LAW ENFORCEMENT MERIT SYSTEM COUNCIL (F-15-1203)

Title 13, Chapter 5, Article 1, General Provisions; Article 2, Classification and Compensation; Article 3, Employment; Article 4, Assignments; Article 5, Employee Leave; Article 6, Grievances; Article 7, Discipline and Appeals; Article 8, Separation from Employment; Retirement System Eligibility

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-1**

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

FROM: Kara Kerker, Staff Attorney

DATE: December 18, 2015

SUBJECT: **LAW ENFORCEMENT MERIT SYSTEM COUNCIL (F-15-1203)**
Title 13, Chapter 5, Article 1, General Provisions; Article 2, Classification and Compensation; Article 3, Employment; Article 4, Assignments; Article 5, Employee Leave; Article 6, Grievances; Article 7, Discipline and Appeals; Article 8, Separation from Employment; Retirement System Eligibility

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Public Safety (Department) is "[t]o prevent crime, apprehend violators, train law enforcement personnel and promote public safety." Laws 2002, Ch. 92, § 3. The Law Enforcement Merit System Council (LEMSC) is in charge of personnel policy and procedures for employees of the Department and the Peace Officer Standards and Training Board.

LEMSC is a five member council consisting of a chair, vice-chair, and three members. Currently, the chair is an attorney practicing in the area of Employee Retirement Income Security Act (ERISA) and employment benefits. The Vice-Chair is a business owner and previous Assistant Mesa Police Department Police Chief. The three members are a retired Phoenix Police Department Detective, a faculty member in the School of Criminology and Criminal Justice at Arizona State University, and an attorney representing corporations in litigation and former law professor.

This five-year review report covers fifty-two (52) rules in 13 A.A.C. 5 (Chapter 5) that relate to the law enforcement merit system council. Specifically, this report covers Article 1, General Provisions; Article 2, Classification and Compensation; Article 3, Employment; Article 4, Assignments; Article 5, Employee Leave; Article 6, Grievances; Article 7, Discipline and Appeals; and Article 8, Separation from Employment; Retirement System Eligibility.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains four (4) rules, which relate to definitions; the law enforcement merit system council; personnel administration; and general information.

Article 2 contains four (4) rules, which address classification; compensation; pay administration; and work hours and work options.

Article 3 contains seventeen (17) rules related to recruitment; examinations; applicant preference points; employment; promotion; reassignment; reinstatement; hiring preference; selection; pre-employment processing; appointments; limited-term appointments; provisional appointments; intermittent appointments; employee conduct; probation; and performance evaluation.

Article 4 contains three (3) rules, which address special duty assignments; uncovered appointments; and transfer of external functions.

Article 5 contains thirteen (13) rules, which address employee leave guidelines; administrative leave; annual leave; civic duty; compensatory leave; donated annual leave; holiday leave; industrial leave; leave amortization; leave without pay; military leave of absence; recognition leave; and sick leave.

Article 6 contains two (2) rules related to the agency grievance system and council review.

Article 7 contains five (5) rules, which address causes for discipline; disciplinary procedures; appeal to the council; rehearing of council decisions; and time limits.

Article 8 contains four (4) rules, which address resignation or retirement; reduction-in-force; disability; and public safety personnel retirement system eligibility.

Year that Each Rule was Last Amended or Newly Made

Rules 101, 201, 302, 304, 305, 307, 309, 312, 501, 503, 507, 513, 702, 703, and 804 were last amended on July 2, 2006.

Rules 102, 308, 315, 316, 504, 506, and 704 were last amended on July 5, 2003.

Rule 314 was last amended on November 6, 2001.

Rules 103, 104, 202, 203, 204, 301, 303, 306, 310, 311, 313, 317, 401, 402, 403, 502, 505, 508, 509, 510, 511, 512, 601, 602, 701, 705, 801, 802, and 803 were newly made on May 10, 2000.

Proposed Action

LEMSC plans to amend the rules R13-5-101, 102, 701, 702, 703, 704, 804, and add a new section, R13-5-706. LEMSC plans to submit final rules to the Council by December 2017.

Summary of Reasons for the Proposed Action

LEMSC believes that the rules with identified issues should be changed pursuant to recent personnel reform in the form of the addition of A.R.S. § 41-1830.16 to the LEMSC statutes and to abide by recent legislative statutorily mandated changes (HB 2377) to A.R.S. §§ 41-1830.12, 41-1830.13, and 41-1830.16. See Laws 2015, Ch. 213, §§ 1, 2, and 3. Once these changes are in place, LEMSC will begin to address additional revisions to its rules that it deems necessary to make interpretation more clear and concise for stakeholders.

Exemption or Request and Approval for Exception from the Moratorium

LEMSC has notified staff that LEMSC has not requested an exemption from the moratorium as it does not plan to submit a rulemaking until after the moratorium is set to expire (December 31, 2015). LEMSC indicates that in the event the moratorium continues, it will seek an exemption from the Governor's Office to implement the changes identified in this report.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. LEMSC has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. LEMSC indicates that the rules reviewed are effective in achieving their objectives. LEMSC proposes changes to further revise the rules so as to incorporate amendments made by additional statutory requirements.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. LEMSC notes that it has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. LEMSC cites general statutory authority for all of the rules reviewed. Under A.R.S. § 41-1830.12(A), LEMSC shall adopt rules it deems necessary for establishing a classification and compensation plan for all covered positions; a plan for appointment, promotion and selection of employees; a performance appraisal system; procedures for conducting hearings of employee

grievances; and procedures for conducting appeals of suspension, demotion, reduction in pay, or dismissal.

Additionally, LEMSC cites A.R.S. § 41-1830.16(A) as general authority for the rules reviewed. Under A.R.S. § 41-1830.16(A), LEMSC "shall adopt rules the council deems necessary for the administration of hearings and the review of appeals as prescribed in this section."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. LEMSC indicates that the rules are consistent with state statutes, with the exception of Rules 101, 102, 701, 702, and 703. These rules are not consistent with A.R.S. §§ 41-1830.12, 41-1830.13, and 41-1830.16 and LEMSC proposes changes to these rules to correct this inconsistency.[1] Rule 706, regarding appeals to LEMSC by covered-employees, has been added to encompass the 2015 changes to these statutes. Additionally, LEMSC indicates that the statutory reference in Rule 804(A) is incorrect and proposes changes to correct this inconsistency.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. LEMSC indicates that it enforces the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. LEMSC indicates that all the rules are clear, concise, and understandable, except Rule 704. LEMSC has proposed clarifying technical changes to this rule to enhance understandability.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

LEMSC indicates that there is not corresponding federal law specific to the law enforcement merit system.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

[1] The full text of the proposed changes to the identified rules is included in the attached five year review report for this submission.

Not applicable. LEMSC indicates that none of the rules were adopted or amended after July 29, 2010.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

Not applicable.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. LEMSC indicates that in the 5YRR approved by the Council in 2010, LEMSC stated it would amend Rules 101, 103, 104, 201, 202, 205, 302, 305, 306, 308, 309, 311, 312, 314, 316, 317, 403, 501, 503, 508, 510, and 804 by August 2011. LEMSC did not complete this course of action due to the continuation of the rulemaking moratorium.

11. <u>Has the agency included a proposed course of action?</u>

Yes, as indicated above, LEMSC plans to amend the rules R13-5-101, 102, 701, 702, 703, 704, 804, and create R13-5-706, submitting final rules to the Council by December 2017.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-1**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **LAW ENFORCEMENT MERIT SYSTEM COUNCIL (F-15-1203)**
Title 13, Chapter 5, Article 1, General Provisions; Article 2, Classification and Compensation; Article 3, Employment; Article 4, Assignments; Article 5, Employee Leave; Article 6, Grievances; Article 7, Discipline and Appeals; Article 8, Separation from Employment; Retirement System Eligibility

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 1 through 8 rules contained in the five-year-review report.

The Law Enforcement Merit System Council (LEMSC) adopts rules for the Department of Public Safety and the Arizona Police Officer Standards and Training Board concerning classification and compensation plans, classified position qualifications, ensuring fair and impartial selection, promotion, separation or removal from service, development of a performance appraisal system for covered employees, and hearings of employee grievances.

LEMSC believes the economic impact has been as predicted for the rules in Articles 1 through 8.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

LEMSC has determined that the rules in Articles 1 through 8 are effective and enforced as written with the exception of nine rules that require amendment to align with statewide personnel reform and statutory changes made to the LEMSC's governing statues in 2015. LEMSC anticipates amending R13-5-101, R13-5-102, R13-5-311, R13-5-701, R13-5-702, R13-5-703, R13-5-704, R13-5-804, and creating a new section R13-5-706 by December 2017.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Law Enforcement Merit System Council

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Website: www.azdps.gov/about/LEMSC

September 25, 2015

Mr. Bret H. Parke, Chair
Governors Regulatory Review Council
100 North Fifteenth Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 13, Chapter 5, Articles 1 through 8

Dear Chairman Parke:

Enclosed you will find the Law Enforcement Merit System Council (LEMSC) 5 Year Rules Review Report for approval by the Governor's Regulatory Review Council. The initial Report was due on May 29, 2015. This Report is timely filed pursuant to the Council's letter, dated April 6, 2015, granting an extension until September 25, 2015.

An electronic and hard copy of this cover letter, the Report, the rules being reviewed, and the general and specific statutes authorizing the rules are concurrently submitted to the Council.

The LEMSC believes that this Report complies with the requirements of A.R.S. § 41-1056 and A.A.C. R1-6-301(C) and certifies that it is in compliance with A.R.S. § 41-1091.

If you need additional information, please contact me at (602) 223-2286.

Sincerely,

P. Ramon Figueroa, Major
Business Manager
Law Enforcement Merit System Council

Enclosures

LAW ENFORCEMENT MERIT SYSTEM COUNCIL

FIVE YEAR REVIEW REPORT

A.A.C. Title 13, Chapter 5, Articles 1 through 8

September 2015

FIVE-YEAR REVIEW REPORT
TITLE 41. STATE GOVERNMENT
CHAPTER 12. PUBLIC SAFETY
ARTICLE 10 MERIT SYSTEM COUNCIL

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4. CURRENT RULES . . . . . Exhibit 1
5. ENABLING AND RELATED STATUTES . . . . . Exhibit 2
6. 2010 ECONOMIC IMPACT STATEMENT . . . . . Exhibit 3
7. 2015 ECONOMIC IMPACT STATEMENT . . . . . Exhibit 4
8. RULE MAKING EXEMPTION LETTER FROM GRRC . . . . . Exhibit 5

TITLE 41, STATE GOVERNMENT
CHAPTER 12, PUBLIC SAFETY
ARTICLE 10 MERIT SYSTEM COUNCIL

FIVE-YEAR-REVIEW SUMMARY

Arizona revised Statutes (A.R.S.) § 41-1830.12 through § 41-1830.16 requires the Arizona Law Enforcement Merit System Council (LEMSC) to make rules defining the merit principles and operating guidelines prescribed by the Council. The Council has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 13, Chapter 5, Articles 1 through 8.

In 2012, Governor Brewer implemented Personnel Reform which added § 41-1830.16. The new governing statutes made it necessary to revise the current rules to include the necessary changes to the current rules. Additional statutory changes were made to the governing statutes last legislative session that will require additional changes to the current rules. An analysis of the rules in Articles 1 through 8, has determined that, with the exceptions noted, the rules are effective, enforced as written, consistent with state and federal statutes and rules, and clear, concise, and understandable. The LEMSC has received no written criticisms of the rules in the past five years. The LEMSC plans to amend R13-5-101, 102, 311, 701, 702, 703, 704, 804, and add new rule R13-5-706 in order to comply with the statutory changes implemented by legislative mandate. The Merit System Council anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council by December 2017. The Council asked for and received an exemption from the rule writing moratorium in 2013 with the intent to revise the rules to conform to mandated personnel reform. The rule making docket was allowed to expire because of additional changes were made to the governing statutes in 2015 which would require additional rules revisions. This timetable is subject to change based on the Merit System Council's priorities, the length of the moratorium, and staffing.

FIVE-YEAR REVIEW REPORT
A.A.C TITLE 13. PUBLIC SAFETY
CHAPTER 5. LAW MERIT SYSTEM COUNCIL

ARTICLE 1. GERERAL PROVISIONS
SECTION

R13-5-101. Definitions
R13-5-102. Law Enforcement Merit System Council
R13-5-103. Personnel Administration
R13-5-104. General Information

ARTICLE 2. CLASSIFICATION AND COMPENSATION
SECTION

R13-5-201. Classification
R13-5-202. Compensation
R13-5-203. Pay Administration
R13-5-204. Work Hours and Work Options

ARTICLE 3. EMPLOYMENT
SECTION

R13-5-301. Recruitment
R13-5-302. Examination
R13-5-303. Applicant Preference Points
R13-5-304. Employment
R13-5-305. Promotion
R13-5-306. Reassignment
R13-5-307. Reinstatement
R13-5-308. Hiring Preference
R13-5-309. Selection
R13-5-310. Pre-Employment Processing
R13-5-311. Appointments
R13-5-312. Limited-Term Appointments
R13-5-313. Provisional Appointments
R13-5-314. Intermittent Appointments
R13-5-315. Employee Conduct
R13-5-316. Probation
R13-5-317. Performance Evaluations

ARTICLE 4. ASSIGNMENTS
SECTION

R13-5-401. Special Duty Assignments
R13-5-402. Uncovered Appointments
R13-5-403. Transfer of External Functions

ARTICLE 5. EMPLOYEE LEAVE

SECTION

R13-5-501. Employee Leave Guidelines
R13-5-502. Administrative Leave
R13-5-503. Annual Leave
R13-5-504. Civic Duty
R13-5-505. Compensatory Leave
R13-5-506. Donated Annual Leave
R13-5-507. Holiday Leave
R13-5-508. Industrial Leave
R13-5-509. Leave Amortization
R13-5-510. Leave Without Pay
R13-5-511. Military Leave of Absence
R13-5-512. Recognition Leave
R13-5-513. Sick Leave

ARTICLE 6. GRIEVANCES

SECTION

R13-5-601. Agency Grievance System
R13-5-602. Council Review

ARTICLE 7. DISCIPLINE AND APPEALS

SECTION

R13-5-701. Causes for Discipline
R20-5-702. Disciplinary Procedures
R20-5-703. Appeal to the Council
R20-5-704. Rehearing of Council Decisions
R20-5-705. Time Limits

ARTICLE 8. SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM ELIGIBILITY

SECTION

R13-5-801. Reassignment or Retirement
R13-5-802. Reduction-in-Force
R13-5-803. Disability
R13-5-804. Public Safety Personnel Retirement System Eligibility

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Authorization of the rule by existing statutes

Specific authority: A.R.S. § 41-1830.12(A) and § 41-1830.16(A).

2. Objective of the rule

See individual rules.

3. Effectiveness in achieving the objective

The rules reviewed are effective in achieving their respective objectives. Proposed course of action currently exists to further revise the rules so as to incorporate amendments made by additional statutory requirements.

4. Consistency with state and federal statutes and rules

The rules reviewed are not consistent with state statutes. The rules are being rewritten to incorporate the requirements of the governing statutes implemented by recent legislative actions.

The listing of the statutes and rules used in determining consistency is as follows: A.R.S. § 41-1830.12 through § 41-1830.16 and A.A.C. Title 13, Ch. 5, Articles 1 through 8. The reviewed rules are consistent with federal statutes and rules.

5. Enforcement policy

The rules reviewed are enforced as written and by use of governing statutes as interpreted by the Business Manager for the Council. If further clarification is necessary, the Council will meet and decide the proper course of action.

6. Clarity, conciseness, and understandability

The rules reviewed are generally clear, concise, and understandable. Specific interpretation of rules that may appear to be unclear is made by the Business Manager with assistance of the Assistant Attorney General assigned to the Council.

7. Written criticisms of the rules received within the last five years

None received for the rules reviewed.

8. Estimated economic, small business, and consumer impact

See attached 2015 Economic Impact Statement and individual rules. The most recent Economic Impact Statement is from 2010 when the rules were reviewed pursuant to the Five Year Review schedule. The economic impact has not differed from that statement submitted in May of 2010. The Council estimates that the rules have a minimal impact on state revenues and public employment and no impact on consumers and businesses.

9. Business competitiveness analysis

No person has submitted an analysis to the Council regarding the reviewed rules' impact on this state's business competitiveness.

10. Completion of previous five-year-review report process

The Council has actively pursued rule changes since the last rule revision made in July of 2006. Additional rule revisions were proposed with plans to submit the proposed changes to GRRC in August of 2011. This was not done because of the continuing moratorium on rule making.

11. Costs vs. benefits/least burden

The rules reviewed do not impose probable costs that exceed the probable benefits within this state.

12. Stringency compared to federal law

There is no corresponding federal law specific to the law enforcement merit system.

13. General permit compliance, A.R.S. § 41-1037

This analysis applies only to rules adopted or amended after July 29, 2010. Of the rules reviewed, none was adopted or amended after July 29, 2010.

14. Proposed course of action

The Council will actively pursue mandatory changes to its rules pursuant to recent personnel reform and additional mandated statutory changes by amending Articles R13-5-101 through 102 and R13-5-701 through 704, R13-5-804 and adding Article R13-5-706. These revisions and addition of the new Article will update the rules and align them with the governing statutes. The Council will then begin to address additional revisions to its rules it deems necessary in order to make interpretation more clear and concise for stakeholders.

R13-5-101. Definitions

2. Objective

The objective of this rule is to inform the public of the meaning of various language, words and phrases used in the rules. There are no definitions in this rule that are not used in the rules. A few definitions are found elsewhere in the rules when they pertain to a specific part of the rules, such as those found in R13-5-506 and R13-5-513.

8. Estimated economic, small business, and consumer impact comparison

This rule is definitional and has no economic impact other than those associated with rulemaking. There is no economic impact on consumers as a result of the definitions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to these definitions:

"Agency head" means the chief executive officer of ~~any agency~~ the Department of Public Safety or the Arizona Peace Officer Standards and Training Board. ~~placed under the rules of the Law Enforcement Merit System Council~~
"Business day" means the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding observed state holidays.
"Covered-employee" means a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service, as defined in A.R.S. § 41-741 (5)(e) and who have completed their original probation.
"Covered position" means any position within ~~an agency~~ Department of Public Safety and Arizona Police Officers Standards and Training Board that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.
"Covered service" means that employment status conferring rights of appeal as prescribed in sections 41-782 and 41-783 or section 41-1830.16, as applicable, as defined in A.R.S. § 41-741 (6).
"Director of employing agency" means chief executive officer of a state agency or designee other than the Department of Public Safety or the Arizona Peace Officer Standards and Training Board.
~~"Disabled person"~~ "Individual with a disability" means anyone who has a physical or mental impairment that substantially limits one more major life activities, or who has a record of impairment, or is regarded as having impairment.
"Employee" means a person who is appointed to a position, subject to the terms and conditions of the appointment within the Department of Public Safety or the Arizona Peace Officers Standards and Training Board.

"Employing agency" means the agency in the state personnel system where the covered-employee is or, in the case of dismissal, was employed. A.R.S. § 41-1830.16(H)(3)
"Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-1830.16(H)(4)
"Full-time employee" means an employee appointed to work 40 hours a week or 160 hour in a 28 day cycle.
"Just Cause" means the all four criteria in A.R.S. § 38-1101(7) *have been met.*
"Original probation" means the specified period following initial appointment to covered service, as defined in A.R.S. § 41-741 (10).
"Personnel Rules" means the rules adopted by the Arizona Department of Administration, human resources division. A.R.S. § 41-1830.16(H)(7)
"Promotional Probation" means a period of 12 months established for evaluating an employee's performance to determine if the employee should be retained in a classification.
"State Agency Head" means the chief executive officer or designee of the employing agency other than the Department of Public Safety or the Arizona Peace Officer Standards and Training Board.
"State Personnel System" means all state agencies and employees of those agencies that are not exempted by this article. A.R.S. § 41-741 (17).
"Working day" means the same as business day.

R13-5-102. Law Enforcement Merit System Council

2. Objective

The objective of the rule is to outline and describe the administrative and operating procedures of the Council.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

A. Authority. The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through 41-1830.~~15~~16.

E. Quorum. ~~Two~~Three members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.

R13-5-103. Personnel Administration

1. Objective

The objective of this rule is to make clear that the Council has jurisdictional authority over the personnel administration requirements maintained by a human resources function.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-104. General Information

1. Objective

The objective of this rule is to clarify additional Council duties that pertain to the entire Chapter that were not listed in R13-5-102.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-201. Classification

1. Objective

The objective of this rule is to provide procedures for employees classification, position allocation, assignment and if necessary modification.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule as any new positions authorized by law are subject to budgetary authorization and availability of funding.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-202. Compensation

1. Objective

The objective of this rule is to determine compensation plans for all classifications which are adopted, revised and overseen by the Council.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to the rate of movement to a classification with a higher pay range as provided by this Article.

R13-5-203. Pay Administration.

1. Objective

The objective of this rule is to authorize and allow the agency head to make special pay adjustments and to determine procedures for other pay incentives.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-204. Work Hours and Work Options

1. Objective

The objective of this rule is to provide for work hours for employees of the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-301. Recruitment

1. Objective

The objective of this rule is to provide guidelines for recruiting qualified new employees.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-302. Examinations

1. Objective

The objective of this rule is to provide a consistent policy in administering all employment or promotional examinations.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-303. Applicant Preference Points

1. Objective

The objective of this rule is to provide requirements for applying preference points to an applicant's qualifying score when applicable authorized by A.R.S § 38-492.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-304. Employment

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to administer fair and impartial employment processes.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-305. Promotion

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to administer fair and impartial promotional processes and provide for promotional opportunities.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-306. Reassignment

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for movement of an employee from one classification to another of equal or lower pay.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-307. Reinstatement

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for reinstatement of an employee or former employee to a classification previously held by that employee or former employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-308. Hiring Preference

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for fair and impartial processes for filling vacant positions.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-309. Selection

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for fair and impartial processes for selection of qualified candidates.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-310. Pre-employment Processing

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide proper pre-employment processes for qualified candidates.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-311. Appointments

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow an agency to administer oaths of office.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

A. Required oath of office. An appointee shall read the oath described A.R.S § 38-231(~~G~~) (E) and agree in writing to uphold the office before the agency head, or a designee authorized to administer the oath.

R13-5-312. Limited-Term Appointments

1. Objective

The objective of this rule is to provide requirements and procedures for an agency to employ limited-term employees or employees employed for specific periods of time.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-313. Provisional Appointments

1. Objective

The objective of this rule is to provide requirements and procedures allowing an agency to hire employees when there is no existing employment list and the agency has an immediate need.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-314. Intermittent Appointment

1. Objective

The objective of this rule is to provide requirements and procedures allowing an agency to hire employees that will work on an intermittent or irregular basis.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-315. Employee Conduct

1. Objective

The objective of this rule is to provide requirements for applying standards of conduct for employees and procedures for the agency to follow to ensure the employee performs the duties and responsibilities of their assigned classification.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-316. Probation

1. Objective

The objective of this rule is to provide requirements and procedures to ensure that probationary categories and probationary periods are properly administered and followed.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-317. Performance Evaluations

1. Objective

The objective of this rule is to provide requirements for an agency to adopt and administer an employee performance evaluation system.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-401. Special Duty Assignment

1. Objective

The objective of this rule is to provide requirements to allow an agency head to make special duty assignments and ensure proper payment of employees serving in that capacity.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-402. Uncovered Appointment

1. Objective

The objective of this rule is to provide requirements and procedures for an agency head to authorize temporary employee appointments to uncovered positions and outlines employee rights while serving in this capacity.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-403. Transfer of and External Function

1. Objective

The objective of this rule is to provide requirements for the orderly transition of state programs from one agency to an agency under the jurisdiction of the Council when transferred by Arizona legislative mandate.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-501. Employee Leave Guidelines

1. Objective

The objective of this rule is to provide requirements and procedures for employee leave accrual, usage and accounting.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time.

R13-5-502. Administrative Leave

1. Objective

The objective of this rule is to provide procedural requirements for administrative leave with pay when authorized by an agency head.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-503. Annual Leave

1. Objective

The objective of this rule is to provide requirements for computing length of service for determining annual leave accrual and administration of employee annual leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-504. Civic Duty

1. Objective

The objective of this rule is to provide requirements and procedures for the administration of Civic Duties for employees of the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-505. Compensatory Leave

1. Objective

The objective of this rule is to provide requirements and procedures for the accrual, use of and payment for compensatory leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-506. Donated Annual Leave

1. Objective

The objective of this rule is to provide requirements and procedures for the transfer of annual leave from one employee into the sick leave balance of another employee and for the use of that sick leave by the recipient.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-507. Holiday Leave

1. Objective

The objective of this rule is to provide requirements and procedures for agency recognition of holidays provided for by statute and for the accrual and use of paid holiday leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-508. Industrial leave

1. Objective

The objective of this rule is to require an agency to establish policies and procedures to comply with statutes regulating industrial leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-509. Leave Amortization

1. Objective

The objective of this rule is to allow an agency to provide for a leave amortization plan for retiring employees.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-510. Leave Without Pay

1. Objective

The objective of this rule is to provide requirements and procedures for short-term and extended leave without pay and for the disposition of accrued leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-511. Military Leave of Absence

1. Objective

The objective of this rule is to provide requirements for privileges of military service provided for by statutes for employees and administration of military leave of absence by an agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-512. Recognition Leave

1. Objective

The objective of this rule is to provide requirements and procedures for awarding worthy employees with recognition leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-513. Sick Leave

1. Objective

The objective of this rule is to provide specific definitions of sick leave and provide requirements and procedures for accrual and use of sick leave under the established agency leave policy in compliance with the provisions of the Family and Medical Leave Act.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-601. Agency Grievance System

1. Objective

The objective of this rule is to provide requirements and procedures for an agency to consider and respond to employee grievances regarding classification, compensation, performance evaluation, and application of Council rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-602. Council Review

1. Objective

The objective of this rule is to provide requirements and procedures for the Council to review employee grievances that have been denied by the agency regarding classification, compensation, performance evaluation, and application of Council rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-701. Causes for Discipline

1. Objective

The objective of this rule is to provide references where the causes for discipline for employees and covered employees can be found.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

A. The causes for discipline for employees are found in A.R.S. § 41-1830.15.

B. The causes for discipline for covered-employees are found in A.R.S. § 41-773.

R13-5-702. Disciplinary Procedures

1. Objective

The objective of this rule is to provide requirements and procedures for the administration of disciplinary action by an agency head.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

C. Interview of an employee. In conducting an interview of an employee being investigated for possible disciplinary action, an agency shall comply with A.R.S. ' ~~38-1101(A) and (B)~~ 38-1110.

D. Time limit for filing a disciplinary action. ~~An agency shall not file a disciplinary action later than 120~~ 180 ~~calendar~~ ~~days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council.~~ An employer shall make a good faith effort to complete any investigation of employee misconduct within one hundred eighty calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct. The investigation is considered complete on the date the employee is served with the notice of discipline or the notice of findings. If the employer exceeds the one hundred eighty calendar day limit, the employer shall provide the employee with a written explanation containing the reasons the investigation continued beyond the one hundred eighty calendar days. A.R.S. ' 38-1110.A

E. Exceptions to the ~~120~~ 180-day rule.

1. The time limit in ~~sub~~Section (D) does not run:

a. During ~~a criminal investigation by a law enforcement or prosecutorial agency;~~ the time that any criminal investigation or

prosecution is pending in connection with the act, omission or other allegation of misconduct; or

b. During ~~any period of time the employee who is the subject of an investigation is absent from the agency on leave, if the absence prevents the agency from proceeding with the normal investigation and disciplinary review process.~~ the period of time in which a law enforcement officer who is involved in the investigation is incapacitated or otherwise unavailable; or

c. During the period prescribed in a written waiver of the limitation by the law enforcement officer; or

d. During emergencies or natural disasters during the time period in which the governor has declared a state of emergency within the jurisdictional boundaries of the concerned employer; or

e. During a multijurisdictional investigation, the time limit may be extended for a period of time reasonably necessary to facilitate the coordination of the employers involved.

2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to a maximum of 90 days beyond the original ~~120~~ 180-day period.

3. If a manager or supervisor is aware of an employee's alleged actions that constitute a criminal offense but fails to act, the time limit does not run during the period of the manager or supervisor's inaction if the supervisor or manager is disciplined for failure to act and:

a. The offense is a misdemeanor involving theft or moral turpitude and is discovered within ~~120~~ 180-day after the ~~120~~ 180-day period for taking disciplinary action, or

b. The offense is a felony.

4. The agency shall maintain documentation to support any exception to the ~~120~~ 180-day time limit, including the dates during which the time limit does not run.

R13-5-703. Appeal to the Council

1. Objective

The objective of this rule is to provide requirements for the conduct of hearings on appeals from employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

The Article title will be changed to Appeal to the Council by Employees

A. Appealable actions by Employees. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.

B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal to the business manager and the Agency Director. The appeal must state specific facts relating directly to the charges on which the appeal is based.

D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An employing agency must prove the ~~cause for disciplinary action~~ by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

E. Effect of appeal. ~~The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay~~ The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council may recommend modification of a disciplinary action if the director of the employing agency has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the director of the employing agency if it finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay. On a finding that the director of the employing agency has not proven just cause to discipline the employee by the preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and at the same time shall send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation.

L. Discovery.

2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency head.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10

business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

R13-5-704. Rehearing of Council Decision

1. Objective

The objective of this rule is to provide requirements and procedures for filing requests for a rehearing of a Council decision.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

The Article title will be changed to Rehearing of Council Decision Regarding Employees

A. Motion for rehearing.

1. Except as provided in ~~sub~~Section (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in ~~sub~~Section (B). A respondent may file a response to the motion within 15 days after service.

R13-5-705. Time Limits

1. Objective

The objective of this rule is to provide requirements for determining and computing time limits that are specified in the rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

***THE FOLLOWING ARTICLE WILL BE ADDED TO THE RULES AS A RESULT OF PERSONNEL REFORM AND MANDATED STATUTORY CHANGES.**

R13-5-706. Appeal to the Council by Covered-employees

1. Objective

The objective of this rule is to provide requirements for the conduct of hearings on appeals from covered-employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the covered-employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions to the rules will made by adding of this new Article:

R13-5-706 Appeal to the Council by Covered-employees

A. Appealable actions by covered-employees. A covered-employee may appeal dismissal from covered service, suspension for more than 40 working hours, or involuntary demotion resulting from disciplinary action.

B. Form of appeal. To initiate an appeal, a covered-employee shall submit a signed written appeal to the business manager and the Agency Director. The appeal must state specific facts relating directly to the charges on which the appeal is based.

C. Time for appeal. A covered-employee shall file an appeal within 10 working days after the effective date of the action.

D. Agency responsibility.

1. When a covered-employee is dismissed, involuntarily demoted, or suspended for more than 40 working hours, the employing agency shall notify the Business Manager in writing of this action and provide related documentation within 5 business days. The employing agency shall furnish the covered employee with specified charges in writing when the action is taken.

2. An employing agency shall have the burden of going forward with the

case once an appeal has been filed.

3. An employing agency must prove by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council may recommend modification of a disciplinary action if the state agency head has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the state agency head if it finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.

F. Council amended notice of disciplinary action. On a finding that the state agency head has not proven just cause to discipline the employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven. Within forty-five days after the conclusion of the hearing, the Council shall enter its decision or recommendation by certified mail and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation.

G. Agency action after receiving decision or recommendation. The state agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within fourteen days of receipt of the findings or recommendation from the Council. The state agency head or the agency head's designee shall accept the Council's recommendation unless the recommendation is arbitrary or without reasonable justification. If the state agency head or the agency head's designee does not accept the Council's recommendation, the state agency head or agency head's designee shall state the reasons for rejecting the recommendation. The decision of the agency head or agency head's designee is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee.

H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.

I. Conduct of hearings. The Council shall hear the appeal within 30 days of the receipt of the appeal. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

J. Witness fees. Witnesses at a hearing, other than covered-employees, are entitled to the fees allowed witnesses under A.R.S. ' 12-303.

K. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall

pay the fees for subpoenaed witnesses. A covered-employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

L. Discovery.

1. Within three business days after receiving a written request from the covered-employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the covered-employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

2. Within 20 days after receiving the investigative file, the covered-employee shall provide all material relating to the defense of the covered-employee to the Director of employing agency.

3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the covered-employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.

5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered-employee shall exchange the names of all witnessed who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered-employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

7. If a party fails to provide material as required, the Council may preclude its use at the hearing.

M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

O. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:

a. The witness does not reside within the State or is out of state,

b. The witness is too ill to attend the action before the Council, or

c. The deposition is for the purpose of discovery in preparing a case before the Council.

2. The requesting party shall pay the expense of any deposition. An covered-employee of the agency is not entitled to a witness fee for giving a deposition.

3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

P. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.

Q. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

R. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

R13-5-801. Resignation or Retirement

1. Objective

The objective of this rule is to provide requirements and procedures for the processing of employees retiring or resigning from the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-802. Reduction in Force

1. Objective

The objective of this rule is to provide requirements and procedures for conducting a reduction in force by an agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-803. Disability

1. Objective

The objective of this rule is to provide requirements for establishing policies and procedures for discontinuing the employment of an employee that becomes disabled and is unable to perform the essential functions of the job.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-804. Public Safety Personnel Retirement System Eligibility

1. Objective

The objective of this rule is to designate classifications that are eligible for membership in the Public Safety Personnel Retirement System.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. ' 38-842 ~~(20~~)(~~a~~) (31)(a).

LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ADMINISTRATIVE RULES

July 2, 2006

TITLE 13. PUBLIC SAFETY
CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

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ARTICLE 1. GENERAL PROVISIONS

R13-5-101 Definitions

In this Chapter, unless otherwise specified, the following terms mean:

"Abandonment of position" means failure of an employee to report to work for a period of five consecutive working days without authorization from the employee's supervisor or manager and without good cause.

"Abilities" means general traits or capabilities an individual possesses when beginning the performance of a task.

"Agency" means any governmental organization subject to the rules of the Law Enforcement Merit System Council.

"Agency head" means the chief executive officer of any agency placed under the rules of the Law Enforcement Merit System Council

"Allocate or allocation" means the placement of a position to a classification based on the duties and responsibilities of the position.

"Annual leave" means the leave time accrued biweekly by an employee based on the number of years of state service and may include holiday leave and recognition leave.

"Appeal" means an employee's request for Council review of a disciplinary action.

"Applicant" means a person who has applied for an opportunity to compete for a position.

"Appointment" means the placement of a candidate or employee into a classified position.

"Background investigation" means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, and driving record.

"Break-in-service" means a period of absence from agency service of more than 240 consecutive working hours resulting from an employee's resignation, retirement, suspension, layoff, or leave of absence without pay.

"Business manager" means the individual responsible for administering the affairs of the Council.

"Candidate" means an applicant who qualifies for a place on an eligibility list.

"Certified list" means the names of qualified candidates on an eligibility list who are willing to accept an appointment.

"Civilian employee" means a person who is appointed to a classification that does not require peace officer status.

"Classification" means one or more positions requiring the same minimum qualifications, knowledge, skills, and abilities that have the same title and pay range.

"Classification date" means the effective date of an employee's appointment to a classification.

"Classification specification" means the classification's title or rank, classification code, typical duties and responsibilities, essential functions, minimum qualifications, required knowledge, skills and abilities.

"Classified position" means a position that is allocated to a classification.

"Commissioned employee" means a person who is appointed to a classification that requires Arizona Peace Officer Standards and Training Board certification as a peace officer.

"Compensation" means the amount of money paid for each hour worked and paid leave taken and includes time off received for overtime and holidays worked or accrued.

"Compensatory time" means leave received for overtime worked.

“Competitor” means an applicant who has met the minimum qualifications for a classification and is competing in an employment or promotional examination.
“Contested case” has the same meaning as in A.R.S. § 41-1001 (4).
“Council” means the Arizona Law Enforcement Merit System Council.
“Covered position” means any position within an agency that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.
“Days” means full calendar days unless otherwise specified in the text of a rule.
“Demotion” means the disciplinary appointment of an employee to a classification with a lower pay range.
“Disabled person” means anyone who has a physical or mental impairment that substantially limits one more major life activities, or who has a record of impairment, or is regarded as having an impairment.
“Dismissal” means an agency-initiated removal of an employee from state service.
“Duties” means actions or tasks required under the circumstances by an employee’s position or classification.
“Eligibility list” means the names of candidates for a classification in descending order of their final scores in preparation for a selection process.
“Employee” means a person who is appointed to a position, subject to the terms and conditions of the appointment.
“Entrance rate” means the lowest rate of pay within the pay range of a classification.
“Examination” means an evaluation or test to determine if an applicant’s qualifications comply with the specifications for a classification.
“Examination plan” means a description of each phase of an examination, the weight applied to each phase of the examination, the criteria for moving from one phase of the examination to another, and any limitations as to the number of names to appear on the eligibility list.
“Exempt employee” means an employee who is not subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.
“External employment list” means an eligibility list of candidates seeking employment with an agency.
“Fair Labor Standards Act” (FLSA) means those federal statutes at Title 29 U.S.C. 201-219 and 251-262.
“Family and Medical Leave Act FMLA leave” means a leave of absence, with or without pay, taken by an employee under a policy adopted by an agency head from options authorized in the Family and Medical Leave Act. 29 U.S.C. 2611, et. seq.
“For cause” means disciplinary action or dismissal for any reason listed in ARS § 41-1830.15 or this Chapter.
“Full-time employee” means an employee appointed to work 40 hours a week.
“Grievance”means a work-related complaint by an employee, regarding classification, compensation, performance evaluation, or violation of law or Council rules.
“Holiday leave” means the leave time accrued by working a state holiday or accrued when the holiday falls on a day the employee is not scheduled to work or is on paid sick leave. Holiday leave may be included in annual leave time.
“Human Resources” means an agency department responsible for personnel administration.
“Initial probation” means a probationary period required of a new employee to an agency, an employee appointed to a classification as a special limited term employee, or an employee

appointed to the classification of officer who has completed the terms of a special limited term appointment.
“Intermittent Appointment” means the appointment of an employee to work on an irregular basis.
“Internal list” means an eligibility list of internal candidates seeking promotional positions or reassignments.
“Knowledge” means a body of information, usually of a factual or procedural nature, that makes for successful performance of a task.
“Limited duty” means a short-term assignment to a physically less demanding position while the employee recovers from a temporary medical condition or disability.
“Limited-term appointment” means an appointment to a position that is designated as temporary.
“Limited-term employee” means an employee in a limited-term appointment who has not achieved the status of a regular employee.
“Manifest error” means an erroneous act or failure to act in administering the provisions of Article 3 of this Chapter.
“Non-exempt employee” means an employee who is subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.
“Overtime” means time worked by a non-exempt employee in excess of 40 hours in a work week or in excess of 160 hours in a 28-day cycle.
“Part-time appointment” means the appointment of an employee to work a schedule of less than 40 hours per week.
“Part-time employee” means an employee appointed to work less than 40 scheduled hours per week.
“Pay range” means the difference between the lowest and highest pay rates for a classification.
“Pay status” means an employee’s right to receive compensation for time worked or leave taken, except when absent on leave-without-pay or suspension without pay.
“Permanent employee” means an employee who has successfully completed an initial probation with an agency.
“Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for a classification.
“Position” means a job or function, whether occupied or vacant, that is assigned a number, classification, funding source, pay range, and location code.
“Position audit” means an examination of the duties and responsibilities of a position to determine the appropriate classification.
“Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.
“Promotion” means the appointment of an employee to a position in another classification with a higher maximum pay level.
“Provisional appointment” means an appointment to a position in a classification for which there is no eligibility list.
“Qualifications Appraisal Board” means a group of raters who evaluate a competitor’s qualifications based upon the competitor’s written or oral responses.
“Qualifying pay period” means a pay period for qualifying service in which an employee is in pay status for at least one-half of the employee’s normally scheduled work week.

“Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.
“Reallocation” means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.
“Reappointment” means appointment to a classification previously held by an employee who was reassigned to a different classification.
“Reassignment” means an appointment, at the employee’s request, to a position in a different classification with the same or a lower pay range.
“Recall” means the appointment of a former employee who was separated by a reduction in force.
“Reclassification” means the change in classification of an employee due to the employee’s movement to a position in a different classification or a reallocation of the employee’s position to a different classification.
“Recognition leave” means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.
“Reduction in force” means an action taken by an agency head to involuntary transfer, reassign, or lay-off an employee as a result of a:

1. Legislative or executive mandate;
2. Reduction of funds; or
3. Decrease in the number of authorized positions, service area, or program responsibilities.

“Regular employee” means an employee, except a limited term-employee, who achieves permanent status.
“Reinstatement” means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.
“Rejection of probation” means an action taken by an agency head to reassign an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.
“Responsibilities” means actions or tasks for which an employee is accountable in a position or classification.
“Retirement” means a voluntary separation from an agency by an employee who is eligible for an immediate disbursement from a retirement plan.
“Separation” means the close of an employee’s term of employment with an agency.
“Skill” means an individual’s level of proficiency or competency in performing a specific task.
“Special duty assignment” means an employee’s temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.
“Special limited term appointment” means an appointment to the classification of cadet officer or officer trainee pending the completion of requirements for the classification of officer.
“State” means the State of Arizona.
“Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.
“Standardized scoring” means a statistical method used to ensure that the various

components of a multi-phased examination receive their proper weights.
"Suspension of pay" means the disciplinary action of withholding an employee's pay for a specified period.
"Telecommuting" means an employee performing assigned work at a location other than the employee's regular work location.
"Time-in-grade" means time spent in a classification.
"Transfer" means the movement of an employee from the employee's current position to another position in the same classification.
"Uncovered appointment" means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.
"Uncovered employee" means an employee who serves at the pleasure of the Governor.
"Veteran" means an individual who served in the armed forces of the United States and was discharged from military service under honorable conditions after more than six month's of active duty and as defined in 37 U.S.C. 101 and A.R.S. § 38-492.
"Work week" means the 40-hour time period an employee works between Saturday and Friday, including any leave time taken.

R13-5-102 Law Enforcement Merit System Council

A. Authority. The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through 41-1830.15.
B. Decisions of the business manager are subject to review by the Council.
C. Selection of officers. The Council shall select a Chair and Vice-Chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-Chair shall hold office for a period of two years, or until their successors are selected.
D. Meetings. The Chair, or in the Chair's absence the Vice-Chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at a location convenient to the participants whenever possible. Except for the Council's executive sessions, the Council's meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.
E. Quorum. Two members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.
F. Minutes. The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.
G. Council rules. An agency shall provide employees with a copy of the Council's rules.

R13-5-103 Personnel Administration

A. Separation of powers. The agency head shall staff and maintain a human resources function responsible for personnel administration consistent with these rules and under the jurisdiction of the Council as provided for in statute and this Chapter. The business manager shall provide oversight to Human Resources in administering this Chapter.
B. Personnel records. Human Resources shall maintain employment records on each agency employee, including the employee's:
1. Employment application;
2. Examination scores;

3. Signed oath of office;
4. Date of initial appointment;
5. Other appointment orders;
6. Performance reports;
7. Transfers;
8. Commendations;
9. Leaves-of-absence without pay;
10. Disciplinary actions;
11. Separation from the agency;
12. Reinstatement to the agency, and
13. Any other appropriate employment records.

C. Confidentiality. Human Resources shall preserve the confidentiality of personnel records. Persons authorized to access personnel records are:

1. The employee;
2. A Person authorized by the employee;
3. A Person with an official court order;
4. A Person authorized by the agency head;
5. A Person authorized by the chair of the Council; and
6. A law enforcement agency with authorized access to such records under A.R.S. § 41-1828.01.

R13-5-104 General Information

A. Delegating authority. The agency head may delegate to other agency personnel the authority and duties imposed by this Chapter upon the agency head, unless otherwise prohibited by statute or rule.

B. Reports. The agency head shall provide information requested by the Council on matters relating to this Chapter. The agency shall present the information in the format requested by the Council.

C. Restricted information. The Council shall safeguard confidential information given to the Council by any employee or former employee. The Council shall not allow inspection of such information except under conditions prescribed by the Council.

D. Service of notice. The agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business address and is complete upon mailing. Service as provided for in this section is required for the following:

1. Notice of an employee's rejection from probation;
2. Notice of a charge in a disciplinary proceeding;
3. Notice of an employee's suspension, layoff, or dismissal; and
4. Other notices required by these rules.

E. Proof of service. The agency shall provide proof of service by affidavit.

F. Availability of funds. Reference in these rules to employee pay is contingent upon availability of funds, as determined by the agency head.

G. Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of

federal funds.

H. Validity and separation. If any provision or application of the rules in this Chapter is held invalid by a court of competent jurisdiction, the remainder of the rules in this Chapter and application of the rules to other persons or circumstances are not affected by the court decision.

I. Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, disability or pregnancy.

J. Accommodation. The Council and the agency head shall make reasonable accommodations to enable a person with a disability to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the business manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

ARTICLE 2. CLASSIFICATION AND COMPENSATION

R13-5-201 Classification

A. Classification Plan. The Council shall adopt and revise the classification of positions for use by an agency. Collectively, classifications adopted by the Council comprise the classification plan of the Council. Each classification in the classification plan includes:

1. A descriptive title;
2. A description of the scope of duties, typical responsibilities, and essential functions;
3. The minimum qualifications required of an applicant; and
4. A determination of non-exempt or exempt status under the Fair Labor Standards Act.

B. Classification specifications. The business manager shall document the date of adoption and the latest revision of each classification specification, and shall maintain the master set of all approved classification specifications. Human Resources shall also maintain a set of all approved classification specifications. Copies of a classification specification are open for inspection by an employee and the public and are available on the DPS website.

C. Allocating positions. The Council shall allocate positions to the appropriate classification in the Classification Plan. The Council shall allocate positions to the same classification when:

1. The duties and responsibilities are substantially similar;
2. The education, experience, knowledge, skills, and abilities required are substantially similar;
3. The examinations used in choosing qualified candidates are substantially similar; and
4. The pay range may be applied equitably to all positions in the classification.

D. Compensation Maintenance Review Plan: The Council shall adopt and revise guidelines for a classification and compensation maintenance review plan. An employee shall be placed in a classification in accordance with this plan.

E. Assignment. Except in an emergency, or as otherwise provided by this Chapter, an agency shall not assign an employee to perform the duties of any classification other than the classification to which the employee's position is allocated.

F. Modification. The Council may establish a new classification and revise or abolish an existing classification. The Council shall decide when a position in an affected classification needs to be reallocated, taking into account the factors in subsection (C). The Council shall also determine the probationary or permanent status of an employee affected by reallocation.

G. Reviewing allocations. An employee affected by reallocation of the employee's position shall have the opportunity to be heard by the Council under R13-5-602.

H. Changes in positions. The Council shall reallocate an existing position when a material and permanent change occurs in the duties and responsibilities of the position.

1. If an employee is in a position that is reallocated, an agency shall reclassify the employee in that position if the employee:
   a. Has been in the position at least 6 months;
   b. Has occupied the position during the change in duties; and
   c. Meets the minimum qualifications of the new classification.
2. A position shall not be reallocated while undergoing a classification and compensation review, except that the Council may reallocate a position that is undergoing a classification and compensation review when an agency head can show that the reallocation is necessary for the continued operation of the agency.

I. Time in grade. The Council shall credit an employee reclassified as a result of a reallocation with time-in-grade, as follows:

1. The employee is credited with time-in-grade for the time spent in the position if no significant change is made to the duties and responsibilities of the position to qualify for the higher classification and if the employee continues to perform the duties previously performed in the position.
2. Time-in-grade status is calculated on the basis of actual hours worked.

J. New positions. An agency head shall establish positions in the agency as authorized by law, subject to budgetary authorization and availability of funds. An agency head shall notify the Council when a new position is established. The Council shall allocate a new position to the appropriate classification.

K. Classification titles. An agency shall use a classification title approved by the Council in all communications regarding personnel, budget, and financial records.

R13-5-202 Compensation

A. Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities and shall submit the agency's recommendations to the Council for approval.

B. Hearings. If an agency recommends a change in a pay range, the Council shall grant any adversely affected employee an opportunity to be heard.

C. Pay Levels. The Council shall specify all pay levels. The Council may also establish more than 1 pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.

D. Lack of Funds. If an agency lacks sufficient funds to pay an employee's salary, the agency shall consider an alternative method of reducing costs, including those described in R13-5-802(B). If an alternative method is not adequate or available, the agency shall assign an employee to a leave of absence without pay under the layoff procedure in R13-5-802. The agency shall recall the laid off employee when sufficient funds become available.

E. Entrance rate. The minimum pay rate for each classification is the entry rate, unless otherwise provided in these rules. The agency shall maintain a record of each employee's

employment date and entrance into a classification.

F. Special pay adjustments. When making an appointment, promotion, reinstatement, recall, transfer, reclassification or reassignment, an agency head may authorize pay anywhere within the pay range to meet recruiting and retention needs, and to give credit for prior agency service.

G. Rate above maximum. When a position is reallocated resulting in the reclassification of an employee to a lower classification or the pay range of a classification is reduced, the agency head may authorize a pay rate for the employee above the maximum for the classification. While an employee's pay remains above the maximum rate for the employee's classification, the employee shall not receive any pay increases except those required by law.

H. Rate on movement to a classification with a lower pay range. An employee who accepts reassignment to a classification with a lower pay range may receive a rate above the minimum, if authorized by the agency head. The agency shall then establish a new classification date for the employee.

I. Rate on movement to a classification with the same range. When an employee moves to another classification with the same range, the employee shall retain the employee's current rate of pay.

J. Rate on movement to a classification with a higher pay range. When an employee moves to another classification with a higher pay range, the employee shall receive pay at the entry level of the new classification. If the employee's current pay is greater than the entry level of the new classification, the employee shall receive no less than a $500 annual increase. In no case shall an employee's salary exceed the maximum for the new classification.

K. Rate upon reinstatement. Upon reinstatement, a former employee shall receive the entrance rate for the employee's classification, unless the agency head authorizes a higher rate or as directed by the Council following a disciplinary hearing.

L. Rate upon recall. A former employee who is recalled after a layoff shall receive the same pay rate as that held before the layoff. If the Council approved a general pay adjustment or classification adjustment while the employee was on leave of absence without pay, the employee shall receive the adjustment.

M. Automatic pay adjustment. A classification pay range adjustment applies equally to all employees within the classification and does not alter an employee's classification date for a pay adjustment.

R13-5-203 Pay Administration

A. Base pay adjustment. An agency head may modify base pay by adding cost-of-living and other adjustment appropriated by the State Legislature. An agency head may also request that the Council revise the compensation plan to include other changes to base pay, as needed. After base pay adjustments are completed, an agency head may add special duty pay before computing an employee's pay rate.

B. Appropriated pay adjustment. Upon approval by the Council the agency head may apply some or all the appropriated funds to the compensation plan, if the appropriation bill does not include specific allocation instructions for an employee pay raise, or if the instructions are not applicable to the agency.

C. Special duty assignment. An agency head may supplement the base pay of an employee on a special duty assignment. Time spent on a special duty assignment counts toward an

employee's length of service. An employee may receive special duty pay only for the period when the employee performs the required duties of the special duty assignment.

D. Return from special duty assignment or uncovered appointment. When an employee returns to a regular appointment from a special duty assignment or an uncovered appointment, the agency shall return the employee's pay to the employee's base pay earned before being assigned to a special duty assignment or uncovered appointment. If general pay adjustments or classification adjustments are approved while an employee is on a special duty assignment or serving in an uncovered appointment, the employee shall receive the adjustments.

E. Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

R13-5-204 Work Hours and Work Options

Work hours and work breaks. An agency head may establish different working hours for certain work groups and shifts in order to meet the needs of the agency. In doing this, the agency head should consider such factors as clean air directives, telecommuting, and flexible work hours. An agency head shall establish a policy for "on-duty" and "off-duty" time consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter and provide procedures for recording time worked and leave taken by an employee.

ARTICLE 3. EMPLOYMENT

R13-5-301 Recruitment

A. Recruiting an external applicant. When authorized by an agency head, Human Resources shall seek qualified applicants through open recruiting and competitive employment opportunities. Human Resources shall publish and distribute job announcements that include:

1. The classification title and pay;
2. The minimum qualifications;
3. The location of the assignment, if known;
4. Special requirements, if any;
5. Location of forms; and
6. The application deadline.

B. Applications. Human Resources shall establish procedures for distributing and receiving an application. Human Resources shall screen all applications and may reject any that are incomplete, illegible, or received after the deadline.

C. Disqualifying an applicant or candidate. An agency head or the agency's Human Resources unit may disqualify any applicant or candidate based upon information in an application, statements made by the applicant's references, and a background investigation by the agency. The agency shall also disqualify any applicant who:

1. Lacks the required qualifications for the classification;
2. Was convicted of a disqualifying offense;
3. Was dismissed by a previous employer for a reason that is cause for dismissal from the agency;

4. Practiced deception or failed to give complete and accurate information; or
5. Failed to meet selection guidelines as established by the Council.

D. Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of 2 years from the date of disqualification.

E. Notifying an applicant. After completing a qualification review, Human Resources shall notify an applicant of the agency's acceptance or rejection of the employee's application.

F. Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

R13-5-302 Examinations

A. Examination plan. Human Resources shall develop an examination plan for each selection process. The business manager shall review and approve each examination plan. An applicant for the examination shall be notified of the examination plan. Once an examination begins, changes will not be made to the plan. If an examination plan needs to be altered, Human Resources shall terminate the current examination and initiate a new examination.

B. Examination guidelines. Human Resources shall obtain or develop a valid examination for each classification, and establish a weight and minimum qualifying requirement for each phase of the examination. The business manager shall review and approve each examination before the examination is administered. A competitor shall achieve the minimum requirements on each phase of an examination before progressing to the next phase. A competitor shall achieve a passing score on each phase before qualifying for a classification.

C. Notifying an applicant. Human Resources shall notify a qualified applicant of the following information:
1. The date, time, and location of each examination;
2. The number of phases included in the examination;
3. Other pre-employment requirements; and
4. How to request special accommodations for persons with a disability.

D. Type and content of examination. Human Resources shall ensure that each examination is valid, non-discriminatory, and fairly and accurately measures an applicant's ability to perform the functions and duties listed in the classification specifications.

E. Conducting an examination.
1. Human Resources, or a person designated by Human Resources, shall administer the examination.
2. The business manager shall oversee all elements of, but not actively participate in, the examination process to ensure that each component is administered, scored, evaluated, and interpreted fairly and accurately.
3. Human Resources shall permanently disqualify an applicant from taking any employment or promotional examination if it has been established that the applicant is guilty of copying, collusion, unauthorized access, or other acts of dishonesty relating to an official examination.

F. Scoring an examination. Human Resources shall oversee the scoring of the examination.

1. Human Resources may use a rater for a qualifications appraisal board from within or outside of an agency to score an examination. Human Resources shall select an examination rater who is qualified to appraise the education, experience, and personal qualifications of a competitor.
2. Human Resources shall provide a rater with scoring guidelines and exam answer keys to ensure consistency of scoring, evaluation, and interpretation of test results. All phases of an examination shall have predetermined and clearly defined scoring criteria.
3. If a majority of the raters on a qualifications appraisal board give the competitor a passing score, the competitor shall receive a minimum rating of "pass" even if the competitor's average score is below the passing level. If a majority of the raters on a qualifications appraisal board gives the competitor a score below the passing level, the competitor shall be disqualified, even if the competitor's average score is above the passing level.
4. Human Resources shall apply standardized scoring to a multi-phased examination when the number of competitors is five or more.

G. Validating an examination result. If Human Resources finds that an examination is incorrectly scored or that a portion of an examination is defective, Human Resources shall:
1. Correct all scoring errors, or
2. Eliminate the defective portion of an examination and revise the score of each competitor.

H. Examination results notification. Human Resources shall mail notification of examination results to each competitor.

I. Review of examinations. Any employee who has tested for promotion may request an examination review under R13-5-305(G).

J. Retaining test scores. Human Resources shall retain all examination materials and test scores under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

R13-5-303 Applicant Preference Points

If an applicant receives a passing score on an examination and has qualified for placement on an employment list, Human Resources shall add the preference points authorized by A.R.S.§ 38-492 to the applicant's final score, provided the applicant submits official documentation of eligibility for preference points. Preference points shall not apply to a promotional examination.

R13-5-304 Employment

A. Establishing an employment eligibility list. Human Resources shall develop, and the Business Manager shall establish, employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of the competitors final examination scores.

B. Establishing a list in case of ties. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.

C. Reviewing the employment eligibility list. Human Resources shall submit an employment eligibility list to the business manager for approval and certification.

D. Notification to candidate. When an employment eligibility list is certified by the business manager, Human Resources shall notify a candidate of the candidate's relative ranking on the list.

E. Duration of an eligibility list. Each new or merged list remains in effect for 18 months from its effective date. Before a list expires, the Council may cancel the list.

1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or was canceled within the past 6 months.
2. Merging a list. Except for the classifications described in R13-5-304(E)(3) if 3 or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates' final scores and notify each candidate of the candidate's relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.
3. Conducting continuous or periodic testing. If the Council determines that a classification requires continuous or periodic testing, the business manager may authorize Human Resources to conduct examinations regardless of the existence of an employment list in that classification. Human Resources shall merge the names of candidates tested with names on the existing employment list for that classification as described in subsection (E)(2).
4. Retesting a merged candidate. If another examination for the same classification is held before the prior list expires, a merged candidate from the prior list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.

F. Removing a candidate. The business manager shall remove a candidate from an eligibility list for any of the following reasons:

1. Human Resources is unable to contact the candidate by phone or mail;
2. The Council abolishes the classification for which the list was developed; or
3. The candidate withdraws from the selection process.

G. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of an eligibility list to correct a manifest error discovered after posting the list.

R13-5-305 Promotion

A. Announcing a promotional examination. Human Resources shall publish an agency-wide announcement when initiating development of an internal eligibility list. An announcement shall include the information in R13-5-301(A).

B. Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.

1. An employee is eligible to take a promotional examination if the employee:

a. Satisfactorily completes initial probation by the application filing deadline;
b. Meets or exceeds the minimum qualifications for the classification; and
c. Receives a standard or above standard performance evaluation for the latest rating period.

2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.

C. Processing an application. Human Resources shall process an application consistent with the procedures in R13-5-301(B), (C), and (F).

D. Business manager review. Within 10 days after a notice of rejection of an application has been mailed to the employee, an employee may request that the business manager review a rejected application. The business manager may review and overturn or concur with the decision of Human Resources. An employee may also request that the Council review the business manager's decision.

E. Promotional examination. Human Resources shall conduct a promotional examination consistent with R13-5-302. An employee eligible to take a promotional examination shall notify the employee's supervisor of the time and date of the examination as soon as it is known. A supervisor shall authorize an employee to participate in a promotional examination while on duty.

F. Scoring and validating an examination. Human Resources shall score and validate an examination under R13-5-302 (F) and (G).

G. Inspection of examination results. Within 10 days after the examination results are mailed, a competitor may file a written notice with the business manager requesting an opportunity to review the examination for the purpose of determining whether the competitor has a reason for challenging the competitive examination. A competitor requesting a review shall outline the specific areas the competitor believes are in error. The competitor shall be allowed to review the examination in the presence of the business manager or an employee authorized by the business manager to determine whether the competitor has a valid basis for a challenge to the examination.

1. The business manager or the authorized employee shall oversee the competitor's examination inspection.
2. An employee shall not copy questions or answers, nor make any alterations to the examination papers.
3. Within 10 days of a review, a competitor may file a written notice with the business manager challenging the examination results on the basis of irregularity, bias, fraud, or scoring error and explaining the basis for any challenge. The business manager shall review the competitor's challenge to determine if the challenge is valid.
4. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.
5. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.
6. If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.
7. Only the Council, a business manager, competitor, competitor's attorney, or an agency head may inspect a competitor's examination.

H. Grievance of business manager's decision. An employee who is aggrieved by a decision of the business manager may grieve the decision to the Council. A grievance of the business manager's decision shall be filed with the Council office no later than 20 days after notice of the decision is given. The Council shall review the grievance as outlined in R13-5-602 (E).

I. Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list based on the employee's score.

J. Establishing an internal list. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score.

K. Establishing a list in case of a tie. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.

L. Approval of list. Human Resources shall submit the internal list to the business manager for approval and certification.

M. Notifying a candidate. When the list is certified by the business manager, Human Resources shall notify a candidate of the exam results and the candidate's relative ranking on the list.

N. Duration of a list. A list shall remain in force consistent with R13-5-304(E).

O. Removing a candidate from an internal list. The business manager shall remove a candidate from an internal list if:

1. The candidate fails to maintain required qualifications for the classification, or
2. The candidate resigns or is terminated from agency service.

P. Promotion to the classification of officer. The business manager shall reclassify an employee to the classification of officer upon certification by the Peace Officer Standards and Training Board.

Q. Promotion for a commissioned classification. An agency may establish a job-interest card system for a promotion in a commissioned classification. If a candidate submits a job-interest card indicating interest in only a specified position, that candidate shall not be considered for any other position except as outlined in this subsection.

1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list until all candidates on the promotion list are offered the position.
3. For a location that has 2 or fewer positions, an agency head may appoint any promotional candidate residing in that location.
4. If a candidate declines an offer of promotion, the business manager shall move that candidate's name to the bottom of the promotional eligibility list.
5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a second offer to all candidates on the list.
6. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for

the classification.

R. Promotion for a civilian classification. Civilian promotions are conducted under R13-5-308 and R13-5-309.

R13-5-306 Reassignment

A. Reassignment application. An employee may request reassignment to a different classification with the same or a lower pay range by submitting an application to Human Resources documenting the employee's qualifications. An application for reassignment can be obtained from Human Resources.

B. Qualification screening. Human Resources shall determine whether the employee meets the minimum qualifications of the classification. Unless the employee has previously held permanent status in a classification, Human Resources shall require the employee to pass an examination for the requested classification. Any employee required to test may request an examination review under R13-5-305(D), (F), and (H).

C. Eligibility list. If the employee qualifies, Human Resources shall place the candidate's name on an appropriate internal eligibility list under R13-5-305 (J) and (K).

R13-5-307 Reinstatement

A. Reinstatement list. An employee may apply for reinstatement within one year from the date of separation. Upon approval of the agency head, Human Resources shall place the former employee's name at the bottom of a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.

B. Duration of the list. A reinstatement list shall remain in force for a maximum of 18 months.

C. Background investigation. All candidates for reinstatement shall pass a background investigation.

R13-5-308 Hiring Preference

A. Order of lists. When an agency head authorizes filling a vacant position, Human Resources shall notify the manager who is filling the vacancy of any employees requesting a transfer to the vacant position. After considering a transfer request, or if there are none, the manager may request a list of candidates for the position from available eligibility lists in the following order of preference:

1. Reappointment list,
2. Reassignment list,
3. Recall list,
4. Internal list,
5. Reinstatement list, and
6. Employment list.

B. Referring candidates. Except for the classification of cadet officer, Human Resources shall contact eligible candidates in the order of preference specified in subsection (A) to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.

1. If there is one vacant position, Human Resources shall refer the three interested

candidates standing highest on each of the lists. Human Resources may refer fewer than three names if there are fewer than three candidates on the lists.

2. For multiple vacancies, Human Resources shall refer one more candidate for each additional vacant position from the lists.
3. If a list is not available, the business manager may refer candidates from lists of the same or higher level as the position being filled.

C. Referring candidates for cadet officer. Human Resources shall make a job offer conditional on passing a background investigation to as many of the highest ranking candidates on the list as Human Resources deems necessary to fill existing positions.

D. Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a second offer to all candidates on the list. The second offer shall include a notification to each candidate that if all candidates decline the position, the list will be cancelled. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

R13-5-309 Selection

A. Selecting a candidate. The manager shall follow the interview and selection policy provided by Human Resources.

B. Interviewing. A manager who is filling a vacancy shall interview all candidates requesting a transfer, may interview up to three candidates from each certified list.

C. Additional names. If the manager rejects all initial candidates, the manager shall document job-related reasons for their rejection and submit the interview forms to Human Resources. If Human Resources agrees with the manager's reason for rejection, Human Resources shall refer up to 3 more names from each certified list.

D. Selection of cadet officer. A candidate who receives a job offer for a position covered under R13-5-312(E) and is not disqualified during the background investigation shall be appointed to the classification by the agency head.

E. Documenting the selection. Upon making a selection, the hiring manager shall complete the documentation and return all interview and selection materials to Human Resources.

F. Record retention. Human Resources shall retain interview and selection records under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

R13-5-310 Pre-employment Processing

A. Pre-employment screening. Before appointment to a position, a candidate shall successfully pass a background investigation and any other examination considered appropriate by the agency head.

B. Withdrawal from selection process. If a candidate elects to withdraw from the selection process, Human Resources shall document the candidate's withdrawal.

C. Failing to successfully complete an examination. If a candidate fails to successfully complete any of the requirements in subsection (A), Human Resources shall document the failure and disqualify the candidate.

D. Final processing. When a candidate passes all the pre-employment requirements, Human

Resources shall prepare and submit the appropriate forms to the agency head for approval.

E. Declining position offers. Human Resources may remove from a certified list any candidate who declines an appointment offer.

F. Requesting accommodation. If a selected candidate requests a special accommodation under state or federal law, Human Resources shall confer with appropriate personnel to determine if a reasonable accommodation is possible.

R13-5-311 Appointments

A. Required oath of office. An appointee shall read the oath described in A.R.S. § 38-231 (G) and agree in writing to uphold the office before the agency head, or a designee authorized to administer an oath.

B. Refusal to take oath. Any person who refuses or fails to take the oath required by this section within the time provided shall forfeit the right to the position.

C. Filing of oath. When the oath is signed by an appointee, Human Resources shall file the oath in the employee's personnel file.

R13-5-312 Limited-Term Appointments

A. Limited-term appointment. After successfully completing initial probation, an appointee to a limited-term position obtains the rights of a permanent employee, except for the opportunity to compete for retention against regular employees in a case of layoff due to a reduction-in-force.

B. Employing a limited-term candidate. An eligible candidate is employed based upon the candidate's position on the eligibility list and the candidate's willingness to accept a limited-term appointment.

C. Separation. The agency may separate a limited-term employee at the expiration of the appointment by notifying the employee in writing. If a provisional or an intermittent employee remains employed in the same classification, the agency shall not separate a limited-term employee except for reasons listed in A.R.S. § 41-1830.15.

D. Effect of transfer or promotion.

1. A limited-term employee who transfers or promotes from a limited-term position to a non-limited-term position shall obtain the rights of a permanent employee. Time spent in a limited term position is counted as service time in cases of layoff due to a reduction-in-force.
2. An employee who transfers or promotes from a non-limited-term position to a limited-term position shall retain the rights of a permanent employee. Time spent in a limited-term position is counted as service time in case of layoff due to a reduction-in-force.

E. Special limited term. A candidate for the classification of officer may be employed in a special limited-term position as a cadet officer or officer trainee for a maximum of three years pending completion of requirements for the classification of officer.

1. Cadet officer. A candidate who is appointed to attend an agency's training academy shall be employed as a cadet officer. Upon successful completion of the training academy and certification as a peace officer by the Peace Officers Standards and Training Board, the candidate shall be reclassified to the classification of officer.

2. Officer trainee. A candidate who is not appointed to a training academy shall be employed as an officer trainee if:
   a. The candidate is between 18 and 21 years of age. If while employed as an officer trainee, the candidate reaches the age of 21 years, and has achieved a performance rating of standard or above for the prior year, the employee shall be promoted to the classification of cadet officer when an opening in the training academy is available.
   b. The candidate is 21 years of age or older, is on the employment list for the classification of cadet officer, and is waiting for an opening in the agency's training academy. The candidate shall remain on the cadet officer employment list and shall be appointed to the classification of cadet officer when an opening in the training academy is available.

R13-5-313 Provisional appointments

A. Provisional appointment. When no employment or internal list is available, an agency head may make a provisional appointment. A provisional appointment continues only until an eligibility list is certified by the business manager.

B. Length of appointment. Within 12 months of a provisional appointment, Human Resources shall conduct an appropriate examination and establish an eligibility list for a classification with a provisional appointee.

C. Separation. Upon separation from a provisional appointment, an employee shall have no right of appeal to the Council for review of the agency head's action.

R13-5-314 Intermittent Appointment

A. Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection.

B. For the purposes of this section, an intermittent employee means an employee in an intermittent position.

C. Establishing an intermittent employment list. The business manager shall establish an intermittent employment list, as follows:
   1. An employee who leaves an agency may be placed on an intermittent employment list for a classification the employee previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within 1 year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
   2. An employee who is reassigned or promoted to another classification may be placed on an intermittent employment list for the classification previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within 1 year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.

3. The business manager shall establish an intermittent employment list in the same manner as an employment eligibility list.

D. Benefits for an intermittent employee. An employee in an intermittent position shall not receive the benefits afforded a full or part-time employee. An intermittent employee shall not acquire annual or sick leave benefits and shall not receive credit for time in the intermittent position for the purposes of pay adjustments in the classification.

E. Eligibility for promotion. An intermittent employee shall not compete in a promotional process.

F. Rate of pay. The agency head shall determine the rate of pay for an intermittent employee.

R13-5-315 Employee Conduct

A. Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.

B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether the employee is fit for duty.

C. Political activity. An agency employee shall not violate the provisions of A.R.S.§ 41-772 concerning permissible and improper political activity.

D. Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S.§ 38-501 through 38-504 while engaged in outside activities or employment.

E. Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.

F. Attending council meetings. With supervisory approval, an employee may attend a meeting of the Council during working hours if the employee is an interested party in a matter scheduled for consideration. The employee may have another representative assist in the presentation before the Council.

G. Employee organization attendance at Council meetings. The agency head may authorize a recognized employee organization to send at least 1 representative to each Council meeting during working hours.

R13-5-316 Probation

A. Initial probation. An employee shall serve an initial probationary period of 12 months. Time spent in a special limited term position does not count toward the initial probation in an officer classification.

B. Promotional probation. An employee shall serve a promotional probationary period of 12 months.

C. Effects of reclassification on probation. The probationary status of an employee reclassified as a result of a classification and compensation maintenance review under R13-5-201(H) is as follows:

1. A permanent status employee shall not be required to serve a new probationary period if the employee continues to perform the same duties previously performed in the reclassified position.
2. A probationary employee shall continue to serve the probationary period.

D. Effect of military service on probation. If a probationer is called into active military service and returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.

E. Extension of probation. An agency head may extend an employee's probationary period by adding a period equal to the time the employee was absent from work or when the employee's performance was below standard. If the probationary period is extended, the manager shall notify the employee of the extension before the end of the probationary period.

F. Satisfying probation. A probationer who achieves a standard or higher performance evaluation by the end of the probationary period shall obtain permanent status in the appointed classification.

G. Permanent status by default. An employee shall achieve permanent status by default if the employee's manager either fails to extend or reject the probationary period prior to the last day of the employee's probation.

H. Rejection of a probationer. An agency head may, at any time during the probationary period, reject a probationer without cause and without the right to Council review.

I. Effect of rejection of initial probationer. If an employee is rejected during initial probation the employee shall be separated from the agency.

J. Effect of rejection of promotional probationer. If a regular employee is rejected during promotional probation or probation for a different but equal classification, the agency head shall reappoint the employee to a vacant position in the employee's former classification or an equal position for which the employee is qualified. If there is no vacancy in an appropriate classification, the agency head may temporarily assign the employee until a vacancy is available.

K. Notice of rejection of probation. An agency shall notify a rejected probationer as follows:

1. The employee's manager shall prepare a notice, stating the effective date of the rejection. The manager shall ensure that this date is no later than the last day of the probationary period.
2. The employee's manager shall obtain the agency head's signature on the notice of rejection.
3. The employee's manager shall serve the probationer with the notice, either in person or by mail, on or before the effective date of rejection.
4. The employee's manager shall submit a copy of the rejection notice to the business manager within 20 days after the notice is served.

L. Review of rejection of promotional probation. Within 20 days after the employee's manager delivers or mails the notice, a rejected promotional probationer may file a written request with the Council for review of the rejection. The Council may review the procedures utilized by the agency to assure conformity with Council rules and statutes.

M. Withdrawal of rejection. At any time before the Council acts on a probationer's rejection, the agency head may withdraw the notice of rejection and restore the employee to the previous position or another position for which the employee is qualified.

N. Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve a probationary period. If a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period. If an employee is separated from an agency while serving an initial probation, the employee shall be required to serve an initial probation upon being recalled or reinstated.

O. Probation not required. If an employee is recalled or reappointed within 2 years after undergoing a reduction-in-force, the employee shall not be required to serve a probationary period if reappointed to the same classification previously held with permanent status. An employee shall not be required to serve another probationary period if the employee is:

1. Reinstated by the Council, or
2. Reassigned or demoted by the agency head into a classification previously held by the employee.

P. Probation for a special limited term employee. An employee in a special limited term position pending completion of requirements for the classification of officer shall serve an initial probation throughout the duration of the special limited term appointment. An employee promoted to officer from a special limited term position shall serve a 1 year initial probation in the officer classification.

R13-5-317 Performance Evaluations

A. Establishing a performance evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employee of the employee's relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve performance.

B. Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. Each employee shall receive a copy of the manual, which includes evaluation procedures and forms.

C. Frequency of evaluation. A supervisor shall evaluate and give each permanent-status employee a written performance evaluation at least 1 time in each 12 month period. A supervisor shall evaluate a probationary employee at least 1 time in each 6 month period.

D. Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.

E. Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:

1. Is less than standard,
2. Would cause a reduction in pay, or
3. Would result in withholding or postponing a salary adjustment.

ARTICLE 4. ASSIGNMENTS

R13-5-401 Special Duty Assignment

A. General. An agency head may assign an employee to a special duty assignment in the employee's current classification or a higher classification. A special duty assignment is temporary and is not a promotion.

B. Pay and eligibility. An agency head may add special-duty pay to the employee's base pay. If the special duty assignment is for a different or higher classification, the agency head may authorize a pay rate within that classification. A special duty assignment is subject to the following conditions:

1. The assigned employee meets the minimum requirements of the special duty classification; and
2. The assigned employee performs the duties of the assigned classification.

C. Review by Council. Special duty assignments shall be biennially reviewed by the Council no later than September in even numbered years.

D. Return to regular duty. Upon completion of a special duty assignment, the agency head shall discontinue special duty pay and reassign the employee to the previously held position or to a similar position in the same classification at the employee's normal pay level.

R13-5-402 Uncovered Appointment

A. Authorization. An agency head may authorize an employee to temporarily accept an uncovered appointment within:

1. The agency,
2. Another state agency,
3. The Governor's office,
4. The Legislature, or
5. Another government agency.

B. Employee rights. A classified employee in an uncovered appointment shall retain all rights of a covered employee except for the right to appeal removal from the uncovered appointment.

C. Returning to regular duty. Upon completion of an uncovered appointment, the agency head shall reassign the employee to the previously held position or to a similar position in the same classification.

D. Leave policy for an uncovered employee accepting a covered position: An uncovered employee of a state agency or any state budget unit may transfer accrued annual and sick leave when accepting a covered position with an agency under the jurisdiction of the Council.

1. Annual leave.
    a. Up to 360 hours of annual leave may be transferred at the gaining agency's discretion.
    b. Annual leave in excess of 360 hours shall be paid off by the losing agency.
    c. An employee shall be paid for any annual leave that is not accepted by the gaining agency.

2. Sick leave. All accrued sick leave hours shall be accepted by and transferred to the agency.

R13-5-403 Transfer of an External Function

A. Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.

B. Council action. The business manager shall determine the classification of a transferring employee and recommend that the Council adopt other classifications that need to be added or revised.

C. Transferee status. A transferee shall retain accrued annual leave, recognition leave, sick leave, and length of State service. A transferee shall also retain the transferee's current rate of pay until the Council reviews and approves a new or existing compensation schedule.

D. Appointing a transferee. An agency head shall determine the organizational placement of a transferred program and appoint each transferee to an appropriate position.

E. Probation. A transferee on probation at the time of the transfer shall complete the transferee's probationary period under R13-5-316 before obtaining permanent status.

ARTICLE 5. EMPLOYEE LEAVE

R13-5-501 Employee Leave Guidelines

A. Accrual of leave. An employee may accrue the following types of paid leave:
1. Annual leave,
2. Holiday leave, and
3. Sick leave.

B. Accruing leave. An employee shall accrue leave for a pay period if the employee is in pay status for at least one-half of the employee's normal scheduled work week.

C. Part-time employees. A part-time employee scheduled to work 20 or more hours in a week shall accrue leave based on the percentage of full-time hours specified in the appointment. An employee scheduled to work less than 20 hours in a week shall not accrue leave.

D. Leave request. An employee shall not use leave before it is accrued. An employee shall obtain supervisory approval before taking leave. An agency may establish a policy allowing delayed notice to the employee's supervisor in emergency situations.

E. Time accounting record. An agency shall maintain a record of time worked, leave earned, leave taken, and accrued leave balances for an employee. A non-exempt employee shall report all time worked and all leave taken on a weekly basis. An exempt employee shall report leave taken as directed by agency policy.

R13-5-502 Administrative Leave

An agency head may authorize administrative leave with pay:

A. During a disaster, state of emergency, or a day of mourning declared by the Governor;

B. When an employee is instructed to not report for duty, or to return home because of a hazardous condition ; or

C. To temporarily relieve an employee from duty for the good of the agency or the employee.

R13-5-503 Annual Leave

A. Computing length of service. For determining an annual leave accrual rate, an employee's length of service shall begin on the first day of the first qualifying pay period of employment. Only a qualifying pay period is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee meets the requirements of A.R.S. § 38-610.

B. Accruing annual leave. A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Biweekly accrual rate
1st year	5th year	4.62 hours
6th year	10th year	5.54 hours
11th year	20th year	6.47 hours
21st year		7.39 hours

C. Progression of annual leave. An employee shall progress to the next higher accrual rate on the first day of the pay period following completion of the required length of service.

D. Using annual leave. An employee may use accrued annual leave under state and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee's supervisor.

E. Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee's annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee's annual leave balance on January 1 exceeds 360 hours, the agency head may withdraw the excess and deposit the hours as sick leave in the employee's sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee's duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.

F. Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave remaining in the employee's account at the average rate received by the employee in the last 3 years of the employee's employment or the employee's current rate of pay, whichever is higher.

R13-5-504 Civic Duty

A. Voting. Under Conditions outlined in A.R.S. § 16-402, an employee may be absent with pay for the time required to vote.

B. Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S.§ 21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.

1. While on jury duty, an employee is considered absent with pay.

2. Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee's peace officer status.

C. Witnesses. An employee subpoenaed as a witness is considered absent with pay, unless the subpoena is unrelated to agency business.

D. Fees. An employee paid for civic duty under this Section shall forward all jury duty or witness fees to the agency.

E. Vehicle mileage reimbursement. An employee may retain any mileage reimbursement paid by the court for the use of a privately owned vehicle. An employee shall remit to the agency any mileage reimbursement for use of a state-owned vehicle.

R13-5-505 Compensatory Leave

A. Compensatory leave. An agency shall establish policies and guidelines for accruing compensatory leave under the overtime provisions of the Fair Labors Standards Act.

B. Using compensatory leave. An employee may use accrued compensatory leave under State and federal law and agency policy. The employee shall schedule the use of accrued compensatory leave through the employee's supervisor.

C. Payment upon separation. Upon separation from an agency, an employee shall be paid for any accrued compensatory leave remaining in the employee's account at the average rate received by the employee in the last 3 years of the employee's employment or the employee's current rate of pay, whichever is higher.

13-5-506 Donated Annual Leave

A. Definitions for purposes of this Section:

1. "Recipient" means an employee in the same agency as a donating employee or a family member of the donating employee who is employed in another agency, department, board, or commission.
2. "Family member" means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
3. "Immediate family" means a spouse, child, brother, sister, natural parent, stepparent, adoptive parent, or an individual for whom a recipient has legal guardianship.
4. "Extended illness or injury" means a period of at least three consecutive weeks to a maximum of six consecutive months.
5. "Seriously incapacitating" means an illness or injury that renders an employee unable to perform the employee's duties, or that confines an immediate family member to home or hospital.

B. Donating leave. An employee may donate accrued annual leave to a recipient who qualifies for donated leave under the personnel rules of the agency where the recipient is employed and who has exhausted all available leave balances. An employee may donate accrued annual leave by submitting a written notice to the Human Resources section of the donating agency with the information required under the agency's policies.

C. Qualifying for donated leave. An employee may request and use donated annual leave if the employee has a seriously incapacitating and extended illness or injury or a member of the

employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances.

1. An employee requesting donated leave shall submit a written request for donated leave under the agency's policy. An agency shall approve only those requests that qualify for donated leave under this Section.
2. Except as provided in subsection (C)(3), an employee receiving donated leave shall not use more than six consecutive months of donated leave per illness or injury.
3. If an employee who has a seriously incapacitating or extended illness or injury applies for long-term disability (LTD) insurance by the end of the fifth month of leave, the employee may continue to use donated leave until an LTD determination is made.

D. Calculating donated leave. An agency shall convert the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient. Donated hours are converted by multiplying the number of hours donated by the donating employee's hourly rate of pay and dividing the result by the recipient employee's hourly rate of pay. An agency shall add hours converted to the recipient's sick leave balance as needed.

E. Distributing unused leave. If a recipient separates from state service before the recipient uses all donated leave, no longer qualifies for donated leave, or otherwise no longer needs donated leave, the agency shall return unused leave to the contributor of the donated leave on a pro-rata basis, unless a contributor gives written notice to Human Resources to deposit the unused leave into an agency "donated-leave bank" for use of other employees in the future.

13-5-507 Holiday Leave

A. Paid holidays. An agency shall observe the holidays authorized under A.R.S. § 1-301.

B. Eligibility. To be eligible for holiday leave, a full-time employee shall be in pay status for 10 or more hours in the work week in which the holiday occurs. A part-time employee shall be in pay status for five or more hours in the work week. The holiday hours that would be accrued cannot be used to satisfy any part of this requirement.

1. If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours the employee is regularly scheduled to work, up to a maximum of eight hours, unless the employee is required to work to maintain essential State services.
2. An employee required to work on a holiday shall receive pay for the time worked, and leave hours for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.
3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.
4. An employee not scheduled to work on a holiday shall receive leave credits up to a maximum of eight hours.

C. Accruing holiday leave. An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balance.

D. Using holiday leave. An employee may use accrued holiday leave under State and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

R13-5-508 Industrial Leave

An agency shall establish policies and procedures to comply with statutes regulating industrial leave under A.R.S. § 23-901, et. seq. and A.R.S. § 23-1043.02.

R13-5-509 Leave Amortization

An agency may provide a leave amortization plan for an employee planning to retire.

R13-5-510 Leave Without Pay

A. Short-term leave without pay.

1. An agency head shall place an employee on leave without pay when the employee is unable to report to work due to illness or non-industrial injury and the employee has no accrued or donated leave balance to cover the absence. The supervisor may require the employee to submit supporting documentation for sick leave without pay. If the absence exceeds 5 working days, the employee must request leave without pay as outlined in paragraph (A) (2) of this section.
2. An employee may request a leave of absence without pay of 30 working days or less by notifying the employee's manager as soon as possible and submitting a signed memorandum. The employee shall include the reason for the request and the employee's intended departure and return-to-duty dates. The agency head may approve or deny the request and may set a date for the employee's return. If the leave is approved, the employee's manager shall notify the employee in writing, including any stipulation of approval. If the employee returns on schedule, the employee shall retain the position held before the leave of absence.

B. Extended leave without pay. An employee may request an extended leave-of-absence without pay of over 30 working days by notifying the employee's manager as soon as possible and submitting a written request under the agency's policies and procedures.

1. Approval. An agency head may approve an extended leave without pay. If extended leave without pay is approved, an employee shall sign a leave of absence agreement with the agency. The leave-of-absence agreement shall outline the conditions of the leave and the employee's return to work.
2. Cancellation. An agency head may cancel a leave-of-absence without pay for any of the following reasons:
   a. The employee violates any condition of the leave-of-absence agreement, including failure to return to work on schedule;
   b. The agency head directs the employee to return to duty because of a need for the employee's services; or
   c. The employee requests to return early from the leave-of-absence.
3. Return to work. An employee shall return to duty on schedule from any approved leave of absence unless an extension is approved by the agency. When an employee returns from an extended leave without pay, the agency head shall return the

employee to the same position, to another position in the same classification, or to a position in a similar classification for which the employee is qualified, provided:

a. The employee complied with all terms of the leave-of-absence agreement, and

b. The employee passes background screening by the agency head.

C. Disposition of accrued leave. An employee may retain annual and sick leave balances while on an extended leave-of-absence. An employee shall be paid for any unused compensatory or holiday leave balances at the beginning of an extended leave-of-absence. If an employee is granted leave without pay to accept an uncovered appointment with the Governor, the Legislature, or another State agency, the agency head shall transfer the employee's accumulated sick leave to the receiving agency. The employee's annual leave may also be transferred if the employee and both agencies agree.

R13-5-511 Military Leave of Absence

A. Privileges of military service. An employee shall receive all rights provided by State and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 38-610.

B. Notifying the agency. An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedure for a military leave-of-absence.

C. Extended military leave. If an employee's orders for active duty exceed the time limit for paid military leave, the employee may request to use accrued leave or leave without pay for the remainder of the military leave.

D. Returning to position. Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.

E. Promotion. Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

R13-5-512 Recognition Leave

A. Employee recognition. An agency head may grant paid time off as part of recognition given to worthy employees under a formal awards program, or as an incentive for continued superior performance. The agency shall publish recognition leave guidelines for annual nominations, selections, and awards.

B. Adding to leave balance. An employee awarded recognition leave shall receive annual leave hours added to the employee's leave balance.

R13-5-513 Sick Leave

A. Definitions. The following definitions shall apply in this Section:

1. "Family sick leave" means:

a. Providing personal care or attending to an employee's family member who

has a serious illness, injury, or temporary disability;

b. A medical appointment for a family member or transporting of a family member to a medical appointment by a licensed health care provider; or

c. Attendance at the death or funeral of an employee's family member.

2. "Family member" means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

B. Accruing sick leave.

1. A full-time employee shall receive 4.62 hours of sick leave biweekly.
2. The following employees are not eligible for sick leave:
   a. A part-time employee working less than 20 hours in a week,
   b. An intern, and
   c. An intermittent employee.
3. An employee shall receive sick leave credit if the employee is in pay status for at least one-half of the employee's normally scheduled work week.
4. Sick leave may be accrued without limit.

C. Using sick leave. A supervisor shall authorize sick leave if an employee is absent because of:

1. An illness that makes the employee unable to perform official duties,
2. An appointment with a licensed health care provider, or
3. Family sick leave.

D. Family sick leave limits. Family sick leave shall not exceed 40 hours in a year. An employee may use annual leave to supplement or instead of family sick leave. If an employee has used the authorized 40 hours of family sick leave and exhausted all compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.

E. Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If the employee fails to provide necessary documentation of the use of sick leave or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an employee has been on sick leave for five or more consecutive days; the supervisor may require the employee to submit evidence that the employee consulted a doctor.

F. Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.

G. Medical review. If a supervisor is concerned about a returning employee's fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.

H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from State service, unless eligible for payment under the provisions of A.R.S. § 38-615.

I. Restoring sick leave. If a former employee is recalled, reinstated, or rehired within two years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under A.R.S. § 38-615 is excluded from restoration.

J. Sick leave credit for Arizona State service. Upon appointment to an agency, an Arizona

State employee with previously accrued sick leave may have the sick leave credit added to the employee's leave balance, provided:

1. The employee does not receive compensation for accrued sick leave upon separating from a State agency;
2. The employee is hired within 2 years of separating from a State agency; and
3. The employee was hired after December 31, 1996.

K. Agency leave policy. An agency shall establish a sick leave policy that complies with all of the provisions of the Family and Medical Leave Act.

ARTICLE 6. GRIEVANCES

R13-5-601 Agency Grievance System

A. General. The agency shall provide a system for considering and responding to an employee grievance regarding classification, compensation, performance evaluation, and application of Council rules.

B. Denial. When an agency head denies an employee grievance regarding classification, compensation, performance evaluation, or application of Council rules, the agency head shall notify the Council.

R13-5-602 Council Review

A. General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency's grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency's notice of denial of the grievance.

B. Procedure. An employee shall submit a written request for Council review of a grievance.

1. The employee's request shall include:
   a. The specific relief sought by the employee;
   b. The asserted factual basis for relief, and
   c. An account of the agency's response during the internal grievance process.
2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.

C. Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee's request, the 10 days may be waived.

D. Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:

1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;
2. By default to the appearing party, if the employee or the agency, fails to appear at the meeting; or
3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.

E. Council review. The Council shall review an employee's grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties' statements. In its discretion, the Council may allow the employee or the agency to present testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.

F. Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the business manager. At the employee's request, the 20 days may be waived.

G. Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.

H. Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial is not supported by substantial evidence or is inconsistent with Council rules.

ARTICLE 7. DISCIPLINE AND APPEALS

R13-5-701 **Causes for Discipline**. The causes for discipline are found in A.R.S. § 41-1830.15.

R13-5-702 **Disciplinary Procedures**

A. Receiving a complaint. A person may file a complaint with an agency asserting that an employee engaged in activity constituting cause for discipline and requesting that the agency head take appropriate disciplinary action against the employee.

B. Initiating disciplinary action. An agency head may take appropriate disciplinary action against an employee for any cause listed in A.R.S. § 41-1830.15.

C. Interview of an employee. In conducting an interview of an employee being investigated for possible disciplinary action, an agency shall comply with A.R.S. § 38-1101(A) and (B).

D. Time limit for filing a disciplinary action. An agency shall not file a disciplinary action later than 120 days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council.

E. Exceptions to the 120-day rule.

1. The time limit in subsection (D) does not run:
   a. During a criminal investigation by a law enforcement or prosecutorial agency; or
   b. During any period of time the employee who is the subject of an investigation is absent from the agency on leave, if the absence prevents the agency from proceeding with the normal investigation and disciplinary review process.
2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to a maximum of 90 days beyond the original 120-day period.

3. If a manager or supervisor is aware of an employee's alleged actions that constitute a criminal offense but fails to act, the time limit does not run during the period of the manager or supervisor's inaction if the supervisor or manager is disciplined for failure to act and:
   a. The offense is a misdemeanor involving theft or moral turpitude and is discovered within 120 days after the 120-day period for taking disciplinary action, or
   b. The offense is a felony.
4. The agency shall maintain documentation to support any exception to the 120-day time limit, including the dates during which the time limit does not run.

F. Notice of disciplinary action. An agency head shall serve a written notice on the employee within 10 days after the agency files the notice of disciplinary action with the Council. Service shall be completed in accordance with R13-5-104(D). The agency head's notice shall include:
1. A statement of the nature of the disciplinary action;
2. Any prior disciplinary action on which the current discipline is based;
3 The effective date of the action;
4. A specific statement of the causes; and
5. A statement of the employee's right to appeal and the time limit in which the employee must file an appeal with the Council under R13-5-703 (A), (B), and (C).

G. Amended notice of disciplinary action before appeal is filed. At any time before an employee files an appeal, the agency head may file with the Council and serve the employee or former employee with an amended or supplemental notice of disciplinary action.

H. Effect of dismissal. An employee's dismissal from the agency shall entail:
1. Dismissal from all positions held by the employee,
2. Removal of the employee's name from all employment or promotional lists, and
3. Termination of the employee's pay on the date of dismissal.

R13-5-703 Appeal to the Council

A. Appealable actions. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.

B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal to the business manager stating the specific grounds for the appeal.

C. Time for appeal. An employee shall file an appeal within 30 days after being served with the notice of disciplinary action.

D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An agency must prove the cause for disciplinary action by a preponderance of the evidence.

E. Effect of appeal. The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay.

F. Amended notice of disciplinary action after employee files an appeal. If good cause exists,

an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than 30 days before the hearing.

G. Notice of hearing. The Council shall notify the parties of the time and place of the hearing.

H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.

I. Conduct of hearings. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

J. Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.

K. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. An employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

L. Discovery.

1. Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.
2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency.
3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.
5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the employee shall exchange the names of all witnessed who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.
6. No later than five business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.
7. If a party fails to provide material as required, the Council may preclude its use at the

hearing.

M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

O. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
   a. The witness does not reside within the State or is out of state,
   b. The witness is too ill to attend the action before the Council, or
   c. The deposition is for the purpose of discovery in preparing a case before the Council.
2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.
3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

P. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.

Q. Minor discipline hearings. When the Council hears appeals of suspension without pay of 24 hours or less or the deduction of 24 hours or less from an employee's annual leave balance, each party shall have no more than three hours to present evidence unless the Council allows more time to assure a fair hearing.

R. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

S. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

T. Settlement of disputes. If requested by the employee, the parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the settlement agreement is later vacated or reversed by a court, neither the settlement discussion nor any resulting agreement shall be admissible against the employee in any hearing before the Council on the matter.

U. Decision. In arriving at a decision, the Council may consider any disciplinary action taken within the previous 10 years against the employee, if the information is introduced at the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

R13-5-704 Rehearing of Council Decision

A. Motion for rehearing.

1. Except as provided in subsection (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 15 days after service.
2. A party filing a post-hearing motion shall include references to the record where appropriate.
3. The Council may require the parties to file written memoranda upon the issues raised in the motion and may permit oral argument.
4. The Council may grant a rehearing on all or part of the issues. If a rehearing is granted, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.

B. Basis for a rehearing. The Council may grant a rehearing for any of the following causes:

1. The Council acted in an arbitrary or capricious manner or abused its discretion;
2. Misconduct of the Council or the prevailing party;
3. Newly discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the original hearing;
4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action;
5. The decision was not supported by the evidence; or
6. The decision is contrary to law.

C. Decisions not subject to rehearing. The Council may issue a decision as final upon making a specific finding that a decision's immediate effectiveness is necessary for the preservation of the public peace, health, or safety, or that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

R13-5-705 Time Limits

Computation of time limits. In computing any period of time prescribed or allowed by this Chapter the day of the act or event from which the designated period or time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

ARTICLE 8. SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM ELIGIBILITY

R13-5-801 Resignation or Retirement

A. Notice of resignation or retirement. An employee shall resign or retire from the agency by submitting a letter addressed to the agency head and stating the effective date of the separation.

B. Oral resignation or retirement. If an employee resigns or retires orally rather than in writing, the employee's manager shall document the employee's stated separation date and forward

the notice through the chain-of-command to the agency head.

C. Abandonment of position. If an employee abandons a position, it shall be deemed to be a voluntary resignation from the agency. The employee's manager shall document the employee's failure to show up for work and forward the notice through the chain-of-command to the agency head.

D. Refusal of resignation. An agency head may refuse to accept a resignation and may dismiss an employee under R13-5-701.

E. Withdrawal of resignation. An employee may withdraw a resignation only by submitting to the agency head a written notice of withdrawal before the employee's separation date. If a withdrawal is not submitted before the separation date, the resignation is final unless both the agency head and the employee agree to withdraw the resignation.

R13-5-802 Reduction in Force

A. General. The agency head may conduct a reduction in force when necessary because of a decrease in authorized positions, service area, funding, program responsibilities, or because of a legislative or executive mandate. If the reduction in force involves removal of a filled position, the agency shall not re-establish the position for 2 years, unless removal of the position was caused by fiscal constraints, legislative action, or court order.

B. Alternate methods. An agency head may pursue alternative methods of reducing costs without reducing the number of employees. Council approval will be required when:

1. Temporarily reducing all employees' pay, or
2. Assigning all employees time off without pay.

C. Order of layoff. An employee shall be separated from an agency in the following order of preference:

1. Internship appointment,
2. Intermittent appointment,
3. Part-time appointment,
4. Provisional appointment,
5. Probationary limited-term appointment who has not established permanent status,
6. Limited-term appointment who has completed a probationary period but has not established permanent status,
7. Probationary appointment in a non-limited term position, and
8. Permanent status appointment.

D. Laying off a probationer and special duty assignee. An employee on promotional probation or special duty shall compete for retention in the highest classification for which the probationer or assignee hold permanent status.

E. Laying off a limited-term employee. A limited-term employee shall compete for retention only against other limited-term employees.

F. Laying off a permanent status employee. If it becomes necessary to reduce the number of full-time employees holding regular appointments, an agency shall use the following method:

1. An employee with the least seniority within a classification shall be the first employee reduced from that classification.
2. An employee who is declared surplus to a classification may displace only the least senior employee in other classifications in which the employee previously held

seniority rights.

G. Determining seniority. Seniority within a classification shall be determined by the number of retention points of an employee. An employee with a greater number of retention points will be senior to another employee with lesser retention points within a classification.

H. Using retention points. Regular employees who have the least retention points shall be considered first for transfer, classification reduction, or separation.

I. Calculation of retention points within a classification. An employee shall receive 1 retention point for each month of service within the employee's classification.

J. Calculation of retention points in a classification for which the employee has established rights. If an employee is transferred to a classification previously held by the employee, the employee shall receive 1 retention point for each month of service in that classification and 1 retention point for each month of service in a higher or equal classification.

K. Eligibility for retention points. The following guidelines shall be used in determining an employee's eligibility for retention points:

1. If the employee was in pay status for at least half of the employee's working days in that month.
2. An employee shall receive credit for agency service before a separation if the separation was less than 2 years.
3. An employee shall receive credit for periods of military leave under 38 USC § 4311.
4. An employee shall receive credit for periods of uncovered appointments with the agency.
5. An employee's prior State service in a position transferred to the agency shall be counted.
6. An employee shall not receive credit for periods constituting a break-in-service. However, periods of time before and after such break-in-service shall be counted.

L. Resolution of a tie. If employees have the same number of retention points, the agency shall resolve tied scores by applying the following tie-breakers in the following order of precedence:

1. The employee with the greatest length of qualifying service with the agency,
2. The employee with the greatest length of qualifying service with the State,
3. The employee who placed highest on the eligibility list for the classification, or
4. If a tie continues to exist, it shall be broken by a lottery system.

M. Offer of a position in a different classification. An employee who meets the qualification for a different classification, but has not previously established displacement rights, may be offered reassignment to a position within that classification provided that such reassignment does not displace another employee in that classification.

N. Notifying employees. An agency shall give written notice at least 20 days in advance to each employee being reassigned or separated. The Council may waive the 20 day notice upon proper justification for a reduced time limit. The agency's notice shall include the number of retention points assigned to the employee, the effective date of the action, the new job classification, the pay rate, the location of the position, the employee's right to request a review of the action, and the employee's recall rights, if applicable.

O. Employee request for review.

1. Within 5 days of receipt of a reassignment or separation notice, an employee may submit a written request to the agency head for a review of the procedures resulting in the employee's reassignment or separation. The employee's request shall contain information concerning any errors in the calculation of retention points and a proposed resolution. The agency head shall review the request and respond to the employee within 5 days after receipt of the request.

2. An employee who wishes further review may submit a written request to the Council within 20 days after receiving the agency head's response. The Council shall investigate and respond to the employee and the agency head by submitting a final decision on the review within 30 days after receiving the employee's request.

P. Employee assistance. An agency shall establish a plan to assist all employees who are separated from the agency through a reduction in force.

Q. Reappointment list. If a permanent status employee is appointed to a lower classification as a result of a reduction in force or reallocation, Human Resources shall place the employee's name on a reappointment list for the last classification held and any previously held classification for which the employee is still qualified.

R. Recall list. If an employee is laid off due to a reduction in force, Human Resources shall place the former employee's name on a recall list for the last classification held and any previously held classification for which the former employee qualifies.

S. Order of names. On both recall and reappointment lists, Human Resources shall arrange the names of former employees in descending order of their retention points. If candidates have the same number of retention points, Human Resources shall resolve tied scores by applying the following tie-breakers in the following order of precedence:

1. The employee with the greatest length of qualifying service with the agency,
2. The employee with the greatest length of qualifying service with the State,
3. The employee who placed highest on the eligibility list for the classification, or
4. If a tie continues to exist, it shall be broken by a lottery system.

T. Duration of list. A former employee's name shall remain on a recall list for up to 3 years from the date of separation. The name of a reappointment candidate shall remain on the reappointment list until promoted or the employee separates from the agency.

U. Background screening. A candidate on a recall list shall be subject to a background screening process.

R13-5-803 Disability

An agency head shall establish policies and procedures for discontinuing the employment of an employee who becomes disabled and is unable to perform the essential functions of the job. Such policies and procedures shall comply with the applicable state and federal laws.

R13-5-804 Public Safety Personnel Retirement System Eligibility

A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S.§38-842 (20)(a). Commissioned employees are eligible for membership in the Public Safety Personnel Retirement System.

B. Employees who were in the following non-commissioned classifications on December 1, 1972, shall be eligible for membership in the Public Safety Personnel Retirement System:

1. Communications Technician; and
2. Radio Mechanic.

41-1830.11 . Law enforcement merit system council: composition

A. The governor shall appoint a law enforcement merit system council pursuant to section 38-211 . The council consists of five persons. No more than three members shall belong to the same political party. Persons eligible for appointment shall have had a continuous recorded registration pursuant to title 16, chapter 1 with either the same political party or as an independent for at least two years immediately preceding appointment. Members appointed shall be persons who are committed to enforcing this article in an honest, independent and impartial fashion and to seeking to uphold public confidence in the integrity of public safety peace officers. The members of the council shall not have held elective public office within one year before appointment and shall not hold any other political office while serving on the council.

B. The governor shall fill a vacancy on the same basis as the original appointment.

C. Members of the council are eligible to receive compensation for their services in the amount of one hundred dollars for each meeting attended, prorated for partial days for each meeting attended.

D. A member serves for a term of three years. The governor may remove a member only for cause.

E. The chairman of the council serves as an ex officio member of the state personnel board without voting privileges.

41-1830.12 . Law enforcement merit system council: duties: authority: rules: business manager: definitions

A. The law enforcement merit system council shall:

1. Select a chairman and vice-chairman.

2. Hold meetings that are necessary to perform its duties on the call of the chairman.

3. Adopt rules pursuant to recognized merit principles of public employment it deems necessary for establishing the following for department of public safety and Arizona peace officer standards and training board personnel :

(a) A classification and compensation plan for all covered positions and for establishing standards and qualifications for all classified positions from a list of necessary employees that is prepared by the director of the employing agency.

(b) A plan for fair and impartial selection, appointment , probation , promotion, retention and separation or removal from service by resignation , retirement , reduction in force or dismissal of all classified employees.

(c) A performance appraisal system for evaluating the work performance of employees of the agencies.

(d) Procedures for the conduct of hearings of employee grievances that are brought before the council relating to classification , compensation and the employee appraisal system.

(e) Procedures for the conduct of hearings on appeals from an order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee.

(f) For hours of employment, annual and sick leave and special leaves of absence, with or without pay or with reduced pay.

4. Pursuant to recognized merit principles, hear and review appeals from any order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee. The council's determination is subject to review by the director and appeal as provided in section 41-1830.13 .

B. The council may meet with the state personnel board to discuss matters of mutual concern.

C. The rules under subsection A, paragraph 3, subdivision (f) of this section shall provide for the transfer of accumulated annual leave from one employee to another employee in the same agency and for the transfer of accumulated annual leave from one employee to another employee of another agency, department, board or commission if the employees are members of the same family. The transfers may occur if the employee to whom the leave is transferred has a seriously incapacitating and extended illness or injury or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances. Transferred annual leave shall be increased or reduced proportionally by the difference in the salaries of the employees as determined by council rule. For the purposes of this subsection,

"family" means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent , grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law.

D. In hearing and reviewing an appeal from any order of the director of the employing agency, the council:

1. Shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

2. May recommend modification of a disciplinary action if the director of the employing agency has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

3. Shall reverse the decision of the director of the employing agency if the council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.

E. On a finding that the director of the employing agency has not proven just cause to discipline the employee by a preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven.

F. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and at the same time shall send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation .

G. The council shall select and the director of the department of public safety shall appoint a business manager who is a certified peace officer and an employee of the department of public safety but who is not a member of the council. The business manager shall perform and discharge all of the powers and duties that are vested in the council, except that adoption of rules, creation and adjustment of classifications and grades, compensation and hearing appeals for dismissal, demotion, reduction in pay, suspensions or other punitive action remain the duty of the council. Any power or duty that the council may lawfully delegate to the business manager is conclusively presumed to have been delegated to the business manager unless it is shown that the council by an affirmative vote recorded in its minutes has specifically reserved the power or duty to itself. At the request of the council, the business manager may make inquiries regarding or investigate infractions of council rules within the department of public safety. The business manager shall report the result of the inquiry or investigation to the council for appropriate action. The business manager may delegate the business manager's powers and duties to the business manager's subordinates unless by council rule or express provision of law the business manager is specifically required to act personally.

H. For the purposes of this section and section 41-1830.13:

1. "Director of the employing agency" means the director of the department of public safety with respect to employees of the department and the executive director of the Arizona peace officer standards and training board with respect to employees of the board.

2. "Just cause" has the same meaning prescribed in title 38, chapter 8, article 1.

41-1830.13 . Review of council decision by agency director; appeal; reinstatement

A. Within fourteen days of receipt of the finding or recommendation by the council pursuant to section 41-1830.12, the director of the employing agency shall accept, modify or reverse the council's decision or accept, modify or reject the council's recommendation. The director shall accept the council's recommendation unless the recommendation is arbitrary or without reasonable justification. Ifthe director does not accept the council's recommendation , the director shall state the reason or reasons for rejecting the recommendation. The decision of the director of the employing agency is final and binding. The director of the employing agency shall send a copy of the agency's final determination to the employee pursuant to section 41-1830.12.

B. Except as provided in section 41-1092.08 , subsection H, a classified employee who is suspended, is demoted, has pay reduced, loses accrued leave time or is dismissed pursuant to this article, after a fair hearing and review before the law enforcement merit system council and review of the suspension, demotion, reduction in pay, loss of accrued leave time or dismissal by the director of the employing agency, may appeal the determination of the council and the final determination of the director of the employing agency pursuant to title 12, chapter 7, article 6.

C. In addition to the trial court's powers as prescribed in section 12-911, if the court overrules the determination of the council or the director of the employing agency, the employee shall be reinstated in the employee's position and the employee shall receive full compensation for any salary withheld pending the determination by the council, the director of the employing agency and court.

41-1830 .15. Causes for dismissal or discipline: definitions

A. The director of the department of public safety may dismiss or discipline any classified employee based on any of the following causes:

1. Fraud or misrepresentation in securing employment.

2. Incompetency.

3. Inefficiency.

4. Inexcusable neglect of duty or unauthorized absence.

5. Insubordination.

6. Dishonesty.

7. Physical or mental disability subject to the provisions of the Americans with disabilities act of 1990 (42 United States Code sections 12101 through 12213).

8. Unauthorized drinking on duty or drunkenness on duty.

9. Being impaired by alcohol or drugs, as provided in title 13, chapter 34, while on duty.

10. Commission of any crime classified as a felony.

11. Discourteous treatment of the public or other employees.

12. Commission of any crime involving moral turpitude.

13. Improper political activity as proscribed in section 41-752.

14. Misuse or unauthorized use of state property.

15. Addiction to the illegal use of a narcotic or dangerous drug.

16. Any other failure of good behavior or acts either during or outside of duty hours that are incompatible with or inimical to the interest of the department of public safety.

B. For the purposes of this section:

1. "Incompetency" means the lack of ability or judgment, legal qualifications or fitness to discharge required duties.

2. "Inefficiency" means the failure to produce as required for reasons other than incompetency.

41-1830.16. Law enforcement merit system council duties; authority; appeals of covered full authority peace officers employed by agencies in the state personnel system: definitions

A. The law enforcement merit system council shall adopt rules the council deems necessary for the administration of hearings and the review of appeals as prescribed in this section.

B. A covered employee in the state personnel system who is a full authority peace officer as certified by the Arizona peace officer standards and training board, is appointed to a position that requires such a certification in the covered service and who has completed the employee's original probationary period of service as provided by the personnel rules may appeal to the law enforcement merit system council the covered employee's dismissal from covered service, suspension for more than forty working hours or involuntary demotion resulting from disciplinary action. The covered employee shall file the appeal no later than ten working days after the effective date of the action. The covered employee shall be furnished with specified charges in writing when the action is taken. The appeal shall be in writing and must state specific facts relating directly to the charges on which the appeal is based. Notwithstanding section 41-1092.05 , subsection D, the law enforcement merit system council shall hear the appeal within thirty days after the council's receipt. The law enforcement merit system council shall provide the employing agency with a copy of the appeal not less than twenty days in advance of the hearing.

C. In hearing and reviewing an appeal, the council:

1. Shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

2. May recommend modification of a disciplinary action if the state agency head has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

3. Shall reverse the decision of the state agency head if the council finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.

D. On a finding that the state agency head has not proven just cause to discipline the employee by a preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven.

E. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation. The state agency head or the agency head's designee shall accept, modify or reverse the council's decision or accept, modify or reject the council's recommendation within fourteen days ofreceipt of the findings or recommendation from the law enforcement merit system council. The state agency head or the agency head's designee shall accept the council's recommendation unless the recommendation is arbitrary or without reasonable justification. Ifthe state agency head or the agency head's designee does not accept the council's recommendation, the state agency head or the agency head's designee shall state the reasons for rejecting the recommendation . The decision of the agency head or agency head's designee is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee pursuant to this section.

F. Any party may appeal the decision of the law enforcement merit system council or the final decision of the agency pursuant to title 12, chapter 7, article 6 to the superior court in the covered employee's county of residence.

G. An appeal shall be available to the court of appeals from the order of the superior court pursuant to title 12, chapter 7, article 6 as in other civil cases.

H. For the purposes of this section:

1. "Covered employee" has the same meaning prescribed in section 41-741.

2. "Covered service" has the same meaning prescribed in section 41-741.

3. "Employing agency" means the agency in the state personnel system where the covered employee is or, in the case of dismissal, was employed.

4. "Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona peace officer standards and training board.

5. "Just cause" has the same meaning prescribed in title 38, chapter 8, article 1.

6. "Original probationary period" has the same meaning prescribed in section 41-741.

7. "Personnel rules" means the rules adopted by the department of administration, human resources division.

8. "State agency head" means the chief executive officer of the employing agency.

9. "State personnel system" has the same meaning prescribed in section 41-741.

D-2

ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-15-1204)

Title 7, Chapter 3, Article 3, Arizona Leveraging Education Assistance Partnership Program; Article 4, Arizona Private Postsecondary Education Student Financial Assistance Program

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-2**

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

FROM: Chris Kleminich, Staff Attorney

DATE: December 18, 2015

SUBJECT: **ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-15-1204)**
Title 7, Chapter 3, Article 3, Arizona Leveraging Education Assistance Partnership Program; Article 4, Arizona Private Postsecondary Education Student Financial Assistance Program

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Commission for Postsecondary Education (Commission) is to:

1. Conduct, supervise and coordinate the review of public and private postsecondary education institutions in this state to determine their eligibility for student financial aid monies,
2. Administer specifically identified federal and state financial aid programs,
3. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest,
4. Coordinate and promote studies of interest to postsecondary institutions, and
5. Provide information to the public on postsecondary education opportunities in this state.

Laws 2009, Ch. 95, § 61.

This five-year-review report covers fourteen rules in A.A.C. Title 7, Chapter 3, Articles 3 and 4. This is the first five-year-review report submitted by the Commission on these rules. A.R.S. § 15-1852 exempts the Commission from Title 41, Chapter 6, but the Commission has chosen to submit five-year-review reports to the Council after changes in 2012 to A.R.S. § 41-1056(A). Under that statute, "[a]t least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed."

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 3 contains nine rules, related to the Arizona Leveraging Educational Assistance Partnership Program (LEAP), which address federal LEAP requirements; institutional eligibility requirements; receipt and allocation of Arizona LEAP program funds; Arizona LEAP student eligibility requirements; Arizona LEAP award procedures; award alteration; administrative costs; institutional program review; and definitions.

Article 4 contains five rules, related to the Arizona Private Postsecondary Education Student Financial Assistance Program (PFAP), which address purpose; definitions; administration and allocation of funds; student eligibility; and termination of awards.

Year that Each Rule was Last Amended or Newly Made

The rules became effective in 1999.

Proposed Action

The Commission proposes no action on the rules at this time.

Summary of Reasons for the Proposed Action

The Commission has determined that the rules are effective, are enforced as written, are consistent with other statutes and rules, and are clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Commission has not made a request for an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

No, as the Commission indicates that A.R.S. § 15-1852 exempts the Commission from Title 41, Chapter 6, which includes A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Commission indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Commission has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Commission cites to A.R.S. § 15-1854, which establishes PFAP, and to A.R.S. § 15-1856, which establishes criteria for LEAP, as authority for the rules. In addition, staff would note that under A.R.S. § 15-1852(A)(2), the Commission shall "[a]dopt rules to carry out the purposes of this article [Title 15, Chapter 14, Article 5, Commission for Postsecondary Education]."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Commission indicates that the rules are consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Commission indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Commission indicates that the rules are clear, concise, and understandable.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The Commission indicates that the rules stem from, and are not more stringent than, the corresponding federal law associated with these programs, namely 34 C.F.R. § 692 [Leveraging Educational Assistance Partnership Program].

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. None of the rules were made after July 29, 2010.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

Not applicable.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. The Commission notes that this is the first five-year-review report on the rules.

11. <u>Has the agency included a proposed course of action?</u>

Yes. The Commission proposes no action on the rules at this time, as the Commission indicates that the rules are effective, are enforced as written, are consistent with other statutes and rules, and are clear, concise, and understandable.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-2**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-15-1204)**
Title 7, Chapter 3, Article 3, Arizona Leveraging Education Assistance Partnership Program; Article 4, Arizona Private Postsecondary Education Student Financial Assistance Program

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules in Articles 3 and 4 contained in the five-year-review report (5YRR). Summaries of the programs addressed by the Articles covered in the 5YRR are provided below:

<u>Article 3</u>: Arizona Leveraging Educational Assistance Partnership Program (LEAP)

This grant program was originally created as a federal, state, and institution partnership to provide financial assistance to students demonstrating substantial financial need. However, federal funding and authority was eliminated in FY 2012 by Public Law 112-10, Department of Defense and Full-Year Continuing Appropriations Act, 2011. Therefore, program therefore now operates with state and institutional funding only.

A key part of the partnership is the matching fund requirement. In order to participate and receive LEAP grant funding, the public or private postsecondary institution shall provide matching funds that equals the amount of State LEAP funds provided. Therefore, some public and private colleges and universities may not be participating in the program due to a lack of internal matching funding.

The LEAP grant is need-based (maximum award is $1,000) and intended for Arizona resident undergraduate students who are enrolled at least half-time and pursuing their first

undergraduate degree; however, the grant is only available to those that are determined to have significant financial need.

In FY 2013, awards were provided through 43 postsecondary institutions. Of the total funding distributed, 34% went to public universities, 50% to community colleges, and 16% to private institutions.

Article 4: Arizona Private Postsecondary Education Student Financial Assistance Program (PFAP)

The PFAP program has not been funded since FY 2010; however, prior to that time the program distributed awards to community colleges graduates enrolled in a private baccalaureate degree granting institution ($2,000 each year maximum for up to 2 years). While awards have not been granted for the past 5 years, the repayment process for existing unforgiven loans remains.

Repayments are deposited into the Private Postsecondary Education Student Financial Assistance Fund. If a grantee does not earn a baccalaureate degree within 3 years, the grantee must repay the commission all award monies. There have been 1,678 students awarded PFAP forgivable loans since its inception in 1996. A total of 228 borrowers are currently being tracked in the repayment program or will be placed in repayment once located.

The Commission believes the economic impact has been as predicted for the rules in Articles 3 and 4.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Commission indicates that the rules in Article 3 and 4 are effective in meeting their objectives and impose the least burden and cost on those regulated. While the rules do meet this standard, with the elimination of the federal component of the LEAP program and the defunding of the PFAP program, it is reasonable to assume that amendments could potentially increase the clarity and conciseness of the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Commission for Postsecondary Education

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September 25, 2015

Bret Parke, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-Year-Review Combined Report on Title 7, Chapter 3, Articles 3 and 4

Dear Mr. Parke:

The Arizona Commission for Postsecondary Education ("Commission") submits for approval by the Governor's Regulatory Review Council the attached Five-Year-Review Combined Report on Title 7, Chapter 3, Articles 3 and 4. This Report is timely filed pursuant to the Council's email, dated May 28, 2015, granting an extension until September 25, 2015.

This document complies with the reporting requirement in A.R.S. § 41-1056. A.R.S § 15-1852 exempts the Commission from Title 41, Chapter 6 which encompasses A.R.S. § 41-1091.

An electronic copy of this cover letter, report, the rules being reviewed, statutes authorizing the rules, and economic impact statement are being submitted by email to Dolores Habre. Additionally, a hard copy will be delivered to the Governor's Regulatory Review Council office at 100 North 15th Avenue, Suite 402.

If you need any further information, please contact me at (602) 258-2435.

Respectfully Submitted,

April L. Osborn

Dr. April L. Osborn, Executive Director

Enclosures

FIVE-YEAR-REVIEW REPORT
TITLE 7. EDUCATION
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION
ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM
ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

September 2015

ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION

...expanding access and increasing success in postsecondary education for Arizonans

FIVE-YEAR-REVIEW REPORT
TITLE 7. EDUCATION
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION
ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM
ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

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FIVE-YEAR-REVIEW SUMMARY

Article 3. Arizona Leveraging Educational Assistance Partnership Program

Arizona Revised Statutes (A.R.S.) § 15-1856 establishes the Leveraging Educational Assistance Program (LEAP) criteria. The Commission has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the criteria for the Leveraging Educational Assistance Partnership Program for the Commission are in A.A.C. Title 7, Chapter 3, Article 3.

The rules in A.A.C. Title 7, Chapter 3, Article 3 cover the federal LEAP requirements; institutional eligibility requirements; receipt and allocation of Arizona LEAP program funds; Arizona LEAP student eligibility requirements; Arizona LEAP award procedures; award alteration; administrative costs; institutional program review; and definitions. Rules R7-3-301 through R7-3-309 were adopted September 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act.

Through an analysis of the rules in Article 3, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are clear, concise, and understandable. The Commission does not anticipate revising this Article anytime in the near future.

INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 3

1. **Authorization of the rule by existing statutes**
   A.R.S. § 15-1856
3. **Effectiveness in achieving the objective**
   The rule is effective in achieving its objective.
4. **Consistency with state and federal statutes and rules**
   The rule is consistent with state and federal statutes and rules.
5. **Enforcement policy**
   The rule describes processes and definitions regarding the Commission's rulemaking process, so enforcement by the Commission is not applicable.
6. **Clarity, conciseness, and understandability**
   The rule is clear, concise, and understandable.
7. **Written criticisms of the rules received within the last five years**
   The Commission staff has not received one written criticism of this rule in the last five years.
8. **Estimated economic, small business, and consumer impact**
   The economic, small business, and consumer impact of the rule is moderate. The principle impact of these rules is on participating postsecondary institutions and their students. For eligible participating postsecondary institutions these rules provide the guidelines for compliance with federal and state requirements. These rules have an impact on participating institutions as the rules define guidelines such as institutional eligibility requirements; student eligibility requirements; grant award procedures; and grant award alterations and reversion procedures.

   Students who are awarded these funds by participating institutions have the financial benefit of the funds to be utilized to meet a student's cost of attendance. The rules will facilitate access to higher education opportunities for those students in need of financial assistance.

   Small business should not be impacted by these rules. Additionally, due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.
9. **Business competitiveness analysis**
   The Commission did not receive a business competitiveness analysis of the rules in the last five years.
10. **Completion of previous five-year-review report process**
    Due to the exemption from the Governor's Regulatory Review Council (GRRC) rulemaking process there has been no previous five-year-review report submitted.
11. **Costs vs. benefits/least burden**
    The rule imposes the least burden and costs to persons regulated.
12. **Stringency compared to federal law**
    Federal law applies to these rules since the program was established by the federal government; Code of Federal Regulations Title 34, Subtitle B, Chapter VI,

Part 692. The rules stem from federal regulations so are not more stringent than corresponding federal law.

13. **General permit compliance, A.R.S. § 41-1037**
Of the rules reviewed, none were adopted or amended after July 29, 2010.

14. **Proposed course of action**
No course of action necessary for the rules reviewed. No revisions to these rules are being made.

INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 3

R7-3-301. Federal LEAP Requirements

2. **Objective of the rule**
The objective of this rule is to outline the federal government requirements for a state LEAP program. Additionally, the objective of this rule is to ensure that all other United States laws and regulations applying to the Federal-State Student Grant Program are obeyed.

R7-3-302. Institutional Eligibility Requirements

2. **Objective of the rule**
The objective of this rule is to identify criteria that public, nonprofit and proprietary institutions must meet to participate in the LEAP program.

R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds

2. **Objective of the rule**
The objective of this rule is to identify a process allowing for the receipt, allocation, transfer, disbursement, and reallocation of program funds.

R7-3-304. Arizona LEAP Student Eligibility Requirements

2. **Objective of the rule**
The objective of the rule is to further define student eligibility requirements beyond the criteria established within ARS § 15-1856. Additionally, the objective of the rule is to define substantial financial need and the procedures used to determine financial need.

R7-3-305. Arizona LEAP Award Procedures

2. **Objective of the rule**
The objective of this rule is to implement a process in which postsecondary institutions through their financial aid office may award LEAP funds to students.

R7-3-306. Award Alteration

2. **Objective of the rule**
   The objective of the rule is to identify a process in which alterations to a student award may be accommodated either through increased awards or reversions.

R7-3-307. Administrative Costs

2. **Objective of the rule**
   The objective of the rule is to define where administrative costs for the program may be paid from.

R7-3-308. Institutional Program Review

2. **Objective of the rule**
   The objective of the rule is to define a process in which the Commission may audit institutional LEAP program records to ensure that postsecondary institutions are complying with the rules and regulations of the program.

R7-3-309. Definitions

2. **Objective of the rule**
   The objective of the rule is to define terms used in the LEAP program so the reader understands clearly the requirements of Article 3 and allow for consistent interpretation.

FIVE-YEAR-REVIEW SUMMARY

Article 4. Arizona Private Postsecondary Education Student Financial Assistance Program

Arizona Revised Statutes (A.R.S.) § 15-1854 establishes the Private Postsecondary Education Student Financial Assistance Program (PFAP) fund and definitions of the program. The Commission has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the criteria for the Private Postsecondary Education Student Financial Assistance Program for the Commission are in A.A.C. Title 7, Chapter 3, Article 4.

The rules in A.A.C. Title 7, Chapter 3, Article 4 cover the purpose; definitions; administration and allocation of funds; student eligibility; and termination of award. Rules R7-3-401 through R7-3-405 were adopted September 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act.

Through an analysis of the rules in Article 4, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are clear, concise, and understandable. The Commission does not anticipate revising this Article anytime in the near future.

INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 4

1. **Authorization of the rule by existing statutes**
   A.R.S. § 15-1854
3. **Effectiveness in achieving the objective**
   The rule is effective in achieving its objective.
4. **Consistency with state and federal statutes and rules**
   The rule is consistent with state and federal statutes and rules.
5. **Enforcement policy**
   The rule describes processes and definitions regarding the Commission's rulemaking process, so enforcement by the Commission is not applicable.
6. **Clarity, conciseness, and understandability**
   The rule is clear, concise, and understandable.
7. **Written criticisms of the rules received within the last five years**
   The Commission staff has not received one written criticism of this rule in the last five years.
8. **Estimated economic, small business, and consumer impact**
   The economic, small business, and consumer impact of the rule is moderate. The principle impact of these rules is on participating postsecondary institutions and their students. For eligible participating postsecondary institutions these rules provide the guidelines for compliance with state requirements. These rules define institutional participation guidelines such as the programs purpose; administration and allocation of funds; student eligibility requirements; and award termination procedures.

   The program was designed to provide financial incentive to students who graduated from an Arizona community college to attend a private postsecondary baccalaureate-granting institution rather than an Arizona public university. Students who are awarded these funds by participating institutions have the financial benefit of the funds to be utilized to meet a student's cost of attendance. The rules will facilitate access to higher education opportunities and lighten the burden on Arizona public universities.

   Small business should not be impacted by these rules. Additionally, due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.
9. **Business competitiveness analysis**
   The Commission did not receive a business competitiveness analysis of the rules in the last five years.
10. **Completion of previous five-year-review report process**
    Due to the exemption from the Governor's Regulatory Review Council (GRRC) rulemaking process there has been no previous five-year-review report submitted.
11. **Costs vs. benefits/least burden**
    The rule imposes the least burden and costs to persons regulated.

12. **Stringency compared to federal law**
Federal law applies to these rules since certain terminology and procedures are incorporated in the PFAP program. The rules stem from federal regulations so are not more stringent than corresponding federal law.

13. **General permit compliance, A.R.S. § 41-1037**
Of the rules reviewed, none were adopted or amended after July 29, 2010.

14. **Proposed course of action**
No course of action necessary for the rules reviewed. No revisions to these rules are being made.

INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 4

R7-3-401. Purpose

2. **Objective of the rule**
The objective of the rule is to identify the purpose of the program and enable the reader to understand who the program aims to assist and which institutional sector is eligible to participate.

R7-3-402. Definitions

2. **Objective of the rule**
The objective of the rule is to define terms used in the PFAP program so the reader understands clearly the requirements of Article 4 and allow for consistent interpretation.

R7-3-403. Administration and Allocation of Funds

2. **Objective of the rule**
The objective of the rule is to identify procedures for the administration and allocation of funds for the PFAP program. These procedures will allow participating postsecondary institutions guidance in the awarding of funds to eligible students.

R7-3-404. Student Eligibility

2. **Objective of the rule**
The objective of the rule is to define student eligibility requirements including assurances for initial student recipients and returning recipients.

R7-3-405. Termination of Award

2. **Objective of the rule**
The objective of the rule is to identify a process in which a student is no longer eligible and a student's award shall be terminated. Termination of an award allows the remaining funds to be made available for additional awards.

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

(Authority A.R.S. § 15-1852 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).

Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 15-1852(C). Exemption from A.R.S. Title 41, Chapter 6 means the Commission was not required to hold public hearings; and the Governor's Regulatory Review Council did not review or approve the rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.

ARTICLE 1. RULEMAKING

Article 1, consisting of Sections R7-3-101 through R7-3-108, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-101. General Provisions
R7-3-102. Incorporation by Reference
R7-3-103. Commission Rulemaking Reference
R7-3-104. Notice of Oral Proceedings
R7-3-105. Economic, Small Business, and Consumer Impact Summary
R7-3-106. Effective Date of Rules
R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption
R7-3-108. Oral Proceedings

ARTICLE 2. ADJUDICATIONS

Article 2, consisting of Sections R7-3-201 through R7-3-205, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-201. Definitions
R7-3-202. Contested Cases, Notice, Hearing, Records
R7-3-203. Decisions and Orders R7-
3-204. Hearings and Evidence
R7-3-205. Rehearing and Decisions

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Article 3, consisting of Sections R7-3-301 through R7-3-309, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-301. Federal LEAP Requirements
R7-3-302. Institutional Eligibility Requirements
R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds
R7-3-304. Arizona LEAP Student Eligibility Requirements
R7-3-305. Arizona LEAP Award Procedures
R7-3-306. Award Alteration
R7-3-307. Administrative Costs
R7-3-308. Institutional Program Review
R7-3-309. Definitions

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

Article 4, consisting of Sections R7-3-401 through R7-3-404, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-401. Purpose
R7-3-402. Definitions
R7-3-403. Administration and Allocation of Funds
R7-3-404. Student Eligibility
R7-3-405. Termination of Award

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Article 1, consisting of Sections R7-3-501 through R7-3-505, adopted effective October 31, 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 97-4).

Section
R7-3-501. Definitions
R7-3-502. Fees
R7-3-503. RFP Process
R7-3-504. Changing Designated Beneficiary
R7-3-505. Account Balance Limitations
R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507. Oversight of Financial Institutions
R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

ARTICLE 1. RULEMAKING

R7-3-101. General Provisions

A. Definitions. In this Article, unless the context otherwise requires:

1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
2. "Commission" means the Commission for Postsecondary Education.
3. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
6. "Rulemaking" means the process for formulation and adoption of a rule.

B. The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the *Arizona Administrative Code*.

Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-102. Incorporation by Reference
The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file three copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-103. Commission Rulemaking Record
The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;
4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-104. Notice of Oral Proceedings
The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at least 30 days to elapse after the publication date of the notice before adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-105. Economic, Small Business, and Consumer Impact Summary
The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rulemaking on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-106. Effective Date of Rules
A rule adopted by the Commission becomes effective when a certified original and two copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order, or as specified in the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption

A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.

B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:

1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt,
2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt,

3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-108. Oral Proceedings

A. When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.

B. The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than five persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission, shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.

C. Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 2. ADJUDICATIONS

R7-3-201. Definitions

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).
2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-202. Contested Cases, Notice, Hearing, Records

A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.

B. The notice shall include:
   1. A statement of the time, place, and nature of the hearing;
   2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
   3. A reference to the particular Sections of the statutes and rules involved.
   4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.

D. The record in a contested case shall include:
   1. All pleadings, motions, and interlocutory rulings;
   2. Evidence received or considered;
   3. A statement of matters officially noticed;
   4. Objections and offers of proof and rulings thereon;
   5. Proposed findings and exceptions;
   6. Any decision, opinion, or report by the officer presiding at the hearing;
   7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.

E. A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.

F. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-203. Decisions and Orders

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-204. Hearings and Evidence

A. A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such

proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.

B. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.

C. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-205. Rehearing of Decisions

A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing of review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
   1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
   2. Misconduct of the Commission or its hearing officer or the prevailing party;
   3. Accident or surprise which could not have been prevented by ordinary prudence;
   4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
   5. Excessive or insufficient penalties;
   6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
   7. That the decision is not justified by the evidence or is contrary to the law.

C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall specify the grounds therefor.

E. When a motion for rehearing or review is based upon affidavits they shall be served with the motion. An opposing party may within 10 days after service of such motion serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

R7-3-301. Federal LEAP Requirements

The federal government requires that a state LEAP Program must:
1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed $5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
    a. The average annual aggregate expenditures for the preceding three years; or
    b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all LEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

Historical Note
Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-302. Institutional Eligibility Requirements

To participate in the Arizona LEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
   a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   b. Is legally authorized by the state of Arizona to provide an educational program beyond secondary education;
   c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a two-year program which is acceptable for full credit toward a baccalaureate degree; or at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a six-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;
   d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.
   e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 CFR 668.
2. Be a proprietary institution of postsecondary education which:
   a. Is not a public or other nonprofit institution;
   b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   c. Is legally authorized to provide postsecondary education in the state of Arizona;
   d. Provides at least a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
   e. Is accredited by a nationally recognized accrediting agency or association; and
   f. Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
   g. Refer to this subsection (1)(e).

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds

A. Receipt of funds.

1. The Commission may receive funds for the Arizona LEAP Program from the following sources:
   a. The federal government;
   b. The Arizona Legislature;
   c. Institutions which are eligible to participate in the program; and,
   d. Other nonfederal institutions, organizations, or individuals.
2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.

B. Allocation of funds.

1. Arizona LEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
   a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the LEAP program for any given academic year will be based on enrollment data from the previous academic year.)
   b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through April.) Enrollment data must be verified by two Administrative Officials of the school.
2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select one of the following choices:
   a. It will provide the full amount of institutional funds in order to receive the full allocation.
   b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.

c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
d. It chooses not to participate in the LEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.

3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the LEAP Program for that academic year.
4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona LEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.

C. Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education -- LEAP Program.

D. Disbursement of Arizona LEAP Program Funds to Participating Institutions. The Commission will disburse funds from the Arizona LEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.

E. Reallocation of Unused LEAP Program Funds
1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
2. Schools not awarding 100% of their funds by the middle of February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. Any LEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-304. Arizona LEAP Student Eligibility Requirements

A. Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:
1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or first professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for LEAP purposes.
4. Have a substantial demonstrated financial need determined in accordance with the provision given in R7-3-304(B);
5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 CFR 692.

B. Financial Need Determination Procedures. The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.

C. A student is considered to have substantial financial need when:
1. The student has an expected family contribution of $2,140 or less as a result of the student's FM need analysis for the program year; or,
2. The difference between the student's cost of education and the student's expected family contribution is at least $100.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt

rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-305. Arizona LEAP Award Procedures

A. Eligible students who wish to apply for a LEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).

B. The financial aid office will:
   1. Determine whether or not the student meets the eligibility requirements for an Arizona LEAP award as outlined in R7-3-304(A);
   2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
   3. Exercise due diligence in determining that the student:
      a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
      b. Satisfies requirements listed under 34 CFR 692.4.
   4. Recommending the amount of the LEAP award in accordance with the following guidelines:
      a. Awards may be made only to students who meet the criteria of R7-3-304(A);
      b. The total of all LEAP awards to a student may not exceed $2,500 for the program year;
      c. The financial aid officer will determine, based on student need, an award of no more than $2,500 nor less than $100 (round all awards to the nearest $1.00).
      d. The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
      e. Sign the application form.
   5. Send the application form to:
      Arizona Commission For Postsecondary Education
      2020 North Central Avenue, Suite 275
      Phoenix, Arizona 85004-4503
      (Attention: Financial Aid Director)
   6. Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
   7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.
   8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.

C. The Arizona Commission for Postsecondary Education will:
   1. Receive the application for the Arizona LEAP award;
   2. Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;
   3. Approve applications which meet these criteria;
   4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
   5. Disburse funds to the institution's financial aid officer for the approved applications.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-306. Award Alterations

A. The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
   1. Increased LEAP Awards: A student's LEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of $2,500 in LEAP awards for a program year.
   2. Reversions: A student's LEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of LEAP award funds possible in accordance with the repayment policies of that institution.
   3. The reversion procedure includes the following steps:
      a. Funds are recovered from the student;
      b. The financial aid officer completes the LEAP Reversion Form;
      c. The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.
   4. Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-307. Administrative Costs

No federal LEAP funds may be used to administer the Arizona LEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal LEAP funds.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-308. Arizona LEAP Institutional Review

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:
   1. The student is a resident of the state of Arizona as prescribed by Arizona Revised Statutes.
   2. The student is currently enrolled at least half-time in an eligible course or program.

3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U.S. Department of Education.
4. The student has received the LEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster, etc.).
5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The LEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
6. Repayments and refunds of LEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each LEAP program year.
7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 CFR 668.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually eight to nine months, during which a full-time student would normally be expected to complete the equivalent of two semesters (24 semester hours), two trimesters (24 trimester hours), three quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of 1998, as amended, of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "CFR" means the Code of Federal Regulations.
5. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
6. "Commission" means the Commission for Postsecondary Education.
7. "Cost of education" means the cost of attending an institution as defined by the institution.
8. "Dependent student" is a student who does not qualify as an Independent Student.
9. "Eligible course or program" is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
10. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
11. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
12. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
    a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least six months or 600 clock hours for those institutions that do not utilize such systems.
    b. The tuition and fees customarily charged for full-time study by the institution.
14. "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
15. "Independent" means an independent student as defined by federal regulations.
16. "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
    a. Awards: Awarded LEAP Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
    b. Reversions:
        i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
        ii. Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.
    c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution.
17. "Public or private nonprofit institution of higher education" means an educational institution which:
    a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
    b. Is legally authorized to provide a program of education beyond secondary education.
    c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree

or at least a two-year program which is acceptable for full credit towards a baccalaureate degree, or at least a six-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

ii. Is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(i) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.

18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.

19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.

20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.

21. "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.

22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.

23. "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.

24. "Proprietary institution of higher education" means an educational institution:

a. Which provides not less than a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;

b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;

c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education;

d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose;

e. Which is not a public or other nonprofit institution; and

f. Which has been in existence for at least two years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to ensure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.

25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

R7-3-401. Purpose

The purpose of the Arizona Private Postsecondary Education Student Financial Assistance Program is to enhance the educational opportunities of citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible postsecondary institutions.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-402. Definitions

A. "Award year" means the period from July 1 through June 30 of the succeeding year.

B. "Commission" means the Commission for Postsecondary Education.

C. "Eligible postsecondary institution" means any private postsecondary institution:

1. Licensed to provide baccalaureate degrees in Arizona by the Arizona State Board for Private Postsecondary Education; and

2. Accredited by an accrediting body recognized by the United States Department of Education.

D. "Eligible student" means an individual who:
1. Has obtained an associate degree from a community college under the jurisdiction of the Arizona State Board of Directors for Community Colleges; and
2. Enrolls as a full-time undergraduate student at an eligible postsecondary institution.

E. "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the definition used at that institution.

F. "FAFSA" means Free Application for Federal Student Aid.

G. "Financial need" means the cost of attendance less expected family contribution, determined from the student's FAFSA form, minus any grant or scholarship aid.

H. "Full-time student" means an individual who is enrolled in at least 12 credit hours per semester or an equivalent calculation.

I. "Undergraduate student" means an individual who has not earned a baccalaureate or professional degree and who is enrolled in a postsecondary educational program which leads to, or is creditable toward, a baccalaureate degree.

J. "Student financial assistance" means awarding a grant of money to an eligible, undergraduate student for payment of tuition and fees, as defined and allowed under United States Department of Education Title IV student assistance analysis, at an eligible postsecondary institution.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-403. Administration and Allocation of Funds

A. The Commission shall administer the Arizona Private Postsecondary Education Student Financial Assistance Program in accordance with A.R.S. § 15-1854 and the rules promulgated thereunder. Administration shall include but not be limited to the award of vouchers to eligible students approved by the Commission.

B. The Commission shall maintain financial records of all disbursements made under the Program. These records shall include the amount of each student grant and the award year for which it was disbursed.

C. The Commission shall allocate private postsecondary education student financial assistance grant funds to eligible students based on methodology approved by the Commission under these rules.

D. Any funds which have been allocated to a student, but are not used by that student, shall be reallocated by the Commission in a subsequent award year.

E. Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the following priority:
1. Date of receipt of a completed application,
2. Highest grade point averages for the associate degree.

F. Student financial assistance in the amount up to $1,500 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The initial expiration of the institution's refund time period for United States Department of Education Title IV student assistance during the award year. The institution shall then repay the Commission the applicable proportion of the annual award if the eligible student is not enrolled full-time on the date of the expiration of the institution's refund policy during any subsequent portion of the award year.

G. Student financial assistance in the amount up to $750 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The expiration of the institution's refund time period for United States Department of Education Title IV student financial assistance.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-404. Student Eligibility

A. To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:
1. Assurance of acceptance at an eligible institution;
2. Assurance of attendance as a full-time student;
3. Written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provision of the Program and the regulations promulgated thereunder;
4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; and
5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award.

B. To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:
1. Meet the conditions of R7-3-402(D);
2. Provide verification of full-time enrollment and satisfactory academic progress as determined by the institution for the previous award year; and
3. Not have exceeded a cumulative total of $3,000 in awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-405. Termination of Award

A. Student financial assistance shall be terminated if:
1. A student has withdrawn from the PFAP program; or

2. A student has been dismissed from the institution for academic or other reasons; or
3. A student is not in attendance for more than 12 consecutive months.

B. The remaining student financial assistance award money designated for that student shall no longer be available to that student. This money shall be available for awards to other eligible students.

Historical Note
Adopted by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

A. "Account year" means the period beginning on October 1 and ending on September 30 of each year.
B. "A.R.S." means Arizona Revised Statutes.
C. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
D. "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
E. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
F. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
G. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
H. "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
I. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
J. "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 486, effective January 9, 2002 (Supp. 02-1). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-502. Fees

A. Application fee. The application fee is $10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission $10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.
B. Administrative fee. For each account opened, the financial institution shall pay to the Commission a one-time fee of $3 at the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account owner the administrative fee.
C. Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a $200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-503. RFP Process

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4).

R7-3-504. Changing Designated Beneficiary

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4).

R7-3-505. Account Balance Limitations

A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
   1. The product (rounded down to the nearest multiple of $1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four

year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or

2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.

B. No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(F).

C. No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).

D. Each year, the Commission shall review the amounts set forth in subsection (A).

E. Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).

F. If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

Historical Note

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 5699, effective November 26, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.

B. Withdrawals.

1. Qualified Withdrawals.
In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:
   a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or
   b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or
   c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
2. Withdrawal Based on Death, Disability, or Scholarship.
A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
3. Non-Qualified or Unsubstantiated Withdrawals.
Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
   a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is

determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.

b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.

c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.

4. Substantiation Procedures.
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.

5. Distributions Made after December 31, 2001.
R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.

C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 6 A.A.R. 2486, effective June 7, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-507. Oversight of Financial Institutions

A. Disclaimer of state liability. Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.

B. No Investment Direction. A financial institution shall not permit an account owner to move funds, once deposited, that in

any way would result in investment direction under § 529 of the Code.

C. Reporting Requirements.
   1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
   2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.
   3. A copy of the statement described in (C)(1) and (2) shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

D. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

E. Non-renewal. The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

F. Marketing programs.
   1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
   2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

A. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

B. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3).

Exhibit 2

15-1856. Leveraging educational assistance program; criteria
A student in this state is not eligible to participate in the leveraging educational assistance program established by section 1203 of the higher education act amendments of 1998 (P.L. 105-244; 112 Stat. 1581; 20 United States Code section 1001) unless the student meets all of the following criteria:
1. The student is a resident of this state.
2. The student demonstrates financial need under the criteria established for the program.
3. The student is attending, on at least a half-time basis, an approved program at a properly accredited postsecondary educational institution in this state.

15-1854. Private postsecondary education student financial assistance program; fund; definition
A. A private postsecondary education student financial assistance program is established. The commission shall develop, implement and administer the program. A student who obtains an associate degree from a community college district or from a community college under the jurisdiction of an Indian tribe in this state that meets the same accreditation standards as a community college district and who registers for enrollment as a full-time student in a baccalaureate program at a private, nationally or regionally accredited four year degree granting college or university chartered in this state is eligible to submit an application to the commission for participation in the program. The commission shall establish eligibility criteria for the program, including financial need and academic merit, shall develop application forms, procedures and deadlines and shall select qualifying students each year for participation in the program. Participating students shall receive an award in an amount of up to two thousand dollars annually not to exceed two years or four thousand dollars to be used to pay all or a portion of the tuition and fees charged at the private, accredited four year college or university.
B. A private postsecondary education student financial assistance fund is established consisting of legislative appropriations. The commission shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The commission shall make awards for payment of tuition at eligible colleges or universities to students who are selected to participate in the private postsecondary education student financial assistance program pursuant to subsection A of this section.
C. The commission shall develop a program evaluation procedure in order to determine the effectiveness of the private postsecondary education student financial assistance program in shifting students who would have otherwise attended a public four-year college or university to private four-year degree granting colleges or universities.
D. A student who fails to receive a baccalaureate degree within a three-year period of receipt of the program award shall reimburse the private postsecondary education student financial assistance fund for all awards received pursuant to subsection A of this section. On receipt of supporting documentation from the student, for good cause shown the commission may provide for extensions of the three year period to obtain a baccalaureate degree.

E. The commission may use monies collected from students pursuant to this section for the purposes of administering the loan programs established by this article and section 15-1855.
F. For the purposes of this section, "community college district" means a community college district that is established pursuant to sections 15-1402 and 15-1403 or section 15-1402.01 and that is a political subdivision of this state.

Exhibit 3

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 3. ARIZONA ~~STATE STUDENT INCENTIVE GRANT~~LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

PREAMBLE

1. Sections Affected	Rulemaking Action
R7-3-301	Amend
R7-3-302	Amend
R7-3-303	Amend
R7-3-304	Amend
R7-3-305	Amend
R7-3-306	Amend
R7-3-307	Amend
R7-3-308	Amend
R7-3-309	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. ' 15-1852(C)

Implementing statute: A.R.S. ' 15-1851(B)

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Verna Allen, Executive Director

Address: 2020 N. Central Avenue, Suite 275, Phoenix, Arizona 85004

Telephone Number: 602/229-2595

Fax Number: 602/229-2599

4. **An explanation of the rule, including the agency=s reason=s for initiating the rule:**

On October 7, 1998, President Clinton signed reauthorization of the Higher Education Act (AHEA@). HEA changes the name of the State Student Incentive Grant (ASSIG@) Program to Leveraging Educational Assistance Partnership (ALEAP@) Program. The heading for Article three will be changing to reflect the new name of the program. The only other change is removing the name of a former employee.

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

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

a. An identification of the proposed rulemaking: Arizona Leveraging Educational Assistance Partnership Program, R7-3-301 through R7-3-30, adopted pursuant to A.R.S. ' 15-1851(B).

b. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: There will be no significant impact to anyone or any institution. The rules simply reflect a name change implemented at the federal level.

c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: There may be minor costs in changing letterhead, envelopes, etc.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: None.

e. A statement of the probable impact of the proposed rulemaking on small business: None are anticipated as the Program remains unchanged.

f. A statement of the probable effect on state revenues: None are anticipated as the Program remains unchanged.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Verna Allen, Executive Director

Address: 2020 N. Central Avenue, Suite 275, Phoenix, Arizona 85004

Telephone Number: 602/229-2595

Fax Number: 602/229-2599

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 24, 1999

Time: 10:00 a.m.

Location: Commission for Postsecondary Education, 2020 N. Central Avenue, Conference Room #230, Phoenix, Arizona 85004 via conference call

Nature: Oral Proceeding and Adoption of Rules

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporation by reference and their location in the rules:

Not applicable.

R99-180

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION ~~VOUCHER~~ STUDENT FINANCIAL ASSISTANCE PROGRAM

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R7-3-401	Amend
R7-3-402	Amend
R7-3-403	Amend
R7-3-404	Amend
R7-3-405	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. § 15-1852(C)

   Implementing statute: A.R.S. § 15-1854

3. **The effective date of the rules:** May 24, 1999

4. **A list of all previous notices appearing in the Register addressing the final rule:**

   5 A.A.R. 1172, April 23, 1999

   5 A.A.R. 1147, April 23, 1999

   5 A.A.R. 709, March 5, 1999

5. **The name and address of agency personnel with whom persons may communicate**

regarding the rulemaking:

Name: Verna Allen, Executive Director

Address: 2020 N. Central Avenue, Suite 275, Phoenix, Arizona 85004

Telephone Number: 602/229-2595

Fax Number: 602/229-2599

6. **An explanation of the rule, including the agency's reason's for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

On May 29, 1998, Governor Jane D. Hull signed HB 2193 renaming the Arizona Postsecondary Education Voucher Program to the Arizona Private Postsecondary Education Student Financial Assistance Program ("PFAP"). The heading for Article four will be changing to reflect the new name of the program. The other changes provide a definition for "financial need" and provide authority to the Commission to grant temporarily ineligible students awards to new eligible students on a waiting list.

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

Not applicable.

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

a. An identification of the proposed rulemaking: Arizona Private Postsecondary Education Student Financial Assistance Program, R7-3-401 through R7-3-405, adopted pursuant to A.R.S. § 15-1854.

b. An identification of the persons who will be directly affected by, bear the costs of,

or directly benefit from the proposed rulemaking: There will be no significant impact to anyone or any institution. The rules simply reflect a name change.

c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: There may be minor costs in changing letterhead, envelopes, etc.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: None.

e. A statement of the probable impact of the proposed rulemaking on small business: None are anticipated as the Program remains unchanged.

f. A statement of the probable effect on state revenues: None are anticipated as the Program remains unchanged.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

On May 29, 1998, Governor Jane D. Hull signed HB 2193 renaming the Arizona Postsecondary Education Voucher Program to the Arizona Private Postsecondary Education Student Financial Assistance Program ("PFAP"). The heading for Article four will be changing to reflect the new name of the program. The other changes provide a definition for "financial need" and provide authority to the Commission to grant temporarily ineligible

students awards to new eligible students on a waiting list.

10. **A summary of the principal comments and the agency response to them:**

There were not any oral or written comments by the public.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

12. **Incorporation by reference and their location in the rules:**

Not applicable.

13. **Was this rule previously adopted as an emergency rule?**

No.

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

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 7, EDUCATION

CHAPTER 3, COMMISSION FOR POSTSECONDARY EDUCATION

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R7-3-301	New
R7-3-302	New
R7-3-303	New
R7-3-304	New
R7-3-305	New
R7-3-306	New
R7-3-307	New
R7-3-308	New
R7-3-309	New
R7-3-401	New
R7-3-402	New
R7-3-403	New
R7-3-404	New

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §15-1582(C)

Implementing statute: A.R.S. §15-1851(B) and A.R.S.§15-1854

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

Adopted by the Commission on August 27, 1996

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Exempt Rulemaking - July 20, 1996

5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Edward A. Johnson, Executive Director

Address: 2020 N. Central Avenue, Suite 275, Phoenix, Arizona 85004

Telephone Number: (602) 229-2591

Facsimile Number: (602) 229-2599

E-Mail: ICEAJ@asuvm.inre.asu.edu

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

Article 3, Arizona State Student Incentive Grant Program

The Commission for Postsecondary Education hereby gives notice of the proposed exempt rulemaking for rules concerning its authority to administer the State Student Incentive Grant (SSIG) Program under title IV, part A of the higher education amendments of 1992. The SSIG Program is a federal-state partnership to provide financial assistance in the form of grants to students who have demonstrated financial need.

Article 4, Arizona Postsecondary Voucher Program

The Commission for Postsecondary Education hereby gives notice of the proposed exempt rulemaking for rules concerning its authority to distribute monies to students who are selected to participate in the Arizona Postsecondary Education Voucher Program. The purpose of the Arizona Postsecondary Education Voucher Program is to enhance the educational opportunities of Arizona citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible Arizona postsecondary institutions.

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

Not applicable.

8. **The preliminary summary of the economic, small business, and consumer impact:**

Article 3, Arizona State Student Incentive Grant Program

The principle impact of these rules will be on participating postsecondary institutions and their students. For eligible Arizona postsecondary institutions which elect to participate in the State Student Incentive Grant (SSIG) Program, these rules provide the guidelines for compliance with federal and state requirements. These rules will have a significant impact on the participating institutions as the rules define guidelines such as 1) institutional eligibility requirements; 2) student eligibility requirements; 3) grant award procedures; and 4) grant award alterations and revertments procedures.

It is the judgment of staff that small businesses should not be affected by this rule.

Students, as consumers, who are awarded SSIG Program grants by their respective institution have the financial benefit of grant funds to be utilized to meet their cost of attendance. It is anticipated that the rules will facilitate access to higher education opportunities for those students in need of financial assistance.

Article 4, Arizona Postsecondary Voucher Program

The principle impact of these rules will be on participating postsecondary institutions and their students. For eligible Arizona postsecondary institutions which elect to participate in the Arizona Postsecondary Education Voucher Program, these rules provide the guidelines for compliance with state requirements. These rules will define institutional participation guidelines such as: 1) institutional eligibility requirements; 2) student eligibility requirements; 3) grant award procedures; and 4) grant award alterations and allocation procedures.

It is the judgment of staff that small businesses should not be affected by this rule.

This grant program is designed to provide a financial incentive to students who have graduated from one of Arizona's community colleges to attend a private postsecondary baccalaureate-granting institution rather than to attend an Arizona public university. Students who are awarded voucher grants have the financial benefit of grant funds to be utilized to meet their cost of attendance. It is anticipated that the rules will facilitate access to higher education opportunities and lighten the burden on Arizona public universities.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

State Student Incentive Grant Program

No changes

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

(Authority A.R.S. § 15-1852 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).

Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 15-1852(C). Exemption from A.R.S. Title 41, Chapter 6 means the Commission was not required to hold public hearings; and the Governor's Regulatory Review Council did not review or approve the rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.

ARTICLE 1. RULEMAKING

Article 1, consisting of Sections R7-3-101 through R7-3-108, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-101. General Provisions
R7-3-102. Incorporation by Reference
R7-3-103. Commission Rulemaking Reference
R7-3-104. Notice of Oral Proceedings
R7-3-105. Economic, Small Business, and Consumer Impact Summary
R7-3-106. Effective Date of Rules
R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption
R7-3-108. Oral Proceedings

ARTICLE 2. ADJUDICATIONS

Article 2, consisting of Sections R7-3-201 through R7-3-205, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-201. Definitions
R7-3-202. Contested Cases, Notice, Hearing, Records
R7-3-203. Decisions and Orders
R7-3-204. Hearings and Evidence
R7-3-205. Rehearing and Decisions

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Article 3, consisting of Sections R7-3-301 through R7-3-309, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-301. Federal LEAP Requirements
R7-3-302. Institutional Eligibility Requirements
R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds
R7-3-304. Arizona LEAP Student Eligibility Requirements
R7-3-305. Arizona LEAP Award Procedures
R7-3-306. Award Alteration
R7-3-307. Administrative Costs
R7-3-308. Institutional Program Review
R7-3-309. Definitions

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

Article 4, consisting of Sections R7-3-401 through R7-3-404, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-401. Purpose
R7-3-402. Definitions
R7-3-403. Administration and Allocation of Funds
R7-3-404. Student Eligibility
R7-3-405. Termination of Award

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Article 1, consisting of Sections R7-3-501 through R7-3-505, adopted effective October 31, 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 97-4).

Section
R7-3-501. Definitions
R7-3-502. Fees
R7-3-503. RFP Process
R7-3-504. Changing Designated Beneficiary
R7-3-505. Account Balance Limitations
R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507. Oversight of Financial Institutions
R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

ARTICLE 1. RULEMAKING

R7-3-101. General Provisions

A. Definitions. In this Article, unless the context otherwise requires:
1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
2. "Commission" means the Commission for Postsecondary Education.
3. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
6. "Rulemaking" means the process for formulation and adoption of a rule.

B. The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the *Arizona Administrative Code*.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-102. Incorporation by Reference
The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file three copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-103. Commission Rulemaking Record
The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;
4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-104. Notice of Oral Proceedings
The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at least 30 days to elapse after the publication date of the notice before adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-105. Economic, Small Business, and Consumer Impact Summary
The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rulemaking on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-106. Effective Date of Rules
A rule adopted by the Commission becomes effective when a certified original and two copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order, or as specified in the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption

A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.

B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:

1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt,
2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt,

3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-108. Oral Proceedings

A. When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.

B. The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than five persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission, shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.

C. Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 2. ADJUDICATIONS

R7-3-201. Definitions

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).
2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-202. Contested Cases, Notice, Hearing, Records

A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular Sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.

D. The record in a contested case shall include:

1. All pleadings, motions, and interlocutory rulings;
2. Evidence received or considered;
3. A statement of matters officially noticed;
4. Objections and offers of proof and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the officer presiding at the hearing;
7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.

E. A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.

F. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-203. Decisions and Orders

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-204. Hearings and Evidence

A. A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such

proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.

B. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.

C. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-205. Rehearing of Decisions

A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing of review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Commission or its hearing officer or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
7. That the decision is not justified by the evidence or is contrary to the law.

C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall specify the grounds therefor.

E. When a motion for rehearing or review is based upon affidavits they shall be served with the motion. An opposing party may within 10 days after service of such motion serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

R7-3-301. Federal LEAP Requirements

The federal government requires that a state LEAP Program must:

1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed $5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
    a. The average annual aggregate expenditures for the preceding three years; or
    b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all LEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-302. Institutional Eligibility Requirements

To participate in the Arizona LEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
   a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   b. Is legally authorized by the state of Arizona to provide an educational program beyond secondary education;
   c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a two-year program which is acceptable for full credit toward a baccalaureate degree; or at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a six-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;
   d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.
   e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 CFR 668.
2. Be a proprietary institution of postsecondary education which:
   a. Is not a public or other nonprofit institution;
   b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   c. Is legally authorized to provide postsecondary education in the state of Arizona;
   d. Provides at least a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
   e. Is accredited by a nationally recognized accrediting agency or association; and
   f. Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
   g. Refer to this subsection (1)(e).

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds

A. Receipt of funds.
1. The Commission may receive funds for the Arizona LEAP Program from the following sources:
   a. The federal government;
   b. The Arizona Legislature;
   c. Institutions which are eligible to participate in the program; and,
   d. Other nonfederal institutions, organizations, or individuals.
2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.

B. Allocation of funds.
1. Arizona LEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
   a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the LEAP program for any given academic year will be based on enrollment data from the previous academic year.)
   b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through April.) Enrollment data must be verified by two Administrative Officials of the school.
2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select one of the following choices:
   a. It will provide the full amount of institutional funds in order to receive the full allocation.
   b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.

c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
d. It chooses not to participate in the LEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.

3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the LEAP Program for that academic year.
4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona LEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.

C. Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education -- LEAP Program.

D. Disbursement of Arizona LEAP Program Funds to Participating Institutions. The Commission will disburse funds from the Arizona LEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.

E. Reallocation of Unused LEAP Program Funds

1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
2. Schools not awarding 100% of their funds by the middle of February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
   a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
   b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. Any LEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-304. Arizona LEAP Student Eligibility Requirements

A. Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:

1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or first professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for LEAP purposes.
4. Have a substantial demonstrated financial need determined in accordance with the provision given in R7-3-304(B);
5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 CFR 692.

B. Financial Need Determination Procedures. The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.

C. A student is considered to have substantial financial need when:

1. The student has an expected family contribution of $2,140 or less as a result of the student's FM need analysis for the program year; or,
2. The difference between the student's cost of education and the student's expected family contribution is at least $100.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt

rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-305. Arizona LEAP Award Procedures

A. Eligible students who wish to apply for a LEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).

B. The financial aid office will:
1. Determine whether or not the student meets the eligibility requirements for an Arizona LEAP award as outlined in R7-3-304(A);
2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
3. Exercise due diligence in determining that the student:
   a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
   b. Satisfies requirements listed under 34 CFR 692.4.
4. Recommending the amount of the LEAP award in accordance with the following guidelines:
   a. Awards may be made only to students who meet the criteria of R7-3-304(A);
   b. The total of all LEAP awards to a student may not exceed $2,500 for the program year;
   c. The financial aid officer will determine, based on student need, an award of no more than $2,500 nor less than $100 (round all awards to the nearest $1.00).
   d. The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
   e. Sign the application form.
5. Send the application form to:
   Arizona Commission For Postsecondary Education
   2020 North Central Avenue, Suite 275
   Phoenix, Arizona 85004-4503
   (Attention: Financial Aid Director)
6. Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.
8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.

C. The Arizona Commission for Postsecondary Education will:
1. Receive the application for the Arizona LEAP award;
2. Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;
3. Approve applications which meet these criteria;
4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
5. Disburse funds to the institution's financial aid officer for the approved applications.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-306. Award Alterations

A. The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
1. Increased LEAP Awards: A student's LEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of $2,500 in LEAP awards for a program year.
2. Reversions: A student's LEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of LEAP award funds possible in accordance with the repayment policies of that institution.
3. The reversion procedure includes the following steps:
   a. Funds are recovered from the student;
   b. The financial aid officer completes the LEAP Reversion Form;
   c. The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.
4. Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-307. Administrative Costs

No federal LEAP funds may be used to administer the Arizona LEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal LEAP funds.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-308. Arizona LEAP Institutional Review

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:
1. The student is a resident of the state of Arizona as prescribed by Arizona Revised Statutes.
2. The student is currently enrolled at least half-time in an eligible course or program.

3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U.S. Department of Education.
4. The student has received the LEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster, etc.).
5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The LEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
6. Repayments and refunds of LEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each LEAP program year.
7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 CFR 668.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually eight to nine months, during which a full-time student would normally be expected to complete the equivalent of two semesters (24 semester hours), two trimesters (24 trimester hours), three quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of 1998, as amended, of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "CFR" means the Code of Federal Regulations.
5. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
6. "Commission" means the Commission for Postsecondary Education.
7. "Cost of education" means the cost of attending an institution as defined by the institution.
8. "Dependent student" is a student who does not qualify as an Independent Student.
9. "Eligible course or program" is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
10. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
11. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
12. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
    a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least six months or 600 clock hours for those institutions that do not utilize such systems.
    b. The tuition and fees customarily charged for full-time study by the institution.
14. "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
15. "Independent" means an independent student as defined by federal regulations.
16. "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
    a. Awards: Awarded LEAP Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
    b. Reversions:
        i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
        ii. Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.
    c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution.
17. "Public or private nonprofit institution of higher education" means an educational institution which:
    a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
    b. Is legally authorized to provide a program of education beyond secondary education.
    c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree

or at least a two-year program which is acceptable for full credit towards a baccalaureate degree, or at least a six-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

ii. Is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(i) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.

18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
21. "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.
22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.
23. "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.
24. "Proprietary institution of higher education" means an educational institution:

a. Which provides not less than a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;

b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;

c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education;

d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose;

e. Which is not a public or other nonprofit institution; and

f. Which has been in existence for at least two years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to ensure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.

25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

R7-3-401. Purpose

The purpose of the Arizona Private Postsecondary Education Student Financial Assistance Program is to enhance the educational opportunities of citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible postsecondary institutions.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-402. Definitions

A. "Award year" means the period from July 1 through June 30 of the succeeding year.

B. "Commission" means the Commission for Postsecondary Education.

C. "Eligible postsecondary institution" means any private postsecondary institution:

1. Licensed to provide baccalaureate degrees in Arizona by the Arizona State Board for Private Postsecondary Education; and

2. Accredited by an accrediting body recognized by the United States Department of Education.

D. "Eligible student" means an individual who:
1. Has obtained an associate degree from a community college under the jurisdiction of the Arizona State Board of Directors for Community Colleges; and
2. Enrolls as a full-time undergraduate student at an eligible postsecondary institution.

E. "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the definition used at that institution.

F. "FAFSA" means Free Application for Federal Student Aid.

G. "Financial need" means the cost of attendance less expected family contribution, determined from the student's FAFSA form, minus any grant or scholarship aid.

H. "Full-time student" means an individual who is enrolled in at least 12 credit hours per semester or an equivalent calculation.

I. "Undergraduate student" means an individual who has not earned a baccalaureate or professional degree and who is enrolled in a postsecondary educational program which leads to, or is creditable toward, a baccalaureate degree.

J. "Student financial assistance" means awarding a grant of money to an eligible, undergraduate student for payment of tuition and fees, as defined and allowed under United States Department of Education Title IV student assistance analysis, at an eligible postsecondary institution.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-403. Administration and Allocation of Funds

A. The Commission shall administer the Arizona Private Postsecondary Education Student Financial Assistance Program in accordance with A.R.S. § 15-1854 and the rules promulgated thereunder. Administration shall include but not be limited to the award of vouchers to eligible students approved by the Commission.

B. The Commission shall maintain financial records of all disbursements made under the Program. These records shall include the amount of each student grant and the award year for which it was disbursed.

C. The Commission shall allocate private postsecondary education student financial assistance grant funds to eligible students based on methodology approved by the Commission under these rules.

D. Any funds which have been allocated to a student, but are not used by that student, shall be reallocated by the Commission in a subsequent award year.

E. Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the following priority:
1. Date of receipt of a completed application,
2. Highest grade point averages for the associate degree.

F. Student financial assistance in the amount up to $1,500 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The initial expiration of the institution's refund time period for United States Department of Education Title IV student assistance during the award year. The institution shall then repay the Commission the applicable proportion of the annual award if the eligible student is not enrolled full-time on the date of the expiration of the institution's refund policy during any subsequent portion of the award year.

G. Student financial assistance in the amount up to $750 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The expiration of the institution's refund time period for United States Department of Education Title IV student financial assistance.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-404. Student Eligibility

A. To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:
1. Assurance of acceptance at an eligible institution;
2. Assurance of attendance as a full-time student;
3. Written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provision of the Program and the regulations promulgated thereunder;
4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; and
5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award.

B. To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:
1. Meet the conditions of R7-3-402(D);
2. Provide verification of full-time enrollment and satisfactory academic progress as determined by the institution for the previous award year; and
3. Not have exceeded a cumulative total of $3,000 in awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-405. Termination of Award

A. Student financial assistance shall be terminated if:
1. A student has withdrawn from the PFAP program; or

2. A student has been dismissed from the institution for academic or other reasons; or
3. A student is not in attendance for more than 12 consecutive months.

B. The remaining student financial assistance award money designated for that student shall no longer be available to that student. This money shall be available for awards to other eligible students.

Historical Note
Adopted by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

A. "Account year" means the period beginning on October 1 and ending on September 30 of each year.
B. "A.R.S." means Arizona Revised Statutes.
C. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
D. "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
E. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
F. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
G. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
H. "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
I. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
J. "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 486, effective January 9, 2002 (Supp. 02-1). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-502. Fees

A. Application fee. The application fee is $10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission $10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.
B. Administrative fee. For each account opened, the financial institution shall pay to the Commission a one-time fee of $3 at the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account owner the administrative fee.
C. Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a $200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-503. RFP Process

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4).

R7-3-504. Changing Designated Beneficiary

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4).

R7-3-505. Account Balance Limitations

A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of $1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four

year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or

2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.

B. No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(F).

C. No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).

D. Each year, the Commission shall review the amounts set forth in subsection (A).

E. Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).

F. If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

Historical Note

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 5699, effective November 26, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.

B. Withdrawals.

1. Qualified Withdrawals.
   In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:
   a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or
   b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or
   c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
2. Withdrawal Based on Death, Disability, or Scholarship.
   A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
3. Non-Qualified or Unsubstantiated Withdrawals.
   Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
   a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is

determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.

b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.

c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.

4. Substantiation Procedures.
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.

5. Distributions Made after December 31, 2001.
R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.

C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 6 A.A.R. 2486, effective June 7, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-507. Oversight of Financial Institutions

A. Disclaimer of state liability. Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.

B. No Investment Direction. A financial institution shall not permit an account owner to move funds, once deposited, that in

any way would result in investment direction under § 529 of the Code.

C. Reporting Requirements.

1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.
3. A copy of the statement described in (C)(1) and (2) shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

D. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

E. Non-renewal. The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

F. Marketing programs.

1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

A. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

B. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3).

15-1852. Additional powers and duties

A. In addition to the powers and duties prescribed in section 15-1851, the commission for postsecondary education shall:

1. Meet at least four times each year.

2. Adopt rules to carry out the purposes of this article.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Keep a record of its proceedings.

5. Contract, on behalf of this state, with the United States secretary of education for the purpose of complying with the provisions of title IV, part H, subpart one of the higher education amendments of 1992.

6. Comply with title 38, chapter 3, article 3.1 and title 39.

B. The commission may:

1. Adopt an official seal.

2. Contract.

3. Sue and be sued.

4. Receive, hold, make and take leases of and sell personal property for the benefit of the commission.

5. Subject to title 41, chapter 4, article 4, employ personnel as the commission deems necessary to carry out this article. The commission may designate the duties of these personnel. The commission employees are subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6.

6. Conduct investigations, hold hearings and determine methods of enforcement of this article.

7. Issue subpoenas to compel the attendance of witnesses and the production of documents, administer oaths, take testimony, hear proof and receive exhibits into evidence.

8. Establish policy centers under its control to conduct studies.

9. Coordinate and promote studies of interest to postsecondary institutions in this state.

C. The commission is exempt from title 41, chapter 6 but shall adopt rules in a manner substantially similar to title 41, chapter 6.

15-1854. Private postsecondary education student financial assistance program; fund; definition

A. A private postsecondary education student financial assistance program is established. The commission shall develop, implement and administer the program. A student who obtains an associate degree from a community college district or from a community college under the jurisdiction of an Indian tribe in this state that meets the same accreditation standards as a community college district and who registers for enrollment as a full-time student in a baccalaureate program at a private, nationally or regionally accredited four year degree granting college or university chartered in this state is eligible to submit an application to the commission for participation in the program. The commission shall establish eligibility criteria for the program, including financial need and academic merit, shall develop application forms, procedures and deadlines and shall select qualifying students each year for participation in the program. Participating students shall receive an award in an amount of up to two thousand dollars annually not to exceed two years or four thousand dollars to be used to pay all or a portion of the tuition and fees charged at the private, accredited four year college or university.

B. A private postsecondary education student financial assistance fund is established consisting of legislative appropriations. The commission shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The commission shall make awards for payment of tuition at eligible colleges or universities to students who are selected to participate in the private postsecondary education student financial assistance program pursuant to subsection A of this section.

C. The commission shall develop a program evaluation procedure in order to determine the effectiveness of the private postsecondary education student financial assistance program in shifting students who would have otherwise attended a public four-year college or university to private four-year degree granting colleges or universities.

D. A student who fails to receive a baccalaureate degree within a three-year period of receipt of the program award shall reimburse the private postsecondary education student financial assistance fund for all awards received pursuant to subsection A of this section. On receipt of supporting documentation from the student, for good cause shown the commission may provide for extensions of the three year period to obtain a baccalaureate degree.

E. The commission may use monies collected from students pursuant to this section for the purposes of administering the loan programs established by this article and section 15-1855.

F. For the purposes of this section, "community college district" means a community college district that is established pursuant to sections 15-1402 and 15-1403 or section 15-1402.01 and that is a political subdivision of this state.

15-1856. Leveraging educational assistance program; criteria

A student in this state is not eligible to participate in the leveraging educational assistance program established by section 1203 of the higher education act amendments of 1998 (P.L. 105-244; 112 Stat. 1581; 20 United States Code section 1001) unless the student meets all of the following criteria:

1. The student is a resident of this state.

2. The student demonstrates financial need under the criteria established for the program.

3. The student is attending, on at least a half-time basis, an approved program at a properly accredited postsecondary educational institution in this state.

D-3

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1206)
Title 18, Chapter 6, Article 1, Numeric Values and Information Submittal; Article 3, Groundwater Protection List

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1206)**
Title 18, Chapter 6, Article 1, Numeric Values and Information Submittal; Article 3, Groundwater Protection List

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Environmental Quality (Department) is to "consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation." Laws 2014, Ch. 247, § 7.

This five-year-review report covers eight rules in A.A.C. Title 18, Chapter 6, which relate to pesticides and water pollution control.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1, on numeric values and information submittal, contains five rules related to definitions; agricultural use pesticide submittal requirements; agricultural use active ingredient evaluation; monitoring and testing; and informational requirements for a pesticide formulator.

Article 3, on the Groundwater Protection List, contains three rules related to the Groundwater Protection List; findings and determinations; and requirements for an agricultural use pesticide on the Groundwater Protection List.

Year that Each Rule was Last Amended or Newly Made

The rules were last amended on November 22, 2005.

Proposed Action

The Department plans to amend Sections 101, 102, 106, and 301 by December 2018.

Summary of Reasons for the Proposed Action

Section 101 should include a definition for the term "environmental fate." Section 102 should include additional grounds for the waiver under subsection (A)(3), such as the use of naturally occurring substances that control pests. Section 106 could be made more effective. Section 301(E) is no longer necessary and should be deleted.

Exemption or Request and Approval for Exception from the Moratorium

The Department has not yet requested an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are effective, with the following exceptions:

- Section 101: The rule should include a definition for the term "environmental fate."
- Section 102: The rule should include additional grounds for the waiver under subsection (A)(3), such as the use of naturally occurring substances that control pests.
- Section 106: The rule should go further to distinguish applicants, by including distributors, or manufacturers of generic pesticide ingredients who have obtained their technical product from other sources different from the primary registrant. In addition, the rule should require formulators, distributors, and other entities to submit evidence of a business relationship at the beginning of the process.
- Section 301: Subsection (E) is no longer necessary and should be deleted.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department indicates that it has not received any written criticisms of the rules within the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department provides general statutory authority for the rules. Under A.R.S. § 49-104(B)(4), the Department shall "[a]dopt procedural rules that are necessary to implement the authority granted under this title [Title 49, The Environment], but that are not inconsistent with other provisions of this title."

The Department cites to a number of statutes which provide specific authority for the rules. Most notably, under A.R.S. § 49-303(B), the Department, in consultation with the Department of Agriculture and the Department of Water Resources, must "adopt rules necessary to implement this section [pesticide evaluation process; reporting requirements]."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Department indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that, to the extent that the rules can be enforced, the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates that the rules do not directly correspond to any federal law. The Department states that the rules are compatible with, and not more stringent than, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were last amended in 2005.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

Not applicable.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. The Department stated in its 2010 five-year-review report that amendments would be made to Sections 101, 102, 106, and 301 by June 2013. The Department indicates that it did not complete the proposed actions due to the continuation of the rulemaking moratorium.

11. <u>Has the agency included a proposed course of action?</u>

Yes. As noted above, the Department plans to amend Sections 101, 102, 106, and 301 by December 2018.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-3**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1206)**
Title 18, Chapter 6, Article 1, Numeric Values and Information Submittal; Article 3, Groundwater Protection List

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules in Articles 1 and 3 contained in the five-year-review report.

Chapter 6 addresses the Arizona Pesticide Groundwater Quality Protection Program, which is intended to prevent the pollution of groundwater aquifers from routine use of agricultural pesticides.

Arizona has established a state level program that requires the submittal of scientific data and associated evaluation as part of the pesticide registration program. The Department is responsible for determining if a particular for agricultural use pesticide has the potential to pollute groundwater. Agricultural use is defined as any pesticide that is used directly on a crop. Those pesticides that are determined to have the potential to pollute are placed on the Groundwater Protection List.

The list of pesticides included on the Groundwater Protection list has been significantly reduced from 223 active ingredients used in pesticides in 2004 to the current 2015 list of 92 active ingredients. The pesticides removed from the list were those that had not been detected by the Department in their monitoring activities or the registration for the pesticide had been cancelled. The narrowed list results is more cost-effective testing due to the reduced contaminant list and has allowed testing to be expanded into Graham County. Previously, testing was only conducted in Yuma and Maricopa Counties.

The Department believes the economic impact has been as predicted for the rules in Articles 1 and 3.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 1 and 3 are generally effective and impose the least burden and cost to the regulated community. While the Department acknowledges that there is a cost to the regulated community, the Department notes that the regulator burden is reasonable in light of the intent of the rules, which is to protect Arizona's groundwater.

While the rules are generally effective, the Department has addressed rules in the 5 YRR that would be more effective with the addition of definitions (R18-6-101), explanatory language (R18-6-102), and process improvements (R18-6-106). The proposed Article 1 amendments would increase the rules clarity, however, because the amendments would not result in a significant benefit to the regulated community, an exemption to the rule moratorium has not been sought for the Article 1 rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

September 29, 2015

Bret Parke, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Title 18, Chapter 6, Articles 1 and 3

Dear Mr. Parke:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 6, Articles 1 and 3 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of the Department's findings, proposed courses of action and reasons, and justifications. I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

FIVE-YEAR REVIEW REPORT

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 6 DEPARTMENT OF ENVIRONMENTAL QUALITY – PESTICIDES AND WATER POLLUTION CONTROL

I. Overview of Five-year-review Report for 18 A.A.C. 6

The Arizona Pesticide Groundwater Quality Protection Program was established to prevent or eliminate the pollution of groundwater aquifers of the state from routine use of agricultural pesticides. The program is responsible for evaluating groundwater data submitted in support of new pesticide product registration, and identifying which active ingredients and products have the potential to pollute Arizona's groundwater.

Under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), all pesticides that are sold or distributed in commerce must be registered by the United States Environmental Protection Agency (EPA). To obtain registration, data must be submitted to EPA to allow it to evaluate the characteristics and potential risks of the proposed pesticide. EPA will register a product only if it has sufficient information about a pesticide product to make the statutory determinations regarding the impacts of the pesticide on public health, fish, and wildlife, endangered species, and the environment, including any relevant impacts on air, surface waters, and groundwater.

The data requirements for EPA registration are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects, and environmental fate of the pesticide. "Environmental fate" is a scientific term used to refer to the life cycle of a chemical or pesticide in the environment, and includes how the pesticide behaves and its final disintegration. A pesticide that meets the requirements is granted a license or “registration” that permits its distribution, sale, and use according to specific use directions and requirements identified on the label. A pesticide cannot be legally used unless it has been registered by EPA.

An individual state may accept EPA’s findings or adopt registration procedures of its own. Arizona is one of several states that has adopted and implemented requirements for the submission of scientific data and the evaluation of these data as part of its pesticide registration program (Pesticide Contamination Prevention, A.R.S. Title 49, Chapter 2, Article 6.) The Arizona Department of Environmental Quality (ADEQ) is the state agency responsible for determining whether the pesticide or its active ingredient has the potential to pollute groundwater. ADEQ works together with the Arizona Department of Agriculture (ADA), which is responsible for registering and regulating pesticides and their use (Pesticides, A.R.S. Title 3, Chapter 2, Article 5.) ADEQ's regulation is limited to agricultural-use pesticides, defined as any pesticide intended for use directly on a crop (R18-6-101).

ADEQ’s Pesticide Groundwater Quality Protection Program, implementing A.R.S. Title 49, Chapter 2, Article 6 and Title 18, Arizona Administrative Code, Chapter 6, has four major components:

(1) Data submittal and completeness determination review. Before registering an agricultural-use pesticide with ADA, an applicant must submit specific product chemistry and environmental fate data for the associated active ingredient(s) to ADEQ for review. All studies submitted must meet minimum testing methods and reporting requirements. ADEQ imposes criteria for tests for certain parameters to evaluate the behavior of chemicals in environments similar to those found in Arizona. ADEQ determines the adequacy, validity, and completeness of the data, and informs the intended registrant of any deficiencies.

(2) Creation of the Groundwater Protection List. ADEQ evaluates the product chemistry and environmental fate data to determine whether an agricultural-use pesticide has the potential to pollute

groundwater in the state. Submitted studies are evaluated and the data compared with criteria established by ADEQ in order to determine each pesticide's potential for polluting groundwater. Pesticides that exceed these criteria are found to have the potential to pollute and are placed on the Groundwater Protection List.

(3) Soil and groundwater monitoring. Once the Groundwater Protection List is established, ADEQ, in cooperation with the ADA, monitors groundwater and soils in agricultural areas throughout the state to more accurately determine the mobility and persistence of agricultural pesticides on the Groundwater Protection List, and whether they have migrated to groundwater.

(4) Annual Reports. The Groundwater Protection List must be reported to the Legislature by December 1st of each year. ADEQ, working with ADA, must report on the use and locations of listed agricultural-use pesticides. ADEQ must also report on an active ingredient, other specified ingredient, or degradation product for which there is a groundwater protection data gap. A "groundwater protection data gap" is defined in A.R.S. § 49-301(5) as " a pesticide for agricultural use has been registered with the Arizona department of agriculture without the director of environmental quality finding that the information submitted pursuant to section 49-302 meets the requirements of this article."

II. Information that is Identical for the Rules in 18 A.A.C. 6

1. Authorization of rules by existing statutes:

All sections of 18 A.A.C. 6 fall under the general rulemaking authority of A.R.S. § 49-104(B)(4). Arizona Revised Statutes, Title 49, Chapter 2, Article 6 (Pesticide Contamination Prevention) provide specific rulemaking authority.

4. Consistency of the rules with state and federal statutes and rules:

ADEQ uses the following statutes and rules to determine that the rules are consistent: Arizona Revised Statutes, Title 49, Chapter 2, Article 6; Arizona Revised Statutes, Title 3, Chapter 2, Article 5; 18 A.A.C. Chapter 6, Articles 1 and 3; 3 A.A.C. Chapter 3, Articles 2, 3, 4, and 7; and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. §§ 136 et seq.).

ADEQ's rules are consistent with the applicable statutes and rules, unless stated otherwise in the Section-By-Section Analysis.

5. Status of Agency enforcement policy regarding the rules:

Arizona Revised Statutes, Title 49, Chapter 2, Article 6 provide the means for enforcement. For issues related to the pesticide evaluation process, ADEQ, through the Attorney General, can seek a penalty of up to $10,000 per day for a groundwater protection data gap (A.R.S. § 49-304). If a pesticide active ingredient, other specified ingredient, or degradation product is found in groundwater or below the crop root zone, or eight feet below surface, ADEQ has the ability to take certain enforcement actions. Depending on the particular health risks for the compound in question, the concentration of the chemical found, and the degree to which the situation constitutes a threat to groundwater, ADEQ can request that ADA cancel the registrations for all agricultural-use products containing the active ingredient (thus prohibiting its use in Arizona) (A.R.S. § 49-309(A)). ADEQ also has the option, in cooperation with the registrant, to require the modification of the label of the pesticide to ensure that the use of the pesticide will not result in any further contamination or potential contamination of groundwater (A.R.S. § 49-309(B)).

In the past five years, ADEQ has not requested that ADA cancel any registrations due to a groundwater protection data gap. ADEQ has not imposed any fines during the past five years.

6. Clarity, conciseness, and understandability of the rules:

ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ has not received any written criticisms of these rules within the last five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2005. Since the 2005 rulemaking made major amendments, ADEQ had to estimate some of the future economic impacts. ADEQ discussed that the Groundwater Protection List would be reduced. The Groundwater Protection List went from 223 listed active ingredients in 2004, to 92 in the draft 2015 Groundwater Protection List. Narrowing the Groundwater Protection List enables ADEQ to focus its statewide groundwater and soil monitoring activities. ADEQ collects about 30 samples annually, within the range of 21-30 samples predicted in 2005. ADEQ has been able to extend the monitoring and testing program outside of Yuma and Maricopa counties, into Graham County.

   Costs to develop new analytical methods for testing pesticides were lower than predicted. The Arizona Department of Health Services (ADHS) did not have to develop new methods, but was able to use five existing approved methods used in testing safe drinking water. Also, with the new ADHS laboratory and more modern equipment, other existing methods became available.

   ADEQ believes that the qualitative assessments of the economic impacts to the Chapter 6 rules were accurate. ADEQ believes that the Article's impact on the state's economy, small business and consumers has not changed since the effective date.

9. Analysis of rules impact on state's business competitiveness:

   ADEQ has not received any analysis submitted by another person that compares the rules impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    In the previous Five-Year Review Report, approved by Council on December 7, 2010, ADEQ proposed that amendments to some sections in Articles 1 and 3 would be submitted to Council by June 2013. ADEQ did not complete any rulemaking action on Articles 1 and 3 due to the continued moratorium on rule making.

11. Cost benefit conclusion after analysis; least burden and cost:

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective of protecting groundwater.

12. Stringency Compared to Corresponding Federal Law:

    The Article 1 and 3 rules do not have a corresponding federal law, but they are compatible with, and not more stringent than the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.).

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. Also, these rules do not require issuance of a regulatory permit, license or agency authorization, although ADEQ is required to make a determination on whether a pesticide has the potential to pollute groundwater in Arizona. ADEQ's determination process must be done on an individual basis in order to meet the applicable statutory requirements of A.R.S. § 49-302(A).

14. Proposed course of action:

No amendments are proposed unless discussed in the Analysis of Individual Rules Section.

III. Analysis of Individual Rules

A. Article 1. Numeric Values and Information Submittal

R18-6-101. Definitions

1. Authorization of rules by existing statutes:

A.R.S. § 49-203(A)(9).

2. Objective of the rules:

The definition section defines important terms used in 18 A.A.C., Chapter 6, so that the rules are understandable to the general public, such as acronyms, words with uncommon meanings, and scientific terms.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively defines important terms used in the rules. The rule could be more effective if it included a definition for the term "environmental fate."

5. Status of Agency enforcement policy regarding the rule:

Definitions are not enforceable.

6. Clarity, conciseness, and understandability of the rule:

The definitions are clear, concise, and understandable.

14. Proposed course of action:

ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-6-102. Agricultural Use Pesticide Submittal Requirements

1. Authorization of rules by existing statutes:

A.R.S. § 49-302.

2. Objective of the rules:

This rule supplements the requirements established in A.R.S. § 49-302 of what pesticide information an applicant must submit to enable ADEQ to determine whether a new agricultural-use pesticide has the potential to pollute groundwater. The standard evaluation process requires numeric data on a number of factors affecting the mobility and persistence of a pesticide product. An applicant can submit data summaries or product evaluation reports from other states in the southwest (such as California), or EPA product data reviews. The second method of evaluation allows the registrant to submit an alternate assessment of the product chemistry and environmental fate data parameters of the active ingredient. The assessment must include the environmental fate of the active ingredient with respect to environmental conditions similar to Arizona's, including consideration of factors such as proposed patterns of use, applicable cultural practices, and pertinent geologic and meteorologic conditions.

There is also a provision to allow the Director to waive the information required under specified

conditions. Also, the Director may require that a registrant submit new information that is available about an active ingredient of an agricultural-use pesticide currently registered.

The rule effectively achieves its objective. The rule could be more effective if it included additional grounds for the waiver under subsection (A)(3), such as the use of naturally occurring substances that control pests.

5. Status of Agency enforcement policy regarding the rule:

   This rule explains the data submittal procedure and what information must be submitted to ADEQ in order to determine whether the new agricultural-use pesticide has the potential to pollute groundwater. Failure to submit the necessary data would result in ADA denying the registration. Registration without satisfying the data submittal requirements can be an enforceable violation of ADEQ's program. Those registrants needing additional time to complete specific data requirements can apply for conditional registration as described in A.R.S. § 49-310.

14. Proposed course of action:

    ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-6-103. Agricultural Use Active Ingredient Evaluation

1. Authorization of rules by existing statutes:

   A.R.S. § 49-303(A) and (B).

2. Objective of the rules:

   This rule establishes the basis for ADEQ's evaluation of whether an active ingredient has the potential to pollute groundwater. Under the standard evaluation process, the numeric data is compared to standards or criteria established by ADEQ, called "Specific Numeric Values". The numeric values obtained from submitted studies must have been performed using testing methods described in EPA's Pesticide Assessment Guidelines. Pesticides that exceed both mobility and persistence criteria will be placed on the Groundwater Protection List. If an applicant chose to submit product chemistry and environmental fate data parameters of the active ingredient according to R18-6-102(C), then that alternate scientific method will be used to perform the evaluation. If the alternate procedure indicates the active ingredient will reach groundwater, it will be placed on the Groundwater Protection List.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective.

5. Status of Agency enforcement policy regarding the rule:

   This rule is not necessarily enforced as it explains what standards ADEQ uses to evaluate the information submitted on an agricultural-use pesticide.

R18-6-104. Monitoring and Testing

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-307 through 49-309.

2. Objective of the rules:

   This rule supplements A.R.S. § 49-307(A) in explaining that ADEQ conducts soil and groundwater monitoring for active ingredients, or their byproducts, on the Groundwater Protection List. If a

pesticide active ingredient, other specified ingredient, or degradation product is found in groundwater or below the crop root zone, or eight feet below surface, ADEQ has the ability to take certain enforcement actions as described in A.R.S. §§ 49-308(A) and 49-309(A), (B) and (D). Depending on the particular health risks for the pesticide in question, the concentration of the chemical found, and the degree to which the situation constitutes a threat to groundwater, ADEQ can require the cancellation of registrations for all agricultural-use products containing the active ingredient (thus prohibiting its use in Arizona), or require the modification of the label of the pesticide to ensure that the use of the pesticide will not result in any further contamination or potential contamination of groundwater.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective.

5. Status of Agency enforcement policy regarding the rule:

   This rule supplements ADEQ's statutory duty that it is required to conduct soil and groundwater testing. ADEQ's monitoring and testing has not found an active ingredient on the Groundwater Protection List at levels that would require enforcement actions as described in A.R.S. §§ 49-308(A) and 49-309(A), (B) and (D) since the rules were amended in 2005.

R18-6-106. Additional Informational Requirements; Pesticide Formulators

1. Authorization of rules by existing statutes:

   A.R.S. § 49-302

2. Objective of the rules:

   This rule specifies the conditions under which a pesticide formulator can use data generated by other sources for the active ingredients used by the formulator. The source of the agricultural-use pesticide active ingredient (such as a manufacturer) must verify that it provides the formulator the active ingredient in question, or the formulator must be able to demonstrate a business relationship with the source.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective. The rule could be more effective if it further distinguished applicants to include distributors, or manufacturers of generic pesticide ingredients who have obtained their technical product from other sources different from the primary registrant. Also, the process and rule could be more effective and streamlined if it required the formulators (or distributors and other entities) to submit evidence of the business relationship up front. Currently ADEQ contacts the sources provided by the formulator and if response is either negative or not forthcoming, then the formulator has to provide the additional documentation.

5. Status of Agency enforcement policy regarding the rule:

   If a pesticide formulator cannot demonstrate a business relationship with the source and data generator of the active ingredient in question, ADEQ will find that a groundwater protection data gap exists. The formulator can be subject to the penalty provisions of A.R.S. § 49-304.

14. Proposed course of action:

   ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

B. Article 3. Groundwater Protection List

R18-6-301. Groundwater Protection List

1. Authorization of rules by existing statutes:

   A.R.S. § 49-305.

2. Objective of the rules:

   This rule describes the process by which ADEQ develops and maintains the Groundwater Protection List, which is a list of pesticides that have the potential to pollute groundwater, required by A.R.S. § 49-305. The process includes publishing a proposed Groundwater Protection List in the Arizona Administrative Register, accepting written comments from the public, and publishing the final list in the Register on or before July 1st. The Groundwater Protection List is effective on December 1st of the publication year, and, as required under A.R.S. § 49-303(C), the final list is reported to the Legislature on or before that date.

   An agricultural-use pesticide can be added to the Groundwater Protection List because ADEQ has determined that it has the potential to pollute groundwater, or the active ingredient, other specified ingredient, or degradation product has been detected in monitoring and testing according to R18-6-104. An agricultural-use pesticide can be removed from the Groundwater Protection List because: monitoring and testing do not detect the active ingredient; ADEQ has determined that it no longer has the potential to pollute groundwater; or, the pesticide registration has been cancelled. This rule also allows any person to request that an agricultural-use pesticide be added or deleted from the Groundwater Protection List, and provides a process for a registrant to request reevaluation.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective.

   ADEQ follows this rule in developing the groundwater protection list each year. Subsection E is no longer used and could be deleted. Subsection E provided a process to reevaluate an agricultural-use pesticide that had been placed on the Groundwater Protection List before these rules became effective on November 22, 2005.

5. Status of Agency enforcement policy regarding the rule:

   This rule is not enforced as it explains what actions ADEQ will take in creating or amending the Groundwater Protection List. ADEQ complies with the rule in taking these actions.

14. Proposed course of action:

    ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-6-302. Findings and Determinations

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-307(D) and 49-308.

2. Objective of the rules:

   This rule lists the findings, determinations, and actions that can or must be made by the Director under the statutes and rules pertinent to 18 A.A.C. 6. ADEQ must report to the appropriate state or federal regulatory agency: (1) the illegal sale or use of any agricultural-use pesticide on the Groundwater Protection list; and (2) soil or groundwater test results of any agricultural-use pesticide on the Groundwater Protection list meeting the conditions in R18-6-104. For a site that demonstrates

pesticide contamination, ADEQ has authority to determine whether remedial action is necessary.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective.

5. Status of Agency enforcement policy regarding the rule:

   This rule is not enforced as it explains what actions ADEQ will take. ADEQ complies with the rule in taking these actions.

R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

1. Authorization of rules by existing statutes:

   A.R.S.§ 49-305(A).

2. Objective of the rules:

   This rule requires that any person who causes the soil application of an agricultural-use pesticide on the Groundwater Protection List to implement Best Management Practices (BMPs) to reduce or prevent the pollution of groundwater. The rule establishes factors to be considered in selecting appropriate BMPs that best suit the situation, given site characteristics and proximity to water resources. The rule also requires ADEQ to obtain annually from ADA information on the use of agricultural-use pesticide on the Groundwater Protection List.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective. Because of the diversity of Arizona's agricultural industry, self-directed BMPs provide a practical and efficient way to regulate the use of these pesticides, as opposed to a prescribed set of BMPs.

5. Status of Agency enforcement policy regarding the rule:

   The BMPs are required but the selection of particular BMPs is discretionary. ADEQ and ADA developed BMPs for the soil application of an agricultural-use pesticide on the Groundwater Protection List. ADA offers training on BMPs as part of its continuing education courses on pesticide use and management, required for pesticide applicators (R3-3-208. Applicator Certification; Examination; Fee; Renewal). ADEQ obtains information on the use of agricultural-use pesticides on the Groundwater Protection List from ADA as part of its continual cooperation with ADA on environmental matters.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY PESTICIDES AND WATER POLLUTION CONTROL

ARTICLE 1. NUMERIC VALUES AND INFORMATION SUBMITTAL

Article 1 consisting of Sections R18-6-101 through R18-6-105 adopted effective May 10, 1988.

Section
R18-6-101. Definitions
R18-6-102. Agricultural Use Pesticide Submittal Requirements
R18-6-103. Agricultural Use Active Ingredient Evaluation
R18-6-104. Monitoring and Testing
R18-6-105. Repealed
R18-6-106. Informational Requirements for a Pesticide Formulator

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION

Article 2 consisting of Section R18-6-201 repealed effective September 23, 1992 (Supp. 92-3).

Article 2 consisting of Section R18-6-201 adopted effective August 27, 1987.

Section
R18-6-201. Repealed

ARTICLE 3. GROUNDWATER PROTECTION LIST

Article 3 consisting of Section R18-6-302 adopted effective May 10, 1988.

Section
R18-6-301. Groundwater Protection List
R18-6-302. Findings and Determinations
R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

ARTICLE 1. NUMERIC VALUES AND INFORMATION SUBMITTAL

R18-6-101. Definitions

In addition to the definitions established in A.R.S. § 49-301, the following terms apply to this Chapter:

1. "Agricultural use pesticide" means any pesticide intended for use directly on a crop. An agricultural use pesticide does not include animal pesticide eartags or pesticides intended solely for use within and around a confined structure.
2. "Crop" means any plant, animal, plant product, or animal product produced for commercial or research purposes.
3. "Data generator" means any person providing information to support the registration in this state of an agricultural use pesticide in accordance with A.R.S. § 49-302(A).
4. "EPA" means the United States Environmental Protection Agency.
5. "Formulator" means any person who purchases an EPA-registered pesticide to reformulate or repackage and register the pesticide for sale in this state.
6. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide container, and the outside container or wrapper of the retail package, if any, of the pesticide.
7. "Pest" means any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria, or other pathogenic organism, or any other form of terrestrial or aquatic plant or animal life, except virus, bacteria, or other microorganism on or in living humans or other living animals, that is declared a pest by the Director of the Arizona Department of Agriculture.
8. "Soil-applied" means an agricultural use pesticide intended for application to or injection into the soil by ground-based application equipment or chemigation, or the label of the pesticide requires or recommends that the application is followed within 72 hours by flood or furrow irrigation.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-102. Agricultural Use Pesticide Submittal Requirements

A. Pre-registration data requirements for new agricultural use pesticides.

1. Before registering a new agricultural use pesticide under A.R.S. § 3-351, an applicant shall submit information that enables the Department to determine whether the new agricultural use pesticide has the potential to pollute groundwater in the state. This information shall include:
   a. A transmittal letter;
   b. The following information on a Data Summary form obtained from the Department:
      i. The company name and address;
      ii. The name and contact information of the person making the submittal;
      iii. The date of filing;
      iv. The product information, including the brand name, EPA registration number, formulation category, and intended use; and
      v. The active ingredient technical name, Chemical Abstract Service (CAS) number, common name, molecular weight, and bulk density; and
   c. The following information for each active ingredient:
      i. Water solubility;
      ii. Vapor pressure;
      iii. Octanol-water partition coefficient;
      iv. Soil adsorption coefficient;
      v. Henry's law constant;
      vi. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, performed under conditions in Arizona, or similar environmental and use conditions, if that information exists in studies and conclusions from other states or the United States government. The studies shall, at a minimum, meet EPA testing methods and reporting guidelines.
2. The applicant may submit the following alternate information:
   a. Upon Director approval, alternate information to satisfy one or more of the data requirements in subsection (A)(1)(c). The alternate information shall

accurately describe the relevant data required for each new agricultural use pesticide active ingredient under conditions in Arizona or under similar environmental and use conditions;

b. California registration.

i. Evidence that the California Department of Food and Agriculture registered the agricultural use pesticide following the data requirements under California Food and Agricultural Code Section 13143; and

ii. Documentation showing that required studies were performed under environmental and use conditions that are similar to those conditions in Arizona.

3. Waiver. The Director may waive some or all of the information required in subsection (A)(1)(c) if the applicant demonstrates that:

a. Due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results for the specified tests; or

b. Due to the application or cultural practices for the active ingredient, it is not necessary to obtain some or all of the information.

B. Pre-registration data submittal completeness.

1. The Department shall notify the Arizona Department of Agriculture when the applicant submits all the information on the active ingredient required under subsection (A) and the Director has concluded that the information is sufficient to determine whether the active ingredient has the potential to pollute groundwater of the state.

2. If the Director cannot determine that the data submittal requirements for agricultural use registration in Arizona have been met, the person may apply for a conditional registration under A.R.S. § 49-310.

C. Information submittal for the product chemistry and environmental fate assessment evaluation. After satisfying the data submittal required in subsection (A) and registering the pesticide with the Arizona Department of Agriculture:

1. A registrant may prepare an assessment of the product chemistry and environmental fate parameters for the Department to evaluate the potential for a new agricultural use pesticide to pollute groundwater. The assessment shall include:

a. Patterns for using the agricultural use pesticide in Arizona;

b. Cultural practices for those areas within Arizona where the agricultural use pesticide is intended for use;

c. Geological and meteorological conditions of the regions within Arizona where the agricultural use pesticide is intended for use; and

d. Any other information the Director determines is necessary to support the assessment.

2. A registrant may submit any of the following information if it is directly relevant to the agricultural use pesticide active ingredient evaluation:

a. Relevant scientific data and summaries, including those submitted to or required by federal and state agencies that further support the studies required in R18-6-102(A)(1)(c);

b. Relevant evaluations and conclusions by federal and state agencies, including evaluations of the studies required in R18-6-102(A)(1)(c);

c. Documentation that addresses whether the studies required in R18-6-102(A)(1)(c) were performed under environmental and use conditions that are similar to those in Arizona.

D. If new information is available about the active ingredient of an agricultural use pesticide currently registered by the Arizona Department of Agriculture, the Director may require the registrant to submit the new information to the Director to assess whether the information is relevant to the Director's determination under subsection (B)(1).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-103. Agricultural Use Active Ingredient Evaluation

For each new or existing agricultural use pesticide registered in Arizona, the Director shall determine whether each active ingredient has the potential to pollute groundwater in the state. The Director shall either:

1. Base the evaluation on the information submitted in accordance with R18-6-102(A) to determine whether the active ingredient fails any of the following mobility factors and one or more of the following persistence factors; or

SPECIFIC NUMERIC VALUES

MOBILITY FACTORS	PERSISTENCE FACTORS
Water solubility	No greater than 30 ppm
Soil adsorption coefficient	K_d no less than 5
Hydrolysis	Half-life no greater than 25 weeks
Aerobic soil metabolism	Half-life no greater than 3 weeks
Anaerobic soil metabolism	Half-life no greater than 3 weeks
Field dissipation	Half-life no greater than 3 weeks

2. Base the evaluation on the product chemistry and environmental fate assessment submitted in accordance with R18-6-102(C).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-104. Monitoring and Testing

A. The Director shall conduct soil and groundwater monitoring for active ingredients contained in agricultural use pesticides placed upon the Groundwater Protection List as required under A.R.S. § 49-307(A). The Department may conduct soil and groundwater monitoring for other specified ingredients or degradation products based on active ingredient test results or other information about the pesticide.

B. The Director shall use the results of soil and groundwater monitoring and testing after considering the factors in A.R.S. §§ 49-307(C) to make the determination in 49-308(A) and 49-309(A), (B), or (D).

C. If the Director determines that an agricultural use pesticide meets the criteria or conditions specified in A.R.S. § 49-308(A), the Director shall notify the registrant in writing.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-105. Repealed

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Section repealed by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-106. Informational Requirements for a Pesticide Formulator

A. A pesticide formulator may rely upon the data generated by another person to meet the requirements in R18-6-102. The pesticide formulator shall submit, to the Department, the name of every person who is a source of each agricultural use pesticide active ingredient.

B. The Department shall request that each person identified under subsection (A) verify within 30 days, in writing, whether the person provides the pesticide formulator with the active ingredient in question.

C. If a person advises the Department that the person is not a source for the active ingredient used by the pesticide formulator or if the person does not respond under subsection (B), the Department shall notify the pesticide formulator of that fact and shall require the pesticide formulator to provide either of the following documents attesting to a business relationship involving the active ingredient in question:

1. A signed contract, or
2. Any other documentation of a business arrangement, endorsed by each party.

D. If the pesticide formulator does not produce acceptable documentation of a business relationship under subsection (C) or if a person identified by the pesticide formulator is not a data generator for the active ingredient in question, the Director shall find that a groundwater protection data gap exists for the agricultural use pesticide, and the formulator is subject to the provisions in A.R.S. § 49-304.

E. Any pesticide formulator who relies on data submitted by a person identified as a source under subsection (A) shall notify the Department of any change in the source within 60 days of a similar notification to the EPA.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION

R18-6-201. Repealed

Historical Note

Adopted effective August 27, 1987 (Supp. 87-3). Repealed effective September 23, 1992 (Supp. 92-3).

ARTICLE 3. GROUNDWATER PROTECTION LIST

R18-6-301. Groundwater Protection List

A. Groundwater Protection List. The Director shall, using an evaluation process specified in R18-6-103 and the addition and deletion criteria specified in subsections (B) and (C), annually develop and maintain a list of agricultural use pesticides that have the potential to pollute groundwater.

1. The Department shall publish the proposed Groundwater Protection List in the *Arizona Administrative Register* and accept written comments from the public.
2. The written public comment period begins on the publication date of the list and extends for 30 calendar days.
3. The Department shall publish the final Groundwater Protection List each year in the *Arizona Administrative Register* on or before July 1. The list is effective on December 1 of the publication year.

B. Adding an agricultural use pesticide. The Director shall add an agricultural use pesticide to the Groundwater Protection List for any of the following reasons:

1. An agricultural use pesticide active ingredient is identified under R18-6-103 as having the potential to pollute groundwater;
2. An agricultural use pesticide active ingredient is detected in Arizona consistent with the testing requirements of R18-6-104 and is found:
   a. At or below the deepest of the following depths:
      i. Eight feet below the soil surface, or
      ii. Below the root zone of the crop where the active ingredient was found;
   b. In the groundwater of this state;
3. An agricultural use pesticide degradation product or other specified ingredient that poses a threat to public health has been found under the conditions described in subsection (B)(2).

C. Deleting an agricultural use pesticide. The Director shall delete an agricultural use pesticide from the Groundwater Protection List under any of the following circumstances:

1. The results of monitoring and testing conducted by the Department, a government agency, or other reliable source establish that the active ingredient has not been detected in Arizona under the conditions described in subsection (B)(2).
2. The Director no longer considers the agricultural use pesticide to have the potential to pollute groundwater in Arizona based on:
   a. A change in a specific numeric value established in R18-6-103(1),
   b. A revision in the specific numeric values established by new research studies or new procedures, or
   c. The results of the evaluation under R18-6-103(2).
3. Agricultural use pesticide registration cancellation. The Arizona Department of Agriculture no longer registers the agricultural use pesticide under A.R.S. § 3-351(I).

D. Pesticide review. Any person may request that the Director add or delete an agricultural use pesticide from the Groundwater Protection List by submitting an explanation of the request to the Department with studies and conclusions of support.

1. The Director shall notify the registrant in writing after receiving a request to add or delete an agricultural use pesticide from the Groundwater Protection List and again upon making the determination.
2. The Director shall consider whether the supporting documentation:
   a. Is based upon procedures consistent with those described in R18-6-104 and A.R.S. Title 49, Chapter 2, Article 6; and
   b. Justifies the addition or deletion of the agricultural use pesticide from the Groundwater Protection List.
3. Director determination.
   a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the Director shall add the pesticide to, or retain the pesticide on, the Groundwater Protection List.

b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall, if the pesticide is on the Groundwater Protection List, delete it from the list.

E. Reevaluation of an agricultural use pesticide. A registrant may request that the Director reevaluate whether an agricultural use pesticide placed on the Groundwater Protection List before [effective date of this Section] that has the potential to pollute groundwater in Arizona. The registrant shall submit the written request before December 1, 2005 and include the assessment and supporting documentation specified in R18-6-102(C).

1. The Director shall not accept a request to reevaluate an agricultural use pesticide if:
   a. An active ingredient has been detected in Arizona using the testing criteria in R18-6-104 and is found under conditions described in subsection (B)(2); or
   b. An agricultural use pesticide degradation product or other specified ingredient relating to the agricultural use pesticide has been detected in Arizona consistent with the criteria in R18-6-104 and the agricultural use pesticide degradation product or other specified ingredient poses a threat to public health and has been found under the conditions described in subsection (B)(2);
2. Director determination.
   a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the pesticide shall remain on the Groundwater Protection List.
   b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall delete the pesticide from the Groundwater Protection List.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-302. Findings and Determinations

A. If the Director discovers or becomes aware of the illegal sale or use of any agricultural use pesticide on the Groundwater Protection List, the Director shall report the sale or use to the appropriate regulatory agency and to the Office of the Attorney General.

B. If the Director finds that an active ingredient, degradation product, or other specified ingredient of an agricultural use pesticide has been detected under the conditions specified in R18-6-104, the Director shall refer these findings to the state or federal agency responsible for further investigation and enforcement.

C. If the Director discovers a site that demonstrates pesticide contamination, the Director shall determine whether remedial action is required under A.R.S. Title 49, Chapter 2, Article 5.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

A. Any person who causes another person to soil-apply an agricultural use pesticide on the Groundwater Protection List shall implement Best Management Practices to reduce or prevent the pollution of groundwater. In implementing the Best Management Practices, the person shall consider the following factors:

1. Application site characteristics, including soil texture, slope, organic matter, and depth to groundwater to determine site susceptibility. The person shall consider:
   a. Selecting a pesticide based on the intended application site characteristics;
   b. Minimizing or avoiding the use of any pesticide with high leaching or high runoff potential;
   c. Incorporating erosion control practices to minimize runoff; and
   d. Using an alternative pest control method, if practical.
2. Protection of water resources from potential contamination during mixing, loading, or application. The person shall consider:
   a. Applying the correct amount of pesticide according to the label and employ methods that avoid overspray or drift;
   b. Weather patterns, soil moisture, and crop needs before pesticide application; and
   c. Maintaining buffer zones, where applicable.

B. The Director shall annually obtain the following information from the Arizona Department of Agriculture for each agricultural use pesticide on the Groundwater Protection List that is soil-applied:

1. The pest condition that the agricultural use pesticide will control;
2. The name of the crop and number of acres to which the agricultural use pesticide has been applied;
3. The location of use including the county, township, range, and section;
4. The name of the product used, including the EPA registration number; and
5. The amount of agricultural use pesticide applied per acre.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

General and Specific Statutes for
Title 18, Chapter 6, Articles 1 and 3

49-203. Powers and duties of the director and department

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
   3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
   4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
   5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
   6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
   7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
   8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
   9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
   10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
   11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or

volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:
   1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
   2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
   3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
   4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
   5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
   6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
   7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
   8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-301. Definitions

In this article, unless the context otherwise requires:

1. "Active ingredient" has the meaning assigned to the term by title 7 United States Code section 136.
2. "Applicant" means any person who applies for a registration or amended registration pursuant to title 3, chapter 2, article 5 or a conditional registration pursuant to section 49-310.
3. "Chemigation" means a method of irrigation by which a pesticide is mixed with irrigation water before the water is applied to the crop or the soil.
4. "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.
5. "Groundwater protection data gap" means that a pesticide for agricultural use has been registered with the Arizona department of agriculture without the director of environmental quality finding that the information submitted pursuant to section 49-302 meets the requirements of this article.
6. "Henry's law constant" means an indicator of the escaping tendency of dilute solutes from water which is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.
7. "New pesticide" means a pesticide that contains an active ingredient for which the information required under section 49-302, subsection A has not been submitted by the applicant for registration and that has not been approved by the director of environmental quality.
8. "Pesticide" means any substance or mixture of substances intended for either:
   (a) Preventing, destroying, repelling or mitigating any pest.
   (b) Use as a plant regulator, defoliant or desiccant.
9. "Pollution" means the introduction into the groundwaters of this state of an active ingredient, other specified product or degradation product of an active ingredient at above a level, with an adequate margin of safety, that does not cause adverse effects on human health or safety.
10. "Registrant" means a person that has registered a pesticide pursuant to title 3, chapter 2, article 5.
11. "Soil adsorption coefficient" means a measure of the tendency of a pesticide, or its biologically active transformation products, to bond to the surfaces of soil particles.

49-302. Information submittal

A. An applicant shall submit to the director information that enables the department of environmental quality to determine whether a pesticide has the potential to pollute the groundwater in this state. This information shall include all of the following information for each active ingredient in the pesticide intended for registration with the arizona department of agriculture:
   1. Water solubility.
   2. Vapor pressure.
   3. Octanol-water partition coefficient.
   4. Soil adsorption coefficient.
   5. Henry's law constant.
   6. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under conditions in this state or similar environmental use conditions, if that information exists in studies and conclusions from other states or the United States government.
   7. The director may by rule require additional information that is required by the United States environmental protection agency for environmental fate parameters necessary to gain full registration under federal law.

B. The director may also require the information prescribed in subsection A for other specified ingredients and degradation products of an active ingredient in any pesticide, and all information

submitted shall comply with subsection C. Any studies submitted pursuant to this subsection shall meet the same testing methods required for studies conducted on active ingredients. The director may also require testing protocols that are specific or adaptable to soil and climatic conditions in this state.

C. Information submitted pursuant to subsection A shall comply with all of the following:
   1. Information shall be presented in English and summarized in tabular form with the actual studies, including methods and protocols, attached.
   2. All information and studies concerning product chemistry and environmental fate shall at a minimum meet the testing methods and reporting guidelines established by the United States environmental protection agency.
   3. With approval from the director, applicants may use specified alternative protocols as permitted by the United States environmental protection agency guidelines if the director finds use of the protocol is consistent with and accomplishes the objective of this article as stated in subsection A.
   4. The director may accept information, studies and conclusions from other states and the federal government if the director finds them to be derived from standard protocol procedures consistent with the objective of this article as stated in subsection A.

D. The director may waive any information required by subsection A if the director determines that the applicant has demonstrated either of the following:
   1. That due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results in the test or tests required to obtain the particular information for which a waiver is sought.
   2. That due to the application or cultural practices for the active ingredient, it is not necessary to obtain the particular information for which a waiver is sought.

E. On approval of the director, an applicant may submit alternative information to satisfy a data requirement of subsection A. This alternative information shall accurately describe the relevant data requirement for each active ingredient of the pesticide under conditions in this state or under similar environmental use conditions.

F. Information requirements that the director waives pursuant to subsection D shall not constitute a groundwater protection data gap.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:
   1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.
   2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.
   3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.
2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:
   (a) Water solubility or soil adsorption coefficient.
   (b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.
3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.
4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-304. Penalty for groundwater protection data gap

A. A registrant of a pesticide is subject to a penalty of up to ten thousand dollars for each day that a groundwater protection data gap exists unless the information was waived pursuant to section 49-302, subsection D or a conditional registration was granted pursuant to section 49-310. In determining the amount of the penalty, the following shall be considered:
   1. The extent to which the registrant has made every effort to submit the valid, complete and adequate information.
   2. Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete and adequate information.

B. If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap, the director or registrant shall submit the issues of the dispute to the water quality appeals board pursuant to section 49-323. The water quality appeals board shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater protection data gap exists.

C. The attorney general may enforce this section.

D. Any monetary penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-305. Groundwater protection list; regulation of pesticides on list

A. The director shall establish a groundwater protection list of pesticides that have the potential to pollute groundwater. The director shall immediately place all pesticides identified in section 49-303, subsection C, paragraphs 2 and 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended for application to or injection into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section.

B. On notice from the director, a person who uses a pesticide on the groundwater protection list is required to report the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established by the Arizona department of agriculture for reporting custom applications.

C. If a pesticide has not been detected in groundwater anywhere in this state in tests conducted by a governmental agency or other reliable source, the director may remove that pesticide from the groundwater protection list as provided in rule.

49-306. Groundwater protection data gap; cancellation of registration

A. The director shall notify the Arizona department of agriculture to cancel the registration of a pesticide for agricultural use if there is a groundwater protection data gap for that pesticide.
B. If a registrant no longer manufactures the active ingredient or pesticide in question or if it has been voluntarily withdrawn from the Arizona market, the registration of that product shall be cancelled.

49-307. Monitoring and testing

A. In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to section 49-303, subsection C, paragraphs 2 and 3 and those pesticides whose continued use is allowed pursuant to section 49-309 and to determine if these pesticides have migrated into groundwaters of this state, the director shall conduct soil and groundwater monitoring statewide in areas of this state where the pesticide is primarily used or where other factors identified pursuant to section 49-302, including physicochemical characteristics and use practices of pesticides, indicate a probability that the pesticide may migrate into the groundwaters of this state. The monitoring shall begin within one year after the pesticide is placed on the groundwater protection list and shall be conducted according to standard protocol and testing procedures established pursuant to subsection B of this section. Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate activities with other agencies that conduct soil and groundwater monitoring.
B. Within ninety days after a pesticide is placed on the groundwater protection list pursuant to section 49-305, the director, in consultation with the department of health services, shall expeditiously develop a standard protocol and testing procedure for each pesticide identified pursuant to section 49-305.
C. The director shall determine the probable source of the pesticides, specified ingredients or degradation products. The analysis of the pesticides, specified ingredients or degradation products shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of applying the pesticide, irrigation practices related to use of the pesticide and types of soil in areas where the pesticide is applied.
D. The director shall report all monitoring results to the Arizona department of agriculture.

49-308. Enforcement

A. Within ninety days after a pesticide that is listed pursuant to section 49-305 is found pursuant to section 49-307 under any of the conditions listed in paragraph 1, 2 or 3 of this subsection, the director shall determine whether the pesticide resulted from agricultural use according to state and federal laws and regulations and shall state in writing the reasons for the determination that:
    1. An active ingredient of a pesticide has been found at or below the deepest of the following depths:
        (a) Eight feet below the soil surface.
        (b) Below the root zone of the crop where the active ingredient was found.
    2. An active ingredient of a pesticide has been found in the groundwaters of this state.
    3. The pesticide has degradation products or other specified ingredients which pose a threat to public health and which have been found under the conditions specified for active ingredients in either paragraph 1 or 2 of this subsection.
B. On a determination by the director that a pesticide meets any of the conditions specified in subsection A of this section as a result of agricultural use according to state and federal laws and regulations, the director shall immediately notify the registrant of the determination. A pesticide that meets any of the conditions in subsection A of this section is subject to section 49-309.

C. For the purposes of this section, any finding of a pesticide shall result from an analytical method approved by the United States environmental protection agency and shall be verified, within thirty days, by a second analytical laboratory approved by the director.
D. The point of compliance prescribed by section 49-244 does not apply to this section.

49-309. Cancellation of pesticide registration; hearing for reconsideration and continued use

A. If the director determines the pesticide which meets any of the conditions specified in section 49-308 is carcinogenic, mutagenic, teratogenic or toxic to humans in concentrations found at depths prescribed in section 49-308, subsection A and the pesticide label cannot be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state, the director shall notify the Arizona department of agriculture to cancel the registration of the pesticide.
B. For any other pesticide which meets any of the conditions specified in section 49-308 the registrant may request a hearing within forty-five days of notification that the director has made a determination pursuant to section 49-308, subsection B. At the same time the registrant shall submit a report and documented evidence which demonstrates either of the following:
   1. The presence in the soil of any active ingredient, other specified ingredient or degradation product does not threaten to pollute the groundwaters of this state in any region in this state or that the pesticide label can be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state.
   2. Any active ingredient, other specified ingredient or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of this state in any region in this state in which the pesticide may be used according to the terms under which it is registered or that the pesticide label can be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwater of this state.
C. The director of environmental quality, after a public hearing and in consultation with the director of water resources, the director of the department of health services and the director of the Arizona department of agriculture, may allow the continued registration, sale and use of a pesticide, other than those identified in subsection A of this section, which meets any of the conditions specified in section 49-308 if the director determines any of the following:
   1. Either of the conditions prescribed in subsection B of this section exist and apply to the pesticide.
   2. There are no alternative products or practices that can be effectively used in substitution for the pesticide and the cancellation or modification will cause severe economic hardship on one or more segments of the agricultural industry in this state.
D. Notwithstanding subsection C of this section, the director shall not allow the continued registration, sale or use of a pesticide if it would cause a violation of water quality standards at the applicable point of compliance.
E. The Arizona department of agriculture shall cancel the registration of any pesticide identified pursuant to section 49-308 unless continued under subsection C of this section.

49-310. New pesticides; conditional registration; reports

A. The director may provide for the conditional registration of a new pesticide for one year with an option to renew annually for a period not to exceed three years under the following conditions:
   1. The new pesticide is registered pursuant to the federal insecticide, fungicide and rodenticide act as amended (7 United States Code section 136; P.L. 100-532; 102 Stat. 2654) and is registered for use in one or more other states.
   2. The director determines that a conditional registration will result in use of the new pesticide in this state that is sufficient to generate acceptable data to complete the permanent registration of the new pesticide pursuant to section 49-302. An applicant who submits data shall commit to develop and generate new data for the department's review and approval. The new data shall

address the deficiency previously identified by the department in its initial review and approval process. The commitment shall be in the form of a contract with the department.

3. The new pesticide in question shall be important to agriculture as determined by the director of environmental quality after consultation with the Arizona department of agriculture.

B. Each registrant who holds a conditional registration shall submit a report to the director annually as specified by the director that describes the progress made in developing each item of required data. The director may require that additional data be included in the reports.

C. On receipt of the prescribed reports, the director may determine that the conditional registration status be continued for an additional year or be canceled if the reports indicate a lack of progress. If the conditional registration is canceled, all product in the state, including product at the user level, shall be removed from sale or distribution.

D. Conditional registration shall not be granted more than one time per pesticide.

E. Conditional registrants shall not voluntarily cancel the conditional registration.

D-4

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1207)
Title 18, Chapter 9, Article 2, Aquifer Protection Permits – Individual Permits

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-4**

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

FROM: Chris Kleminich, Staff Attorney

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1207)**
Title 18, Chapter 9, Article 2, Aquifer Protection Permits – Individual Permits

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Environmental Quality (Department) is to "consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation." Laws 2014, Ch. 247, § 7.

This five-year-review report covers 20 rules in A.A.C. Title 18, Chapter 9, Article 2, which relate to individual aquifer protection permits.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 2 contains 20 rules related to individual permit applications; technical requirements; financial requirements; contingency plans; alert levels, discharge limitations, and aquifer quality limits; monitoring requirements; reporting requirements; compliance schedule; temporary cessation, closure, post-closure; temporary individual permits; permit amendments; permit transfer; permit suspension, revocation, denial, or termination; requested coverage under a general permit; general consideration and prohibitions; design reports; engineering plans and specifications; treatment performance requirements for new facilities; treatment performance requirements for existing facilities; treatment performance requirements for expansion of facilities.

Year that Each Rule was Last Amended or Newly Made

The rules were last amended or newly made on November 12, 2005.

Proposed Action

The Department plans to amend Sections A201, A203, A209, A210, A211, A213, and B201 by December 2018.

Summary of Reasons for the Proposed Action

- Section A201: The rule is not fully effective as currently written.
- Section A203: The rule should account for 2014 changes to A.R.S. § 49-243(N).
- Section A209: Subsection (B)(4)(a)(i) should specify that under A.R.S. § 49-252, a facility that does not have an Aquifer Protection Permit (APP), or the previous groundwater permit, and is not a dry well, must obtain an individual APP for closure.
- Section A210: The rule should clarify that closure and post-closure requirements must be addressed as a part of a temporary individual permit. The rule should also require that public notice be made before grant or issuance of a temporary individual permit.
- Section A211: The rule should further clarify how permit amendments may be categorized, in relation to a maximum fee.
- Section A213: The citation to R18-9-A209(B)(3)(a)(ii) should be to R18-9-A209(B)(4)(a)(ii).
- Section B201: Subsection (I) is not fully effective as currently written.

Exemption or Request and Approval for Exception from the Moratorium

The Department has not yet requested an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

   Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **<u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>**

   Yes. The Department indicates that the rules are effective, with the following exceptions:

- Section A201: Instead of listing facilities covered by individual permits, subsection (A) should reference A.R.S. § 49-241(A) and (B). In addition, the rule should require the name and address of the owner of the property upon which the discharging facility will be located, if the property owner is different than the applicant. In addition, subsection (B)(5)(b) should account for 2014 changes to A.R.S. § 49-243(N).
- Section A203: The rule should account for 2014 changes to A.R.S. § 49-243(N).

- Section A209: Subsection (B)(4)(a)(i) should specify that under A.R.S. § 49-252, a facility that does not have an APP, or the previous groundwater permit, and is not a dry well, must obtain an individual APP for closure.
- Section A210: The rule should clarify that closure and post-closure requirements must be addressed as a part of a temporary individual permit. The rule should also require that public notice be made before grant or issuance of a temporary individual permit.
- Section A211: The rule should further clarify how permit amendments may be categorized, in relation to a maximum fee.
- Section A213: The citation to R18-9-A209(B)(3)(a)(ii) should be to R18-9-A209(B)(4)(a)(ii).
- Section B201: In subsection (I), the setbacks measured from treatment and disposal components of sewage treatment facilities should apply only to those components that produce noise or odor. In addition, subsection (I)(2) should be amended to allow the owner or operator of a new sewage treatment facility to decrease setbacks when allowed by local ordinance or by affected neighboring property owner waivers. Currently, only existing facilities undergoing a major modification may decrease setbacks.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

No. The Department indicates that it has not received any written criticisms of the rules within the last five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Department provides both general and specific statutory authority for the rules. In particular, A.R.S. § 49-104(B)(13) provides, in part, that the Department shall "[p]rescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases." In addition, A.R.S. § 49-203(A)(4) provides, in part, that the Department shall "[a]dopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer."

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Department indicates that the rules are consistent with other rules and statutes.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates that, to the extent that the rules can be enforced, the rules are enforced as written.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Department indicates that the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates that the rules do not directly correspond to any federal law.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were last amended in 2005.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department stated in its 2011 five-year-review report that amendments would be made to Sections A201, A208, A209, A211, A213, and B201 by June 2013. The Department indicates that it is no longer proposing action on Section A208, as the Department has made internal process changes that have eliminated the need for amendment of that rule. The Department indicates that it did not complete the other proposed actions due to the continuation of the rulemaking moratorium.

11. Has the agency included a proposed course of action?

Yes. The Department plans to make the aforementioned amendments to Sections A201, A203, A209, A210, A211, A213, and B201 by December 2018.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-4**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-1207)**
Title 18, Chapter 9, Article 2, Aquifer Protection Permits – Individual Permits

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules in Article 2 contained in the five-year-review report.

Article 2 addresses the Aquifer Protection Permits (APP) program, which is considered to be the Department's keystone program for protection ground water quality. This program requires an APP for a facility that discharges a pollutant in such a manner that there is reasonable probability that the pollutant will reach an aquifer.

The Department issues both general and individual APPs. There are currently 506 facilities that have individual APPs. A large number of the individual APPs are issued to sewage treatment facilities due to their large number and separate treatment considerations.

The Department believes the economic impact has been as predicted for the rules in Article 2.

<u>2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Department notes that a number of the rules require amendment to improve their clarity and to align with 2014 legislative changes. Many of these rule amendments were also proposed in the 2010 5YRR; however, due to the rule moratorium, the changes were not submitted to the Council. For example, amendments to R18-9-A201 to increase the rules clarity

were cited in the 2010 5 YRR. In addition, subsequent to the last 5YRR on Article 2 rules, statutory changes were enacted, which also impact R18-9-A201.

While the proposed Article 2 amendments would increase the rules clarity, the Department's assessment is that the suggested amendments would not result in significant benefit for the regulated community; therefore, an exemption to the rule moratorium has not been sought for the Article 2 rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

September 29, 2015

Bret Parke, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Title 18, Chapter 9, Article 2

Dear Mr. Parke:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 9, Article 2 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of the Department's findings, proposed courses of action and reasons, and justifications. I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

FIVE-YEAR REVIEW REPORT

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

I. Introduction and Overview

The Aquifer Protection Permit (APP) Program is the Arizona Department of Environmental Quality's (ADEQ) keystone program for protecting groundwater quality (Title 49, Chapter 2, Article 3, Aquifer Protection Permits). An APP is required for a facility that discharges a pollutant either directly to an aquifer, to the land surface, or the vadose zone (the area between an aquifer and the land surface) in such a manner that there is a reasonable probability that the pollutant will reach an aquifer. Arizona Revised Statutes § 49-241 lists specific facilities that are considered to be "discharging" and that require permits, unless exempted, or the director determines that the facility will be designed, constructed and operated so there will be no migration of pollutants directly to the aquifer or to the vadose zone.

ADEQ issues both general and individual APPs. Unless exempted by statute or covered by a general permit, every discharging facility must apply for an individual APP. Title 18, Arizona Administrative Code, Chapter 9, Articles 1 - 4 govern the APP program, divided as follows:

- Article 1, General Provisions
- Article 2, Individual Permits
  - Part A. Application and General Provisions
  - Part B. BADCT for Sewage Treatment Facilities
- Article 3, General Permits
  - Part A. General Provisions
  - Part B. Type 1 General Permits
  - Part C. Type 2 General Permits
  - Part D. Type 3 General Permits
  - Part E. Type 4 General Permits
- Article 4, Nitrogen Management General Permits

The provisions in 18 A.A.C. 9, Article 2, Part A, outline the application requirements and terms that are included in most individual APPs. Part B outlines provisions regarding sewage treatment facilities, which make up a large number of facilities requiring an individual APP under A.R.S. 49-241(B). Due to their large numbers and separate treatment considerations, presumptive best available demonstrated control technology (BADCT) was established under 49-243.01 for sewage treatment facilities that have additional APP requirements. There are numerous requirements specified in 18 A.A.C. 9, Article 2, but the following are applicable to all individual permits:

- The applicant must show that BADCT will be used by the facility.
- The applicant must show that aquifer water quality standards (AWQS) will not be violated in the aquifer at a point of compliance as a result of discharge from the facility. If the level of a pollutant in

the aquifer already exceeds the AWQS at the time of permit issuance, the aquifer must not be further degraded.

- Financial and technical capability.
- Evidence that the facility complies with local zoning.

II. Information That Is Identical For Rules (unless noted differently in the Section-by-Section Analysis of Rules)

1. Authorization of rules by existing statutes:

   The rules in 18 A.A.C. 9, Article 2 are authorized generally by A.R.S. §§ 49-104 (B)(13), 49-203(A)(4), (A)(7), (A)(10), (A)(11), with specific statute authorization from A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits).

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 9, Article 1, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal laws apply.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces these rules in reviewing and ultimately approving or denying an application for an individual APP, and in setting requirements in the terms of an APP. An APP is required to discharge under A.R.S. § 49-241(A) and (B). Under A.R.S. Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ has not received any written comments on the rules within the past five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   ADEQ described probable economic impacts in qualitative terms in the economic impact statement prepared when the rules were last amended in November 2005. ADEQ believes that the qualitative assessments of the economic impacts of the rules remain accurate. ADEQ believes that the Article 2 rules impact on the state’s economy, small business, and consumers has not changed since the November 2005 effective date. Approximately 506 facilities have individual APPs.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    In the previous Five-Year Review Report, approved by Council on May 3, 2011, ADEQ proposed

that amendments to some sections in Article 2 would be submitted to Council by June 2013. ADEQ did not complete any rulemaking action on Article 2 due to the continued moratorium on rule making. ADEQ does not believe that the suggested amendments would significantly benefit the regulated community. ADEQ did not make a request for an exception to the rule moratoriums as it did not see that all the proposed amendments would clearly qualify under the existing or previous executive orders. Some suggested amendments to a section could have some benefit to the regulated community but as the rules are interrelated, ADEQ prefers to amend all the rules in the Article together.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, while still achieving the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    Article 2 does not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules in Article 2 govern the procedures and requirements for ADEQ to issue an individual permit. ADEQ issues general permits for the Aquifer Protection Permit; the rules governing general permits are in Article 3 and 4, as explained above in Part I.

14. Proposed course of action:

    No amendments are proposed, unless noted specifically in the Section-by-Section Analysis.

III. Section-by-Section Analysis of Rules

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

2. Objective of the rules:

   This Section explains the individual APP application process, including permit duration and permit issuance or denial. The standard for permit issuance is that the application must demonstrate compliance with the statutory and regulatory requirements of the Aquifer Protection Program.

   The Section specifies what information must be submitted by an applicant, referencing the technical requirements under R18-9-A202. There are also specific instructions for underground storage facilities and sewage treatment facilities. The substantive information submitted is the technical information as specified in R18-9-A202(A) and cost estimates for construction, operation, maintenance, closure, and post-closure costs. An applicant can request a pre-application meeting to discuss issues relevant to permitting. ADEQ provides the applicant with a draft of the permit before it is published for the public comment and participation phase described in R18-9-109.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to explain the individual APP application process, including permit duration and permit conditions of issuance or denial. The rule could be more effective if subsection (A) referenced the statutory requirements in A.R.S. § 49-241(A) and (B), instead of listing facilities covered by individual permits. Also, it would be useful to require the name

and address of the owner of the property upon which the discharging facility will be located if the property owner is different than the applicant. .

A.R.S. § 49-243(N), which governs the financial assurance requirements, was amended in 2014. R18-9-A201(B)(5)(b) should be amended to reflect the statutory changes that the cost estimate be based on the cost for the applicant to hire a third party to conduct the closure unless the financial responsibility mechanism is a self-assurance or guarantee and the Director determines that the applicant is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting post-closure maintenance and monitoring.

14. Proposed course of action:

ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A202. Technical Requirements

2. Objective of the rules:

A.R.S. § 49-243 establishes the criteria for ADEQ to issue an individual APP, if the applicant demonstrates that the facility will be designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable, as required under A.R.S. § 49-243(B), (G), or (P), and that the AWQS will not be violated in the aquifer at a point of compliance as a result of discharge from the facility. A.R.S. 49-243(A) lists the information an applicant may need to provide in the application process, such as a description of how the facility will be operated or the characteristics of the pollutants discharged by the facility. This rule provides the specifics on what technical information an applicant must submit, including as-built designs of the facility, chemical information on the facility discharge, a description of the BADCT that will be used to achieve the greatest degree of discharge reduction, and a hydrogeologic study. An additional requirement is that the applicant must demonstrate its ability to maintain the technical capability necessary to carry out the terms of the individual APP, including having a certified operator for a sewage treatment facility, if applicable.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively achieves its objective of informing applicants of the required technical documentation that must be submitted with an individual permit application.

R18-9-A203. Financial Requirements

2. Objective of the rules:

A basic concept of the APP program is that an applicant must demonstrate and maintain the financial capability to construct, operate, maintain and then close a discharging facility, consistent with BADCT and to ensure that AWQS are met. Individual APPs are issued for the life of the facility. This Section identifies options to demonstrate financial capability through various financial mechanisms including self-assurance demonstrations, performance surety bond, or guarantees. Each financial mechanism has specific requirements to clarify exactly what an applicant needs to provide for the financial demonstration.

The Section defines specific financial terms used only in this section. This Section also allows the Director to request evidence from the permittee if the Director believes the permittee will lose financial capability. A permittee can demonstrate financial capability through a previous demonstration of financial assurance to a governmental agency. Also, a permittee must update financial capability and amend the permit when: substituting one financial assurance mechanism for

another; there are changes to the existing facility that constitute a significant permit amendment under R18-9-A211(B); or, if changes in the closure strategy will result in an increase in the estimated cost.

3. Effectiveness of the rule in achieving the objectives:

   The rule mostly achieves its objective of informing applicants of the documentation necessary to demonstrate financial assurance. This rule allows flexibility in the type of documents that may be submitted and allows each entity to submit documentation to show financial strength that is appropriate to its status.

   A.R.S. § 49-243(N), which governs the financial assurance requirements, was amended in 2014. R18-9-A203 should be amended to reflect the statutory changes to account for inflation and to demonstrate that the financial mechanism is viable. Amendments should also include that an applicant using a guarantee or self-assurance must aggregate the estimated closure and post-closure costs for all aquifer protection permits in the state for which they have used the self-assurance or guarantee to demonstrate they meet the applicable financial test.

14. Proposed course of action:

    ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A204. Contingency Plan

2. Objective of the rules:

   An applicant submits a contingency plan as part of the technical information required in R18-9-A202(A)(7). This Section specifies the requirements of the contingency plan to address discharges that result in violations of applicable permit conditions or present an imminent and substantial endangerment to the public health or environment.

   This Section lists a number of actions the contingency plan may include (depending upon specific site conditions), such as sampling or preparing a hydrogeologic study to assess the soil or water impact. Corrective action is a possible action but ADEQ must first approve any proposed corrective action. The contingency plan must provide for emergency response to address an imminent and substantial endangerment to the public health or environment, and must be kept at the facility in the location where day-to-day operational decisions are made. A permittee can amend and submit a contingency plan required under other pollution prevention laws.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective of informing applicants of the requirements for a contingency plan that will become part of the APP.

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

2. Objective of the rules:

   This Section describes how ADEQ will prescribe alert levels, discharge limitations, or aquifer quality limits when it determines such indicators are necessary to ensure that a permitted discharge from the facility does not violate an AWQS in the aquifer at a point of compliance. The alert levels, discharge limitations, or aquifer quality limits serve as an early warning; the permittee would monitor for prescribed pollutants based against the prescribed baseline.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively achieves its objective to inform permittees how alert levels, discharge limitations, or aquifer quality limits could be required in an APP.

R18-9-A206. Monitoring Requirements

2. Objective of the rules:

   This Section explains when ADEQ will require monitoring as an APP condition, and establishes recordkeeping requirements. Monitoring records must be kept for at least ten years following the date of the monitoring.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective of explaining when ADEQ will require monitoring as an APP condition.

R18-9-A207. Reporting Requirements

2. Objective of the rules:

   This Section establishes that a permittee must notify ADEQ of a violation of a permit condition or an alert level being exceeded, and must later submit a written report including the information specified in this Section. The permittee also must notify ADEQ if it files for bankruptcy or is subject to an environmental protection-related order or judgment.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform permittees when they will be required to report violations of permit conditions to ADEQ.

R18-9-A208. Compliance Schedule

2. Objective of the rules:

   This Section explains the permittee's responsibility under a compliance schedule, and the factors ADEQ considers in setting compliance schedule requirements. The compliance schedule cannot be used to defer BADCT requirements for a new facility.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to explain a permittee's responsibility under a compliance schedule. A compliance schedule allows ADEQ to issue an APP to an existing facility that may have deficiencies, but can remedy those deficiencies over time according to the compliance schedule established in the APP. A compliance schedule also can be used for a new facility that lacks monitoring results prior to beginning operations.

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

2. Objective of the rules:

   This Section implements A.R.S. § 49-252 (Closure Notification and Approval) by explaining the process for review of closure plans, closure, and post-closure requirements. The person submits a complete closure plan, which includes a plan for investigating the site and evaluating the extent of contamination (soils and groundwater) resulting from past discharges and the materials that will be

removed or remain on site. The person may submit a site investigation plan to ADEQ for a pre-review. Other requirements for a complete closure plan are a summary of the results of any past site studies, a closure design, an estimate of closure costs, and a schedule for implementing the plan if clean closure will not be achieved.

If clean closure is achieved, ADEQ will issue a letter of approval for a facility that is not covered under an APP, and a Permit Release Notice for a facility covered by an individual APP. This signifies that the facility/permittee has met all closure and post-closure requirements for the facility. If the facility does not qualify for clean closure, post-closure monitoring and maintenance activities must be implemented and the facility will need to seek to amend its existing APP or seek a new APP.

This Section also requires the permittee to submit proposed measures for temporary cessation for ADEQ's approval prior to implementation. Even if the facility ceases discharging, it may still be necessary to monitor for some period of time.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to ensure that a facility does not continue to discharge pollutants even after it has ceased to operate as required under A.R.S. § 49-252, with the ideal outcome being clean closure, as defined in A.R.S. § 49-201(5). The rule could be more effective by clarifying subsection (B)(4)(a)(i) to specify that under A.R.S. § 49-252, a facility that does not have an APP (or the previous groundwater permit) and is not a dry well, must obtain an individual APP for closure.

14. Proposed course of action:

    ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A210. Temporary Individual Permit

2. Objective of the rules:

   This Section allows ADEQ to issue a temporary APP for a pilot project to develop data for an APP application for the full-scale project, or a facility with a discharge lasting no more than six months. This Section explains what information the applicant needs to submit and the level of public participation required. A temporary APP expires after one year, and may be renewed for one additional year.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective regarding the requirements for a temporary APP. The rule could be more effective if clarified that closure and post closure requirements must be addressed as a part of the permit. Additionally, the rule currently does not require public notice until after the permit is issued. The rule could be made more effective if public notice was made before grant or issuance, as with individual APPs.

14. Proposed course of action:

    ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A211. Permit Amendments

2. Objective of the rules:

A permitted facility, or the Director, can seek an amendment to the APP. Approved amendments supersede the previous permit. This Section classifies APP amendments as significant, minor, and other permit amendments, and lists examples of each classification.

The classification affects the level of public notice required. "Significant amendments" have the greatest potential to impact the surrounding environment and be of interest to the public. They require the same public notice and comment provisions as a new permit application. "Other amendments" are more substantial than a minor amendment and require public notice but do not warrant the public participation requirements for a significant amendment. No public notice or public participation is required for a minor amendment.

The Section also prohibits an amendment with a lesser level of treatment technology than established in the individual APP previously issued, unless one of the listed criteria exists.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively achieves its objective to inform permittees how permit amendments will be classified. An amendment to the rules on the APP fees was approved by the Governor's Regulatory Review Council on April 5, 2011, which correlates the complexity of a modification to a facility with the type of amendment referenced in R18-9-A211. There are different limits to the fees charged depending on the modification.

ADEQ proposes to further clarify how amendments should be categorized in relation to a maximum fee.

14. Proposed course of action:

ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A212. Permit Transfer

2. Objective of the rules:

An APP can be transferred to a new owner or operator. Persons who meet the requirements in R18-9-105(A) (meaning they hold a Groundwater Quality Protection Permit, a Notice of Disposal or applied for an APP before December 27, 1989) must notify and provide ADEQ with the specified information on the change of ownership. All other permittees with an APP must demonstrate that the new owner or operator has the technical and financial capability necessary to fully carry out the terms of the APP according to R18-9-A202 and R18-9-A203 and agrees to the terms of the APP. The permittee is responsible for all terms of the APP until ADEQ transfers the permit to the new owner or operator.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively achieves its objective of informing permittees and potential permittees of their responsibilities when transferring ownership of a facility operating under an APP, operating under a Groundwater Quality Protection Permit or a Notice of Disposal, or when they have applied for an APP before December 27, 1989.

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

2. Objective of the rules:

This Section lists the reasons when ADEQ may suspend or revoke an individual permit, or deny an individual permit application. Under subsection (C), ADEQ will terminate a permit if each facility covered under the individual permit has been closed and ADEQ issues a Permit Release Notice under

R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii), or if the facility is covered under another APP.

3. Analysis of effectiveness of the rule in achieving the objective:

   The rule effectively achieves its objective of informing applicants and permittees of the basis ADEQ will use to suspend or revoke an individual permit, or deny an individual permit application. The rule could be more effective without the incorrect citation in subsection (C)(1); the citation to R18-9-A209(B)(3)(a)(ii) should be R18-9-A209(B)(4)(a)(ii).

14. Proposed course of action:

   ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-A214. Requested Coverage Under a General Permit

2. Objective of the rules:

   This Section describes the process for a person to request substitute coverage under a general permit for a facility covered under an individual permit. ADEQ first must determine that the discharge from the facility is covered under an existing general permit.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform a permittee of the process to request coverage under a general permit for a facility covered under an individual permit.

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

2. Objective of the rules:

   This Section describes general considerations and prohibitions for sewage treatment facilities. The general considerations include references to other governing rules, such as: a required certified operator under 18 A.A.C. 5, Article 1; reclaimed water under 18 A.A.C. 11, Article 3; or biosolids under 18 A.A.C. 9, Article 10. Setbacks from neighboring properties are established to lessen the noise and odor impacts of such facilities. Two prohibitions are listed, that a person shall not: (1) create or maintain a connection between a sewage treatment facility and a potable water supply so that the potable water supply is contaminated, or (2) bypass or release sewage or partially treated sewage from a sewage treatment facility.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective of informing owners or operators of sewage treatment facilities of the general considerations and prohibitions. The rule could be more effective by clarifying subsection (I) so that the setbacks measured from the treatment and disposal components apply only to those components that produce noise or odor. Also, subsection (I)(2) could be more effective if the owner or operator of a new sewage treatment facility is allowed to decrease setbacks when allowed by local ordinance or via affected neighboring property owner waivers, rather than only for an existing facility undergoing a major modification.

14. Proposed course of action:

   ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.

R18-9-B202. Design Report

2. Objective of the rules:

   As required in R18-9-A201(B)(6), sewage treatment facilities have additional application requirements for an APP. A design report under this Section satisfies part of the technical requirements under R18-9-A202(A)(3). The design report, sealed by an Arizona-registered professional engineer, includes a description of the treatment processes used to meet BADCT requirements, planned normal operation, and other requirements for sewage treatment facilities. The design report also includes flow information in gallons per day, such as the design flow, the maximum flow and the minimum flow.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform applicants of the requirements for a design report.

R18-9-B203. Engineering Plans and Specifications

2. Objective of the rules:

   As required in R18-9-A201(B)(6), sewage treatment facilities have additional application requirements for an APP. Engineering plans and specifications under this Section satisfy part of the technical requirements under R18-9-A202(A)(3).

   Engineering plans and specifications must be submitted for a sewage treatment facility with a design flow under one million gallons per day. As smaller sewage treatment facilities often lack the resources to hire specialized staff to interface with design engineers, they must submit engineering plans and specifications in order to allow a more thorough design review. ADEQ can waive this requirement if it previously approved engineering plans and specifications for a sewage treatment facility from the same owner or operator with a design flow of more than one million gallons per day. Engineering plans and specifications are not required for a sewage treatment facility with a design flow of one million gallons per day or greater unless ADEQ finds that the design report has specified inadequacies or discrepancies. After a sewage treatment facility receives an APP but before it discharges, an Engineer's Certificate of Completion is required, sealed by an Arizona-registered professional engineer that confirms that the facility is constructed according to the approved design report or plans and specifications.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform applicants when engineering plans and specifications will be required.

R18-9-B204. Treatment Performance Requirements for a New Facility

2. Objective of the rules:

   The term "new facility" is defined in A.R.S. § 49-201(23) and is significant because the current BADCT will apply to the new facility under A.R.S. § 49-243(B)(1). This Section requires the discharge of treated wastewater from a new sewage treatment facility to meet specified performance requirements. Many of the performance requirements establish maximum limits for pollutants or parameters in the treated wastewater, such as total suspended solids, total nitrogen, fecal coliform or *E.Coli.* For constituents regulated under A.R.S. § 49-243(I), removal of the constituent upon release of the treated wastewater at the outfall will be to the greatest extent practical regardless of cost. The

individual permit will specify treated wastewater discharge limitations and associated monitoring specified to ensure compliance with the BADCT requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform the owner or operator of a new sewage treatment facility of the statutory and regulatory performance requirements.

R18-9-B205. Treatment Performance Requirements for an Existing Facility

2. Objective of the rules:

   An existing sewage treatment facility, defined as an existing facility in A.R.S. § 49-201(16), is not required to use as strict BADCT for treatment performance as a new facility when obtaining an APP. In determining BADCT under A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h), ADEQ is required to consider factors, such as facility age and cost to achieve BADCT.

   The statute requires ADEQ to look at cost versus discharge reduction achieved by a particular technology. This Section allows a facility to eliminate from consideration any technology more expensive than the number of gallons of design flow times $1.00 per gallon. The facility will need to evaluate possible treatment improvements up to the ceiling cost provided in this Section.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective of informing owners or operators of an existing sewage treatment facility of the requirements for treatment performance.

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

2. Objective of the rules:

   Under A.R.S. § 49-201(23), the definition of new facility includes a major modification to an existing facility. This Section describes what type of expansion constitutes a major modification so that the new facility BADCT requirements in R18-9-B204 apply. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively achieves its objective to inform owners and operators of an existing sewage treatment facility on what constitutes a major modification that requires compliance with new facility BADCT requirements.

R18-9-127. Repealed

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

R18-9-128. Repealed

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

R18-9-129. Repealed

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

R18-9-130. Repealed

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

Appendix I. Repealed

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

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

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

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

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

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

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

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

G. Permit issuance or denial.
1. The Director shall issue an individual permit, based upon the information obtained by or made available to the Department, if the Director determines that the applicant will comply with A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter.
2. The Director shall provide the applicant with written notification of the final decision to issue or deny the permit within the overall licensing time-frame requirements under 18 A.A.C. 1, Article 5, Table 10 and the following:
   a. The applicant's right to appeal the final permit determination, including the number of days the applicant has to file a protest and the name and telephone

number of the Department contact person who can answer questions regarding the appeals process;

b. If the permit is denied under R18-9-A213(B), the reason for the denial with reference to the statute or rule on which the denial is based; and

c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

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

R18-9-A202. Technical Requirements

A. Except as specified in R18-9-A201(C)(1), an applicant shall, as required under R18-9-A201(B)(4), submit the following technical information as attachments to the individual permit application:

1. A topographic map, or other appropriate map approved by the Department, of the facility location and contiguous land area showing the known use of adjacent properties, all known water well locations found within one-half mile of the facility, and a description of well construction details and well uses, if available;
2. A facility site plan showing all known property lines, structures, water wells, injection wells, drywells and their uses, topography, and the location of points of discharge. The facility site plan shall include all known borings. If the Department determines that borings are numerous, the applicant shall satisfy this requirement with a narrative description of the number and location of the borings;
3. The facility design documents indicating proposed or as-built design details and proposed or as-built configuration of basins, ponds, waste storage areas, drainage diversion features, or other engineered elements of the facility affecting discharge. When formal as-built plan submittals are not available, the applicant shall provide documentation sufficient to allow evaluation of those elements of the facility affecting discharge, following the demonstration requirements of A.R.S. § 49-243(B). An applicant seeking an Aquifer Protection Permit for a sewage treatment facility satisfies the requirements of this subsection by submitting the documents required in R18-9-B202 and R18-9-B203;
4. A summary of the known past facility discharge activities and the proposed facility discharge activities indicating all of the following:
   a. The chemical, biological, and physical characteristics of the discharge;
   b. The rate, volume, and frequency of the discharge for each facility; and
   c. The location of the discharge and a map outlining the pollutant management area described in A.R.S. § 49-244(1);
5. A description of the BADCT employed in the facility, including:
   a. A statement of the technology, processes, operating methods, or other alternatives proposed to meet the requirements of A.R.S. § 49-243(B), (G), or (P), as applicable. The statement shall describe:
      i. The alternative discharge control measures considered,
      ii. The technical and economic advantages and disadvantages of each alternative, and
      iii. The justification for selection or rejection of each alternative;
   b. An evaluation of each alternative discharge control technology relative to the amount of discharge reduction achievable, site-specific hydrologic and geologic characteristics, other environmental impacts, and water conservation or augmentation;
   c. For a new facility, an industry-wide evaluation of the economic impact of implementation of each alternative discharge control technology;
   d. For an existing facility, a statement reflecting the consideration of factors listed in A.R.S. § 49-243(B)(1)(a) through (h);
   e. A sewage treatment facility meeting the BADCT requirements under Article 2, Part B of this Chapter satisfies the requirements under subsections (A)(5)(a) through (d).
6. Proposed points of compliance for the facility based on A.R.S. § 49-244. An applicant shall demonstrate that:
   a. The facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the proposed point of compliance; or
   b. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, no additional degradation of the aquifer relative to that pollutant and determined at the proposed point of compliance will occur as a result of the discharge from the proposed facility. In this case, the applicant shall submit an Ambient Groundwater Monitoring Report that includes:
      i. Data from eight or more rounds of ambient groundwater samples collected to represent groundwater quality at the proposed points of compliance, and
      ii. An AQL proposal for each pollutant that exceeds an Aquifer Water Quality Standard;
7. A contingency plan that meets the requirements of R18-9-A204;
8. A hydrogeologic study that defines the discharge impact area for the expected duration of the facility. The Department may allow the applicant to submit an abbreviated hydrogeologic study or, if warranted, no hydrogeologic study, based upon the quantity and characteristics of the pollutants discharged, the methods of disposal, and the site conditions. The applicant may include information from a previous study of the affected area to meet a requirement of the hydrogeologic study, if the previous study accurately represents current hydrogeologic conditions.
   a. The hydrogeologic study shall demonstrate:
      i. That the facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the applicable point of compliance; or
      ii. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, that no additional degradation of the aquifer relative to that pollutant and determined at the applicable point of compliance will occur as a result of the discharge from the proposed facility;
   b. Based on the quantity and characteristics of pollutants discharged, methods of disposal, and site conditions, the Department may require the applicant to provide:
      i. A description of the surface and subsurface geology, including a description of all borings;

ii. The location of any perennial, intermittent, or ephemeral surface water bodies;
iii. The characteristics of the aquifer and geologic units with limited permeability, including depth, hydraulic conductivity, and transmissivity;
iv. The rate, volume, and direction of surface water and groundwater flow, including hydrographs, if available, and equipotential maps;
v. The precise location or estimate of the location of the 100-year flood plain and an assessment of the 100-year flood surface flow and potential impacts on the facility;
vi. Documentation of the existing quality of the water in the aquifers underlying the site, including, where available, the method of analysis, quality assurance, and quality control procedures associated with the documentation;
vii. Documentation of the extent and degree of any known soil contamination at the site;
viii. An assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials;
ix. For an underground water storage facility, an assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials or cause the migration of contaminated groundwater;
x. Any changes in the water quality expected because of the discharge;
xi. A description of any expected changes in the elevation or flow directions of the groundwater expected to be caused by the facility;
xii. A map of the facility's discharge impact area; or
xiii. The criteria and methodologies used to determine the discharge impact area.

9. A detailed proposal indicating the alert levels, discharge limitations, monitoring requirements, compliance schedules, and temporary cessation or plans that the applicant will use to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of this Chapter;
10. Closure and post-closure strategies or plans; and
11. Any other relevant information required by the Department to determine whether to issue a permit.

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

Historical Note

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

R18-9-A203. Financial Requirements

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

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

C. Financial assurance mechanisms. The applicant may use any of the following mechanisms to cover the financial assurance obligation under R18-9-A201(B)(5):
1. Financial test for self-assurance. If an applicant uses a financial test for self-assurance, the applicant shall not consolidate the financial statement with a parent or sibling company. The applicant shall make the demonstration in either subsection (C)(1)(a) or (b) and submit the information required in subsection (C)(1)(c):
   a. The applicant may demonstrate:
      i. One of the following:
         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;
         (2) A ratio of total liabilities to net worth less than 2.0 and a ratio of the sum of net annual income plus depreciation, deple-

tion, and amortization to total liabilities greater than 0.1; or

(3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;

ii. The net working capital and tangible net worth of the applicant each are at least six times the closure cost estimate; and

iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; or

b. The applicant may demonstrate:

i. The applicant's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;

ii. The tangible net worth of the applicant is at least six times the closure cost estimate; and

iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; and

c. The applicant shall submit:

i. A letter signed by the applicant's chief financial officer that identifies the criterion specified in subsection (C)(1)(a) or (b) and used by the applicant to satisfy the financial assurance requirements of this Section, an explanation of how the applicant meets the criterion, and certification of the letter's accuracy, and

ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (C)(1)(c)(i) is accurate based on a review of the applicant's financial statements for the latest completed fiscal year or more recent financial data and no adjustment to the financial statement is necessary.

2. Performance surety bond. The applicant may use a performance surety bond if the following conditions are met:

a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;

b. The bond provides for performance of all the covered items listed in R18-9-A201(B)(5) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the permittee fails to perform the required activities;

c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-9-A201(B)(5) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;

d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;

e. The original surety bond is submitted to the Director;

f. Under the terms of the bond, the surety is liable on the bond obligation when the permittee fails to perform as guaranteed by the bond; and

g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.

3. Certificate of deposit. The applicant may use a certificate of deposit if the following conditions are met:

a. The applicant submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the applicant's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;

b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;

c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;

d. Only the Department has access to the certificate of deposit; and

e. Interest accrues to the permittee during the period the applicant gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-9-A201(B)(5).

4. Trust fund. The applicant may use a trust fund if the following conditions are met:

a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and

b. The trust is initially funded in an amount at least equal to:

i. The cost estimate of the closure plan or strategy submitted under R18-9-A201(B)(5),

ii. The amount specified in a compliance schedule approved in the permit, or

iii. A pro-rata amount if used with another financial assurance mechanism.

5. Letter of credit. The applicant may use a letter of credit if the following conditions are met:

a. The financial institution issuing the letter is regulated and examined by a federal or state agency;

b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of cancellation or expiration. The permittee shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;

c. The financial institution names the Arizona Department of Environmental Quality as beneficiary for the letter of credit; and

d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the applicant as the permittee.

6. Insurance policy. The applicant may use an insurance policy if the following conditions are met:

a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;

b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;

c. The permittee submits a copy of the insurance policy to the Department;

d. The insurance policy guarantees that funds are available to pay costs as submitted under R18-9-

A201(B)(5) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

e. The policy guarantees that while closure and post-closure activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed in R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;

g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;

h. The policy contains a provision allowing assignment of the policy to a successor permittee. The transfer of the policy is conditional upon consent of the insurer and the Department; and

i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the permittee fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the permittee shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.

7. Cash deposit. The applicant may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-9-A201(B)(5).

8. Guarantees.

a. The applicant may use guarantees to cover the financial assurance obligation under R18-9-A201(B)(5) if the following conditions are met:

i. The applicant submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the applicant is a corporation, the applicant shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the permittee's financial assurance obligation;

ii. The applicant submits to the Department documentation that explains the substantial business relationship between the guarantor and the permittee;

iii. The applicant demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (C)(1). For purposes of applying the criteria in subsection (C)(1) to a guarantor, substitute "guarantor" for the term "applicant" as used in subsection (C)(1);

iv. The guarantee is governed by and complies with state law;

v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (C);

vi. The guarantee provides that, if the permittee fails to perform closure or post-closure care of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure or post-closure care, as required by the permit, or establish a fully funded trust fund as specified under subsection (C)(4) in the name of the owner or operator; and

vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.

b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:

i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;

ii. Receiving an adverse auditor's notice, opinion, or qualification; or

iii. Receiving a Department notification requesting an update of the guarantor's financial condition.

9. An applicant may use a financial assurance mechanism not listed in subsection (C)(1) through (8) if approved by the Director.

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

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

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

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

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

Historical Note

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

R18-9-A204. Contingency Plan

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

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

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

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

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

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

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

Historical Note

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

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

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

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

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

Historical Note

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

R18-9-A206. Monitoring Requirements

A. Monitoring.
1. The Department shall determine whether monitoring is required to assure compliance with Aquifer Protection

Permit conditions and with the applicable Aquifer Water Quality Standards established under A.R.S. §§ 49-221, 49-223, 49-241 through 49-244, and 49-250 through 49-252.

2. If monitoring is required, the Director shall specify to the permittee:
   a. The type and method of monitoring;
   b. The frequency of monitoring;
   c. Any requirements for the installation, use, or maintenance of monitoring equipment; and
   d. The intervals at which the permittee reports the monitoring results to the Department.

B. Recordkeeping.
1. A permittee shall make a monitoring record for each sample taken as required by the individual permit consisting of all of the following:
   a. The date, time, and exact place of a sampling and the name of each individual who performed the sampling;
   b. The procedures used to collect the sample;
   c. The date sample analysis was completed;
   d. The name of each individual or laboratory performing the analysis;
   e. The analytical techniques or methods used to perform the sampling and analysis;
   f. The chain of custody records; and
   g. Any field notes relating to the information described in subsections (B)(1)(a) through (f).
2. A permittee shall make a monitoring record for each measurement made, as required by the individual permit, consisting of all of the following:
   a. The date, time, and exact place of the measurement and the name of each individual who performed the measurement;
   b. The procedures used to make the measurement; and
   c. Any field notes relating to the information described in subsections (B)(2)(a) and (b).
3. A permittee shall maintain monitoring records for at least 10 years after the date of the sample or measurement, unless the Department specifies a shorter time period in the permit.

Historical Note

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

R18-9-A207. Reporting Requirements

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

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

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

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

Historical Note

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

R18-9-A208. Compliance Schedule

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

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

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

Historical Note

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

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

A. Temporary cessation.
1. A permittee shall notify the Department before a cessation of operations at the facility of at least 60 days duration.
2. The permittee shall implement any condition specified in the individual permit for the temporary cessation.

3. If the permit does not specify any temporary cessation condition, the permittee shall, prior to implementation, submit the proposed temporary cessation plan for Department approval.

B. Closure.

1. Before providing notice under subsection (B)(2), a person may request that the Director review a site investigation plan for a facility under subsection (B)(3)(a) or the results of a site investigation at a facility to determine compliance with this subsection and A.R.S. § 49-252.
2. A person shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
3. The person shall submit a closure plan for Director approval within 90 days following the notification of intent to cease operations with the applicable fee established in 18 A.A.C. 14. A complete closure plan shall include:
   a. A site investigation plan that includes a summary of relevant site studies already conducted and a proposed scope of work for any additional site investigation necessary to identify:
      i. The lateral and vertical extent of contamination in soils and groundwater, using applicable standards;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil proposed for removal from the facility;
      iii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil that will remain at the facility; and
      iv. Information regarding site conditions related to pollutant fate and transport that may influence the scope of sampling necessary to characterize the site for closure;
   b. A summary describing the results of a site investigation and any other information used to identify:
      i. The lateral and vertical extent of soil and groundwater contamination, using applicable standards, and the analytical results that support the determination;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each material scheduled for removal;
      iii. The destination of the materials and documentation that the destination is approved to accept the materials;
      iv. The approximate quantity and chemical, biological, and physical characteristics of each material that remains at the facility; and
      v. Any other relevant information the Department determines is necessary;
   c. A closure design that identifies:
      i. The method used, if any, to treat any material remaining at the facility;
      ii. The method used to control the discharge of pollutants from the facility;
      iii. Any limitation on future land or water uses created as a result of the facility's operations or closure activities and a Declaration of Environmental Use Restriction according to A.R.S. § 49-152, if necessary; and
      iv. The methods used to secure the facility;
   d. An estimate of the cost of closure;
   e. A schedule for implementation of the closure plan and submission of a post-closure plan if clean closure is not achieved; and
   f. For an implemented closure plan, a summary report of the results of site investigation performed during closure activities, including confirmation and verification sampling.
4. Within 60 days of receipt of a complete closure plan, the Department shall determine whether the closure plan achieves clean closure.
   a. If the implemented complete closure plan achieves clean closure, the Director shall:
      i. If the facility is not covered by an Aquifer Protection Permit, send the person a letter of approval; or
      ii. If the facility is covered by an Aquifer Protection Permit, send the person a Permit Release Notice issued under subsection (C)(2)(c).
   b. If the implemented complete closure plan did not achieve clean closure, the person shall submit a post-closure plan under subsection (C) and the following documents within 90 days from the date on the Department's notice or as specified under A.R.S. § 49-252(E):
      i. An application for an individual permit, or
      ii. A request to amend a current individual permit to address closure activities and post-closure monitoring and maintenance at the facility.

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

1. The application shall include:
   a. The duration of post-closure care;
   b. The monitoring procedures proposed by the permittee, including monitoring frequency, type, and location;
   c. A description of the operating and maintenance procedures proposed for maintaining aquifer quality protection devices, such as liners, treatment systems, pump-back systems, surface water and stormwater management systems, and monitoring wells;
   d. A schedule and description of physical inspections proposed at the facility following closure;
   e. An estimate of the cost of post-closure maintenance and monitoring;
   f. A description of limitations on future land or water uses, or both, at the facility site as a result of facility operations; and
   g. The applicable fee established in 18 A.A.C. 14.
2. The Director shall include the post-closure plan submitted under subsection (C)(1) in the individual permit or permit amendment.
   a. The permittee shall provide the Department written notice that a closure plan or a post-closure plan was fully implemented within 30 calendar days of implementation of the plan. The notice shall include a summary report confirming the closure design and describing the results of sampling performed during closure activities and post-closure activities, if any, to demonstrate the level of cleanup achieved.
   b. The Director may, upon receipt of the notice, inspect the facility to ensure that the closure plan has been fully implemented.

c. The Director shall issue a Permit Release Notice if the permittee satisfies all closure and post-closure requirements.

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

R18-9-A210. Temporary Individual Permit

A. A person may apply for a temporary individual permit for either of the following:
1. A pilot project to develop data for an Aquifer Protection Permit application for the full-scale project, or
2. A facility with a discharge lasting no more than six months.

B. The applicant shall submit a preliminary application containing the information required in R18-9-A201(B)(1).

C. The Department shall, based on the preliminary application and in consultation with the applicant, determine and provide the applicant notice of any additional information in R18-9-A201(B) that is necessary to complete the application.

D. Public participation.
1. If the Director issues a temporary individual permit, the Director shall postpone the public participation requirements under R18-9-109.
2. The Director shall not postpone notification of the opportunity for public participation for more than 30 days from the date on the temporary individual permit.
3. The Director may amend or revoke the temporary individual permit after consideration of public comments.
4. The Director shall not issue a public notice or hold a public hearing if a temporary individual permit is renewed without change.
5. The Director shall follow the public participation requirements under R18-9-109 when making a significant amendment to a temporary individual permit.

E. A temporary individual permit expires after one year unless it is renewed. The Director may renew a temporary individual permit no more than one time.

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

R18-9-A211. Permit Amendments

A. The Director may amend an individual permit based upon a request or upon the Director's initiative.
1. A permittee shall submit a request for permit amendment in writing on a form provided by the Department with the applicable fee established in 18 A.A.C. 14, explaining the facts and reasons justifying the request.
2. The Department shall process amendment requests following the licensing time-frames established under 18 A.A.C. 1, Article 5, Table 10.
3. An amended permit supersedes the previous permit upon the effective date of the amendment.

B. Significant permit amendment. The Director shall make a significant amendment to an individual permit if:
1. Part or all of an existing facility becomes a new facility under A.R.S. § 49-201;
2. A physical change in a permitted facility or a change in its method of operation results in:
   a. An increase of 10 percent or more in the permitted volume of pollutants discharged, except a sewage treatment facility;
   b. An increase in design flow of a sewage treatment facility as follows:

Permitted Design Flow	Increase in Design Flow
500,000 gallons per day or less	10%
Greater than 500,000 gallons per day but less than or equal to five million gallons per day	6%
Greater than five million gallons per day but less than or equal to 50 million gallons per day	4%
Greater than 50 million gallons per day	2%

   c. Discharge of an additional pollutant not allowed by a facility's original individual permit. The Director may consider the addition of a pollutant with a chemical composition substantially similar to a pollutant the permit currently allows by making an "other" amendment to the individual permit as prescribed in subsection (D);
   d. For any pollutant not addressed in a facility's individual permit, any increase that brings the level of the pollutant to within 80 percent or more of a numeric Aquifer Water Quality Standard at the point of compliance; or
   e. An increase in the concentration in the discharge of a pollutant listed under A.R.S. § 49-243(I);
3. Based upon available information, the facility can no longer demonstrate that its discharge will comply with A.R.S. § 49-243(B)(2) or (3);
4. The permittee requests and the Department agrees to less stringent monitoring that reduces the frequency in monitoring or reporting or reduces the number of pollutants monitored, and the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
5. It is necessary to change the designation of a point of compliance;
6. It is necessary to update BADCT for a facility that was issued an individual permit and was not constructed within five years of permit issuance;
7. The permittee requests and the Department agrees to less stringent discharge limitations when the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
8. It is necessary to make an addition to or a substantial change in closure requirements or to provide for post-closure maintenance and monitoring; or
9. Material and substantial alterations or additions to a permitted facility, including a change in disposal method, justify a change in permit conditions.

C. Minor permit amendment. The Director shall make a minor amendment to an individual permit to:
1. Correct a typographical error;
2. Change nontechnical administrative information, excluding a permit transfer;
3. Correct minor technical errors, such as errors in calculation, locational information, citations of law, and citations of construction specifications;
4. Increase the frequency of monitoring or reporting, or to revise a laboratory method;

5. Make a discharge limitation more stringent;
6. Make a change in a recordkeeping retention requirement; or
7. Insert calculated alert levels, AQLs, or other permit limits into a permit based on monitoring subsequent to permit issuance, if a requirement to establish the levels or limits and the method for calculation of the levels or limits was established in the original permit.

D. "Other" permit amendment.
1. The Director may make an "other" amendment to an individual permit if the amendment is not a significant or minor permit amendment prescribed in this Section, based on an evaluation of the information relevant to the amendment.
2. Examples of an "other" amendment to an individual permit include:
   a. A change in a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of Articles 1 and 2 of this Chapter and provides equal or better performance;
   b. A change in an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;
   c. A change in the permittee's financial assurance mechanism under R18-9-A203(C);
   d. A permit transfer under R18-9-A212;
   e. The replacement of monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness;
   f. Any increase in the volume of pollutants discharged that is less than that described in subsection (B)(2)(a) or (b);
   g. An adjustment of the permit to conform to rule or statutory provisions;
   h. A calculation of an alert level, AQL, or other permit limit based on monitoring subsequent to permit issuance;
   i. An addition of a point of compliance monitor well;
   j. A combination of two or more permits at the same site as specified under R18-9-107;
   k. An adjustment or incorporation of monitoring requirements to ensure Reclaimed Water Quality Standards developed under 18 A.A.C. 11, Article 3 are met; or
   l. A change in a contingency plan resulting in equal or more efficient responsiveness.

E. The public notice and public participation requirements of R18-9-108 and R18-9-109 apply to a significant amendment. The public notice requirements apply to an "other" amendment. A minor amendment does not require a public notice or public participation.

F. The Director shall not amend or reissue a permit to allow use of a discharge control technology that provides a lesser degree of pollutant discharge reduction than the BADCT established in the individual Aquifer Protection Permit previously issued for a facility, unless:
1. The industrial classification of the facility has changed so that a new assessment of BADCT is appropriate,
2. The pollutant load has decreased or the pollutant composition has changed significantly to warrant a new assessment of the BADCT,
3. The Director approves a corrective or contingency action that necessitates a change in the treatment technology, or
4. The approved discharge control technology is not operating properly due to circumstances beyond the control of the owner or operator.

Historical Note

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

R18-9-A212. Permit Transfer

A. The person subject to the continuance requirements under R18-9-105(A)(1), (2), or (3) shall notify the Department by certified mail within 15 days following a change of ownership. The notice shall include:
1. The name of the person transferring the facility;
2. The name of the new owner or operator;
3. The name and location of the facility;
4. The written agreement between the person transferring the facility and the new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;
5. A signed declaration by the new owner or operator that the new owner or operator has reviewed the permit and agrees to the terms of the permit, including fee obligations under A.R.S. § 49-242; and
6. The applicable fee established in 18 A.A.C. 14.

B. A permittee may request that the Department transfer an individual permit to a new owner or operator.
1. The new owner or operator shall:
   a. Notify the Department by certified mail within 15 days after the change of ownership and include a written agreement between the previous and new owner indicating a specific date for transfer of all permit responsibility, coverage, and liability;
   b. Submit the applicable fee established in 18 A.A.C. 14;
   c. Demonstrate the technical and financial capability necessary to fully carry out the terms of the permit according to R18-9-A202 and R18-9-A203;
   d. Submit a signed statement that the new owner or operator has reviewed the permit and agrees to the terms of the permit; and
   e. Provide the Department with a copy of the Certificate of Disclosure if required by A.R.S. § 49-109.
2. If the Director amends the individual permit for the transfer, the new permittee is responsible for all conditions of the permit.

C. A permittee shall comply with all permit conditions until the Director transfers the permit, regardless of whether the permittee has sold or disposed of the facility.

Historical Note

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

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

A. The Director may, after notice and opportunity for hearing, suspend or revoke an individual permit or a continuance under R18-9-105(A)(1), (2), or (3) for any of the following:
1. A permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; or any permit condition;

2. A permittee misrepresented or omitted a fact, information, or data related to an Aquifer Protection Permit application or permit condition;
3. The Director determines that a permitted activity is causing or will cause a violation of an Aquifer Water Quality Standard at a point of compliance;
4. A permitted discharge is causing or will cause imminent and substantial endangerment to public health or the environment;
5. A permittee failed to maintain the financial capability under R18-9-A203(B); or
6. A permittee failed to construct a facility within five years of permit issuance and:
   a. It is necessary to update BADCT for the facility, and
   b. The Department has not issued an amended permit under R18-9-A211(B)(6).

B. The Director may deny an individual permit if the Director determines upon completion of the application process that the applicant has:
1. Failed or refused to correct a deficiency in the permit application;
2. Failed to demonstrate that the facility and the operation will comply with the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter. The Director shall base this determination on:
   a. The information submitted in the Aquifer Protection Permit application,
   b. Any information submitted to the Department following a public hearing, or
   c. Any relevant information that is developed or acquired by the Department; or
3. Provided false or misleading information.

C. The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

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

R18-9-A214. Requested Coverage Under a General Permit

A. If a person who applied for or was issued an individual permit qualifies to operate a facility under a general permit established in Article 3 of this Chapter, the person may request that the individual permit be terminated and replaced by the general permit. The person shall submit the Notice of Intent to Discharge under R18-9-A301(B) with the appropriate fee established in 18 A.A.C. 14.

B. The individual permit is valid and enforceable with respect to a discharge from each facility until the Director determines that the discharge from each facility is covered under a general permit.

C. The owner or operator operating under a general permit shall comply with all applicable general permit requirements in Article 3 of this Chapter.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

A. Applicability. The requirements in this Article apply to all sewage treatment facilities, including expansions of existing sewage treatment facilities, that treat wastewater containing sewage, unless the discharge is authorized by a general permit under Article 3 of this Chapter.

B. The Director may specify alert levels, discharge limitations, design specifications, and operation and maintenance requirements in the permit that are based upon information provided by the applicant and that meet the requirements under A.R.S. § 49-243(B)(1).

C. The permittee shall ensure that a sewage treatment facility is operated by a person certified under 18 A.A.C. 5, Article 1, for the grade of the facility.

D. Operation and maintenance.
1. The owner or operator shall maintain, at the sewage treatment facility, an operation and maintenance manual for the facility and shall update the manual as needed.
2. The owner or operator shall use the operation and maintenance manual to guide facility operations to ensure compliance with the terms of the Aquifer Protection Permit and to prevent any environmental nuisance described under A.R.S. § 49-141(A).
3. The Director may specify adherence to any operation or maintenance requirement as an Aquifer Protection Permit condition to ensure that the terms of the Aquifer Protection Permit are met.
4. The owner or operator shall make the operation and maintenance manual available to the Department upon request.

E. A person shall not create or maintain a connection between any part of a sewage treatment facility and a potable water supply so that sewage or wastewater contaminates a potable or public water supply.

F. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from a sewage treatment facility.

G. Reclaimed water dispensed to a direct reuse site from a sewage treatment facility is regulated under Reclaimed Water Quality Standards in 18 A.A.C. 11, Article 3.

H. The preparation, transport, or land application of any biosolids generated by a sewage treatment facility is regulated under 18 A.A.C. 9, Article 10.

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

Historical Note

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

R18-9-B202. Design Report

A. A person applying for an individual permit shall submit a design report signed, dated, and sealed by an Arizona-registered professional engineer. The design report shall include the following information:
1. Wastewater characterization, including quantity, quality, seasonality, and impact of increased flows as the facility reaches design flow;
2. The proposed method of disposal, including solids management;
3. A description of the treatment unit processes and containment structures, including diagrams and calculations that demonstrate that the design meets BADCT requirements and will achieve treatment levels specified in R18-9-B204 through R18-9-B206, as applicable, for all flow conditions indicated in subsection (A)(9). If soil aquifer treatment or other aspects of site conditions are used to meet BADCT requirements, the applicant shall document performance of the site in the design report or the hydrogeologic report;
4. A description of planned normal operation;
5. A description of key maintenance activities and a description of contingency and emergency operation for the facility;
6. A description of construction management controls;
7. A description of the facility startup plan, including preoperational testing, expected treated wastewater characteristics and monitoring requirements during startup, expected time-frame for meeting performance requirements specified in R18-9-B204, and any other special startup condition that may merit consideration in the individual permit;
8. A site diagram depicting compliance with the setback requirements established in R18-9-B201(I) for the facility at design flow, and for each phase if the applicant proposes expansion of the facility in phases;
9. The following flow information in gallons per day for the proposed sewage treatment facility. If the application proposes expansion of the facility in phases, the following flow information for each phase:
   a. The design flow of the sewage treatment facility. The design flow is the average daily flow over a calendar year calculated as the sum of all influent flows to the facility based on Table 1, Unit Design Flows, unless a different basis for determining influent flows is approved by the Department;
   b. The maximum day. The maximum day is the greatest daily total flow that occurs over a 24-hour period within an annual cycle of flow variations;
   c. The maximum month. The maximum month is the average daily flow of the month with the greatest total flow within the annual cycle of flow variations;
   d. The peak hour. The peak hour is the greatest total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations;
   e. The minimum day. The minimum day is the least daily total flow that occurs over a 24-hour period within the annual cycle of flow variations;
   f. The minimum month. The minimum month is the average daily flow of the month with the least total flow within the annual cycle of flow variations; and
   g. The minimum hour. The minimum hour is the least total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations; and
10. Specifications for pipe, standby power source, and water and sewer line separation.

B. The Department may inspect an applicant's facility without notice to ensure that construction conforms to the design report.

Historical Note

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

R18-9-B203. Engineering Plans and Specifications

A. A person applying for an individual permit for a sewage treatment facility with a design flow under one million gallons per day, shall submit engineering plans and specifications to the Department. The Director may waive this requirement if the Director previously approved engineering plans and specifications submitted by the same owner or operator for a sewage treatment facility with a design flow of more than one million gallons per day.

B. A person applying for an individual permit for a sewage treatment facility with a design flow of one million gallons per day or greater shall submit engineering plans and specifications if,

upon review of the design report required in R18-9-B202, the Department finds that:

1. The design report fails to provide sufficient detail to determine adequacy of the proposed sewage treatment facility design;
2. The described design is innovative and does not reflect treatment technologies generally accepted within the industry;
3. The Department's calculations of removal efficiencies based on the design report show that the treatment facility cannot achieve treatment performance requirements;
4. The design report does not demonstrate:
   a. Protection from physical damage due to a 100-year flood,
   b. Ability to continuously operate during a 25-year flood, or
   c. Provision for a standby power source;
5. The design report shows inconsistency in sizing or compatibility between two or more unit process components of the sewage treatment facility;
6. The designer of the facility has:
   a. Designed a sewage treatment facility of at least a similar size on less than three previous occasions,
   b. Designed a sewage treatment facility that has been the subject of a Director enforcement action due to the facility design, or
   c. Been found by the Board of Technical Registration to have violated a provision in A.R.S. Title 32, Chapter 1;
7. The permittee seeks to expand its sewage treatment facility and the Department believes that the facility will require upgrades to the design not described and evaluated in the design report to meet the treatment performance requirements; or
8. The construction does not conform to the design report if the sewage treatment facility has already been constructed.

C. The Department shall review engineering plans and specifications upon request by an applicant seeking a permit for a sewage treatment facility, regardless of its flow.

D. The Department may inspect an applicant's facility without notice to ensure that construction generally conforms to engineering plans and specifications, as applicable.

E. Before discharging under a permit, the permittee shall submit an Engineer's Certificate of Completion signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department, that confirms that the facility is constructed according to the Department-approved design report or plans and specifications, as applicable.

Historical Note

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

R18-9-B204. Treatment Performance Requirements for a New Facility

A. Definition. "Week" means a seven-day period starting on Sunday and ending on the following Saturday.

B. An owner or operator of a new sewage treatment facility shall ensure that the facility meets the following performance requirements upon release of the treated wastewater at the outfall:

1. Secondary treatment levels.
   a. Five-day biochemical oxygen demand (BOD_5) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average), or carbonaceous biochemical oxygen demand ($CBOD_5$) less than 25 mg/l (30-day average) or 40 mg/l (seven-day average);
   b. Total suspended solids (TSS) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average);
   c. pH maintained between 6.0 and 9.0 standard units; and
   d. A removal efficiency of 85 percent for BOD_5, $CBOD_5$, and TSS;
2. Secondary treatment by waste stabilization ponds is not considered BADCT unless an applicant demonstrates to the Department that site-specific hydrologic and geologic characteristics and other environmental factors are sufficient to justify secondary treatment by waste stabilization ponds;
3. Total nitrogen in the treated wastewater is less than 10 mg/l (five-month rolling geometric mean). If an applicant demonstrates, using appropriate monitoring that soil aquifer treatment will produce a total nitrogen concentration less than 10 mg/l in wastewater that percolates to groundwater, the Department may approve soil aquifer treatment for removal of total nitrogen as an alternative to meeting the performance requirement of 10 mg/l at the outfall;
4. Pathogen removal.
   a. For a sewage treatment facility with a design flow of less than 250,000 gallons per day at a site where the depth to the seasonally high groundwater table is greater than 20 feet and there is no karstic or fractured bedrock at the surface:
      i. The concentration of fecal coliform organisms in four of the wastewater samples collected during the week is less than 200 cfu/100 ml or the concentration of *E. coli* bacteria in four of the wastewater samples collected during the week is less than 126 cfu/100 ml, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 800 cfu/100 ml or the single sample maximum concentration of *E. coli* bacteria in a wastewater sample is not greater than 504 cfu/100 ml; and
      iii. An owner or operator of a facility may request a reduction in the monitoring frequency required in subsection (B)(4)(a)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(a)(i) and (ii) at the discharge point;
   b. For any other sewage treatment facility:
      i. No fecal coliform organisms or no *E. coli* bacteria are detected in four of the wastewater samples collected during the week, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 23 cfu/100 ml or the single sample maximum concentration of *E. coli* is not greater than 15 cfu/100 ml;
      iii. An owner or operator may request a reduction

in the monitoring frequency required in subsection (B)(4)(b)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(b)(i) or (ii) at the discharge point;

c. An owner or operator may use unit treatment processes, such as chlorination-dechlorination, ultraviolet, and ozone to achieve the pathogen removal performance requirements specified in subsections (B)(4)(a) and (b);

d. The Department may approve soil aquifer treatment for the removal of fecal coliform or *E. coli* bacteria as an alternative to meeting the performance requirement in subsection (B)(4)(a) or (b), if the soil aquifer treatment process will produce a fecal coliform or *E. coli* bacteria concentration less than that required under subsection (B)(4)(a) or (b), in wastewater that percolates to groundwater;

5. Unless governed by A.R.S. § 49-243(I), the performance requirement for each constituent regulated under R18-11-406(B) through (E) is the numeric Aquifer Water Quality Standard;

6. The performance requirement for a constituent regulated under A.R.S. § 49-243(I) is removal to the greatest extent practical regardless of cost.

a. An operator shall minimize trihalomethane compounds generated as disinfection byproducts using chlorination, dechlorination, ultraviolet, or ozone as the disinfection system or using a technology demonstrated to have equivalent or better performance for removing or preventing trihalomethane compounds.

b. For other pollutants regulated by A.R.S. § 49-243(I), an operator shall use one of the following methods to achieve industrial pretreatment:

i. Regulate industrial sources of influent to the sewage treatment facility by setting limits on pollutant concentrations, monitoring for pollutants, and enforcing the limits to reduce, eliminate, or alter the nature of a pollutant before release into a sewage collection system;

ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or

iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and

7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

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

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);

2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and

3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

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

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:

a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or

b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.

2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

General and Specific Statutes for
Title 18, Chapter 9, Article 2

49-104. Powers and duties of the department and director

A. The department shall:
   1. Formulate policies, plans and programs to implement this title to protect the environment.
   2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
   3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
   4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
   5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
   6. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
   7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
   8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
   9. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.
   10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
   11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
   12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
   13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
   14. Assist the department of health services in recruiting and training state, local and district health department personnel.
   15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
   16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
   17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This provision shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

B. The department, through the director, shall:
   1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
    (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
    (b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:
    (a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.
    (b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

    (a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

    (b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

    (a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

    (b) The availability of other funds for the duties performed.

    (c) The impact of the fees on the parties subject to the fees.

    (d) The fees charged for similar duties performed by the department, other agencies and the private sector.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other

law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:
   1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
   2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-203. Powers and duties of the director and department

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
   3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
   4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
   5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
   6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
   7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
   8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
   9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:
1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.
D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.
B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:
   1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
   2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
   3. Injection wells.
   4. Land treatment facilities.
   5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
   6. Mine tailings piles and ponds.
   7. Mine leaching operations.
   8. Underground water storage facilities.
   9. Sewage treatment facilities, including on-site wastewater treatment facilities.
   10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.
C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for such a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.
D. The director shall publish a list of the names and locations of existing facilities that are required to obtain an aquifer protection permit. The director may revise the list as needed. Any revised list shall contain deadlines for the submittal of applications for aquifer protection permits, based on the degree of risk to the public health and welfare and the environment and based on a work plan of the director

designed to process all applications for an aquifer protection permit no later than January 1, 2004 for nonmining facilities and no later than January 1, 2006 for mining facilities.

E. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, shall be available to the public on request.

F. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-241.01. Groundwater protection permit facilities; schedule; definition

A. The director shall complete the issuance or denial of aquifer protection permits or clean closure approval for all groundwater protection permit facilities on the following schedule:
   1. By January 1, 2004, for all groundwater protection permits for nonmining facilities.
   2. By January 1, 2006, for all groundwater protection permits for mining facilities.

B. The failure by the director to issue or deny an aquifer protection permit for a groundwater protection permit facility within the time prescribed by this section does not excuse a person from continuing to comply with all statutory and regulatory requirements applicable to that person's facility.

C. For purposes of this section, "groundwater protection permit facility" means either of the following:
   1. A facility for which a groundwater quality protection permit was issued pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.
   2. A facility for which a notice of disposal was filed pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

49-241.02. Payment for aquifer protection permit fees; definitions

A. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees for aquifer protection permits, including maximum fees and fees for individual or area-wide permits, complex and standard modifications to permits and clean closure of a nonpermitted facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

B. Each permit action application submitted by the applicant is subject to a maximum fee.

C. Notwithstanding any other provision in this section, an applicant may request that the department waive the applicable maximum fee for processing an application for a permit action. On requesting the waiver, the applicant agrees to pay the total direct costs incurred by the department in processing the application and the department may process the application for a permit action.

D. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

E. The department shall review the revenues derived from and expenses incurred for processing permit action applications through June 30, 2014 to determine the adequacy of the maximum fees, and by August 31, 2014, the department shall issue a report to the legislature on its findings.

F. For the purposes of this section:
   1. "Complex modification" means, for purposes of the mining sector, any of the following:
      (a) Any new tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance required to have an individual permit under this article, unless this new facility is within an approved passive containment capture zone under section 49-243, subsection G, paragraph 1.

(b) The expansion of the footprint of any tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance permitted under this article if the expanded facility is not located within a passive containment capture zone under section 49-243, subsection G, paragraph 1, and the expansion either:
   (i) Requires expansion of the pollutant management area and a new or relocated point of compliance.
   (ii) Extends over a geologic unit of higher hydraulic conductivity than the original facility, unless the original facility is lined and the same liner is extended to cover the entire expansion area.
(c) A new or expanded waste rock pile is not considered to be a discharging facility under section 49-241, subsection B and may be categorized as a complex modification for purposes of this section only if the department determines all of the following:
   (i) The new or expanded waste rock pile otherwise qualifies as a discharging facility and is not exempted under section 49-250.
   (ii) The new or expanded waste rock pile is located outside of a passive containment capture zone under section 49-243, subsection G, paragraph 1.
   (iii) The new or expanded waste rock pile either requires expansion of the pollutant management area and a new or relocated point of compliance or it extends over a geologic unit of higher hydraulic conductivity than the original facility.

2. "Maximum fee" means the maximum amount the director establishes by rule for services for a permit action.
3. "Permit action" means:
   (a) Issuance of an individual or area-wide aquifer protection permit to operate or to close.
   (b) Issuance of a complex modification of an individual or area-wide aquifer protection permit.
   (c) Issuance of a clean closure approval.
   (d) Issuance of a standard modification of an individual or area-wide aquifer protection permit.
   (e) Denial of any application.
   (f) Processing any permit action application request that the applicant withdraws.

G. The department shall adopt a rule to define "complex modification" for other nonmining aquifer protection permit sectors.

49-242. Procedural requirements for individual permits; annual registration of permittees; fee

A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.
B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to navigable waters to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.
C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.
D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an

annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

E. Only for a one-time rule making after the effective date of this amendment to this section, the director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase.

F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.

49-243. Information and criteria for issuing individual permit; definition

A. A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:
   1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.
   2. A description of how the facility will be operated.
   3. Existing and proposed pollutant control measures.
   4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.
   5. The use of water from aquifers in the discharge impact area.
   6. The existing quality of the water in the aquifers in the discharge impact area.
   7. The characteristics of the pollutants discharged by the facility.
   8. Closure strategy.
   9. Any other relevant federal or state permits issued to the applicant.
   10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:
   1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available

demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.
(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.
(c) The age of equipment and facilities involved.
(d) The industrial and control process employed.
(e) The engineering aspects of the application of various types of control techniques.
(f) Process changes.
(g) Non-water quality environmental impacts.
(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.
3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.
2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.
2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).
3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:
1. Monitoring requirements.
2. Record keeping and reporting requirements.
3. Contingency plan requirements.
4. Discharge limitations.
5. Compliance schedule requirements.
6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.
7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.
8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:
1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.
2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:
1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.
2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal

agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial responsibility by means of a self-assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.
4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.
5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.
6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.
7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.
3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.
4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.

B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.

C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:
   1. The petition identifies the class of facilities for which rule adoption is requested.
   2. The petition includes a description of the presumptive controls for the requested class of facilities.
   3. The petition complies with section 41-1033.
   4. The class of facilities described in the petition satisfies subsection A of this section.

D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.
2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:
   (a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.
   (b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:
      (i) The property boundary.
      (ii) Any point of an existing or reasonably foreseeable future drinking water source.
      (iii) Seven hundred fifty feet from the edge of the pollutant management area.
3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:
   1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.
   2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:
   1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
   2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
   3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:
   1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
      (a) The vadose zone injection wells are registered pursuant to section 49-332.
      (b) The discharge occurs only in response to storm events.
      (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The

monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.

(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.

(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
   (a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
   (b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
   (c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.
3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:
   (a) The discharges are subject to a valid national pollutant discharge elimination system permit.
   (b) The discharges occur only in response to storm events.
   (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:
   1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.
   2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.
   3. On issuing a general permit containing best management practices, make a reasonable effort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:
   1. On-site facilities for urban runoff.
   2. Storm sewers.
   3. Urban runoff.
   4. Silvicultural activities.
   5. Septic tank systems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:

1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.
2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a designated region if the director determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices, and in doing so shall consider any recommendation of the agricultural best management practices advisory committee established under section 49-248.

D. In adopting agricultural best management practices, the director shall consider:
   1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.
   2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article after considering any recommendation submitted by the advisory committee established under section 49-248.

49-248. Agricultural best management practices advisory committee

A. The agricultural best management practices advisory committee is established to develop and recommend best management practices for grazing activities as defined in section 49-202.01 and to develop and recommend best management practices for concentrated animal feeding operations. The directors, or the directors' designees, from the department of environmental quality, the Arizona department of agriculture and the department of water resources and the dean of the college of agriculture of the university of Arizona, or the dean's designee, shall serve on the advisory committee.

B. The governor shall appoint ten members to the advisory committee as follows:
   1. Two persons who are actively engaged in dairying.
   2. Two persons who are actively engaged in commercial livestock operations.

3. One person who is actively engaged in the production of swine.
4. One person who is actively engaged in the production of poultry.
5. One hydrologist from the university of Arizona college of agriculture.
6. Two persons who are actively engaged in cattle grazing.
7. One person who is actively engaged in sheep grazing.

C. Appointive members shall be appointed to terms of six years and may be reappointed to one additional term. Members are not entitled to compensation for their services as such but are entitled to reimbursement for expenses as provided by law for travel on, and attending, official business. The committee shall elect a chairperson from among the appointive members to serve a two year term as chairperson. The chairperson may be reelected. The committee shall meet on the call of its chairperson or at the request of a majority of its appointive members. The department of environmental quality, the Arizona department of agriculture, the department of water resources and the college of agriculture of the university of Arizona shall cooperate with, provide technical and expert assistance to and supply data and other necessary information to the advisory committee. The department of environmental quality shall furnish necessary staff support and meeting facilities to the advisory committee.

D. The advisory committee shall develop and recommend to the director best management practices for discharges from a regulated agricultural activity considering the requirements of section 49-247.

E. The advisory committee may appear or be represented at any administrative proceeding for adopting the agricultural best management practices.

F. The advisory committee shall periodically reexamine, evaluate and propose any modification to agricultural best management practices necessary to meet the requirements of this article. The advisory committee may recommend modifications to agricultural best management practices at any time on its own initiative.

49-249. Aquifer pollution information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director may, by rule, exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from such facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:
1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).
    (d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.
19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

(f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
(g) Foundation or footing drains in which flows are not contaminated with process materials.
(h) Occupational safety and health administration or mining safety and health administration safety equipment.

24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:
   1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.
   2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:
      (a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.
      (b) The breakdown or upset will be corrected in a reasonable period of time.
   3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:
   1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.
   2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit

pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of work justifying a schedule for collecting the technical information necessary to apply.

D-5

ARIZONA NATUROPATHIC PHYSICIANS MEDICAL BOARD (F-16-0101)
Title 4, Chapter 18, Article 6, Naturopathic Medical Assistants

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-5**

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

FROM: Chris Kleminich, Staff Attorney

DATE: December 18, 2015

SUBJECT: **ARIZONA NATUROPATHIC PHYSICIANS MEDICAL BOARD (F-16-0101)**
Title 4, Chapter 18, Article 6, Naturopathic Medical Assistants

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Naturopathic Physicians Medical Board (Board) is to "promote the safe and professional delivery of naturopathic services and treatment in this state." Laws 2005, Ch. 30, § 3. The Board has seven members, four of which are physician members and three of which are public members.

This five-year-review report covers five rules in A.A.C. Title 4, Chapter 18, Article 6.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 6 contains five rules, related to definitions; medical assistant qualification; application for medical assistant certification; renewal of medical assistant certificate; and authorized procedures for medical assistants.

Year that Each Rule was Last Amended or Newly Made

The rules were newly made on June 4, 2005.

Proposed Action

The Board intends to amend Sections 603 and 605.

Summary of Reasons for the Proposed Action

In Section 603, the term "signed and dated" should be replaced with the term "verified". In addition, a provision should be added which grants the Board the ability to collect a public benefits statement, in accordance with A.R.S. § 41-1080. In Section 605, the term "Massage Therapy" should be removed from subsection (A)(7)(e).

Exemption or Request and Approval for Exception from the Moratorium

The Board has not yet requested an exception from the moratorium for these rules.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Board has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Board indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Board has not received any written criticisms of the rules covered by this report during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. As general rulemaking authority, the Board cites to A.R.S. § 32-1504(A)(1), under which the Board shall "[a]dopt rules that are necessary or proper for the administration of this chapter [Title 32, Chapter 14, Naturopathic Medicine]." The Board also cites to specific rulemaking authority. Notably, under A.R.S. § 32-1504(A)(3), the Board shall "[a]dopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Board indicates that the rules are consistent with other rules and statutes, with the exception of Section 603. In accordance with A.R.S. § 41-1080, the rule should be amended to allow the Board to collect public benefits statements from applicants.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Board indicates that the rules are clear, concise, and understandable, with two exceptions. First, in Section 603(1), the term "signed and dated" should be struck, and replaced with the term "verified". Second, in Section 605(A)(7)(e), the term "Massage therapy" should be removed from the list of practices that constitute physiotherapy.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. No federal laws directly correspond to the rules.

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable. None of the rules were made after July 29, 2010.

   b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. No course of action was identified in the 2010 five-year-review report.

11. **Has the agency included a proposed course of action?**

Yes. As noted above, the Board intends to amend Sections 603 and 605. Assuming receipt of an exception from the moratorium, the Board anticipates presenting these amendments to the Council by December 2016.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-5**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **ARIZONA NATUROPATHIC PHYSICIANS MEDICAL BOARD (F-16-0101)**
Title 4, Chapter 18, Article 6, Naturopathic Medical Assistants

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the Article 6 rules contained in the five-year-review report.

The Article 6 rules reviewed address qualifications, the application/ renewal process, and procedures that Naturopathic Medical Assistants are authorized to perform. A recent history of the number of medical assistants certified by the Board is provided below.

Number of Naturopathic Medical Assistants certified:

- FY 2011 11 medical assistants
- FY 2012 13 medical assistants
- FY 2013 13 medical assistants
- FY 2014 15 medical assistants
- FY 2015 19 medical assistants

The Board believes the economic impact has been as predicted for the rules in Article 6.

<u>2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

Generally, the Board has determined that the rules impose the least burden and costs to the regulated community. Two rules will be amended. R4-18-603 (*Application for Medical Assistant Certification)* will be amended to require more specific information requirements on

medical assistant applications. R4-18-605 (*Authorized Procedures for Medical Assistants)* will be amended by removing 'message therapy' from the list of procedures for which a medical assistant is authorized to perform.

Medical assistants do not have the required training to perform message therapy in the State of Arizona; so this procedure should be deleted from the authorized list. However, the Board reports that there have been no reports of medical assistants performing message therapy and that supervising physicians of medical assistants report they do not allow medical assistant to perform message therapy.

While the proposed Article 6 amendments would increase the rules clarity, the Board's assessment is that the suggested amendments would not result in significant benefit for the regulated community; therefore, an exemption to the rule moratorium has not been sought for the Article 6 rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

State Of Arizona
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1400 West Washington • Suite 230 • Phoenix, AZ 85007 Phone, 602-542-8242, FAX 602-542-3093, Email Gail.anthony@aznd.gov
www.aznd.gov
Douglas A. Ducey - Governor

October 26, 2015

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: Five-year-review of A.A.C. Title 4, Chapter 18, Article 6

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the State of Arizona Naturopathic Physicians Medical Board submits for your approval a report on a review of the referenced rules. The Board reviewed all the referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies that it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me.

Sincerely,

Gail Anthony, Executive Director
gail.anthony@aznd.gov
602 542-8242

STATE OF ARIZONA

NATUROPATHIC PHYSICIANS MEDICAL BOARD

FIVE-YEAR-REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

December 2015

2015 FIVE-YEAR-REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

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FIVE-YEAR-REVIEW SUMMARY

Statutory Authority

The Naturopathic Physicians Medical Board (Board) is statutorily vested with the duty to issue licenses and certificates to applicants who are qualified. A.R.S. § 32-1526. A.R.S. § 32-1504(A)(1) requires the Board to “adopt rules that are necessary or proper for the administration of this chapter.” A.R.S. § 32-1504(A)(2) requires the Board to administer and enforce A.R.S. § 32-1501 *et seq.* and rules adopted by the Board. A.R.S. § 32-1504(A)(3) requires the Board to "adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine". A.R.S. § 32-1559 sets out basic procedures a naturopathic medical assistant is authorized to perform under the supervision of a licensed naturopathic medical doctor in the State of Arizona. Statute also allows the Board to prescribe by rule, medical treatments and procedures a naturopathic medical assistant may perform, under the direct supervision of the naturopathic doctor. The application requirements for a naturopathic medical assistant are found in A.R.S. § 32-1524. A naturopathic medical assistant is required to renew a certificate each year, according to A.R.S. § 32-1526(D). According to A.R.S. § 32-1526(G), a naturopathic medical assistant who fails to renew a certificate by the due date shall pay a late renewal fee as prescribed in A.R.S. §32-1527. Further, the certificate "automatically expires if not renewed within sixty days after the due date." A.R.S. § 32-1559(E) states it is unlawful for a person to "use the title medical assistant or a related abbreviation unless that person is working as a naturopathic medical assistant pursuant to this section." A.R.S. §32-1526 (H) states "the Board may reinstate a license or certificate on payment of all renewal and penalty fees.

The Rules

This report analyzes the five rules in Article 6 for naturopathic medical assistants that became effective on June 4, 2005. The rules in Article 6 contain provisions for definitions, qualifications, initial and renewal applications, and authorized procedures for medical assistants.

After review of the rules, the Board determined the following changes should be made in order to achieve consistency with state and federal statute and rules.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

All of the rules have general statutory authority in A.R.S. § 32-1504(A)(1) and A.R.S. § 32-1504(A)(2). Specific statutory authority is as stated in each rule.

3. Analysis of effectiveness in achieving the objective

All of the rules are effective in achieving the objective.

4. Analysis of consistency with state and federal statutes and rules

Most of the rules are consistent with state and federal statutes and rules, with the following exception. R4-18-605(A)(7), allows for a naturopathic medical assistant certified by the board, to perform physiotherapy; including (e) "massage therapy".

The State of Arizona Massage Therapy Board, issues massage therapy licensure to qualified applicants. Pursuant to A.R.S. § 32-4222(B), an applicant for licensure as a massage therapists shall either: "1. Have successfully completed a course of study of massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a board recognized school in this state that is accredited by an agency recognized by the secretary of the United States department of education. 2. Have done both of the following: (a) Successfully completed a course of study in massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a school in this state that is licensed by the state board for private postsecondary education or at a school outside of this state that is recognized by the board pursuant to section 32-4228. (b) Successfully passed an examination administered by a national board accredited by the certifying agency that has been approved by the national commission on competency assurance and that is in good standing with that agency or have successfully passed an examination that is administered or approved by the board."

Pursuant to A.R.S. § 32-4201(5), "Massage therapy" means the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement or provide general or specific therapeutic benefits:

(a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head. (b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical or electrical devices. (c) Any combination of range of motion, directed, assisted or passive movements of the

joints. (d) Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows and similar applications of products to the skin.

A.R.S. §32-4201(6) defines the "Practice of massage therapy" as the application of massage therapy to

any person for a fee or other consideration. Practice of massage therapy does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, homeopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, nursing, occupational therapy, athletic training, physical therapy, acupuncture or podiatry is required by law.

The education requirements to become a licensed Massage Therapist in the State of Arizona are beyond the scope of training provided in an approved medical assistant program. Massage therapy should be removed from the list of approved naturopathic medical assistant procedures.

In order to be consistent, the Board would like to make changes to R4-18-603(1), by striking "signed and dated", inserting "verified", and adding, (g) the ability to collect public benefits statement.

5. <u>Status of enforcement of the rules</u>

The Board currently enforces all of the rules.

6. <u>Analysis of clarity, conciseness, and understandability</u>

All of the rules are clear, concise, and understandable.

7. <u>Summary of the written criticisms of the rule received within the last 5 years</u>

The Board has not received any written criticism of the rules within the last five years.

8. <u>Estimated economic, small business and consumer impact comparison</u>

In this comparison, minimal means less than $1,000, moderate means between $1,000 and $10,000, and substantial means greater than $10,000.

The Board made rules in Articles 6 that became effective on June 4, 2005. The Board has attached the economic impact statement (EIS) related to the rulemaking that was approved by GRRC at the time of the rulemaking, and have not changed since that time.

As anticipated by the Board upon promulgation of the rules, the rules have had minimal to moderate economic impact on the Board, physicians, and consumers of naturopathic services.

In 2005 the Board certified 23 naturopathic medical assistants. That number decreased in 2010 to 13, and now in 2015 has risen to 19 naturopathic medical assistants. The Board certified 11 medical assistants in 2011, 13 in 2012, 13 in 2013 and 15 in 2015. The cost for an applicant to

obtain a certificate or certificate holder to renew a certificate is minimal. The Board charges an initial application fee of $100.00, and does not charge for issuance of the certificate. The Board does charge a renewal fee according to R4-18-107(C)(3) per A.R.S. 32-1527(A)(6). The current renewal fee for the certificate is $150.00 due by July 1st of each year. If a naturopathic medical assistant renews the certificate within 60 days after the due date, a late fee of $75.00 is required. There have been no disciplinary actions taken against a medical assistant.

As a requirement to obtain certification as a naturopathic medical assistant, an applicant must graduate from an approved medical assistant program. The Board considers the medical assistant program approved if the course of study is provided at an institution accredited by the Commission on Accreditation of Allied Health Education Programs, the Commission for the Accrediting Bureau of Health Education Schools, or an accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States or by an organization recognized by the American Association of Naturopathic Physicians. The cost of a medical assistant program ranges from minimal to moderate.

Businesses, including small businesses that hire naturopathic medical assistants, benefit from rules that state the minimum competencies a naturopathic medical assistant must meet and the tasks that may be performed by them.

Consumers benefit from the services provided by a naturopathic medical assistant because naturopathic physicians are able to spend more time with patients.

9. Summary of business competitiveness analyses of the rules

No analysis has been submitted.

10. Status of the completion of action indicated in the previous five-year-review report

No course of action was identified in the 2010 Report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Analysis of stringency compared to federal laws

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037.

The rules were made prior to July 29, 2010.

14. Proposed course of action

Under R4-18-605(A)(7)(e), ; the removal of "Massage Therapy".

Under R4-18-603(1), striking "signed and dated" inserting "verified", and adding (g) the ability to collect public benefits statement, as required pursuant to A.R.S. § 41-1080.

The Board has not identified any other changes that need to be made to the rules in Article 6.

INFORMATION FOR INDIVIDUAL RULES

R4-18-601. Definitions

2. <u>Objective of the rule</u>

The objective of the rule is to define the meaning of terms used in the rules to make them understandable to the reader and afford their consistent interpretation and application.

R4-18-602. Medical Assistant Qualification

1. <u>Authorization of the rule by existing statute</u>

Specific authority for the rule is in A.R.S. § 32-1504(A)(3).

2. <u>Objective of the rule</u>

The objective of the rule is to state that an individual must complete an approved medical assistant program to qualify for certification as a medical assistant.

R4-18-603. Application for Medical Assistant Certification

1. <u>Authorization of the rule by existing statute</u>

Specific authority for the rule is A.R.S. § 32-1524 and A.R.S. § 32-1527.

2. <u>Objective of the rule</u>

The objective of the rule is to state the information and documents that must be submitted to the Board when applying for a certificate.

R4-18-604. Renewal of Medical Assistant Certificate

1. <u>Authorization of the rule by existing statute</u>

Specific authority for the rule is A.R.S. § 32-1526.

2. <u>Objective of the rule</u>

The objective of the rule is to state the information and fee that must be submitted to the Board for renewal of a certificate.

R4-18-605. Authorized Procedures for Medical Assistants

1. <u>Authorization of the rule by existing statute</u>

Specific authority for the rule is A.R.S. § 32-1559.

2. <u>Objective of the rule</u>

The objective of the rule is to state the procedures that a medical assistant is allowed to perform.

General and specific statutes authorizing the rules.

32-1559. Naturopathic medical assistants; certification; supervision; duties; use of title

A. A person who wishes to be certified as a naturopathic medical assistant shall submit an application as prescribed in section
32-1524.
B. A certified naturopathic medical assistant **may assist a doctor of naturopathic medicine** who is licensed under this chapter.
C. **The board by rnle may prescribe naturopathic medical treatment procedures that a naturopathic medical assistant certified under** this section may perform **under the direct supervision of a doctor of naturopathic medicine** who is licensed under this chapter if the board determines that these procedures:
1. May be competently performed by the assistant.
2. Do not exceed the procedures that the supervising doctor of naturopathic medicine has been licensed by this state to perform.
D. A naturopathic medical assistant may do clerical tasks without direct supervision if the tasks do not involve the treatment of a person's condition or other procedures that are prohibited under this chapter.
E. A person shall not use the title "medical assistant" or a related abbreviation unless that person is working as a naturopathic medical assistant pursuant to this section

7. To work as a naturopathic medical assistant except under the direct supervision of a doctor of naturopathic medicine licensed pursuant to this chapter.
8. To use the title "medical assistant" or a related abbreviation unless the person is working as a medical assistant under the direct supervision of a doctor of naturopathic medicine .

32-1555 (7-8) It is unlawful to 7. To work as a naturopathic medical assistant except under the direct supervision of a doctor of naturopathic medicine licensed pursuant to this chapter.8. To use the title "medical assistant" or a related abbreviation unless the person is working as a medical assistant under the direct supervision of a doctor of naturopathic medicine.

32-1504(3) **Adopt rules regarding the qualifications of medical assistants** who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.

32-1501(21). "Medical assistant" or "naturopathic medical assistant" means a person who is certified by the board as a medical assistant, who assists a doctor of naturopathic medicine and **who may perform delegated procedures that are commensurate with the assistant's education and training under the direct supervision of a doctor of natnropathic medicine** and that do not include diagnosing, designing or modifying established treatment programs or those procedures prohibited by the board or by this chapter.

R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training
A holder of a certificate to engage in a clinical or preceptorship training shall renew the certification by submitting before the anniversary date of the certificate the appropriate fee and;

1. A completed form provided by the Board that allows the Board to determine whether the holder of the certificate continues to meet the requirements of A.R.S. Title 32 Chapter 14 and R4-18-501; and
2. A letter from the chief medical officer stating that the applicant is in good standing in the training program.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program
A chief medical officer applying on behalf of a school of naturopathic medicine for a certificate to conduct clinical training, or on behalf of a preceptorship training program, shall submit to the Board the fee indicated in R4-18-107 and an application form provided by the Board, signed and dated by the chief medical officer, that contains:

1. The chief medical officer's name, mailing address, and telephone number;
2. The name and address of the training program and of each facility where training will be conducted;
3. The name, professional degree, license number, and licensing agency for each physician who will be providing supervision in the training program; and
4. A mission statement outlining the goals of the training program.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-504. Annual Renewal of Certificate to Conduct a Clinical or Preceptorship Training Program
A certificate to conduct clinical or preceptorship training shall be renewed before the anniversary date, by submitting the appropriate fee listed in R4-18-107 and a completed form.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

R4-18-601. Definitions
In addition to the definitions in A.R.S. § 32-1501 and R4-18-101, the following definitions apply to this Article:

1. "Approved medical assistant program" means a course of study for medical assistants that is provided:
   a. At an institution that is accredited by:
      i. The Commission on Accreditation of Allied Health Education Programs,
      ii. The Commission for the Accrediting Bureau of Health Education Schools, or
      iii. An accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States, or
   b. By an organization recognized by the American Association of Naturopathic Physicians.
2. "Employ" means to compensate by money or other consideration for work performed.
3. "Medical history" means an account of an individual's past and present physical and mental health including the individual's illness, injury, or disease.
4. "Medication" means a drug as defined in A.R.S. § 32-1501 or a natural substance as defined in A.R.S. § 32-1581.
5. "Naturopathic practice" means a place where the practice of naturopathic medicine as defined in A.R.S. § 32-1501 takes place.
6. "Training" means classroom and clinical instruction completed by an individual as part of an approved medical assistant program.
7. "Treatment" means any of the acts included in the practice of naturopathic medicine as defined in A.R.S. § 32-1501.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-602. Medical Assistant Qualification
An individual shall complete an approved medical assistant program to qualify for certification as a medical assistant.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-603. Application for Medical Assistant Certification
An applicant for a medical assistant certificate shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:
   a. The applicant's name, mailing address, telephone number, and Social Security number;
   b. The applicant's date and place of birth;
   c. The applicant's height, weight, and eye and hair color;
   d. The name, address, and telephone number of the applicant's employer, if applicable;
   e. The name of the licensed physician who will supervise the applicant;
   f. The name and address of the institution where the applicant completed an approved medical assistant program;
2. A copy of a certificate of completion from an approved medical assistant program or a letter of completion from an approved medical assistant program signed by the person in charge of the approved medical assistant program;
3. A completed and legible fingerprint card; and
4. The fees required by the Board under A.R.S. § 32-1527.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-604. Renewal of Medical Assistant Certificate
An applicant for a renewal certificate shall submit to the Board:

1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains the applicant's:
   a. Name,
   b. Social Security number,
   c. Residence and naturopathic practice addresses, and
   d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1527.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-605. Authorized Procedures for Medical Assistants
A. A medical assistant may perform the following under the direct supervision of a physician:

1. Obtain a patient's medical history;
2. Obtain a patient's vital signs;
3. Assist a physician in performing a physical examination, surgical procedure, or treatment;
4. Perform a diagnostic test ordered by a physician including:
   a. An electrocardiogram;
   b. A peripheral vein puncture;
   c. A capillary puncture;
   d. Urine analysis;
   e. A hematology test; or
   f. Respiratory function testing;
5. Administer a medication:
   a. By mouth; or
   b. By subcutaneous or intra-muscular injection if the medical assistant received training on performing this type of administration from an approved medical assistant training program;
6. Monitor and remove an intravenous administration of a medication established by a supervising physician if the medical assistant received training on monitoring and removing an intravenous administration from an approved medical assistant training program.
7. Perform physiotherapy, which includes the following:
   a. Whirlpool treatment,
   b. Diathermy treatment,
   c. Electronic stimulation treatment,
   d. Ultrasound therapy,
   e. Massage therapy,
   f. Traction,
   g. Transcutaneous nerve stimulation,
   h. Colon hydrotherapy, or
   i. Hot and cold pack treatment.

B. A medical assistant shall not:
1. Diagnose a medical condition;
2. Design or modify a treatment program;
3. Prescribe a medication or natural substance;
4. Provide a patient with a prognosis;
5. Unless authorized by law, perform:
   a. An ionizing radiographic procedure,
   b. A surgical procedure,
   c. A central venous catheterization,
   d. An acupuncture needle insertion, or
   e. Manipulative therapy;
6. Administer or establish an intravenous medication;
7. Perform any procedure that requires precise placement of a needle into a patient by single or multiple injections including:
   a. Sclerotherapy,
   b. Prolotherapy,
   c. Mesotherapy, or
   d. Neurotherapy; or
8. Employ the medical assistant's supervising physician or have any financial interest in a naturopathic practice where the supervising physician is employed.

C. While assisting a naturopathic physician or performing a procedure delegated to the medical assistant, the medical assistant shall wear a clearly visible tag that states the individual is a medical assistant.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

R4-18-701. Time-frames for Board Decisions

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license, certification, or approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend a substantive review and overall time-frame by no more than 25 percent of the overall time-frame listed in Table 1.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license, certification, and approval granted by the Board is listed in Table 1.
1. The administrative completeness review time-frame begins on the day the Board receives the application form and the appropriate fee.
2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information.
3. The administrative completeness review time-frame and the overall time-frame are suspended from the date on the Board's notice until the date the Board office receives all missing information.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license, certification, and approval granted by the Board is listed in Table1.
1. The substantive review time-frame begins on the date of the Board's notice of administrative completeness.
2. If the Board determines that additional information or documentation is required, the Board shall send to the applicant a written request for that additional information or documentation.
3. The time-frame for the substantive review is suspended from the date the request for additional information or documentation is sent to the applicant, until the date on which all of the requested information is received.
4. The Board shall notify the applicant of the dates of all Board meetings at which the application will be considered.
5. The Board shall send a written notice of approval or denial to applicants within ten working days of the Board meeting at which the decision is made. An applicant may request a hearing on the decision within 30 days of the Board's action.

D. The Board shall consider an application withdrawn if within 360 days from the date of application the applicant fails to:
1. Supply the missing information requested under subsection (B)(2) or (C)(2); or
2. If applicable, take and obtain a minimum score of 75% on the Arizona Naturopathic Jurisprudence Examination.

E. During the administrative review period, an applicant may withdraw an application by requesting withdrawal in writing. During the substantive review period, the Board shall decide whether to grant a request to withdraw.

F. An applicant shall send written notice to the Board within 10 days from the date of any change of applicant's address.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0102)
Title 9, Chapter 18, Article 1, Per Capita Matching Funds

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-6**

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

FROM: Kara Kerker, Staff Attorney

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0102)**
Title 9, Chapter 18, Article 1, Per Capita Matching Funds

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "[t]o protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2000, Ch. 310, § 3.

This five-year review report covers the six (6) rules in 9 A.A.C. 18 (Chapter 18), Article 1, which relate to per capita matching funds (PCMF) for local health department services.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains five rules, which provide definitions applicable to Chapter 18; requirements for grant applications; the process for review of applications and awarding of grants; the minimum standard of personnel required at a local health department and the procedure to request a waiver of the requirement; the requirements for record retention and review; and requirements for notice to the Department.

Year that Each Rule was Last Amended or Newly Made

All of the rules reviewed were last amended on November 11, 2006.

Proposed Action

The Department does not plan to amend the rules at this time.

Summary of Reasons for the Proposed Action

The Department believes the rules are consistent with other statutes and rules; are enforced as written; are clear, concise, and understandable; and have not received any written criticisms in the last five years. Additionally, the Department indicates that there have been no funds allocated for PCMF grants by the Legislature since FY 2010. The Department intends to retain the rules as written in the event that funding is allocated for PCMF grants in the future.

Exemption or Request and Approval for Exception from the Moratorium

Not applicable.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that all the rules reviewed are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department indicates that it has not received any written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites general statutory authority for all of the rules reviewed. Under A.R.S. § 36-132(A)(1), the Department shall protect the health of the people of the state. The Department cites additional general statutory authority under A.R.S. § 36-136(F) where "[t]he director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health."

The Department cites to specific statutory authority under A.R.S. § 36-132(A)(2) which states, in pertinent part, the Department shall "provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel."

The Department cites A.R.S. § 36-189(A) as specific statutory authority for Article 1 where the Department "may use funds at its disposal and not otherwise appropriated to match funds provided by cities and counties to establish and maintain local health department services for any city or county, on such reasonable terms as it establishes by rule."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Department indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are not currently enforced as there have been no funds allocated by the Legislature since FY 2010. The Department indicates that if funding is allocated for PCMF grants in the future, the Department will resume enforcement of the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that all the rules are clear, concise, and understandable as written. The Department indicates that Rule 106 could be improved by rephrasing to clarify that 30-day timeframe applies only to changes in personnel, not to modification of the local health department's PCMF allocation plan. However, the Department has not proposed a course of action for this change.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

The Department indicates that the rules are not related to federal laws.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

The Department indicates that the rules were adopted prior to July 29, 2010, and do not require the issuance of a permit, license, or agency authorization.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In the previous five-year-review report, the Department indicated that it did not plan to amend the rules until substantive issues arose. The Department indicates that no substantive issues were identified since the last five year review report, and, as such, no changes were made to the Article 1 rules.

11. Has the agency included a proposed course of action?

No. The Department does not plan to amend the rules at this time.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2016 **AGENDA ITEM: D-6**

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

FROM: GRRC Economist

DATE: December 18, 2015

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0102)**
Title 9, Chapter 18, Article 1, Per Capita Matching Funds

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statements (EIS) from the most recent Department of Health Services (Department) rulemaking, completed in 2006, was reviewed for the rules in Article 1.

The rules reviewed provide the standards, terms, and procedures under which the matching funds from the Per Capita Matching Fund (PCMF) grant are distributed to local health departments. However, since FY 2010, matching funds have not been appropriated by the legislature; therefore, no funds were distributed. Anecdotal information received from the Department indicates that the discontinuation of matching funds has resulted in decreased service levels provided by local health departments.

The PCMF grant was originally established in 1968 and the enabling statutes were last amended in 2002 when the maximum per capita amount was increased from $1.00 to $1.25. With the transfer of behavioral health responsibilities to Arizona Health Care Cost Containment System (AHCCCS), FY 2017 statutory language concerning the PCMF grant will reference AHCCCS instead of the Division of Behavioral Health.

The Department believes the economic impact has generally been as predicted in the prior EIS for the rules in the Article 1.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules are effective and will be enforced when funding is appropriated for the PCMF grant.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Department of Health Services

Division for Planning and Operations
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DOUGLAS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

October 28, 2015

Bret Parke, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 18, Article 1

Dear Mr. Bret Parke:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 18, Article 1 is due to the Council no later than October 30, 2015. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 18, Article 1, Per Capita Matching Funds, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, copies of authorizing statutes, and copies of each rule reviewed are included in this package. As stated in the report, the Department does not intend to amend the rules at this time.

The Department certifies that the Department is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:vkg

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 18. DEPARTMENT OF HEALTH SERVICES

LOCAL HEALTH DEPARTMENT SERVICES

ARTICLE 1. PER CAPITA MATCHING FUNDS

October 2015

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

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ARTICLE 1. PER CAPITA MATCHING FUNDS

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FIVE-YEAR-REVIEW SUMMARY
LOCAL HEALTH DEPARTMENT SERVICES
ARTICLE 1. PER CAPITA MATCHING FUNDS

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people of the state of Arizona. A.R.S. § 36-136(F) requires the Department to promulgate rules necessary for the proper administration and enforcement of the laws relating to the public health.

A.R.S. § 36-189 authorizes the Department to use funds "not otherwise appropriated to match funds provided by cities and counties to establish and maintain local health department services" and authorizes the Department to establish by rule reasonable terms that local health departments are required to meet in order to receive matching funds. A.R.S. § 36-132(A)(2) requires the Department to "provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and [submit] a plan and budget ... to the Department for approval." If a local health department meets the minimum standards of personnel and performance established by the Department, the Department is required in A.R.S. § 36-189(A) to reimburse the local health department from funds appropriated for this purpose an amount up to 50% of the local health department's submitted budget, but not in excess of $1.25 per capita (or a prorated portion if sufficient funds are not available to meet the approved requests).

Arizona Administrative Code (A.A.C.) Title 9, Chapter 18, Article 1 contains rules that implement A.R.S. §§ 36-132 and 36-189 by providing the standards, terms, and procedures under which the matching funds are distributed to local health departments. Since FY 2010, there have been no funds allocated, so the Department did not distribute any funds. Accordingly, the rules are not currently enforced.

These rules were last amended at 12 A.A.R. 3715, effective November 11, 2006. The rules contained in this five-year-review report are effective in their current state and will be enforced when funding is appropriated by the Legislature for this purpose. The Department does not plan to amend 9 A.A.C. 18, Article 1 until further substantive issues are identified.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

General authority: A.R.S. §§ 36-132(A) and 36-136(F)

Specific authority: A.R.S. §§ 36-132(A) and 36-189(A)

2. The purpose of the rule

The purpose of the rule is to establish minimum standards of personnel and performance for a local health department in order for the Department to disburse matching funds to the local health department.

3. Analysis of effectiveness in achieving the objective

The rule is effective or mostly effective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

Since FY 2010, there have been no funds allocated, so the Department has not distributed any funds. Accordingly, the rules in this Article are not currently enforced. If funding is allocated for PCMF grants in the future, the Department would anticipate resuming enforcement of the rules in this Article.

6. Analysis of clarity, conciseness, and understandability

Except for the issue identified in the analysis of R9-18-106, the rules are clear, concise, and understandable.

7. Summary of the written criticism of the rule received within the last five years

The Department has not received any written criticisms of the rules in 9 A.A.C. 18, Article 1 in the past five years.

8. Economic, small business, and consumer impact comparison

The Department submitted an economic, small business, and consumer impact statement (EIS) with the rulemaking effective November 11, 2006, included in this report in Attachment A. The 2006 EIS identified cost bearers and beneficiaries as the Department, local health departments, and "society in general" (the public). The 2006 EIS designated costs as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

The 2006 EIS expected the Department to bear moderate costs to complete the rulemaking process. The Department believes this benefit has occurred as expected.

The 2006 EIS expected the Department and local health departments to experience a minimal-to-moderate benefit from the reduced staff time necessary to administer clearer rules with simplified requirements. Based on verbal feedback from stakeholders and stakeholder involvement in the rulemaking process in 2006, the Department believes this benefit has occurred as expected.

The 2006 EIS noted that local health departments might incur minimal costs associated with credentialing a registered nurse to fulfill waiver requirements as specified in R9-18-104. No waivers have been requested since the previous five-year-review report, and no waivers are currently expected for as long as the PCMF grant has no funding, so the actual economic impact has been no cost.

The 2006 EIS expected local health departments to incur minimal costs to retain records for five years rather than three years. The Department believes this is probably occurring, based on other requirements for record retention and the likelihood that local health departments are following the rule in anticipation of the PCMF grant being funded again in the future, but the Department has not verified whether this is occurring because the rules are not currently being enforced.

The 2006 EIS expected the public to experience a minimal-to-moderate benefit from local health department services made more abundant by the PCMF grant defraying some local health department costs and a minimal benefit from improved services as a result of additional training of registered nurses who do not meet certain criteria. The Department believes local health departments experienced the minimal-to-moderate benefit during the years that PCMF grant funding was in place, but that they are not currently experiencing that benefit. The Department believes there was no benefit from the additional training of registered nurses because there were no waiver requests indicating that a local health department had a registered nurse that needed to meet the requirements in R9-18-104(C).

The 2006 EIS expected there to be no direct impact on public or private employment in Arizona or on state revenues. No small businesses are subject to the rules, and there are no less intrusive or less costly alternatives for achieving the purpose of the rules.

9. <u>Summary of business competitiveness analyses of the rule</u>

The Department did not receive a business competitiveness analysis of the rules in the last five years

10. <u>Status of the completion of action in the previous five-year-review report</u>

In the previous five-year-review report, the Department did not plan to amend 9 A.A.C. 18, Article 1 until further substantive issues were identified. No further substantive issues

were identified and no amendments were made. Accordingly, the course of action the Department described in the previous five-year-review report was completed.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The rules establish requirements for local health departments to be eligible for reimbursement for costs to maintain local health services from funds appropriated to the Department for this purpose. No funds have been appropriated since the previous five-year-review report. No small businesses are subject to the rules, and there are no less intrusive or less costly alternatives for achieving the purpose of the rules.

12. Analysis of stringency compared to federal laws

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010 and do not establish licensing, certification, or permit requirements

14. Proposed course of action

The rules contained in this five-year-review report are effective in their current state and will be enforced when funding is appropriated by the Legislature for this purpose. The Department does not plan to amend 9 A.A.C. 18, Article 1 until further substantive issues are identified.

INFORMATION FOR INDIVIDUAL RULES

R9-18-101. Definitions

2. **The objective of the rule**

The objective of the rule is to define terms used in 9 A.A.C. 18, Article 1 so that a reader can understand requirements in the Article.

R9-18-102. Grant Application

2. **The objective of the rule**

The objective of the rule is to establish requirements for an application for a Per Capita Matching Grant that include:

a. The information and documentation required; and

b. The submission deadline.

R9-18-103. Review of Application and Awarding of Grant

2. **The objective of the rule**

The objective of the rule is to establish:

a. Procedures for approval or denial of an application;

b. Deadlines and notification requirements for the review, approval, and denial of applications; and

c. Deadlines and notification requirements for authorization of payment of Per Capita Matching Grant funds.

R9-18-104. Minimum Standard of Personnel; Waiver

2. **The objective of the rule**

The objective of the rule is to:

a. Specify the personnel that are required for the delivery of clinical services by a local health department,

b. Establish the credentials required for a registered nurse to provide direction for public health nursing services,

c. Provide a procedure for an individual to obtain a waiver of the requirements specified in (b),

d. Provide a procedure for the Department to approve or deny a waiver request specified in (b),

e. Provide an exception for any "registered nurse providing direction for public health nursing services" in Arizona on the date the Article became effective, and

f. Require a sanitarian providing environmental health services in the designated service area to be currently registered in Arizona.

R9-18-105. Record Retention and Review

2. **The objective of the rule**

The objective of the rule is to:

a. Establish records retention and accessibility requirements, and

b. Described the circumstances under which the Department may require a refund of funds paid under a Per Capita Matching Grant.

R9-18-106. Notice to Department

2. **The objective of the rule**

The objective of the rule is to require local health departments to notify the Department:

a. Within 30 days of any change in the physician, registered nurse, or sanitarian specified in R9-18-104; or

b. Upon any modification to a plan for which Per Capita Matching Funds were allocated.

7. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable, but could be improved by rephrasing to clarify that 30-day timeframe applies only to changes in personnel, not to modification of the local health department's PCMF allocation plan.

TITLE 9. HEALTH SERVICES

CHAPTER 18. DEPARTMENT OF HEALTH SERVICES LOCAL HEALTH DEPARTMENT SERVICES

ARTICLE 1. PER CAPITA MATCHING FUNDS

Section
R9-18-101. Definitions
R9-18-102. Grant Application
R9-18-103. Review of Application and Awarding of Grant
R9-18-104. Minimum Standard of Personnel; Waiver
R9-18-105. Record Retention and Review
R9-18-106. Notice to Department
R9-18-107. Renumbered

ARTICLE 1. PER CAPITA MATCHING FUNDS

R9-18-101. Definitions

In this Article, unless otherwise specified:

1. "Application" means the information and documents submitted to the Department by a local health department to obtain approval from the Department to receive funds through a Per Capita Matching Grant.
2. "Business hours" means the specific time period during a day in which a local health department is open to provide local health department services.
3. "Clinical services" means activities performed by a local health department that are:
   a. Provided to an individual within a local health department building or at a location specified by the local health department, and
   b. Intended to provide medical or nursing services to the individual.
4. "Communicable disease" means the same as in A.A.C. R9-6-101.
5. "Communicable disease control services" means activities intended to identify, prevent, or reduce the incidence, spread, or severity of communicable diseases.
6. "Department" means the Arizona Department of Health Services.
7. "Designated service area" means a geographical section of Arizona, specified by a local health department, in which local health department services are provided.
8. "Direction" means the same as in A.R.S. § 36-401.
9. "Electronic" means the same as in A.R.S. § 44-7002.
10. "Environmental health services" means activities intended to identify, prevent, or reduce the exposure of an individual to substances or conditions in air, water, food, soil, or objects with which the individuals may come into contact, which may adversely impact human health.
11. "Epidemiologic investigation" means the same as in A.A.C. R9-6-101.
12. "Health education" means supplying oral or written information to an individual or a group of individuals for the purpose of enabling the individual or group of individuals to attain or maintain optimal health.
13. "High-risk population" means individuals in a designated service area who have medical, social, financial, or other problems that increase the chances that the individuals will need more help than most other individuals in order to maintain or attain optimal health.
14. "Immunization" means the same as in A.R.S. § 36-671.
15. "Local health department" means the same as in A.R.S. § 36-671.
16. "Local health department services" means activities performed by a local health department within a designated service area that:
   a. Are funded in part by a Per Capita Matching Grant;
   b. Assist individuals, groups of individuals, and populations to improve health and prevent disease;
   c. Address:
      i. Communicable disease control services,
      ii. Maternal and child health services, or
      iii. Environmental health services; and
   d. Include activities such as:
      i. Providing public health nursing services;
      ii. Providing clinical services to individuals;
      iii. Providing health education;
      iv. Performing epidemiologic investigations;
      v. Planning for public health emergencies and mobilizing community resources during emergencies;
      vi. Assisting individuals to access state or federal health programs;
      vii. Coordinating local services concerning nutrition, health-related services, financial assistance with health-related expenses, or other services needed by an individual;
      viii. Serving as a resource for local programs; and
      ix. Evaluating the effects of activities and services provided by the local health department.
17. "Maternal and child health services" means activities, such as those specified in A.R.S. § 36-132, that are intended to promote the health of women and children.
18. "Medical services" means the same as in A.R.S. § 36-401.
19. "Modification" means a change to the local health department services identified in a local health department's narrative plan, as specified in R9-18-102(A)(1)(b).
20. "Nursing services" means the same as in A.R.S. § 36-401.
21. "Per Capita Matching Grant" means an allocation of funds by the Department to a local health department as provided in A.R.S. § 36-189.
22. "Population" means a group of individuals who share a specific characteristic or set of characteristics.
23. "Public health emergency" means any local emergency, as defined in A.R.S. § 26-301, that may affect the health of individuals or populations within a designated service area.
24. "Public health nursing services" means activities performed by a local health department within a designated service area that include:
   a. Assessing the health and health needs of individuals and populations;
   b. Developing and administering nursing services to meet the health needs of high-risk populations;
   c. Evaluating the effects of nursing services on the health of an individual or a population;
   d. Coordinating nursing or medical services for an individual or a population;
   e. During planning for public health emergencies, recommending strategies to meet the health needs of individuals and high-risk populations; and
   f. Performing nursing services in response to public health emergencies.

25. "Registered nurse" means an individual licensed under A.R.S. Title 32, Chapter 15, Article 2, to practice professional nursing, as defined in A.R.S. § 32-1601.
26. "Registered sanitarian" means an individual who meets the requirements for a registered sanitarian specified in A.R.S. § 36-136.01 and 9 A.A.C. 16, Article 4.
27. "Service population" means the specific group of individuals who are eligible to receive local health department services from a local health department.
28. "State fiscal year" means the period from July 1 of one year through June 30 of the following year.
29. "Submit" means to send a document from a local health department to the Department by mail, electronically, or by an express package delivery service.
30. "Supervision" means the same as in A.R.S. § 36-401.

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-102. Grant Application

A. A local health department may request funds from the Department through a Per Capita Matching Grant by submitting an application to the Department that includes:
1. A narrative plan for the period corresponding to the state fiscal year, which specifically identifies:
   a. A designated service area;
   b. The local health department services, such as those specified in R9-18-101(16)(d), which will be provided in the designated service area;
   c. Which of the local health department services, identified in subsection (A)(1)(b), the local health department provided in the last three years; and
   d. The number of individuals projected to receive the local health department services identified in subsection (A)(1)(b);
2. A budget for the period corresponding to the state fiscal year, which identifies:
   a. The total cost for providing local health department services within the designated service area;
   b. A list of all sources of funds to be used by the local health department for providing local health department services within the designated service area; and
   c. The proportionate shares of the total cost to be paid by funds obtained from the sources listed in subsection (A)(2)(b);
3. A chart that shows the organizational structure of the local health department, including:
   a. The names of the incumbents in each position; and
   b. A designation of the types of local health department services performed by the incumbent in each position; and
4. The signature of an individual authorized by the local health department's County Board of Supervisors, under A.R.S. § 11-201, to submit the application.

B. A local health department shall submit an application to the Department so that the application is:
1. Received by the Department on or before December 31 of the current state fiscal year; or
2. Postmarked, or accepted for delivery by an express package delivery service, on or before December 31 of the current state fiscal year, and received by the Department on or before January 5 of the current state fiscal year.

C. A local health department shall furnish to the Department any other information as may be requested by the Department, as specified in R9-18-103(A)(2), to clarify incomplete or ambiguous information contained in the local health department's application.

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-103. Review of Application and Awarding of Grant

A. Within 15 calendar days of the receipt of an application from a local health department, the Department shall:
1. Review the application to determine whether the application:
   a. Contains all the information specified in R9-18-102(A); and
   b. Was submitted as specified in R9-18-102(B);
2. Request from the local health department any additional information necessary to clarify incomplete or ambiguous information contained in the local health department's application;
3. Award a Per Capita Matching Grant to the local health department for the purposes set forth in the application if the application:
   a. Meets the criteria specified in subsection (A)(1); or
   b. Meets the criteria specified in subsection (A)(1)(b), and the local health department furnishes to the Department the information requested under subsection (A)(2) within seven calendar days of the Department's request; and
4. Notify the local health department in writing whether the Per Capita Matching Grant is awarded or denied, including, if the Per Capita Matching Grant is denied, the reason for the denial.

B. If a Per Capita Matching Grant is awarded to a local health department, the Department shall authorize payment of per capita matching funds to the local health department within 30 days of the receipt of an application.

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-104. Minimum Standard of Personnel; Waiver

A. For clinical services delivered by a local health department, a local health department shall ensure that:
1. A physician licensed under A.R.S. Title 32, Chapter 13 or 17 provides direction for medical services; and
2. A registered nurse provides direction for and supervision of nursing services.

B. Except as provided in subsection (C), a local health department shall ensure that:
1. A registered nurse provides direction for public health nursing services; and
2. The registered nurse specified in subsection (B)(1) has:
   a. A baccalaureate degree in the science of nursing from an institution accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education; or
   b. Five years experience providing public health nursing services.

C. A local health department may submit to the Department a request for a waiver of the requirement in subsection (B)(2) that includes:
1. The reason for the request, including what burden the requirement would impose upon the local health department;

2. The education and experience of the registered nurse, specified in subsection (B)(1), that would qualify the registered nurse to perform public health nursing services;
3. A description of the educational activities the local health department plans to provide for the registered nurse to address differences between the education and experience of the registered nurse and the education and experience of a registered nurse who meets the requirements of subsection (B)(2); and
4. How the waiver would affect public health, safety, or welfare.

D. The Department shall approve or deny a request made as specified in subsection (C):
1. Within 14 calendar days from the date of the Department's receipt of the request, and
2. Based on:
   a. The education and experience of the registered nurse,
   b. The activities described in the narrative plan, specified in R9-18-102(A)(1), and
   c. The content of the educational activities described as specified in subsection (C)(3).

E. A registered nurse who is providing direction for public health nursing services within the state of Arizona on the effective date of this Article is exempt from the requirement of subsection (B)(2).

F. A local health department shall ensure that a registered sanitarian provides environmental health services in the designated service area.

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-105. Record Retention and Review

A. A local health department shall maintain for review by the Department all records, reports, and accounts pertaining to the provision of local health department services.

B. A local health department shall maintain or store the documents specified in subsection (A) for five years from the date the local health department submitted an application, unless the Department performs a financial review of local health department services before that date. If the Department performs a financial review, the local health department shall maintain or store the documents until any dispute arising from the financial review is resolved or for five years, whichever is later.

C. Upon request by the Department, a local health department shall make available the documents specified in subsection (A) to the Department during business hours.

D. The Department may require a refund of any funds paid to a local health department under a Per Capita Matching Grant that are expended for purposes not set forth in the narrative plan described in R9-18-102 (A)(1).

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-106. Notice to Department

A local health department shall provide written notice to the Department within 30 calendar days of any change in the physician, registered nurse, or sanitarian who are specified in R9-18-104, and of any modification to the narrative plan described in R9-18-102(A)(1).

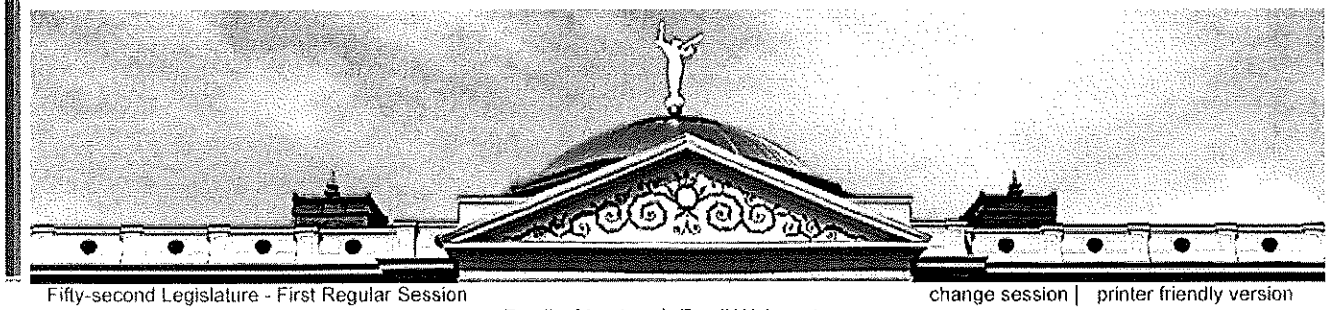
Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Former R9-18-106 repealed; new R9-18-106 renumbered from R9-18-107 and amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

R9-18-107. Renumbered

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Former R9-18-107 renumbered to R9-18-106 by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).



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

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

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

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

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

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

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

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

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

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.

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

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

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

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

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink

are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
(a) Screening in early pregnancy for detecting high risk conditions.
(b) Comprehensive prenatal health care.
(c) Maternity, delivery and postpartum care.
(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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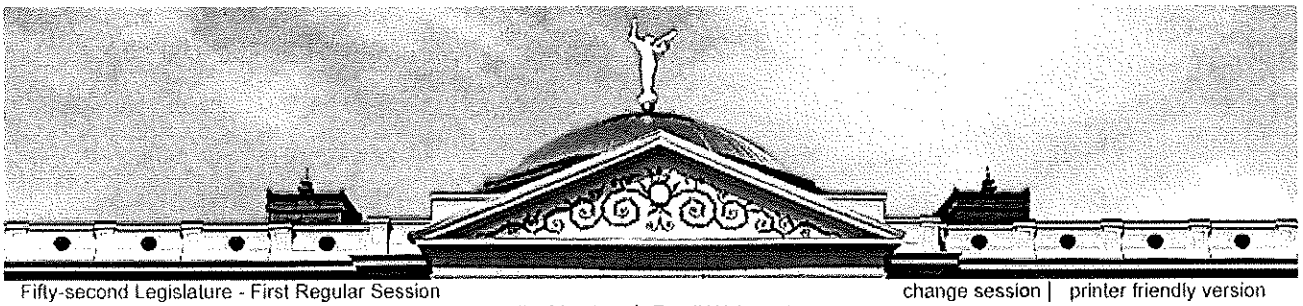

36-136. Powers and duties of director; compensation of personnel

A. The director shall:

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

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

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

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

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

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

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
H. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
(a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
5. Prescribe reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to assure that all bottled drinking water distributed for human consumption is free from unwholesome,

poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.
9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.
I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the

department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink is exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

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