ARIZONA DEPARTMENT OF ADMINISTRATION (F-15-1205)
Title 2, Chapter 15, Article 2, Fleet Management

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

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-15-1205)**
Title 2, Chapter 15, Article 2, Fleet Management

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

Under A.R.S. § 41-803(A), the Arizona Department of Administration (Department) "shall operate a motor vehicle fleet for all state owned motor vehicles for the purpose of providing transportation for state officers and employees…."

This five-year-review report covers six rules in A.A.C. Title 2, Chapter 15, Article 2, related to fleet management.

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

Article 2 contains six rules that address definitions; vehicles, operators, and uses; operator responsibilities; vehicle request procedures; special equipment; and billing rates.

Year that Each Rule was Last Amended or Newly Made

Sections 201, 203, 205, 206, and 207 were last amended on October 20, 2000. Section 202 was last amended on July 6, 2012.

Proposed Action

The Department proposes no action on the rules at this time.

Summary of Reasons for the Proposed Action

The Department indicates that the rules are effective, are enforced as written, are consistent with other rules and statutes, and are clear, concise, and understandable.

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 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 no written criticisms of the rules have been received during the last five years.

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

Yes. As general and specific authority for the rules, the department cites to A.R.S. § 41-803. Under A.R.S. § 41-803(B), the Department "may adopt rules necessary for the administration of the motor vehicle fleet."

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 enforced as written.

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

Yes. The rules are clear, concise, and understandable.

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:

R2-15-202 became effective on July 6, 2012.

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

R2-15-202 does not, in accordance with the definition of "general permit" in A.R.S. § 41-1001(11), require issuance of an agency authorization or approval.

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 indicates that no course of action was proposed in the previous five-year-review report.

11. Has the agency included a proposed course of action?

Yes. As noted above, the Department proposes no action on 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
M E M O R A N D U M

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-1**

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-15-1205)**
Title 2, Chapter 15, Article 2, Fleet Management

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 rules in Article 2 contained in the five-year-review report.

The Arizona Department of Administration General Services Division houses Fleet Management who is charged with maintaining a fleet of vehicles for use by state agencies. The fleet currently has approximately 1,350 vehicles with an average age of 7.5 years. The rates charged to state agencies for the use of ADOA fleet vehicles are built around recapturing depreciation and include insurance/ registration costs. These rates have remained unchanged since FY 2002. See page 2 for current daily rates.

Daily Rental Rates

The following daily rental rate schedule on short-term vehicle rentals is effective as of July 1, 2001. There is no mileage charge, but expenses for fuel are charged.

Sedan -	$26.00
Mini-Van -	$26.00
Sports Utility 4x4 -	$27.00
1/2 - 1 Ton 4x2 Pickup -	$26.00
Passenger Van -	$28.00
Cargo Van -	$28.00
Suburban -	$28.00

Stake-bed Truck -	$28.00
Box Truck -	$29.00

https://gsd.az.gov/content/taxi-services

The Department believes the economic impact has been as predicted for the rules in Articles 2.

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 2 are effective and enforced as written in addition to being clear and concise.

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.

Douglas A. Ducey
Governor

Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR

100 NORTH FIFTEENTH AVENUE • SUITE 401
PHOENIX, ARIZONA 85007

(602) 542-1500

September 29, 2015

Bret H. Parke, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Mr. Parke:

In compliance with A.R.S. § 41-1056, the Arizona Department of Administration (ADOA) submits a report of its five-year-review of Title 2, Chapter 15, Article 2 of the Arizona Administrative Code. I certify that the Department is in compliance with A.R.S. § 41-1091. This Chapter contains rules authorized by statute that govern fleet management.

If you have any questions regarding this five-year-review report or you need additional information prior to the Council meeting when the report is considered, please contact Rob Smook, ADOA Acting Fleet Administrator at (602) 542-6161. Individuals from the Department will be present at the Council meeting to answer any questions that the members may have about this five-year-review report.

Sincerely,

Kevin Donnellan
Deputy Director

cc: Nola Barnes, Assistant Director – General Services Division
Rob Smook, Acting Fleet Administrator

Five Year Review Report
Title 2, Chapter 15, Article 2
Fleet Management

Introduction

The Department adopted rules as authorized by statute to provide policies and procedures for operating a motor vehicle fleet in addition to providing transportation for state officers and employees. The rules were adopted, effective July 27, 1983. The rules were repealed effective February 7, 1990. New sections were adopted by final rulemaking effective either February 7, 1990 or October 20, 2000. The rules were amended by final rulemakings effective either October 20, 2000 or July 6, 2012. The rules include Chapter 15 consisting of Article 2, Sections R2-15-201 through R2-15-203 and R2-15-205 through R2-15-207.

The Department conducted a five-year-review of the rules that was approved by GRRC Council on December 7, 2010. The five-year-review report approved by Council during that time indicated that Article 2 was clear, concise, effective, and conformed to the specific statute in law. In addition, the Department noted that no course of action was needed for the rules.

Except as otherwise noted, the information is identical, consistent and effective for all of the rules in the Article.

1. General and specific statutes authorizing the rules:

A.R.S. §41-803 – Provides general authority for the rules.
A.R.S. §41-803(B) – Provides specific authority for the rules.

2. Objective of the rules including the purpose for the existence of the rules:

The Department believes the rules are effective in achieving their objective.

Article 2 Fleet Management
R2-15-201 Definitions
The objective of R2-15-201 is to help state agencies, boards and commissions understand the terminology that is used throughout the Article. The reason the rule is necessary is to ensure that state agencies, boards and commissions understand the terms used in the rules.

R2-15-202 Vehicles, Operators, and Uses
The objective of R2-15-202 is for all state agencies, boards and commissions who utilize state vehicles understand who is an authorized operator, the proper use of a state vehicle

and that the vehicle is properly registered and complies with state law. The rule is necessary in order for employees of state agencies, boards and commissions to operate a state vehicle.

R2-15-203 Operator Responsibilities
The objective of R2-15-203 is for state employees to understand the responsibilities for operating a state vehicle. The reason the rule is necessary is to ensure that all authorized state employees follow the policies and procedures for operating a state vehicle.

R2-15-205 Vehicle Request Procedures
The objective of R2-15-205 is to outline how authorized users can the use for fleet management taxis or extended dispatch vehicles. The reason the rule is necessary is for authorized state employees to understand the procedures for requesting and using a fleet management vehicles.

R2-15-206 Special Equipment
The objective of R2-15-206 is to allow the installation of special equipment on state vehicles only when requested in writing and authorized by fleet management. The reason the rule is necessary is allow state agencies, boards and commissions to install special equipment on a state vehicle.

R2-15-207 Billing Rates
The objective of R2-15-207 is to provide the rate methodology for charges on extended dispatch vehicles and taxis. The reason the rule is necessary is to allow for rate changes from fiscal year to fiscal year that are directly affected by the State budget in addition to variables associated with the management of a state fleet.

3. Effectiveness of the rules in achieving the objective, including a summary of any available data supporting the conclusion reached:

The rules effectively achieve their objective.

4. Consistency of the rules with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency:

The Department's analysis of the rules shows that the rules do not exceed the authority provided by statute. The rules are consistent with A.R.S. §§ 41-803 and 41-803(B).

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The Department enforces R2-15-201 through R2-15-203 and R2-15-205 through R2-15-207.

6. Clarity, conciseness, and understandability of the rules:

The Department considers the language for all the rules to be clear, concise, and understandable.

7. Summary of the written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analysis submitted to agency questioning whether the rules are based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rules are discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings:

The Department has not received written criticisms regarding the rules during the last five years.

8. A comparison of the current economic, small business, and consumer impact of the rules with economic, small business, and consumer impact statement prepared on the last rulemaking of the rule or, if no economic, small business, and consumer impact statement was prepared on the last rulemaking of the rule, an assessment of the actual economic, small business, and consumer impact of the rules:

The information provided with the previous five-year-review report approved by Council on December 7, 2010 indicated that the economic impact of the rules was nominal and there has been no change since then. In addition, the EIS submitted with the final rulemaking approved by Council on May 1, 2012 indicated no direct economic impact on small businesses or consumers and minimal impact on agencies and there has been no change since then.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

None

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

The Department indicated in the previous five-year review report that no course of action was necessary for the rules.

11. A determination that the probable benefits of the rules outweigh within this state the probable costs of the rules, and 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:
The Department believes that the rules impose the least burden and costs to the agencies regulated by the rules. Fleet Management has made every effort to ensure the policies, procedures, paperwork and compliance costs effectively work for agency customers, but that they are also efficient, cost effective and necessary to achieving the regulatory objectives for the Department to properly manage and maintain a state fleet.

The impact remains the same from the information provided in 2010 and 2012. The Department will expend time reviewing existing rules and there are no other expected costs.

The Department estimates that the rules do not have any impact on small businesses or consumers in the state, nor affects state agencies. Sales tax does not impact the rules.

12. A determination that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law, indicating whether:

    a. There is a similar regulatory framework governing the same subject matter under federal law,

       There is no similar regulatory framework or federal law applicable to the subject matter of the rules.

    b. The rules are more restrictive than a similar requirement in federal law, and

       There is no similar requirement in federal law.

    c. There is statutory authority for more restrictive requirements than those in federal law.

       Federal law does not apply to this rule.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037, indicating whether:

    a. The rule requires issuance of a regulatory permit, license, or agency authorization;

       The Department indicates that most of the rules are not subject to the requirements imposed by A.R.S. § 41-1037 as the rules were adopted prior to July 29, 2010. However R2-15-202 was effective on July 6, 2012. Neither the authorization nor the approval described in R2-15-202(B)(1) all within the definition of "general permit" in A.R.S. § 41-1001(11) because the rule does not require "issuance" of the authorization or approval.

b. The permit, license, or agency authorization falls within the definition of "general permit" in A.R.S. § 41-1001, if a permit, license or agency authorization is issued; or

Not applicable as answer was provided in 13(a).

c. An exception applies under A.R.S. § 41-1037, if a general permit is not issued.

Not applicable as answer was provided in 13(a).

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department is not considering a course of action in amending the rules at this time.

Title 2, Chapter 15, Article 2

Fleet Management

RULE TEXT

TITLE 2. ADMINISTRATION
CHAPTER 15. DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION

ARTICLE 2. FLEET MANAGEMENT

(Authority: A.R.S. § 41-803(B))

Former Article 2, consisting of Sections R2-15-201 through R2-15-209, transferred from Title 2, Chapter 1, Article 2, Sections R2-1-201 through R2-1-209 (Supp. 91-3).

Section

R2-15-201. Definitions
R2-15-202. Vehicles, Operators, and Uses
R2-15-203. Operator Responsibilities
R2-15-204. Repealed
R2-15-205. Vehicle Request Procedures
R2-15-206. Special Equipment
R2-15-207. Billing Rates
R2-15-208. Repealed
R2-15-209. Repealed

ARTICLE 2. FLEET MANAGEMENT

R2-15-201. Definitions

The following terms apply to this Article:

"Accident reporting packet" means the automobile loss report form and witness information cards in the glove compartment of each Fleet Management vehicle.

"ADOA" means the Arizona Department of Administration.

"Approved fueling facility" means a location managed by ADOA or the Arizona Department of Transportation to dispense fuel to Fleet Management vehicles.

"Capitol area" means that area within a ten-mile radius of the State Capitol Complex.

"Director" means the Director of ADOA.

"Domicile-to-duty travel" means travel between an operator's residence and worksite as prescribed under A.R.S. § 38-622.

"Extended dispatch vehicle" means a Fleet Management vehicle that is dispatched full-time to a using agency that has continuing requirements for official state business travel.

"Fleet administrator" means the person designated by the Director to administer the Fleet Management program.

"Fleet Management" means the section of the ADOA that administers all state-owned vehicles, except those specified in A.R.S. § 41-803(E).

"Fleet Management facility" means the dispatch center, alternative fuel depot, and car wash facility located at 1501 W. Madison, Phoenix, Arizona 85007.

"Fleet Management vehicle" means any state vehicle owned and managed by Fleet Management.

"Maintenance provider" means a person contracting with Fleet Management to provide vehicle maintenance.

"Operator" means a driver of a Fleet Management vehicle.

"Recall" means a demand to return an extended dispatch vehicle because of failure to comply with this Article.

"Taxi" means a general purpose passenger vehicle on a temporary, short-term dispatch assignment.

"Using agency" means any agency to which a Fleet Management vehicle is dispatched.

"Vehicle rotation" means the periodic reassignment of vehicles dispatched to using agencies to equalize use.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-201 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-202. Vehicles, Operators, and Uses

A. Any state employee holding a valid Arizona driver's license may be an operator if authorized by the employee's agency.

B. An operator shall use a Fleet Management vehicle only for state government activities as prescribed under A.R.S. § 38-538.02. Prohibited uses include the following:

1. Domicile-to-duty transportation of a state employee, unless specifically authorized by the employee's agency director and approved by the ADOA Director;
2. Personal convenience; or
3. Transportation of family members or friends, or any person not essential to accomplishing the purpose for which the vehicle is dispatched.

C. Fleet Management shall ensure that a Fleet Management vehicle:

1. Bears a current state license plate in accordance with A.R.S. §§ 28-2351 and 28-2416,
2. Bears designations in accordance with A.R.S. § 38-538,
3. Is registered with the Arizona Department of Transportation Motor Vehicle Division, and
4. Complies with state emissions laws.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-202 (Supp. 91-3). New Section adopted by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4). Amended by final rulemaking at 18 A.A.R. 1261, effective July 6, 2012 (Supp. 12-2).

R2-15-203. Operator Responsibilities

A. Fueling facilities.

1. An operator shall use an approved fueling facility whenever available. If an approved fueling facility is not available, an operator shall use a fueling facility that accepts the Fleet Management-issued credit card, if possible.
2. An operator assigned an alternative fuel vehicle shall use alternative fuel whenever available.
3. An operator shall use fuel from regular unleaded self-service pumps.
4. Except in the case of emergency, operators within the Capitol area shall use the ADOA Fleet Management facility to refuel Fleet Management vehicles.

B. Purchases and repairs.

1. An operator shall use the Fleet Management-issued credit card for purchases and repairs only on Fleet Management vehicles.
2. An operator shall obtain authorization from the maintenance provider before making a purchase or repair for a Fleet Management vehicle that costs more than $50.00.

C. Accident reporting.

1. An operator shall report a fleet management vehicle accident to the police and shall make a written report to Fleet Management within 24 hours after the accident using the automobile loss report form contained in the accident reporting packet. If the operator is incapacitated, the operator's supervisor shall make the report.
2. The operator and the operator's supervisor shall sign the automobile loss report and give it to Fleet Management within 24 hours after the accident.
3. If another driver is involved, the operator shall request that the other driver fill out the witness information card located in the accident reporting packet. The operator shall obtain the name and telephone number of any witness.
4. The operator shall submit the police report regarding the accident to Fleet Management within 10 calendar days after the accident.

D. Traffic citations.

1. An operator is personally responsible for the prompt payment of any fine for a moving or non-moving traffic citation, other than for mechanical failure, received while driving a Fleet Management vehicle.
2. If a citation is received for mechanical failure, the operator shall, as soon as possible, deliver the vehicle, with the citation, to Fleet Management for repair.

3. An operator who receives a traffic citation while driving a Fleet Management vehicle and fails to resolve the matter within 90 calendar days of the citation shall lose the privilege of operating a Fleet Management vehicle. The operator's privilege shall be reinstated when the operator provides Fleet Management with verification that the operator paid the fine, successfully contested the traffic citation, or attended traffic school and possesses a valid driver's license.

E. Vehicle operation.
1. The operator and all passengers shall wear seat belts while the vehicle is in motion.
2. An operator is responsible for the safe and careful operation of a Fleet Management vehicle and for observing all directives issued by the Governor.

F. Care of vehicles. An operator shall ensure that:
1. A Fleet Management vehicle is properly warmed as prescribed in the vehicle operation manual before operation;
2. A Fleet Management vehicle is kept clean and free of litter;
3. Any defect or malfunction is promptly reported to Fleet Management. If the Fleet administrator determines that the operator is negligent and fails to safeguard the Fleet Management vehicle, the cost of any resulting damage shall be billed to the using agency;
4. The vehicle maintenance schedule is followed. Fleet Management vehicles not brought in for scheduled service are subject to recall; and
5. Smoking does not occur in a Fleet Management vehicle.
   a. If Fleet Management determines that smoking occurred in a Fleet Management vehicle, the operator's agency shall be billed for the cleaning expense.
   b. A subsequent incident of smoking in a Fleet Management vehicle shall result in the operator losing the privilege to operate a Fleet Management vehicle.

G. Taxi return. An operator shall return a taxi to Fleet Management on the return date specified, unless an extension of the return date is approved by the Fleet Administrator.

H. Loaning vehicles to other state employees. An operator to whom a Fleet Management vehicle is dispatched is responsible for proper use of the vehicle. Before allowing another state employee to drive the vehicle, the operator to whom the vehicle is dispatched shall verify that the other state employee is properly licensed and instructed in the proper use of Fleet Management vehicles.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-203 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-204. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-204 and paragraph labeling corrected (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-205. Vehicle Request Procedures

A. Using agencies may request either taxis or extended dispatch vehicles.

B. Taxis
1. Fleet Management shall fill reservations for a taxi on a first-come, first-serve basis. Vehicles shall be reserved in person, by telephone, in writing, or by electronic means.
2. Fleet Management shall hold a reserved taxi for one hour beyond the stipulated time of dispatch. If, by that time, the requesting agency does not pick up the taxi, the request shall be canceled and the taxi shall be dispatched to the next requestor.
3. If a requesting agency fails to pick up a taxi, Fleet Management shall bill the agency for one day's use.

C. Extended dispatch vehicles
1. An extended dispatch vehicle request shall be approved by the head of the requesting agency, or the agency head's designee, and forwarded to the Fleet Administrator.
2. If the extended dispatch vehicle request cannot be satisfied with existing resources, the requesting agency may request appropriated funds for purchase of a vehicle in the next budget cycle, coordinating the request with the Fleet Administrator and the Office of Strategic Planning and Budgeting.

3. If funds are available, the requesting agency shall purchase the vehicle through Fleet Management and assign the vehicle to the Fleet Management maintenance and replacement program.
4. The requesting agency shall transfer the appropriate funding to Fleet Management before the vehicle is ordered.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-205 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-206. Special Equipment

An agency requesting specially installed equipment such as two-way radios, sirens, cages, or tanks shall submit the request in writing to the Fleet Administrator. The using agency shall pay for the equipment, for installation of the equipment, and for restoration expenses or diminution in value caused by modifications made to install special equipment.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Editorial correction, subsection (B), paragraph (3) (Supp. 84-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-206 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-207. Billing Rates

A. Charges for extended dispatch vehicles are determined by a rate methodology that consists of a cost-per-month charge, a cost-per-mile charge, and a charge for fuel use.

B. Charges for taxi vehicles are determined by a rate methodology that consists of a cost-per-day charge and a charge for fuel use.

C. Fleet Management rates may vary from fiscal year to fiscal year depending upon the size of the fleet and the cost of new vehicles, maintenance, repairs, overhead, and insurance costs.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-207 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

R2-15-208. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-208 (Supp. 91-3).

R2-15-209. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Transferred from R2-1-209 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 4265, effective October 20, 2000 (Supp. 00-4).

A COPY OF THE GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULES

A.A.C. Title 2, Chapter 15, Article 2

Article 2, Fleet Management

41-803. Operation of state motor vehicle fleet; public service announcements; energy conservation; alternative and clean burning fuels; definitions

A. The director shall operate a motor vehicle fleet for all state owned motor vehicles for the purpose of providing transportation for state officers and employees, except those officers and employees of any agency or department excluded by subsection E of this section. The director shall make fleet motor vehicles available to state agencies and departments on the request of the chosen representative for that agency or department.

B. The director may adopt rules necessary for the administration of the motor vehicle fleet. State agencies and departments, including agencies and departments listed in subsection E of this section, may accept compensation for placing public service announcements on state owned motor vehicles, and monies received shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The agency or department director shall determine the appropriateness of the announcements, may exempt any vehicles that are not suitable for advertising and may contract with private parties for design and placement of the announcements.

C. The director shall provide for detailed cost, operation, maintenance, mileage and custody records for each state owned vehicle. On or before August 1 of each year, all state agencies and departments, including those listed in subsection E of this section, shall make information available to the director regarding vehicle cost, operation, maintenance and mileage and other information as established by the director in policies and procedures for the purposes of the report prescribed in subsection R of this section.

D. Each state department and agency shall pay from available monies the cost of motor vehicle services received from the state motor vehicle fleet at a rate determined by the director.

E. The following departments and agencies are excluded from participation in the state motor vehicle fleet:

1. Department of public safety.
2. Department of transportation.
3. Department of economic security.
4. State department of corrections.
5. Universities and community colleges.
6. Arizona state schools for the deaf and the blind.
7. Cotton research and protection council.

F. The director shall appoint a person in the office of the director who is the state motor vehicle fleet alternative fuel and clean burning fuel coordinator. The coordinator shall develop, implement, document,

monitor and modify as necessary a statewide alternative fuels plan in consultation with all state agencies and departments that are subject to the alternative fuel and clean burning fuel requirements prescribed in this section or any other law. The approval of the coordinator is required for all acquisitions of vehicles pursuant to this section, except for acquisitions by community college districts.

G. Purchases of all new motor vehicles that primarily operate in counties with a population of more than two hundred fifty thousand persons and that have a gross vehicle weight of eight thousand five hundred pounds or less, including those agency motor vehicle fleets listed in subsection E of this section, shall meet the following minimum requirements for vehicles:

1. For model year 1997, ten per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

2. For model year 1998, fifteen per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

3. For model year 1999, twenty-five per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

4. For model year 2000, fifty per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

5. For model year 2001 and all subsequent model years, seventy-five per cent of new motor vehicles purchased shall be capable of operating on alternative fuels or clean burning fuels.

H. Purchases of new alternative fuel and clean burning fuel vehicles that have a gross vehicle weight of eight thousand five hundred pounds or less shall meet the following minimum requirements for vehicles that primarily operate in counties with a population of more than one million two hundred thousand persons:

1. For model year 2000, forty per cent of new alternative fuel and clean burning fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

2. For model year 2001, fifty per cent of new alternative fuel and clean burning fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

3. For model year 2002, sixty per cent of new alternative fuel and clean burning fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

4. For model year 2003, seventy per cent of new alternative fuel and clean burning fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

I. The coordinator may waive the requirements of subsection G of this section for any state agency on receipt of certification supported by evidence acceptable to the coordinator that:

1. The agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has established or can reasonably be expected to establish a central refueling station for alternative fuels or clean burning fuels.

2. The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than thirty per cent more than the net costs associated with the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department of environmental quality pursuant to section 49-412. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to section 49-555.

J. The department of administration, through the coordinator, may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using alternative fuels or clean burning fuels:

1. By purchase or lease as authorized by law.

2. By gift or loan of the equipment or facilities.

3. By gift or loan of the equipment or facilities or any other arrangement pursuant to a service contract for the supply of alternative fuels or clean burning fuels.

K. The coordinator and the department of commerce energy office shall develop and implement a vehicle fleet energy conservation plan for the purposes of reducing vehicle fuel consumption and to encourage and progressively increase the use of alternative fuels and clean burning fuels in state owned vehicles. The plans shall include:

1. A timetable by which fleet vehicles shall be replaced with vehicles that have demonstrated high fuel economy estimates within their vehicle class.

2. A timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles which operate on alternative fuels or clean burning fuels:

(a) Not less than forty per cent of the total fleet by December 31, 1995, except for community college districts. Community college districts shall comply by December 31, 2002.

(b) Not less than ninety per cent of the total fleet operating primarily in counties with populations exceeding one million two hundred thousand persons according to the most recent federal decennial census by December 31, 1997, except for community college districts. Community college districts shall comply by December 31, 2004.

3. Options for increasing, whenever possible, the use of vehicles that have the capability to use available alternative fuels or clean burning fuels, or vehicles that may be economically converted, if needed, for the use of alternative fuels or clean burning fuels.

4. Options for the use of demonstrated innovative technologies that promote energy conservation and reduced fuel consumption.

5. Methods that promote efficient trip planning and state vehicle use.

6. Car pooling and van pooling for agency employees for commuting and job related travel.

L. The coordinator shall identify specific vehicle models within each vehicle class that would meet the demands of each state agency and that demonstrate a high degree of fuel economy. Vehicle classes and fuel economy comparisons shall be based on United States department of energy and United States environmental protection agency data pursuant to title 15 United States Code sections 2003 through 2006. For the use of an alcohol fueled vehicle, the state agency shall demonstrate to the director that the fuel for the vehicle is available within a ten mile radius of the primary home base of that vehicle.

M. Subsections G, H, I, J, K, L, N, O and P of this section do not apply to the purchase or lease of the following:

1. A vehicle to be used primarily for criminal law enforcement.

2. A motorcycle.

3. An all-terrain vehicle.

4. An ambulance.

5. A fire truck, a fire engine or any other fire suppression apparatus.

N. Any contract for conversion of vehicles to alternative fuels pursuant to this section shall be entered into by competitive sealed proposals pursuant to section 41-2534.

O. If everything else is equal, when contracting for vehicles to satisfy the requirements prescribed in this section, preference shall be given to vehicles with the lowest emissions levels.

P. The departments and agencies excluded from participation in the state motor vehicle fleet pursuant to subsection E of this section shall develop and implement a program for alternative fuels and clean burning fuels and fuel economy for their motor vehicle fleets substantially similar to the standards set forth in this section, and the program shall be submitted to the coordinator for review.

Q. All agencies, including those listed in subsection E of this section, shall comply with the plan developed and implemented by the coordinator pursuant to subsection F of this section.

R. On or before November 1 of each year, the director shall submit a report to the governor, the speaker of the house of representatives, the president of the senate, the governor's office of strategic planning and budgeting and the joint legislative budget committee concerning the use of alternative fuels and clean burning fuels in the state motor vehicle fleet. The report shall include at least the following:

1. The number of state fleet vehicles.
2. The number of state fleet vehicles used primarily in Maricopa county.
3. The number of state fleet vehicles capable of using alternative fuels or clean burning fuels.
4. Progress on compliance with federal and state guidelines mandating the conversion of state fleet vehicles to alternatively fueled vehicles.
5. Alternative fuels and clean burning fuels usage data.
6. Information received from state agencies pursuant to subsection C of this section.
7. Information gathered from local offices of federal agencies regarding progress made toward implementing the federal mandates relating to the conversion of motor vehicle fleets to alternative fuels or clean burning fuels pursuant to subsection G of this section.

S. For the purposes of this section:

1. "Alternative fuels" has the same meaning prescribed in section 1-215.
2. "Clean burning fuels" has the same meaning prescribed in section 1-215.
3. "New motor vehicle" means an original equipment manufactured vehicle, a converted original equipment manufactured vehicle or an original equipment manufactured vehicle that will be converted.

38-538.02. Use of state motor vehicles; personal vehicle reimbursement

A. A motor vehicle owned or leased by this state shall not be provided to an employee, including an elected official, for the employee's personal use except as provided in subsection D of this section.

B. This state shall restrict the use of all motor vehicles owned or leased by it for motor pool use only. An employee may use a motor vehicle in the motor pool for business purposes only.

C. Reimbursement for travel for business purposes with an employee's own motor vehicle shall only be based on actual miles traveled.

D. This section does not apply to a person who is exempt under section 38-538.03 or a motor vehicle that is leased or rented pursuant to section 41-805 or section 41-1713, subsection B, paragraph 9.

E. For purposes of this section, use for business purposes does not include normal commuting to and from the employee's residence at any time unless the employee is on duty or on call for duty during the time that the employee is at the employee's residence.

38-538.03 Exemptions

A. This article does not apply to a motor vehicle designated for the use of the governor.

B. The head of a state department or agency with the power and duty to conduct rehabilitation or social service programs, felony investigations or activities of a confidential nature may apply to the governor, or the head of a department or agency of a political subdivision may apply to the governing body of the political subdivision, for an exemption from this article for a motor vehicle used in this service. The application shall state the nature of the service and the year, make, model and identification number of the motor vehicle and shall provide other information the governor or political subdivision governing body requires. The governor or political subdivision governing body may grant the exemption for not more than one year.

ARIZONA STATE BOARD OF BARBERS (F-16-0106)
Title 4, Chapter 5, Article 1, General Provisions; Article 2, Examination and Practitioner Licensing; Article 3, Shops; Article 4, Schools; Article 5, Hearings

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

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-2**

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

FROM: Chris Kleminich, Staff Attorney

DATE: February 12, 2016

SUBJECT: **ARIZONA STATE BOARD OF BARBERS (F-16-0106)**
Title 4, Chapter 5, Article 1, General Provisions; Article 2, Examination and Practitioner Licensing; Article 3, Shops; Article 4, Schools; Article 5, Hearings

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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 State Board of Barbers (Board) is to "ensure that the public is protected from the incompetent practice of barbering." Laws 2014, Ch. 247, § 3. This five-year-review report covers all of the rules in A.A.C. Title 4, Chapter 5.

This report was originally due on April 30, 2015. After a 180-day extension request was granted by the Council, the final due date became October 28, 2015.

On October 6, 2015, the Council approved a rulemaking that affected all of the Board's rules, as it amended 27 rules and two (2) exhibits, renumbered two (2) rules, repealed two (2) rules, and created one (1) new section and one (1) new table. The updated rules became effective on December 8, 2015.

After the Council approved its rulemaking, the Board requested a rescheduling of this report. The Council's rules, however, did not allow for this request to be granted. Under R1-6-302, the Council may only grant a rescheduling request for rules that are substantially revised <u>at the time that the report is due</u>. Because the Board's amended rules did not take effect until after October 28, 2015, the Council determined that the Board was required to submit this report.

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

Article 1 contains eight rules, all of which were affected by the Board's rulemaking, related to definitions; fees and service charges; fee payment; safety and sanitation provisions; change of ownership or location; inspections; licensing time-frames; and license renewal.

Article 2 contains four rules, all of which were affected by the Board's rulemaking, related to examinations; barber license applications; instructor license applications; and license renewal.

Article 3 contains four rules, all of which were affected by the Board's rulemaking, related to shop license applications; shop premises and basic equipment; shop supervision; and shop mobile units.

Article 4 contains ten rules and two exhibits, all of which were affected by the Board's rulemaking, related to barber school applications; notification of changes; use of "accredited," "approved," or similar terms; school premises and basic equipment; school operations and enrollment; required age and education notice to a barber trainee; required age and education notice to an instructor trainee; student training and supervision; school curriculum; school records; school closure; and offsite training facilities.

Article 5 contains two rules, both of which were affected by the Board's rulemaking, related to hearing procedures; and rehearing and review of decisions.

Year that Each Rule was Last Amended or Newly Made

All of the rules were amended or newly made on December 8, 2015.

Proposed Action

The following is a non-exhaustive summary of the actions that the Board took on each rule, exhibit, and table in its 2015 rulemaking:

- R4-5-101: Definitions are being added, modified, or deleted, in order to improve clarity.

- R4-5-102: As part of the Board's request for an exception from the rulemaking moratorium, the Board proposed fee increases. The Governor's Office did not approve those increases. Clarifying changes are being made to the Board's fee rules. In addition, subsection (C) is being added to allow the Board to collect, from applicants who provide a dishonored check, the actual amount assessed by the bank, plus a $10 service fee. The Board does not believe that this provision violates the directive of the Governor's Office, as the $10 charge is a service fee, rather than a charge for an inspection or for obtaining a license. See A.R.S. § 41-1001, under which a fee is "a charge prescribed by an agency for an inspection or for obtaining a license." Staff agrees with the Board's conclusion.

- R4-5-103: Non-substantive technical corrections are being made.

- R4-5-104: The term "sanitation" in the heading is being changed to "infection control" to more specifically identify the purpose and objective of the rule. The Board is making a number of amendments to provide greater specificity as to the particular procedures that licensees must follow to protect public health and safety.

- R4-5-105: The rule, related to approval and usage of disinfectants, is being repealed.

- R4-5-106: The new subsection (A) provides that licenses issued to operate a shop or school are not transferable to locations other than that on the license, or to an owner other than the owner on the license. The new subsection (B) provides that a change in the owner or location of a shop or school requires that the owner apply for a new license.

- R4-5-107: In subsection (B), due to a lack of personnel, the Board is decreasing, from two annually to one annually, the number of times a Board inspector must inspect each establishment's premises.

- R4-5-108: The Board is overhauling its rule related to licensing time-frames. As Table 1 indicates, the overall time-frame for barber and instructor licenses is being increased from seven (7) days to 28 days. The overall time-frame for shop licenses is being increased from seven (7) days to 105 days. The overall time-frame for school licenses is being increased from 60 days to 105 days.

- R4-5-109: The former R4-5-204 is being renumbered to R4-5-109. Subsection (B) will provide that a licensee that fails to renew a license timely shall immediately cease providing the services authorized by the license. The new subsection (C) provides that expired licenses may be renewed within five years after the date of expiration by applying for renewal, and paying the late-renewal fee prescribed under R4-5-102.

- R4-5-201: The new subsection (A) highlights the examinations that applicants are required to take. Clarifying changes are being made to subsection (B).

- R4-5-202: The Board is modifying the type of information that applicants for barber licenses must provide.

- R4-5-203: The Board is modifying the type of information that applicants for instructor licenses must provide.

- R4-5-204: As noted above, this rule is being renumbered to R4-5-109.

- R4-5-301: A provision, requiring a person that intends to operate more than one shop to apply for a separate license to operate each shop, is being added to subsection (A). In subsection (B), the Board is modifying the type of information that applicants for licenses to operate a shop must provide.

- R4-5-302: The Board is adding the following equipment to the list of items which are required in a shop:
  - A barber or styling chair;
  - One sink, which has hot and cold running water, for every two barber or styling chairs, located no less than six feet from the barber or styling chairs;
  - One tool drawer and one liquid sanitizer for each barber or styling chair and the necessary EPA-registered disinfectants for each;

- One wall mirror located near each barber or styling chair;
- One workstation for each barber or styling chair; and
- Cabinet in which to store additional supplies.

Staff would note that, with regard to the requirements for a mirror, a workstation, and a cabinet, the Board was asked whether these requirements are compatible the Board's statutory authority to ensure that shops are sanitary and safe for consumers. The Board's representative indicated that the provisions are about general tidiness and cleanliness standards for the industry, which relate to sanitation and safety. Staff believes that the Board's response is reasonable.

- R4-5-303: A provision, requiring the holder of a license to operate a shop to designate a licensed barber to directly supervise the shop during all hours of operation, is being added as subsection (A). Clarifying changes are being made to the rest of the rule.

- R4-5-304: The new subsection (A) provides that, to operate a mobile unit as a shop, the owner of the mobile unit must make application for a license under R4-5-301. Clarifying changes are being made to the rest of the rule.

- R4-5-305: This new rule relates to the Board's authority to regulate the display of barber poles. The full text of the rule is below:

  A. Under A.R.S. § 32-355(A)(4), it is unlawful to display a sign or advertise as being engaged in the practice or business of barbering without being licensed under A.R.S. Title 32, Chapter 3, and this Chapter.
  B. The Board has trademarked through the Office of the Secretary of State the barber pole as a sign of the barbering business.
  C. A business shall not display a barber pole unless a barber licensed under A.R.S. Title 32, Chapter 3, and this Chapter is available to provide barbering services during the business hours that the barber pole is displayed.

Staff asked the Board whether it was necessary for subsections (A) and (B) to be included in the rule, as the provisions appear to provide only background information. The Board's representative acknowledged staff's concern, but indicated that inclusion of the information would be beneficial for both the Board and for licensees. Staff believes that the Board's response is reasonable.

- R4-5-401: Subsection (A) is being added to allow courtesy inspections of proposed school locations. A provision, requiring the owner of a barber school that operates in more than one location, except at an offsite training facility, to apply for and obtain a separate license to operate the barber school at each location, is being added as subsection (B). In addition, the Board is modifying the type of information that applicants for a license to operate a school must provide.

- R4-5-402: Clarifying changes are being made to the rule.

- R4-5-403: The term “school’s owner” is being changed to “holder of the license to operate the school”.

- R4-5-404: A provision, requiring each student workstation to have a barber chair, a wall mirror located behind the chair, a tool drawer, and one liquid sanitizer and one spray disinfectant, is being added to subsection (B). In addition, clarifying changes are being made to the rule.

- R4-5-405: A provision, requiring a licensed school operator to send the Board information about a student’s age, education, and lawful presence in the United States within 90 days after enrolling a student, is being added as subsection (H). In addition, clarifying changes are being made to the rule.

- Exhibit 1: The exhibit is being updated to reflect amendments to the Board’s rules.

- Exhibit 2: The exhibit is being updated to reflect amendments to the Board’s rules.

- R4-5-406: Clarifying changes are being made to the rule.

- R4-5-407: Clarifying changes are being made to the rule.

- R4-5-408: Subsection (F) adds requirements that a licensed school operator must follow if a student transfers to another school. Subsection (G) adds requirements which a licensed school operator must follow if a student graduates or withdraws. Subsection (H) provides that the holder of a license to operate a school shall maintain the student record file permanently, unless required under R4-5-409(E) to forward the records to the Board. In addition, clarifying changes are being made to the rule.

- R4-5-409: Subsection (C) provides that a licensed operator of a school that is closing must provide currently enrolled students with information related to 1) when a full refund of paid tuition will be provided to the student, 2) how to make a claim against the bond required under A.R.S. § 32-325(C)(6) and R4-5-401(D)(3), 3) how to obtain a copy of the student’s transcript and certification of hours completed, 4) how to obtain possession of the training kit provided under R4-5-405(C) and other personal possessions, and 5) how to access the student’s records in the future. In addition, clarifying changes are being made to the rule. Subsection (D) adds a requirement that a licensed school operator of a school that is closing obtain a signed statement from each currently enrolled student verifying that the license holder complied with subsection (C). Subsection (E) adds requirements related to the disposition of student records. In addition, clarifying changes are being made to the rule.

- R4-5-410: The rule, related to multiple-location schools, is being repealed.

- R4-5-411: Clarifying changes are being made to the rule.

- R4-5-501: The term “proceedings” is being changed to “hearings”.

- R4-5-502: A provision, allowing the Board to issue a decision as a final administrative decision without an opportunity for rehearing or review if the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, is being added as subsection (I).

Beyond the actions that it already took in October 2015, the Board does not intend to take any action on the rules.

Summary of Reasons for the Proposed Action

The Board indicates that, now that the rules have been amended, the rules are effective, enforced as written, consistent with other rules and statutes, and are clear, concise, and understandable.

Substantive or Procedural Concerns

While not a "concern", staff would note that the Board's October 2015 rulemaking passed by a close 3-2 vote of the Council. After the vote, Chairman Bret Parke noted that the Council expressed real concerns about direction that the Board has chosen, and asked the Board to be proactive and to meet with members and regulated entities to discuss the impacts of the Board's rules.

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?**

   Yes. The Board indicates that no written comments have been received on the rules in the last five years. Six individuals were in attendance at an oral proceeding held on July 20, 2015.

   Four commenters argued that R4-5-302(A)(2), related to the provision of sinks in shops, could be overly burdensome if shops had to be retrofitted to comply with the rule. In response, the Board added a provision to clarify that the subsection applies only to those who obtain a new license after the effective date of the rules, and made the distance from the chair to the sink more flexible.

Commenter Shannon Roberts argued that the phrase "is available to provide barber services" in R4-5-305(C), related to the display of barber poles, is too restrictive, and could lead to expensive signage changes. In response, the Board indicates that display of a barber pole, without having a barber available to provide barbering services, could violate A.R.S. § 32-355(A)(4), under which "[a] person shall not [d]isplay a sign or in any way advertise or hold oneself out as a barber or as being engaged in the practice or business of barbering without being licensed pursuant to this chapter." The Board indicates that shops would have a number of options if a barber is not available to provide barbering services, including covering the barber pole, or providing some type of notice that informs the public that a barber is not available.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Board provides general statutory authority for the rules. Under A.R.S. § 32-304(A)(1), the Board shall "[m]ake and adopt rules which are necessary or proper for the administration of this chapter [Barbers], including sanitary and safety requirements for schools and shops or salons, sanitary and safety standards for the practice of barbering and mobile unit requirements."

The Board also provides specific authority for the rules. With regard to the Article 4 rules, A.R.S. § 32-304(A)(7) calls on the Board to "[p]rescribe minimum school curriculum requirements." The Board cites to A.R.S. §§ 32-322 through 32-327 as authority for its rules related to examinations, as well as the licensure of barbers, instructors, shops, and schools. A.R.S. § 32-328 gives the Board authority to establish and collect fees. In addition, the Board cites to A.R.S. §§ 32-351 through 32-355 as authority for its rules related to disciplinary action and hearings.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Board indicates that, after amendment, 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 Board indicates that, after amendment, the rules are enforced as written.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The rules, after amendment, are clear, concise, and understandable.

8. <u>Stringency of the Rules:</u>

a. <u>Are the rules more stringent than corresponding federal law?</u>

No. No federal laws directly correspond to the rules.

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

Not applicable.

9. <u>For rules adopted after July 29, 2010:</u>

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

Yes. The rules require issuance of a regulatory permit, license or agency authorization.

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

Yes. The Board indicates that the licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

Yes. The previous course of action was completed through the Board's October 2015 rulemaking.

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

Yes. As noted above, beyond the actions that it already took in October 2015, the Board does not intend to take any action on the rules.

<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
M E M O R A N D U M

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-2**

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA STATE BOARD OF BARBERS (F-16-0106)**
Title 4, Chapter 5, Article 1, General Provisions; Article 2, Examination and Practitioner Licensing; Article 3, Shops; Article 4, Schools; Article 5, Hearings

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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 rules contained in the five-year-review report. The economic impact information provided by the Board of Barbers (hereafter referred to as The Board) fulfills the criteria of A.R.S. § 41-1056.

The Board reports that the rule amendments approved by the Council on October 6, 2015 corrected inconsistencies with statute and other rules. The rule amendments added clarifying language for fee and licensing requirements, updated health and safety standards, and added notification procedures for closing barber schools, among other things. The Board completed the course of action indicated in the Board's 2010 five-year-review report in the Notice of Final Rulemaking approved by the Council on October 6, 2015.

At the time of the five-year-review report submission, there were 6,269 licensed barbers in Arizona; 95 licensed instructors; 1,666 licensed shops; and 26 licensed schools. During FY2015, the Board collected $391,200 in fees and was appropriated $318,294. Ten percent of the fees collected go to the state's general fund. The Board has 3.8 FTEs.

The Board noted that the economic, small business, and consumer impact statement, prepared for their most recent rulemaking, correctly identified the individuals and entities bearing the burden of and benefitting from the licensing and regulatory provisions in the Board's rules, and correctly identified the economic impacts of the rules.

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

In making the rules, the Board determined the benefits outweigh the costs and imposed the least burden and costs on those regulated by the rules consistent with protecting public health and safety. The Board received no written criticisms of the rules during the last five years. The Board noted that individuals and entities pursue licensure because they perceive that their benefits outweigh their costs.

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

No analysis was submitted to the Board 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, the staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA STATE BOARD OF BARBERS
1400 WEST WASHINGTON • STE. 220
PHOENIX, ARIZONA 85007-2937
(602) 542-4498
Web Site: www.AzBarberBoard.us

October 21, 2015

RECEIVED
OCT 21 2015
GRRC

Bret Parke, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report on 4 A.A.C. 5

Dear Mr. Parke:

As required by A.R.S. § 41-1056, the Board of Barbers submits for your approval a report on a review of its rules that went into effect on April 5, 2005. This report is due to be submitted to Council by October 27, 2015, under an extension of time provided to the Board at Council's March 2015 meeting. The Board reviewed all the referenced rules.

You will recall that the Council approved a rule package on October 6, 2015, in which all of the referenced rules were amended or new rules made. The approved Notice of Final Rulemaking will be published in the October 30, 2015, edition of the *Register*. The amended rules will go into effect on December 8, 2015, and the rules reviewed for this report will cease to exist on the same date.

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 Sam Barcelona at (602) 542-4498. Thank you for your consideration.

Sincerely,

Sam LaBarbera

Sam LaBarbera
Executive Director

BOARD OF BARBERS

Five-year-review Report: A.A.C. Title 4, Chapter 5, Articles 1-5

October 2015

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 5. Board of Barbers

INTRODUCTION

The mission of the Arizona Board of Barbers is to preserve the public health and welfare through the development and enforcement of adequate sanitation procedures, rules, and laws governing barbers and barbering establishments. The Board accomplishes its mission by communicating with licensees regarding proper sanitation methods and changes in the law; administering barbering examinations; investigating consumer complaints regarding unlawful activities; and taking effective measures to resolve complaints, including holding hearings, levying fines, and suspending or revoking licenses.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-304(A)(1)

1. Specific statute authorizing the rule:

   R4-5-101: A.R.S. § 32-304(A)(1)
   R4-5-102: A.R.S. § 32-328
   R4-5-103: A.R.S. § 32-328
   R4-5-104: A.R.S. § 32-304(A)(1)
   R4-5-105: A.R.S. § 32-304(A)(1)
   R4-5-106: A.R.S. § 32-328
   R4-5-107: A.R.S. §§ 32-304(B)(2) and 32-325(C)(5)
   R4-5-108: A.R.S. § 41-1073
   R4-5-201: A.R.S. § 32-324
   R4-5-202: A.R.S. § 32-322
   R4-5-203: A.R.S. § 32-323
   R4-5-204: A.R.S. § 32-327
   R4-5-301: A.R.S. § 32-326
   R4-5-302: A.R.S. § 32-304(A)

R4-5-303: A.R.S. §§ 32-326, 32-351, and 32-355(A)(6) and (9)

R4-5-304: A.R.S. §32-304(A)

R4-5-401: A.R.S. § 32-325

R4-5-402: A.R.S. § 32-325

R4-5-403: A.R.S. § 32-304

R4-5-404: A.R.S. §§ 32-304(A)(1) and 32-325

R4-5-405: A.R.S. § 32-325

Exhibit 1: A.R.S. §§ 32-322 and 32-325

Exhibit 2: A.R.S. §§ 32-323 and 32-325

R4-5-406: A.R.S. §§ 32-304(A)(1) and 32-325

R4-5-407: A.R.S. §§ 32-304(A)(7) and 32-325(B)

R4-5-408: A.R.S. § 32-304

R4-5-409: A.R.S. § 32-304

R4-5-410: A.R.S. §§ 32-304 and 32-325

R4-5-411: A.R.S. §§ 32-304 and 32-325

R4-5-501: A.R.S. § 32-354

R4-5-502: A.R.S. § 41-1092.09

2. Objective of the rule including the purpose for the existence of the rule:

R4-5-101: Definitions. The objective of this rule is to make the rules clear and understandable by defining terms used in rule or statute. This facilitates use of the rules.

R4-5-102: Fees and Service Charges. The objective of this rule is to establish the fees charged by the Board for various licensing activities and other services. This increases efficiency in the licensing process by enabling applicants to submit the correct fee.

R4-5-103: Fee Payment. The objective of this rule is to indicate the methods of fee payment acceptable to the Board and the procedure for determining whether a fee is paid timely. This increases efficiency in the licensing process by enabling applicants to submit fees timely and in the correct manner.

R4-5-104: Safety and Sanitation Provisions. The objective of this rule is to establish standards for safety and sanitation. This enables the Board to fulfill its statutory responsibility to protect public health and safety.

R4-5-105: Disinfectants: Approval; Usage Guidelines. The objective of this rule is to protect customers of barbering services by establishing approved disinfectant, sanitation, or sterilization products or methods. This enables the Board to fulfill its statutory responsibility to protect public health and safety.

R4-5-106: Change of Ownership or Location. The objective of this rule is to enable the Board to remain informed of the ownership and location of each licensed shop and school. This enables the Board to fulfill its statutory responsibility to protect public health and safety by conducting timely inspections.

R4-5-107: Inspections. The objective of this rule is to provide information regarding the Board's procedure for inspecting schools and shops. This enables the Board to fulfill its statutory responsibility to protect public health and safety by conducting timely inspections.

R4-5-108: Licensing Time-frames. The objective of this rule is to establish the time frame within which the Board will act on each license application received. This provides certainty to an applicant regarding when the Board will make a decision on an application.

R4-5-201: Examinations. The objective of this rule is to establish procedures the Board follows in administering licensing examinations. This enables an applicant to prepare for the examination.

R4-5-202: Barber License Application. The objective of this rule is to establish the information and documents an applicant for licensure, whether by examination or reciprocity, must provide to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-203: Instructor License Application. The objective of this rule is to establish the information an applicant for an instructor license must provide to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-204: License Renewal. The objective of this rule is to specify the process for renewing a license issued by the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete and timely renewal application.

R4-5-301: Shop License Application. The objective of this rule is to prescribe the information that must be provided to the Board with an application for a shop license. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-302: Shop Premises and Basic Equipment. The objective of this rule is to specify the minimum equipment requirements for a licensed shop. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring shops have equipment necessary to provide barbering services in a safe and sanitary manner.

R4-5-303: Shop Supervision. The objective of this rule is to specify the minimum requirements for supervision of a licensed shop. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring shops are properly supervised.

R4-5-304: Shop Mobile Units. The objective of this rule is to specify the additional requirements for obtaining a shop license for a mobile unit. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring that mobile shops meet minimum standards.

R4-5-401: Barber School Application. The objective of this rule is to prescribe the application form an applicant for a school license is required to submit to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-402: Notification of Changes. The objective of this rule is to ensure the Board has current information regarding a licensed school. This enables the Board to communicate timely with a licensee.

R4-5-403: Use of "Accredited," "Approved," or Similar Terms. The objective of this rule is to protect the public from false or misleading advertising. This enables the Board to fulfill its statutory responsibility.

R4-5-404: School Premises and Basic Equipment. The objective of this rule is to specify the minimum equipment required on the premises of a school. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring schools have equipment necessary to teach barbering in a safe and sanitary manner.

R4-5-405: School Operations and Enrollment. The objective of this rule is to protect barber trainees by specifying minimum requirements for operating a licensed school and enrolling trainees. This enables the Board to fulfill its statutory responsibility to protect the public.

Exhibit 1: Required Age and Education Notice to a Barber Trainee. The objective of this rule is to ensure that a barber trainee is aware of the Board's age and education requirements for obtaining a barber license. This enables the Board to fulfill its statutory responsibility to protect the public and increases efficiency in the licensing process by ensuring potential students are aware of the licensing requirements before enrolling.

Exhibit 2: Required Age and Education Notice to a Barber Trainee. The objective of this rule is to ensure that an instructor trainee is aware of the Board's age and education requirements for obtaining an instructor license. This enables the Board to fulfill its statutory responsibility to protect the public and increases efficiency in the licensing process by ensuring potential students are aware of the licensing requirements before enrolling.

R4-5-406: Student Training and Supervision. The objective of this rule is to protect students by establishing minimum standards for training and supervision. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-407: School Curriculum. The objective of this rule is to establish minimum curricular requirements for a licensed school. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-408: School Records. The objective of this rule is to protect students by requiring the owner of a licensed school maintain records of the students' progress and provide regular progress reports to the Board. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-409: School Closure. The objective of this rule is to protect students by requiring the owner of a licensed school provide notice to each student when a school closes and forward student records to the Board. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-410: Multiple-location Schools. The objective of this rule is to specify special requirements for a school that operates at multiple locations. This increases efficiency in the licensing process by informing licensees who operate at multiple locations that a separate license is required for each location.

R4-5-411: Offsite Training Facility. The objective of this rule is to provide minimum requirements for a licensed school to provide training in a shop rather than at a school location. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-501: Hearing Procedures. The objective of this rule is to indicate the Board conducts hearings according to the procedures at A.R.S. Title 41, Chapter 6, Article 10. This enables a party to prepare for a hearing.

R4-5-502: Rehearing and Review of Decision. The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

   The Board concluded, based on a five-year-review report of these rules approved by Council on September 14, 2010, that the rules would be more effective if amended to be consistent with industry standards and Board procedures. The amendments identified as needed in 2010 and made in the Notice of Final Rulemaking approved by Council on October 6, 2015, include:

   - Clarifying important concepts such as "certified hour" and "change of ownership;'
   - Clarifying that the fee for late renewal is not a penalty;
   - Updating infection control procedures to be consistent with industry standards;
   - Establishing procedures for dealing with exposure to blood or other body fluids;
   - Establishing standards for protecting the health and safety of barbering patrons;
   - Clarifying that a license to operate a shop or school is not transferable to another person or location;
   - Amending the Board's operating procedure to ensure an initial inspection is made before a license to operate a shop is issued;
   - Clarifying that applicants for licensure by reciprocity are required to take an Arizona-specific examination;
   - Adding citizenship requirement to application and notice required for all students;
   - Adding a requirement that a school that closes provide notice to enrolled students; and
   - Clarifying requirements for handling student records when a student transfers or graduates or withdraws.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

   Several of the rules contain inconsistencies with statute or other rules. All of the inconsistencies were corrected in the Notice of Final Rulemaking approved by Council on October 6, 2015. Among the inconsistencies were the following:

- R4-5-102. In subsections (A)(4) and (A)(5)(e), the phrase "late-renewal penalty" was used. However, the phrase used in A.R.S. § 32-328 is "late renewal fee." In statute, the word "penalty" is reserved for the Board charge for submission of an insufficient-funds check.
- R4-5-202, R4-5-301, and R4-5-401. These rules are not consistent with both the federal Personal Responsibility and Work Opportunity Act and A.R.S. § 1-501, which require that it determine whether an applicant is a U.S. citizen or lawfully present in the U.S.
- R4-5-203. Under A.R.S. § 32-323, it is not necessary that an applicant for an instructor license have training to be an instructor. As a result, the information requested under subsections R4-5-203(A)(6) through (A)(8) is beyond the Board's statutory authority.
- R4-5-204. As written, the only requirement to renew a license is to pay the renewal fee. However, both the federal Personal Responsibility and Work Opportunity Act and A.R.S. § 1-501 require the Board to determine whether an applicant for license renewal is a U.S. citizen or lawfully present in the U.S.
- R4-5-402. Subsections (1) through (3) require that a school owner provide notice if certain information changes. However, there is no requirement in rule or statute that these items of information be provided initially. Subsection (7) requires notice if the school opens an additional location. However, opening an additional location requires more than notice. It requires an application for a separate license.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

   The Board enforces all of the rules in a manner that is consistent with statute.

6. Clarity, conciseness, and understandability of the rule:

   The Board determined several of the rules could be made more clear, concise, and understandable and made the corrections in the Notice of Final Rulemaking approved by the Council on October 6, 2015. Among the clarifications made were the following:

   - R4-5-106. A change in ownership or location of a licensed shop or school requires that a new license be obtained. As a result, the rule should clarify that the required notice must be provided before rather than after a change in ownership or location.

- R4-5-108. As written, R4-5-108(B)(4) suggests that only denial of a school license is an appealable agency action. However, under A.R.S. § 41-1076(2), denial of any license is an appealable agency action.
- R4-5-401. A.R.S. § 32-325(C)(1) requires that a licensed school be operated under the general supervision of a licensed instructor but the school application does not require that the licensed instructor responsible for providing general supervision be identified. A.R.S. § 32-325 has other requirements, such as an area appropriate in size and a student-instructor ratio of not more than 20 to 1, for which the license application requires no information.
- R4-5-404. Subsection (B)(3) needs to clarify that the chair required for a patron must be a barber chair.
- R4-5-405. In subsection (B), the phrase "shop quality" is not clear.
- R4-5-408. Subsection (C) requires that a school owner maintain a permanent file for each student but does not specify how long the file must be maintained. Subsection (D)(2)(a) refers to "chief instructor" but the statutory phrase is "supervising instructor."
- R4-5-410. The information in this Section more appropriately belongs in R4-5-202.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:
The Board received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.
8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The Board issues licenses to individual barbers, instructors of barbering students, barber shops, and barber schools. The economic, small business, and consumer impact statement prepared when the Board's rules were made in 2005 correctly identified these individuals and entities as bearing the burden of and benefitting from the licensing and regulatory provisions in the Board's rules and correctly identified the economic impacts of the rules.

There are currently 6,269 licensed barbers in Arizona; 95 licensed instructors; 1,666 licensed shops; and 26 licensed schools. The Board acted on all applications within its time-frames. During FY2015, the Board collected $391,200 in fees and was appropriated $318,294. Ten percent of the fees collected go to the state's general fund. The Board has 3.8 FTEs.

All of the licensed individuals and entities bear the cost of becoming qualified and taking the steps necessary for licensure. For a shop or school, depending on the size of the shop or school, this may include the costs for equipment. All licenses are renewed annually or biannually. Individuals and entities pursue licensure because they perceive that their benefits outweigh their costs.

During FY2015, the Board received or initiated 413 complaints against licensees. It is the Board's philosophy to work with licensees to correct issues rather than pursuing disciplinary action. As a result, only 11 complaints went to hearing. Most of the complaints leading to discipline deal with unlicensed personnel or shops or unsanitary conditions in a shop or school.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

   No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

    Yes. The Board completed the course of action indicated in the Board's 2010 5YRR in the Notice of Final Rulemaking approved by the Council on October 6, 2015.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons

regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

It is statute that requires barbers, instructors, and operators of schools or shops be licensed and establishes the minimum qualifications for each. Statute also requires that a license be regularly renewed and fees be paid. The rules establish a form that must be completed to make application. Completing and submitting this form has a cost but the cost is minimal and generally results in authorization to do business in Arizona, which is a significant benefit.

It is statute that requires the Board to establish sanitary and safety requirements for schools and shops and sanitary and safety standards for the practice of barbering. The requirements and standards established by the Board involve costs. However, they result in the very significant benefit of protecting public health and safety.

In making the rules, the Board determined the benefits outweigh the costs and impose the least burden and costs on those regulated by the rules consistent with protecting public health and safety.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

    No federal law is applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    None of the rules was made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

    No course of action is necessary. When the Notice of Final Rulemaking approved by the Council on October 6, 2015, goes into effect on December 8, 2015, the rules reviewed for this report will cease to exist.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. BOARD OF BARBERS

Authority: A.R.S. § 32-301 et seq.

Editor's Note: 4 A.A.C. 5 consists of new rules for the Board of Barbers that were made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Editor's Note: 4 A.A.C. 5, formerly the rules for the Board of Barber Examiners, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004. The rescinded Chapter, with Historical Notes, is on file in the Office of the Secretary of State (Supp. 04-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R4-5-101 through R4-5-108, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Section

R4-5-101. Definitions
R4-5-102. Fees and Service Charges
R4-5-103. Fee Payment
R4-5-104. Safety and Sanitation Provisions
R4-5-105. Disinfectants: Approval; Usage Guidelines
R4-5-106. Change of Ownership or Location
R4-5-107. Inspections
R4-5-108. Licensing Time-frames

ARTICLE 2. EXAMINATION AND PRACTITIONER LICENSING

Article 2, consisting of R4-5-201 through R4-5-204, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Section

R4-5-201. Examinations
R4-5-202. Barber License Application
R4-5-203. Instructor License Application
R4-5-204. License Renewal

ARTICLE 3. SHOPS

Article 3, consisting of R4-5-301 through R4-5-304, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Section

R4-5-301. Shop License Application
R4-5-302. Shop Premises and Basic Equipment
R4-5-303. Shop Supervision
R4-5-304. Shop Mobile Units

ARTICLE 4. SCHOOLS

Article 4, consisting of R4-5-401 through R4-5-411, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Section

R4-5-401. Barber School Application

R4-5-402. Notification of Changes
R4-5-403. Use of “Accredited,” “Approved,” or Similar Terms
R4-5-404. School Premises and Basic Equipment
R4-5-405. School Operations and Enrollment
Exhibit 1. Required Age and Education Notice to a Barber Trainee
Exhibit 2. Required Age and Education Notice to an Instructor Trainee
R4-5-406. Student Training and Supervision
R4-5-407. School Curriculum
R4-5-408. School Records
R4-5-409. School Closure
R4-5-410. Multiple-location Schools
R4-5-411. Offsite Training Facility

ARTICLE 5. HEARINGS

Article 5, consisting of R4-5-501 through R4-5-502, made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Section

R4-5-501. Hearing Procedures
R4-5-502. Rehearing and Review of Decision

ARTICLE 1. GENERAL PROVISIONS

R4-5-101. Definitions

The following definitions apply to this Chapter unless the context otherwise requires:

“Barbering implement” means any tool or device used for barbering.

“Diploma from a high school or its equivalent” means any of the following:

A document that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country;

A cumulative score of no fewer than 45 points on a General Education Development “GED” test;

A high school equivalency diploma that certifies successful passing of a General Education Development “GED” test; or

An academic degree from an accredited college or university in the United States, a U.S. territory, the District of Columbia, or a foreign country.

“Domestic administration” means barbering performed:

On oneself, or

On another person to whom the practitioner is related as follows:

Father,
Mother,
Grandfather,
Grandmother,
Child,
Step-child,
Brother,
Sister,
Foster parent,
Legal guardian,
Step-parent, or
Spouse.

“Dry sanitizer” means a container large enough to store any barbering implement that requires:

Sanitation by a Board-approved fumigant or ultraviolet radiation, and

Maintenance of the implement’s sanitary condition.

"Establishment" means a distinct physical location but does not include an offsite training facility.
"Liquid sanitizer" means a container large enough to immerse completely any barbering implement that requires disinfectant by solution sanitization.
"One year's experience as a licensed barber" means that during any period of 12 consecutive months, a person:
Maintained a valid license prescribed under A.R.S. § 32-322, and
Engaged in barbering at least 1,200 hours.
"Owner" means a person who has controlling interest in a barber shop or school or the owner's designee.
"Patron" means a person who receives barbering services.
"Practiced barbering for at least two years" means that during any period of 24 consecutive months, a person engaged in barbering at least 1,200 hours during each 12-month consecutive period.
"Shop" has the meaning prescribed under A.R.S. § 32-301(6) and when used in this Chapter includes the term "salon."
"Study" means to receive classroom or practical instruction in a subject.
"Two years of high school education or its equivalent" means either of the following:
Receipt of 10 high school credits,
Receipt of an overall score of no fewer than 39 points on a GED test, or
Passing a GED test.
"Workstation" means a specific location within a shop, mobile unit, offsite training facility, or school where barbering is performed not including hair-cleaning activity.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-102. Fees and Service Charges

A. Under authority of A.R.S. § 32-328, the Board charges the following fees:

1. Barber:
   a. Examination $100.
   b. License by reciprocity $175.
   c. Initial license $40.
   d. Renewal valid for two years $80.
2. Instructor:
   a. Examination $100.
   b. Initial license $50.
   c. Renewal valid for two years $60.
3. Shop:
   a. Application and initial inspection $150.
   b. Change of location $85.
   c. Change of ownership $85.
   d. Renewal $50.
4. Late-renewal penalty for any license issued under subsections (A)(1) through (A)(3):
   a. First time in a five-year period $25.
   b. Second time in a five-year period $50.
   c. Third time in a five-year period $75.
5. School:
   a. Application and initial inspection $1,000.
   b. Change of location $500.
   c. Change of ownership $500.
   d. Renewal $400.
   e. Late-renewal penalty:
      i. First time in five-year period $50.
      ii. Second time in five-year period $100.
      iii. Third time in five-year period $150.

6. Re-examination fee for an examinee who failed part of an examination after an original fee assessment under subsection (A)(1)(a) or (A)(2)(a):
    a. Written $25.
    b. Practical $50.
7. A duplicate of any license issued under this Section $20.

B. The Board charges the following for copies of non-confidential records:
1. Name and address of licensee $.25 per licensee.
2. Public records $.50 per page.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-103. Fee Payment

A. A person shall pay any fee required by the Board in full, in cash, or certified instrument.

B. The Board shall consider a fee payment timely if:
1. The Board receives the fee on or before the date due; or
2. The fee is postmarked on or before the date due.

R4-5-104. Safety and Sanitation Provisions

A. A licensee under A.R.S. Title 32, Chapter 3, and this Chapter shall conduct the following safety and sanitation procedures:
1. Use barbering implements that are:
    a. New if intended for use on a single patron and disposed of after use; or
    b. In good repair and free of defect if intended for multiple use;
2. Sanitize any barbering implement intended for multiple use according to the following procedure:
    a. For any immersible barbering implement other than a scissors or razor, a licensee shall:
        i. Remove all hair or debris,
        ii. Wash with soap and water,
        iii. Completely immerse in a disinfectant solution that is approved and used as prescribed under R4-5-105,
        iv. Rinse with water,
        v. Dry completely, and
        vi. Store in a dry sanitizer;
    b. For a scissors or a razor, a licensee may follow the procedure under subsection (A)(2)(a) or wipe the implement with a cloth bearing a disinfectant solution approved and used as prescribed under R4-5-105. The licensee shall store an implement sanitized under this subsection in a dry sanitizer;
    c. For a non-immersible barbering implement, a licensee shall wipe or spray any parts that contact a patron with a disinfectant solution approved and used as prescribed under R4-5-105. The licensee shall store an implement sanitized under this subsection in a dry sanitizer;
3. Dispense any barbering preparation listed under subsection (A)(3)(a) according to the procedure prescribed under subsection (A)(3)(b).
    a. A barbering preparation under this subsection includes any:
        i. Oil,
        ii. Gel,
        iii. Shampoo,
        iv. Cream,
        v. Antiseptic,
        vi. Clay,
        vii. Ointment, or
        viii. Other preparation intended for use on a patron,
    b. Preparation dispensing procedure. A licensee shall avoid direct manual contact with a barbering preparation by:
        i. Using a manufacturer’s dispensing device included with the original container; or

ii. Using a new disposable or sanitized reusable spoon, spatula, or other similar dispensing implement when no manufacturer dispensing device is included with the original container;

4. Maintain a sufficient quantity of uncontaminated sanitizing solution approved for use as prescribed under R4-5-105 at all times during the performance of barbering;
5. Maintain towels or cloths for patron use that are:
   a. New and disposed immediately after use if intended for single use,
   b. Sanitized by laundering if intended for multiple use,
   c. Stored in a closed container when sanitized before use, and
   d. Stored in a closed container separate from sanitized towels or cloths after use;
6. Maintain a separate covered receptacle for garbage and hair;
7. Maintain all barbering product containers with clear, correct labels indicating contents and intended use;
8. Wash hands with soap and water before serving each patron;
9. Not use a styptic pencil or lump alum in barbering;
10. Not reuse a neck strip, end paper, or depilatory wax on multiple patrons;
11. Use a neck strip to prevent a patron's neck from contacting a non-sanitized object; and
12. Store each neck duster not in use in a dry sanitizer.

B. In addition to licensee requirements under subsection (A), a licensed shop or school owner shall:

1. Ensure that flooring within six feet of each workstation is comprised of smooth, durable, and impervious material; and
2. Maintain all furniture and fixtures of each facility in a clean and orderly manner at all times.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-105. Disinfectants: Approval; Usage Guidelines

A. Approval. For barbering purposes, the Board approves any disinfectant, sanitation, or sterilization product or method registered by the U.S. Environmental Protection Agency for use as:

1. A virucide,
2. A bactericide, or
3. A fungicide.

B. Usage guidelines. Unless a product manufacturer's instructions specify otherwise, a licensee shall disinfect barbering implements according to the following guidelines:

1. Liquid sanitizing. A licensee shall use one or more of the following:

Solution type	Strength	Minimum immersion time
Quaternary Ammonium Compounds "Quats" – liquid or dissolved tablet	1:1000	20 minutes
Formalin	25%	10 minutes
Formalin	10%	20 minutes
Alcohol*: Ethyl, Grain, or Isopropanol	70%	10 minutes
Sodium Hypochlorite	10%	10 minutes

* Note: for sharp cutting implement or electrode sanitization

2. Dry sanitizing. A licensee shall use either of the following:
   a. A fumigant prepared as a mixture of:
      i. One tablespoon of borax; and

ii. One tablespoon, one premanufactured tablet, or one container of formalin; or

b. An ultraviolet-ray electric sanitizer manufactured specifically for sanitation purposes.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-106. Change of Ownership or Location

Within 15 days after a change in location or ownership of a shop or school, the new owner shall submit the following to the Board:

1. Written notification of the change;
2. A completed shop or school operation application; and
3. The applicable fee prescribed under R4-1-102(A)(3)(b), (A)(3)(c), (A)(5)(b), or (A)(5)(c).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-107. Inspections

A. Applicability. This Section applies to any barbering establishment operating within Arizona.

B. Time of inspection. An inspector designated by the Board:

1. Shall inspect each establishment's premises at least twice per calendar year, and
2. May inspect an establishment at any time permitted under A.R.S. § 32-304(B)(2).

C. Inspection procedure. According to the requirements of A.R.S. Title 32, Chapter 3, and this Chapter, the Board's inspector shall document that:

1. Each applicable license is current and displayed as prescribed under A.R.S. § 32-351;
2. Equipment and barbering implements are present, clean, and in appropriate quantity to the number of employees in the establishment;
3. Each sanitary product and procedure is appropriately maintained by facility staff; and
4. All applicable statutes and rules are followed.

D. Inspection findings. An inspector shall submit a copy of a completed inspection report to:

1. The owner of the inspected establishment; and
2. The Board.

E. Disciplinary action. The Board shall follow disciplinary procedures prescribed under A.R.S. §§ 32-352 through 32-356 for any inspection finding indicating a violation of any provision under A.R.S. Title 32, Chapter 3, or this Chapter.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-108. Licensing Time-frames

A. Licensure and renewal. For purposes of A.R.S. § 41-1073(E)(2), the Board shall issue or deny all licenses and renewals under A.R.S. Title 32, Chapter 3, and this Chapter within seven days of receipt of an application except for an initial school license.

B. Initial school licensure. For purposes of A.R.S. Title 41, Chapter 6, Article 7.1, the Board shall issue an initial school license according to the following time-frame:

1. The overall time-frame for issuance of a license under this subsection is 60 days. The Board and an applicant may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The administrative completeness time-frame for a license under this subsection is 15 days beginning the day the Board receives a school license application.
   a. The Board shall send notice of administrative completeness or deficiencies within the administrative completeness time-frame.
   b. In a notice of deficiency, the Board shall list each deficiency and items required to complete the application.
   c. The Board shall suspend for a maximum of 30 days the administrative completeness time-frame and the overall time-frame to provide the applicant time to submit the items specified in the notice of deficiency under subsection (B)(2)(b).

d. If the applicant fails to submit the deficient items within 30 days after the date of the notice of deficiency, the Board shall consider the application withdrawn.

3. The substantive review time-frame for a license under this subsection is 45 days beginning on the date of a notice of administrative completeness sent under subsection (B)(2)(a).
   a. As part of the substantive review for a license under this subsection, the Board shall inspect the applicant's premises according to the procedure prescribed under R4-5-107.
   b. The Board shall send a license or a written notice of denial to an applicant within the substantive review time-frame.
   c. During the substantive review time-frame, the Board may send a single comprehensive written notice of request for additional information that includes a written statement of the additional information needed for the Board to make a decision.
   d. An applicant shall submit all required information within 15 days after the date of a notice of request for additional information sent under subsection (B)(3)(c).
   e. The Board may suspend the substantive review time-frame if the Board and applicant agree in writing to a specified amount of time necessary for the applicant to return all information required under subsection (B)(3)(c) to the Board. The Board shall not grant a substantive time-frame extension that exceeds the amount of time allowed under A.R.S. § 41-1075(B).
   f. The Board shall close the file of an applicant if the applicant fails to submit all required information to the Board within:
      i. The number of days specified under subsection (B)(3)(d); or
      ii. The amount of time specified by written agreement under subsection (B)(3)(e) if applicable.
   g. If the Board denies a license under this subsection, the Board shall send a written denial notice to the applicant that specifies each reason for denial.
4. A person denied a school license under this Section may immediately reapply according to the provisions of R4-5-401 and may appeal the denial under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

ARTICLE 2. EXAMINATION AND PRACTITIONER LICENSING

R4-5-201. Examinations

In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:

1. The Board shall send written notification of an assigned examination time and location to an applicant for a license under A.R.S. Title 32, Chapter 3, and this Chapter at least seven days before a scheduled examination.
2. Examination language provision. The Board shall:
   a. Administer an examination under this Section in the English language; and
   b. Allow an applicant to provide a personal foreign language interpreter that shall not be:
      i. A currently or previously licensed barber or cosmetologist,
      ii. A barber or cosmetology instructor, or
      iii. A barber or cosmetology student in any state of the U.S. or foreign country.
3. Examination integrity provision. The Board shall not:
   a. Provide advance disclosure of examination questions; or
   b. Return a completed examination or other examination records kept by the Board to a school or applicant.
4. The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the applicant:
   a. Cheats, or
   b. Solicits any information from another person except the examiner.
5. The Board shall require re-examination if an applicant fails to apply for a license within one year after successfully completing an examination.

6. For purposes of an examination's practical portion, an applicant shall supply:
   a. All necessary barbering implements and supplies; and
   b. Any necessary live model who shall not be:
      i. A currently or previously licensed barber or cosmetologist,
      ii. A barber or cosmetology instructor, or
      iii. A barber or cosmetology student in any state of the U.S. or foreign country.
7. If an applicant fails to pass a portion of an examination, the Board shall allow the applicant to review the failed portion of the examination if the applicant submits a written review request notice to the Board within 30 days after the examination.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-202. Barber License Application

A. On a form provided by the Board, an initial barber license applicant shall submit the following:
1. Full name;
2. Full address;
3. Telephone number;
4. Social Security number;
5. Birth date;
6. Name and location of high school attended;
7. Highest school grade completed;
8. Alternate school enrollment name if different from that provided under subsection (A)(1);
9. Dates of high school attendance;
10. Proof of an earned GED, if applicable;
11. A statement and explanation if the applicant has had a barber license suspended or revoked in the five-year period before the application date;
12. A statement of any current reciprocal license in another state and state name;
13. Any other information required by the Board; and
14. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.

B. In addition to the requirements under subsections (A), (D)(1), and (D)(2), the Board shall require the following information on a special application form if an applicant applies for licensure by examination:
1. A statement whether the applicant was ever previously a licensed barber in Arizona;
2. A statement whether the applicant was ever licensed as a barber or apprentice in another state or country and the state or country, if applicable;
3. The date of first barber or apprentice license;
4. The name and location of barber school attended;
5. Total number of earned credit hours;
6. Attendance dates;
7. Proof that the applicant graduated from barber school; and
8. The applicant's verification that the information contained on the special application is correct and complete, and the applicant's notarized signature.

C. In addition to the requirements under subsections (A), (D)(1), and (D)(2), an applicant for a barber license by reciprocity shall submit to the Board the following documentation:
1. Proof the applicant is at least 16 years old;
2. Proof of a minimum tenth grade education in one of the following forms:
   a. A copy of a high school diploma;
   b. A high school transcript or letter that verifies the minimum education requirement under this subsection;
   c. Military discharge documentation that verifies the minimum education requirement under this subsection; or

d. A GED grade report indicating an overall passing grade as prescribed under R4-5-101 for two years of high school education or its equivalent;

3. A copy of a current barber license from a state that has a reciprocity agreement with Arizona; and
4. Documentation of at least one year of barbering work experience, notarized by the barber where the work was performed.

D. The Board shall require any applicant under this Section to submit the following application attachments:

1. A photograph as prescribed under A.R.S. § 32-322(A)(3) that is:
   a. A professionally produced photograph of the applicant only;
   b. U.S. passport sized; and
   c. Signed by the applicant across the front, but without blocking the face;
2. The applicable fee in cash or by certified instrument for the type of license for which application is made.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-203. Instructor License Application

A. On a form provided by the Board, an applicant for a barbering instructor license shall submit the following:

1. Full name;
2. Full address;
3. Telephone number;
4. Birth date;
5. Current barber license number;
6. Name and address of barbering school attended for instructor training;
7. Total hours of instructor training;
8. Attendance dates;
9. An indication whether the applicant:
   a. Completed more than one instructor examination in Arizona before the current application;
   b. Has been a licensed instructor in any other country or state of the U.S.; and
   c. Had a former instructor license suspended or revoked;
10. Name and location of high school attended;
11. Highest school grade completed;
12. Alternate school enrollment name if different from that provided under subsection (A)(1);
13. Dates of high school attendance;
14. Proof of an earned GED, if applicable;
15. Any other information required by the Board; and
16. The applicant's verification that the information contained on the license application is correct and complete, and the applicant's notarized signature.

B. An applicant shall submit the instructor license fee in cash or by certified instrument with the completed application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-204. License Renewal

A. A licensee shall renew a license by submitting the renewal fee for the applicable license type as prescribed under R1-4-102(A)(1)(d), (A)(2)(c), (A)(3)(d), or (A)(5)(d) to the Board:

1. No earlier than 30 days before the expiration date; and
2. No later than midnight on the expiration date.

B. The licensee shall pay the fee according to R4-1-103.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

ARTICLE 3. SHOPS

R4-5-301. Shop License Application

A. Application time-frame. An applicant shall submit to the Board the items under subsections (B) and (C) no fewer than seven business days before the opening date of the applicant's shop.

B. On a form provided by the Board, a shop license applicant shall submit the following information:

1. Ownership information:
   a. Name and Social Security number of an individual; or
   b. Partnership or corporate name, names of the individuals comprising the partnership or corporation, and the tax identification number of the partnership or corporation;
2. Shop information:
   a. Shop name,
   b. Full physical address,
   c. Telephone number,
   d. A map of approximate shop location indicating the names of major cross streets, and
   e. Any applicable corporate information that includes:
      i. Corporate name if different from subsection (B)(2)(a);
      ii. Name of contact person;
      iii. Address of corporate headquarters; and
      iv. Telephone number;
3. If known at the time of application, the name and license number of the barber who will manage the shop on behalf of the licensed owner;
4. A projected date for the Board's initial inspection;
5. Indicate the applicant's requested licensing action:
   a. A new shop license;
   b. A shop relocation; or
   c. A change of ownership including the following information:
      i. Former owner's name,
      ii. Former shop name,
      iii. Board file number, and
      iv. A copy of the shop's bill of sale or the signature of the former owner on the application;
6. A listing of equipment in the applicant's shop including the total number of the following:
   a. Barber chairs,
   b. Sinks,
   c. Dry sanitizers,
   d. Liquid sanitizers,
   e. Soiled-towel receptacles, and
   f. Garbage and hair receptacles;
7. A description of the shop's floor covering;
8. An indication of whether the applicant's shop is or will be licensed by the Board of Cosmetology;
9. Any other information required by the Board; and
10. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.

C. Fee. In addition to a completed shop application form, an applicant shall submit to the Board in cash or by certified instrument the appropriate fee for the licensing action requested.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-302. Shop Premises and Basic Equipment

A shop owner shall ensure that each shop has at least the following equipment:

1. A sink that has hot and cold running water;
2. Soap and clean towels for use at each sink; and

3. A separate covered receptacle for the following:
   a. Garbage and hair, and
   b. Reusable towels or cloths that are soiled.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-303. Shop Supervision

A. A shop owner or supervising barber licensed under this Chapter shall ensure that:
1. Each employee, independent contractor, or supervisor that practices barbering in the shop has a current license that meets the requirements of A.R.S. § 32-322;
2. Each required license and the most recent Board inspector's record are displayed according to A.R.S. § 32-351(A); and
3. Each licensee complies with any applicable provision of A.R.S. Title 32, Chapter 3, and this Chapter.

B. The Board shall hold a shop owner and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3, or this Chapter.

C. A shop owner who is a licensed barber may directly supervise a shop.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-304. Shop Mobile Units

The Board shall license a mobile unit as a shop only if:
1. The unit is self-contained,
2. The mobile unit meets all requirements for a shop, and
3. The mobile unit's owner agrees to provide the Board with 15-day written or oral advance notice of the unit's proposed location or a change in location.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

ARTICLE 4. SCHOOLS

R4-5-401. Barber School Application

A. Application form. On a form provided by the Board, an applicant for a license to operate a barber school shall submit the following information:
1. School name;
2. Physical location address;
3. Telephone number;
4. Applicant information:
   a. Name,
   b. Address, and
   c. Telephone number;
5. Owner information. If the school owner is other than the person specified under (A)(4), the applicant shall supply the following owner information:
   a. Owner name,
   b. Home address, and
   c. Telephone number;
6. School manager information:
   a. Name, and
   b. Applicable barber or instructor license number;
7. An indication of whether the school is or will be licensed by the Board of Cosmetology;
8. An indication of the requested licensing action:
   a. A new school license,

b. A school move, or
c. A change of ownership;

9. If the applicant indicates a school move under subsection (A)(8)(b):
   a. The Board file number, and
   b. The school's new address;
10. If the applicant indicates a change of ownership under subsection (A)(8)(c):
   a. The Board file number,
   b. The school's former name if applicable, and
   c. A copy of the bill of sale or the signature of the former owner on the application;
11. A listing of equipment in the applicant's school including the total number of the following:
   a. Barber chairs,
   b. Sinks,
   c. Dry sanitizers,
   d. Liquid sanitizers,
   e. Latherizers,
   f. Soiled-towel receptacles,
   g. Garbage and hair receptacles, and
   h. Student lockers;
12. A description of the establishment's floor covering;
13. A projected ready date for the Board's initial inspection;
14. Any other information required by the Board; and
15. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.

B. Bond. An applicant for a license to operate a school shall attach to the completed application a copy of the bond in the amount required under A.R.S. § 32-325(C)(6).

C. Fee. In addition to a completed barber school application form, an applicant shall submit to the Board in cash or by certified instrument the appropriate fee for the applicant's indicated licensing action.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-402. Notification of Changes

A school owner shall send written notification and updated information to the Board within 15 days if the school owner:

1. Amends the school catalog,
2. Offers a new curriculum,
3. Offers a new course,
4. Changes the school operating schedule,
5. Changes the school name,
6. Changes the school manager,
7. Opens an additional location, or
8. Establishes an offsite training facility in a shop under the provisions of R4-5-411.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-403. Use of "Accredited," "Approved," or Similar Terms

If "accredited," "approved," or a similar term appears in a school catalog or advertisement, the school's owner shall ensure that the catalog or advertisement includes the name of the accrediting or approving organization.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-404. School Premises and Basic Equipment

A. In addition to the requirements of A.R.S. § 32-325(C)(2) and (C)(3), the school owner shall ensure that the school has the following at a minimum:
1. An instructor, licensed in Arizona, to teach each required course of instruction;
2. Instructional furnishings and fixtures for instructor and student use;
3. A workstation for each student scheduled for practical instruction;
4. Filing cabinets for school and student records;
5. Chalkboards or other writing boards;
6. A dispensary to prepare, mix, store, and dispose of supplies and chemicals used to sanitize barbering implements;
7. One liquid sanitizer and one dry sanitizer at each workstation;
8. At least one latherizer for every 10 students;
9. At least one sink, with hot and cold running water, soap, and towels for every three students; and
10. A student library that contains at least the following:
    a. A dictionary;
    b. Current barbering manuals and textbooks;
    c. A current copy of A.R.S. Title 32, Chapter 3; and
    d. A current copy of this Chapter; and
11. All equipment, implements, materials, and supplies necessary for student instruction.

B. A school owner shall ensure that each student workstation has at least the following:
1. A wall mirror;
2. A work stand; and
3. A chair for the patron.

C. A school owner shall ensure that each student at a workstation has access to the following:
1. A covered receptacle for soiled towels and cloths;
2. A covered receptacle for garbage and hair; and
3. A sufficient supply of tonics, lotions, shampoos, and chemical preparations used to process hair.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-405. School Operations and Enrollment

A. A school owner shall file the school's operating schedule with the Board before the first scheduled class begins.

B. A school owner shall ensure that any item provided under this Chapter is of shop quality and maintained in good repair.

C. Unless a student possesses items listed under this subsection at the time of enrollment, a school owner shall provide each student with a non-returnable training kit that includes:
1. Course textbooks,
2. One mannequin for barbering practice,
3. Twelve combs and six brushes without defects,
4. One hair dryer,
5. One straight razor with interchangeable blades,
6. One pair of haircutting shears,
7. One pair of thinning shears,
8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper, and
9. One neck duster.

D. Trainee age and education requirement notices. At the time a school owner enrolls a student, the school owner shall give Exhibit 1 or 2 to the student, as appropriate, and maintain the completed document for five years.

E. An instructor trainee shall not teach students until the instructor trainee has received 40 hours of training in methods of teaching.

F. A person who is not a licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when the person is under the supervision of a licensed instructor.

G. Within five days after enrolling a student, a school owner shall send the following to the Board:

1. A copy of the student's written application that contains the following:
   a. The student's name and address,
   b. The student's enrollment date,
   c. Indicate whether the student is enrolled in a barber or instructor course, and
   d. The student's signature, and
2. Two passport-size photographs of the student.

H. Upon receipt of enrollment information under subsection (G), the Board shall issue an educational card to a student. The student shall:
1. Display the card at the student workstation, and
2. Return the card to the Board upon completion of the course or upon withdrawal from the course for any reason.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Exhibit 1. Required Age and Education Notice to a Barber Trainee

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber in Arizona. The Arizona State Board of Barbers will not issue you a license unless you are at least 16 years of age when you apply for the license and you can demonstrate to the Board of Barbers that you have completed and received appropriate credits for at least two years of high school education or its equivalent.

It is your responsibility to make sure that you can meet the requirements of the Board of Barbers, particularly regarding the completion of two years of high school or its equivalent. If you are unsure about whether you can meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I hereby acknowledge that I have received and understand the foregoing Notice.

(student signature)

(signature date)

Historical Note

New Exhibit made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

Exhibit 2. Required Age and Education Notice to an Instructor Trainee

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber instructor in Arizona. The Arizona State Board of Barbers will not issue you a license unless you are at least 19 years of age when you apply for the license and you can demonstrate to the Board of Barbers that you hold a high school diploma or its equivalent.

It is your responsibility to make sure that you can meet the requirements of the Board of Barbers, particularly regarding the holding of a high school diploma or its equivalent. If you are unsure about whether you can meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I hereby acknowledge that I have received and understand the foregoing Notice.

(student signature)

(signature date)

Historical Note

New Exhibit made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-406. Student Training and Supervision

A. A school owner shall grade students at least monthly and inform the students of their grades.

B. An instructor may assist students in the performance of barbering.

C. A student shall not dismiss a patron until a licensed instructor inspects and approves the student's work.

D. A student shall not attend a school for longer than eight hours per day.

E. A student may receive a maximum of 20 credit hours for field trips pertaining to barbering.

F. A student may receive up to 50 percent of the student's total training at an offsite training facility operated under the provisions of R4-5-411.

G. The instructor shall not ask a student to perform barbering on the public while the student is engaged in classroom instruction or taking a written examination.

H. A student shall wear a name tag during school attendance that clearly identifies the student.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-407. School Curriculum

A. A school owner shall offer barbering curriculum that complies with A.R.S. § 32-325(B).

B. In addition to the minimum requirements under A.R.S. § 32-325(B)(1), a school owner shall include instruction in the following:

1. Professional ethics,
2. Shop management, and
3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3, and this Chapter.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-408. School Records

A. A school owner of one school shall keep a student's records at the student's enrollment location. A school owner of a multiple-location school may keep a student's records at the student's enrollment location or as prescribed at R4-5-410.

B. A school owner shall at least weekly enter into each student's record the following:

1. The date of the recorded entry,
2. Each subject and number of clock hours earned,
3. An indication whether instruction in a subject listed under subsection (B)(2) was classroom or practical instruction,
4. The student's signature on a paper copy of the record to acknowledge modification of the record within three days after each record update.

C. A school owner shall maintain a permanent record file for each student that includes:

1. The signed contract made between the student and the school,
2. The student's current transcript,
3. The applicable original notice required under R4-5-405(D), and
4. The records created under subsection (B).

D. Within 15 days after the end of each month, a school owner shall submit a report to the Board that includes:

1. A list of each student who graduated during the reporting period;
2. The name and license number of:
   a. The school's chief instructor, and
   b. Each licensed instructor;

3. A list of total hours earned by each student during the reporting period;
4. A list of each student's cumulative hours;
5. The name of any student who, during the applicable reporting period:
   a. Transfers to another school,
   b. Withdraws, or
   c. Takes a leave-of-absence;
6. A copy of the documents signed by a student under R4-5-408(B)(4) during the reporting period; and
7. The signature of the school owner or the owner's representative verifying that all information is correct and complete.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-409. School Closure

A. The Board shall consider a school closed if the school fails to provide instruction for a consecutive five-day period that does not comply with the operating schedule on file with the Board.

B. Closure notification. A school owner shall deliver written or oral notification of a school's closure to each student and the Board:
1. Ten days in advance of closure in a case when the owner anticipates school closure, or
2. Within five days after closure if the school's closure was not reasonably anticipated by the owner.

C. Disposition of student records. A school owner shall forward all records for each student to the Board within 10 days after school closure.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-410. Multiple-location Schools

The following provisions apply to a school that operates in more than one location:
1. The operator of a multiple-location school shall obtain a license for each school location; and
2. The owner of a multiple-location school may keep school records in a single location.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-411. Offsite Training Facility

A. A school owner may operate an offsite training facility in a shop that complies with the provisions of A.R.S. § 32-325(C) and R4-5-404(A)(11), R4-5-405(B), (E), and (F), and R4-5-406(B), (C), (D), (G), and (H).

B. In addition to subsection (A), a school owner operating an offsite training facility shall comply with the following:
1. R4-5-404(A)(1), (3), (6), (7), (8), and (9) if training at the facility is practical only; or
2. Requirements of subsection (B)(1) and R4-5-404(A)(2) and (A)(5) if training at the facility includes classroom study.

C. In addition to the requirements of subsection (A), a school owner operating an offsite training facility shall:
1. Clearly indicate to the public the specific portion of the shop designated as an offsite training facility,
2. Post a sign indicating that barbering services at the offsite training facility are provided by students,
3. Require a student to orally give notice of status as a student to each patron, and
4. Restrict student barbering only to the portion of the shop designated as an offsite training facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

ARTICLE 5. HEARINGS

R4-5-501. Hearing Procedures

For purposes of A.R.S. § 32-354(D), the Board shall conduct all formal proceedings according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

R4-5-502. Rehearing and Review of Decision

A. The Board shall provide for a rehearing and review of a decision under A.R.S. Title 41, Chapter 6, Article 10.

B. A party shall file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

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

1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. That the Board's decision is a result of passion or prejudice; or
8. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. If a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).

G. Not later than 30 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:

1. A ruling on the motion will further administrative convenience, expedition, or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1422, effective April 5, 2005 (Supp. 05-2).

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R15-151]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable)

	Rulemaking Action
R2-8-104	Amend
R2-8-115	Amend
R2-8-118	Amend
R2-8-120	Amend
R2-8-123	Amend
R2-8-126	Amend
R2-8-401	Amend
R2-8-501	Amend
R2-8-601	Amend
R2-8-701	Amend

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

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711, 38-712, 38-715, 38-738, 38-740, 38-742, 38-743, 38-745, 38-747, 38-755, 38-760, 38-762, 38-769, 38-770, 38-771, 38-772, 38-773, 38-776, 38-924, 41-1001, 41-1092

3. The effective date for the rules:

December 5, 2015

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 726, May 22, 2015

Notice of Rulemaking Docket Opening: 21 A.A.R. 931, June 26, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 959, July 3, 2015

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

Name: Jessica A. Ross, Rule Writer

Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaR@azasrs.gov

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

Definitions for terms that apply to all the articles in 2 A.A.C. 8 will be removed from rules throughout the articles and added to R2-8-104. R2-8-104 contains terminology that is outdated and needs to be removed. This rulemaking reorganizes and clarifies the terms and definitions used throughout 2 A.A.C. 8. In a 2010 five-year-review report approved by the Council, the ASRS identified that R2-8-104 is not clear, concise, or understandable because it appears to address when certain categories of people (e.g. agricultural labor, student services, and elective positions) are excluded from participating in the ASRS. This is not the typical function of a definitions section and the rule needs to be amended to conform to current rulemaking formatting. Similarly, the remaining sections containing definitions throughout 2 A.A.C. 8 need to be amended in order to improve clarity and consistency with other rules.

R2-8-115 provides for the return of contributions to an ASRS member who leaves ASRS employment other than by retirement or death. The rule also provides for the distribution of a deceased member's benefits upon the death of the member. The ASRS will amend R2-8-115 to reflect that the ASRS will distribute a deceased member's benefits pursuant to the most recent, acceptable documentation on file with the ASRS prior to the member's death. Members' survivors will no longer be able to submit documents to the ASRS on behalf of the member on, or after, the date of the member's death.

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

No study was reviewed.

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

Not applicable

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

Other than the minimal cost to the ASRS to prepare the rule package, there is little to no economic, small business, or consumer impact. The rules will have minimal economic impact, if any, because they simply clarify and make public, the terms and definitions used by the ASRS. Amendments to the rules will not substantively affect the definitions of terms or the interests of people subject to these rules.

R2-8-115 will have minimal economic impact, if any, because the majority of members currently follow this process. There may be some minimal cost to a few members who, in the past, have not used acceptable documentation to designate beneficiaries, and now must do so, either physically or electronically. There may also be some minimal cost to members' survivors, who, in the past, could submit a beneficiary designation that was embedded within an incomplete document after the member's death, so long as the designation was complete and dated before the member's death. With these amendments, survivors cannot submit any kind of beneficiary designation after the member's death.

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

The ASRS made minor formatting and grammatical changes to the rules between the proposed rulemaking and the final rulemaking as follows:

- The ASRS referenced "the" ASRS in the definition of "contribution" at R2-8-104(B)(3).
- The ASRS included the citation symbol in the reference to A.R.S. § 38-924 at R2-8-104(B)(3).
- The ASRS did not change "survivor" benefits to "member" benefits as proposed in R2-8-115 in order to remain clear and consistent with the language used in statute.
- The ASRS referenced "the" ASRS in R2-8-115(G).
- The ASRS included references to statutory subsections for definitions at R2-8-104(B)(9), (10), (12), (14), and (16); R2-8-401; R2-8-501(15); and R2-8-601(4).
- The ASRS formatted the language in R2-8-104(B)(10), and R2-8-601(4) to be more consistent with other definitions.
- The ASRS corrected the reference in R2-8-115(J) from A.R.S. § 38-762(F) to A.R.S. § 38-762(E).
- The ASRS included a comma in R2-8-118(B).
- The ASRS cited to the A.R.S. in R2-8-501(26).
- The ASRS replaced the reference to A.R.S. § 1-215 in R2-8-104(B)(10) with A.R.S. § 41-1001(15) and removed reference to A.R.S. § 41-1001(15) from R2-8-401 and R2-8-601.

The differences between the proposed rulemaking and the final rulemaking do not render the rules substantially dif-

ferent and the ASRS has not filed any supplemental notice of rulemaking with the Secretary of State.

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on August 11, 2015.

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

None

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

The rules do not require a permit.

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

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rulemaking.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

Not applicable

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section
R2-8-104. Definitions
R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of ~~Survivor~~ Member's Benefits Upon the Death of a Member
R2-8-118. Application of Interest Rates
R2-8-120. Designating a Beneficiary; Spousal Consent to Designation
R2-8-123. Actuarial Assumptions and Actuarial Value of Assets
R2-8-126. Calculating Benefits

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Section
R2-8-401. Definitions

ARTICLE 5. PURCHASING SERVICE CREDIT

Section
R2-8-501. Definitions

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Section
R2-8-601. Definitions

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Section
R2-8-701. Definitions

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-104. Definitions

~~**A.** Proprietary functions: Services performed in a single proprietary function for a political subdivision are those services normally carried on by private enterprises. These include, but are not limited to, municipal water departments, municipal transportation departments, municipal housing and airport authorities. For other political subdivisions such as school districts, these functions include cafeteria workers and bookstore employees. School district bus drivers engaged in transporting students without charge are not engaged in a proprietary function. Hospitals operated for the care of the indigent sick by political subdivisions constitute a governmental function, and the employees in such a hospital, therefore, are not performing services in proprietary functions.~~

~~**B.** Who are employees:~~

~~1. Every individual is an employee if the political subdivision for which he performs services has the right to control and direct him not only as to what shall be done but how it shall be done. It is not necessary that the political subdivision actually control or direct the manner in which the services are performed; it is sufficient if the subdivision has the right to do so. The right to discharge strongly implies the right to control.~~

~~2. Officers of a political subdivision are its employees. So are any individuals performing services under contract in the exercise of a governmental function. Individuals such as physicians, dentists, and lawyers, engaged in an independent profession in which they offer their services to the public, are employees if their services include the exercise of a governmental function. If not, they may or may not be employees depending upon the degree to which they are subject to control by the political subdivision.~~

~~3. Whether the individual is an employee depends upon the actual facts of his relationship with the political subdivision. A juror is not an employee since he is not a public officer and is not subject to control as to how he votes on a verdict. A physician who contracts with a county Board of Supervisors to furnish medical services to the indigent sick is an employee when the duty of caring for indigent sick is by law placed in the Board.~~

~~**C.** Mandatory exclusion: Prior to the 1967 Social Security Amendments, the state had the option of excluding emergency services. Beginning January 1, 1968, services performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency are mandatorily excluded. This mandatory exclusion is applicable to services for groups already covered as well as to services for groups which may be covered in the future.~~

~~**D.** Elective positions: Elective positions as used in agreements excluding such positions from coverage means those positions filled by a vote of a legislative body, a board or committee, or by the qualified electorate at large for the subdivision or instrumentality covered by the agreement, which would constitute an election under the law of Arizona.~~

~~**E.** Class or classes of part-time positions: Services performed in a position which does not require more than 150 hours of service in a calendar quarter are services in a part-time position. If a position is established during a calendar quarter and if such position would require more than 150 hours of service if it had been in existence for the entire quarter, such position would not be a part-time position and services in such a position would not be excluded under the state's definition. The time requirements of the position itself, and not the number of hours worked by an individual, is the determinative factor. For example, an individual may be employed and compensated for only a few hours in only one day of a calendar quarter and such individual may be subject to coverage if the position is one which requires more than 150 hours of service.~~

~~**F.** Class or classes of positions the compensation for which is on a fee basis:~~

~~1. Compensation is considered to be on a salary basis when the payments are made at regular and fixed intervals based on services for definite and regular periods of time; and on a fee basis when made for particular services rendered at irregular and uncertain periods. Persons performing personal services of a governmental nature for a political subdivision are employees regardless of whether compensation is on a salary or fee basis. The services of such a person may be excluded, however, if compensated on a fee rather than a salary basis and the agreement between the Arizona State Retirement System Board and the subdivision excludes positions on a fee basis.~~

~~2. Individuals performing governmental services in the practice of their profession, such as doctors or lawyers, may be on either a fee or salary basis depending on the nature of their contract of employment with the political subdivision. For example, a city attorney working full time for a regular monthly salary is not on a fee basis. An attorney employed by the city for special services to be rendered at irregular and uncertain periods for a fixed amount (even though weekly, monthly or other partial advances may be made) is compensated on a fee basis. When, as with some justices of the peace or tax collectors, the compensation is derived in part from fees and part from salary, the position is to be considered as on a fee basis if fees constitute the primary source of compensation. The fees may be received from either the public or the political subdivision. If the fee-basis exclusion is taken and if the position is a fee-basis position, all fees and salary received for services in such a position are not to be reported. If the exclusion is not exercised, all fees received, whether from the political subdivision or other sources, are to be reported.~~

~~3. Beginning January 1, 1968, services performed by state and local employees in positions compensated solely by fees, which are not covered under an agreement, are compulsorily covered as self-employment. However, an individual occupying such a fee-basis position in 1968 could elect not to have his fees covered as self-employment income, if he filed a certificate of election of exemption with the Internal Revenue Service on or before the due date of his 1968 federal income tax return.~~

4. ~~An entity may modify its agreement to extend coverage to services performed after 1967 in any class or classes of positions compensated solely by fees not covered under an agreement prior to 1968. However, the entity must specifically include such services where this coverage is desired. Such coverage shall be effective with respect to services in such fee-basis positions performed beginning with the first day of the year after the year in which the agreement is approved.~~
5. ~~An entity may at any time after 1967 modify its agreement to exclude services performed in any class or classes of positions compensated solely by fees. Such an exclusion from coverage is effective the first day of the year following the year in which the agreement is approved. If any class or classes of positions are so excluded, the entity cannot at a later date modify its agreement to again cover the services.~~

~~G.~~ ~~Exclusion by class or classes of positions:~~
1. ~~Basic classifications may be made within either elective, part-time, or fee-basis positions according to a class or classes of positions having common characteristics or attributes, and exclusions limited to such classes. A class of positions includes all of the positions in the coverage group which have these common characteristics. Services in one or more classes or combinations of classes may be excluded. Positions may be excluded in one class and covered in another. For example, in a coverage group there may be excluded services in all elective positions or the exclusion could be limited to services in all elective positions except elective judicial positions and except part-time elective positions.~~
2. ~~Positions in a single organizational unit of the coverage group do not constitute a class of positions. Therefore, while all of the part-time maintenance workers of a county could be excluded under the part-time option, the exclusion could not be limited to all or any class or part-time maintenance workers in the Office of the County Clerk, which is an organizational unit of the county.~~

~~H.~~ ~~Agricultural labor which would be excluded if performed for a private employer:~~
1. ~~Under the federal Social Security Act, when the agricultural exclusion has been taken, tests as to services which are excluded should be applied to all reports covering reporting quarters beginning on or after January 1, 1957. Cash remuneration paid to an employee for agricultural services should be reported only if:~~
   a. ~~Such remuneration paid the employee during a calendar year (even though part of it was for services performed in a previous calendar year) amounts to $150 or more; or~~
   b. ~~The employee performs agricultural services for the employer on some part of a day on at least 20 days during a calendar year for cash remuneration computed on a time basis, as by the hour, day, or week; in which event the amount of cash remuneration is immaterial in determining if the services are covered.~~
2. ~~Services performed by individuals lawfully admitted from any foreign country on a temporary basis to perform agricultural labor are excluded.~~

~~I.~~ ~~Student service exclusion: Only those student services which would be mandatorily excluded if performed for a private employer fall within this exclusion. Where this exclusion is taken, the following services are not covered:~~
1. ~~Services performed by a student regularly enrolled and attending classes in the employ of his school, college, or university. This means the employing entity and not necessarily the individual institution. The exclusion applies only during periods of regular school attendance. Thus, the exclusion does not apply to work done during summer vacation unless the student is attending a summer session. This is true even though the student was enrolled and regularly attending classes in the school during the previous year and expects to return to school the following year. Services performed on holidays and weekends falling within the academic year when classes are not scheduled, on the other hand, are excluded.~~
2. ~~Services performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law. It is not necessary that the nurses' training school in which the student nurse is enrolled and attending classes be located within the approving state as long as the school meets the educational standards established by state law for the approval of schools within the state.~~

~~J.~~ ~~Services performed by election officials or election workers if remuneration paid in a calendar quarter is less than $50:~~
1. ~~Prior to the 1967 amendments to the Social Security Act, there was no provision for a specific exclusion of the services of election officials or election workers. The exclusion of such services was possible, however, by exclusion of a class of services for which an exclusion was permitted, i.e., exclusion of election officials and election workers as a class of part-time or fee-basis positions.~~
2. ~~This optional exclusion of services performed by election officials or election workers is dependent on the amount paid in a calendar quarter for such services, e.g., if the remuneration paid in the third calendar quarter of a year amounts to $50 or more, the services are covered and must be reported regardless of the fact that the remuneration paid in any other calendar quarter for election officials' or election workers' services amount to $49.99 or less and is not reportable.~~
3. ~~These services may continue to be excluded as a class of part-time or fee-basis positions without regard to the amount paid for such services. These services would, of course, be excluded already if a part-time or fee-basis position exclusion in broad enough terms was previously exercised. The purpose of the optional exclusion of services performed by election officials or election workers if remuneration in a calendar quarter is less than $50 is to permit the exclusion to be taken where one was not previously taken. The effective date of exclusion for these services~~

~~may not be earlier than the last day of the calendar quarter in which the modification to state's Social Security agreement is mailed to the Secretary of Health and Human Services.~~

~~4. On or after January 1, 1978, a political entity can modify its agreement to specifically exclude the services of election officials or election workers if the remuneration paid in a calendar year is less than $100. A change to $100 in a year from $50 in a calendar quarter requires the execution of a new modification. For modification executed after December 31, 1977, the $100 in a year test must be used.~~

~~**K.** "Wages" -- (A.R.S. § 38-701(8)) means all remuneration paid to employees whose services are covered under an agreement in a calendar year not in excess of the maximum reportable wages on which social security contributions are due.~~

~~1. Wages include the cash value of remuneration paid to employees other than money, for example, the value of room and board. The valuation of room and board furnished an employee by a political entity shall be computed at the same valuation as computed by the Industrial Commission for payment of workmen's compensation premiums.~~

~~2. If, as a part of the employment, it is understood that the employee is entitled to meals and the employer is to furnish them, the value of such meals is wages and should be reported. If there is no understanding (either orally or in writing) that meals will be furnished the employee, but they are in fact provided, the value of the meals would be wages if it is substantial. The value of meals may be considered as not substantial if it is less than five percent of the cash pay.~~

~~3. The employer's report of wages paid for each calendar quarter to the Arizona State Retirement System Board shall include for each employee both the cash wages and the value of room and board as a lump sum for the quarter for which the report is made.~~

~~4. The employee tax shall be deducted from the wages paid in accordance with the method of including the value of remuneration paid in any medium other than cash in each pay period or in a single pay period in the calendar quarter.~~

~~5. The value of meals and lodging furnished by, or on behalf of an employer to an employee, the employee's spouse, or any of the employee's dependents is not wages for Social Security purposes if:~~

~~a. The meals or lodging are furnished on the business premises of the employer, and~~

~~b. The meals or lodging are furnished for the convenience of the employer, and~~

~~c. The employee is required to accept such lodging as a condition of employment.~~

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
3. "Contribution" means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to the ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
   b. Any voluntary amounts paid to the ASRS by a member to be placed in the member's account; and
   c. Amounts credited by transfer under A.R.S. § 38-924.
4. "Day" means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.
5. "Designated beneficiary" means the same as in A.R.S. § 38-762(G).
6. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
7. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
8. "Investment return rate" means a percentage of total return on an asset.
9. "Party" means the same as in A.R.S. § 41-1001(14).
10. "Person" means the same as in A.R.S. § 41-1001(15).
11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
13. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. "System" means the same as "defined contribution plan" in A.R.S. § 38-769(O)(7), and as administered by the ASRS.
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member

A. The following definitions apply to this Section unless otherwise specified:

~~1. "ASRS" means the same as in A.R.S. § 38-711.~~

~~2. "ASRS employer" has the same meaning as "employer" in A.R.S. § 38-711.~~

~~3. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.~~

~~4. "Beneficiary" means the individual specified by a member to receive the balance of the member's account or, if applicable, selected benefits upon the death of the member.~~

~~5. "Contribution" means:~~

~~a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;~~

~~b. Any voluntary amounts paid by a System member to ASRS to be placed in the System member's account; and~~

~~c. Any amount credited to a non-retired System member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24(B) of Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.~~

~~6. "Court" means a superior, appellate, or the Supreme court of this state, a corresponding court of another state of the United States, or a federal court of the United States.~~

~~7. "Designated beneficiary" has the same meaning as in A.R.S. § 38-762(H).~~

~~8. "Domestic relations order" has the same meaning as in A.R.S. § 38-773(G).~~

1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.

~~9.~~2. "Eligible retirement plan" ~~has~~ means the same ~~meaning~~ as in A.R.S. § 38-770(D)(3).~~38-770(C)(3).~~

~~10.~~3. "Employer number" means a unique identifier the ASRS assigns to a member employer.

~~11.~~4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).~~38-770(C)(3)(c), (d), (e), and (f).~~

~~12. "Fiscal year" means July 1 of one year to June 30 of the next year.~~

~~13. "Individual retirement account" means the types of eligible retirement plans specified in A.R.S. § 38-770(C)(3)(a) and (b).~~

~~14. "Lump-sum payment" means a member receives the total amount in the member's ASRS account to which the member is entitled by law.~~

~~15. "Member" has the same meaning as in A.R.S. § 38-711.~~

~~16. "Personal representative" means a person who is authorized by law to represent the estate of a deceased individual.~~

~~17.~~5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.

~~18. "Service year" has the same meaning as in A.R.S. § 38-711.~~

~~19. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.~~

~~20. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.~~

~~21. "Trustee" means an individual who holds monetary assets in an eligible retirement plan under the Internal Revenue Code for the benefit of the member.~~

~~22. "United States" means the same as in A.R.S. § 1-215.~~

~~23.~~6. "Warrant" means a voucher authorizing payment of funds due to a member.

B. No change

C. No change

1. No change
2. No change
3. No change

D. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
   a. No change
   b. No change
   c. No change

d. No change
e. No change
f. No change
g. No change
h. No change
i. No change
j. No change
8. No change
a. No change
b. No change
c. No change
9. No change
a. No change
b. No change
c. No change

E. No change
1. No change
a. No change
b. No change
2. No change
a. No change
b. No change
c. No change
d. No change
e. No change
f. No change
g. No change
i. No change
ii. No change
iii. No change
h. No change

F. No change

G. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in ~~R2-8-118(B)~~ R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

H. No change

I. Upon the death of a member, the ASRS shall ~~provide~~ distribute the survivor benefits ~~based~~ according ~~on~~ to the ~~deceased member's last dated, written designation of beneficiary~~ most recent, acceptable documentation that is on file with the ASRS that was received ~~before~~ prior to the date of the member's death, unless otherwise provided by law.

J. If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § ~~38-762(F)~~ 38-762(E). The designated beneficiary or other person specified in A.R.S. § ~~38-762(F)~~ 38-762(E) shall:
1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
a. The deceased member's full name,
b. The deceased member's Social Security number,
c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § ~~38-762(F)~~ 38-762(E):
i. Full name;
ii. Mailing address;
iii. Contact telephone number;
iv. Date of birth, if applicable; and
v. Social Security number or Tax ID number, if applicable.

R2-8-118. Application of Interest Rates

~~**A.** The following definitions apply to this Section unless otherwise specified:~~

~~1. "ASRS" means the same as in A.R.S. § 38-711.~~
~~2. "Member" has the same meaning as in A.R.S. § 38-711.~~
~~3. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.~~
~~4. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and that is administered by the ASRS.~~

~~**B.**~~**A.** Application of interest from inception of the ASRS through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Interest and Investment ~~Yield~~ Return Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death		Interest Rate Used to Determine Survivor Benefits
7-1-1953	2.50%	2.50%		2.50%
7-1-1959	3.00%	3.00%		3.00%
7-1-1966	3.75%	3.75%		3.75%
7-1-1969	4.25%	4.25%		4.25%
7-1-1971	4.75%	4.75%		4.75%
7-1-1975	5.50%	5.50%		5.50%
7-1-1976	6.00%	5.50%		6.00%
7-1-1981	7.00%	5.50%		7.00%
7-1-1982	7.00%	7.00%		7.00%
7-1-1984	8.00%	8.00%		8.00%
7-1-2005	8.00%	4.00% for Plan Members	8.00% for System Members	8.00%
7-1-2013	8.00%	2.00% for Plan Members	8.00% for System Members	8.00%

~~**C.**~~**B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
2. Voluntary additional contributions made by ~~System~~ members, if applicable;
3. Amounts credited by transfer under A.R.S. § ~~38-922~~38-924;
~~4. Amounts credited to a non-retired system member's employer account or to a retired System member's non-guaranteed benefit as determined by Article 2 of this Chapter;~~ and
~~5.~~4. Interest credited in previous years.

R2-8-120. Designating a Beneficiary; Spousal Consent to Designation

A. ~~In addition to the definitions at A.R.S. § 38-711, the~~ The following definitions apply to this Section unless otherwise specified:
1. ~~"Beneficiary" means a person designated to receive money or other benefits when someone dies.~~ "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
~~2. "Contingent annuitant" means the person that a member designates to receive continued annuity payments after the member dies.~~
~~3.~~2. "Joint and survivor annuity" means an optional form of retirement benefits described ~~at~~ in A.R.S. § ~~38-760(B).~~38-760(B)(1).
~~4.~~3. "Period certain and life annuity" means an optional form of retirement benefits described ~~at~~ in A.R.S. § ~~38-760(B).~~38-760(B)(2).
~~5. "QDRO" means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.~~
~~6.~~4. "Spouse" means the individual to whom a member is married under Arizona law.

B. No change
1. No change
   a. No change
   b. No change
2. No change

C. No change
1. No change
2. No change
3. No change

D. Changing a beneficiary designation:
1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
2. If a married member who retired before July 1, 2013, and:
   a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
   b. Chose a period certain and life annuity or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).

E. No change
1. No change
2. No change

F. No change
G. No change
1. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change

H. No change
I. No change
1. No change
   a. No change
   b. No change
2. No change
3. No change

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

A. For the purposes of ~~The following definitions apply to~~ this Section, ~~unless otherwise specified:~~
~~1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities.~~
~~2. "Board" means the same as in A.R.S. § 38-711.~~
~~3. "Investment return rate" means a percentage of total return on an asset.~~
~~4.~~ "market ~~Market~~ value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. No change
1. No change
2. No change
   a. No change
   b. No change

R2-8-126. Calculating Benefits

A. ~~The following definitions apply to this Section unless otherwise specified:~~ For the purposes of this Section, "prior service credit" means a "service credit" listed in R2-8-501(24), credited service that is earned pursuant to A.R.S. § 38-739, or a service credit that is transferred or redeemed pursuant to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.
~~1. "Contingent annuitant" has the same meaning as in A.R.S. § 38-711.~~
~~2. "Life annuity" has the same meaning as in A.R.S. § 38-711.~~
~~3. "Member" has the same meaning as in A.R.S. § 38-711.~~
~~4. "Plan" means a "defined benefit plan" under A.R.S. § 38-769 that is administered by the ASRS.~~
~~5. "Prior service" has the same meaning as in A.R.S. § 38-772.~~
~~6. "System" means a "defined contribution plan" as defined under A.R.S. § 38-769 that is administered by the ASRS.~~

B. No change
C. No change
D. No change
E. No change
F. No change
G. The ASRS shall add any prior service credit benefit that is payable to a member to the life annuity of the member before the ASRS applies any optional payment plan calculation provided for in A.R.S. § 38-760.
H. No change

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

~~The following definitions apply to this Article unless otherwise specified:~~

~~1.~~ "Appealable agency action" ~~has~~ means the same ~~meaning~~ as in A.R.S. § ~~41-1092~~ 41-1092(3).
~~2. "Board" has the same meaning as in A.R.S. § 38-711.~~
~~3. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.~~
~~4. "Party" has the same meaning as in A.R.S. § 41-1001.~~
~~5. "Person" has the same meaning as in A.R.S. § 41-1001.~~

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" ~~has the same meaning as in 32 U.S.C. 101.~~ means full-time duty in a branch of the United States uniformed service, other than active reserve duty.
2. "Active duty termination date" means the day a member:
   a. Separates from active military duty;
   b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
   c. Dies as a result of active military duty.

~~3. "Active member" means the same as in A.R.S. § 38-711.~~

~~4.~~3. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.

~~5.~~4. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Member's current years of credited service to the nearest month;
   b. Member's age to the nearest day;
   c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
   d. Member's current annual compensation.

~~6. "ASRS" means the same as in A.R.S. § 38-711.~~
~~7. "ASRS employer" means the same as "employer" in A.R.S. § 38-711.~~
~~8. "Authorized employer representative" means an individual who has been delegated the authority to act on behalf of an ASRS employer to provide the ASRS with information.~~

~~9.~~5. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.

~~10. "Compensation" means the same as in A.R.S. § 38-769.~~
~~11. "Credited service" means the same as in A.R.S. § 38-711.~~
~~12. "Current annual compensation" means the greater of:~~
   ~~a. Annualized compensation of the full pay period immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.~~
   ~~b. Annualized compensation of the partial year if the member has less than twelve months total credited service on the date of a request to purchase credited service pursuant to section 38-743 or 38-745.~~
   ~~c. The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.~~
   ~~d. The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745 divided by three.~~
   ~~e. If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve. A.R.S. § 38-711(10).~~

~~13.~~6. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.

~~14.~~7. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.

~~15. "Day" means a calendar day, and excludes the:~~
   ~~a. Day of the act or event from which a designated period of time begins to run; and~~
   ~~b. Last day of the period if a Saturday, Sunday, or official state holiday.~~

~~16.~~8. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).

~~17.~~9. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).

~~18.~~10. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.

~~19. "Error" means a typographical mistake, incorrect information, or other inaccuracy, whether intentional or unintentional.~~

~~20.~~11. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, indirect IRA rollover, indirect rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.

~~21.~~12. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.

~~22.~~13. "Immediate family member" means:

a. A member's spouse or life partner;
b. A member's natural, step, or adopted sibling;
c. A member's natural, step, or adopted child;
d. A member's natural, step, or adoptive parent; or
e. An individual for whom the member has legal guardianship.

~~23.~~14. "Indirect IRA rollover" means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.

~~24. "IRA" means an Individual Retirement Account or Annuity under IRC § 408.~~

~~25.~~15. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).

~~26.~~16. "Irrevocable Payroll Deduction Authorization ~~payroll deduction authorization~~" means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.

~~27. "Leave of absence" means the same as in A.R.S. § 38-711.~~

~~28.~~17. "Life partner" means an individual who lives with a member as a spouse, but without being legally married.

~~29.~~18.~~"Member" means the same as in A.R.S. § 38-711.~~ "Military Call-up" means a member is called to active duty in a branch of the United States uniformed services.

~~30.~~19. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.

~~31.~~20. "Military service record" means a United States uniformed services or National Oceanic and Atmospheric Administration document that ~~provides proof of active duty or active reserve duty time, including a military form DD-214 or other military form that~~ provides the following information:

a. The member's full name;
b. The member's Social Security number;
c. Type of discharge the member received; and
d. Active duty dates, if applicable; ~~and~~ or
e. Active reserve duty dates, if applicable~~.~~; and
f. Point history for reserve duty dates, if applicable.

~~32.~~21. "Other public service" means previous employment listed in A.R.S. § 38-743(A).

~~33.~~22. "PDA pay-off letter" means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.

~~34. "Person" means the same as in A.R.S. § 1-215.~~

~~35. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.~~

~~36.~~23. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).

~~37. "Political subdivision" means the same as in A.R.S. § 38-711.~~

~~38. "Political subdivision entity" means the same as in A.R.S. § 38-711.~~

~~39. "Presidential Call-up" means a directive from the President of the United States, Cabinet Secretary, or Secretary of any United States uniformed service, initiating active duty for personnel of active military, or active or inactive National Guard and Reserve branches of the United States uniformed services.~~

~~40. "Public employer" means the United States government, a state of the United States, a political subdivision of a state of the United States, or a political subdivision entity.~~

~~41. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (3).~~

~~42.~~24. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and ~~Presidential~~ Military Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.

~~43.~~25. "SP invoice" means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.

~~44. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.~~

~~45.~~26. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in A.R.S. § 38-747(B)(2).

~~46.~~27. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.

~~47.~~28. "Transfer employment" means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:

a. After accepting an offer to work for a new ASRS employer, or

b. While working as an active member for a different ASRS employer.

~~48.~~29. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.

~~49.~~30. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, ~~the National Oceanic and Atmospheric Administration,~~ and the Commissioned Corps of the Public Health Service.

~~50. "United States" means the same as in A.R.S. § 1-215.~~

~~51.~~31. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions

The following definitions apply to this Article unless otherwise specified:

~~1. "ASRS" has the same meaning as in A.R.S. § 38-711.~~

~~2. "Day" means a calendar day, and excludes the:~~

~~a. Day of the act or event from which a designated period of time begins to run; and~~

~~b. Last day of the period if a Saturday, Sunday, or official state holiday.~~

~~3.~~1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.

~~4.~~2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.

~~5.~~3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.

~~6.~~4. "Substantive policy statement" ~~has~~ means the same ~~meaning~~ as in A.R.S. § ~~41-1001~~ 41-1001(22).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § ~~218~~418 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.

~~2. "Active member" has the same meaning as in A.R.S. § 38-711.~~

~~3. "ASRS" has the same meaning as in A.R.S. § 38-711.~~

~~4. "ASRS employer" means this state, a political subdivision, or a political subdivision entity that has:~~

~~a. Signed a 218 agreement,~~

~~b. Applied to become a member of ASRS, and~~

~~c. Been approved for membership by the Board.~~

~~5. "Authorized employer representative" means an individual who has legal power to bind the ASRS employer in its transactions with the ASRS.~~

~~6. "Board" has the same meaning as in A.R.S. § 38-711.~~

~~7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.~~

~~8.~~2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:

a. Whether the employee was covered under the ASRS employer's 218 agreement prior to July 24, 2014,

b. The number of hours worked or length of time the member was employed by the ASRS employer, or

c. The compensation paid to the member by the ASRS employer.

~~9.~~3. "Eligible service" means employment with an ASRS employer:

a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and

b. In which the member~~:~~

~~i. Until 6/30/92, worked a minimum of 20 hours per week for at least five months in a fiscal year for any one or more ASRS employers;~~

~~ii. From 7/1/92 to 7/1/99, worked a minimum of 20 hours per week for at least 20 weeks in a fiscal year for any one or more ASRS employers; or~~

~~iii. From 7/1/99 to the present,~~ worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer from 7/1/1999 to the present.

~~10. "Fiscal year" means from July 1 of one year through June 30 of the next year.~~

~~11. "Member" has the same meaning as in A.R.S. § 38-711.~~

~~12. "Person" has the same meaning as in A.R.S. § 1-215.~~

~~13. "Political subdivision" has the same meaning as in A.R.S. § 38-711.~~

~~14. "Political subdivision entity" has the same meaning as in A.R.S. § 38-711.~~

~~15. "Service year" has the same meaning as in A.R.S. § 38-711.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. BOARD OF BARBERS

[R15-152]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable)	Rulemaking Action
R4-5-101	Amend
R4-5-102	Amend
R4-5-103	Amend
R4-5-104	Amend
R4-5-105	Repeal
R4-5-106	Amend
R4-5-107	Amend
R4-5-108	Amend
Table 1	New Table
R4-5-109	Renumber
R4-5-109	Amend
Article 2	Amend
R4-5-201	Amend
R4-5-202	Amend
R4-5-203	Amend
R4-5-204	Renumber
R4-5-301	Amend
R4-5-302	Amend
R4-5-303	Amend
R4-5-304	Amend
R4-5-305	New Section
R4-5-401	Amend
R4-5-402	Amend
R4-5-403	Amend
R4-5-404	Amend
R4-5-405	Amend
Exhibit 1	Amend
Exhibit 2	Amend
R4-5-406	Amend
R4-5-407	Amend
R4-5-408	Amend
R4-5-409	Amend
R4-5-410	Repeal
R4-5-411	Amend
R4-5-501	Amend
R4-5-502	Amend

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

Authorizing statute: A.R.S. § 32-304(A)(1)

Implementing statute: A.R.S. §§ 32-304(A)(7), 32-322, 32-323, 32-324, 32-325, 32-326, 32-327, 32-328, 32-351, 32-352, 32-353, 32-354, and 32-355

3. The effective date for the rules:

December 8, 2015

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 889, June 19, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 869, June 19, 2015

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

Name: Sam Barcelona
Address: 1400 W. Washington St., Suite 220
Phoenix, AZ 85007
Telephone: (602) 542-4498
Fax: (602) 542-3093
E-mail: sam.barcelona@azbarberboard.us
Web site: www.azbarberboard.us

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

The Board's rules have not been amended since 2005. In a five-year review report approved by Council on September 14, 2010, the Board identified several rules that needed to be amended. Because of the age of its rules, the Board determined it was necessary to amend all its rules. Some of the amendments the Board determined were necessary increased the length of its licensing time-frames and established requirements regarding blood and body fluid spills and notice to students when a barber school closes.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated May 18, 2015.

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

The Board has not reviewed and does not propose to rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The rule changes will have minimal economic impact. The owner of a licensed shop that is not complying with current industry standards regarding safety and infection control will incur some cost to comply with the new standards. The holder of a license to operate a school that closes will incur a minimal cost to provide notice to students affected by the closure.

The Board's time-frame rule for acting on an application for a barber or instructor license is adjusted to be more realistic. While the Board's small staff will continue to act on applications expeditiously, the additional time is necessary to ensure that all applications receive careful and thorough review.

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

In addition to the change indicated in item 11, the following minor, non-substantive changes were made between the proposed and final rules.

R4-5-101: The definition of "barber pole" was amended to more closely align with the language used in the Certificate of Trademark issued by the Office of the Secretary of State.

R4-5-107(A), (B)(1), and (C)(1): Were amended to clarify that inspection procedures apply not only to existing barbering establishments but also to establishments for which an application for licensure has been made. This also clarified that the annual inspection of an establishment is separate from the initial inspection required before licensure.

R4-5-108(B)(3): Was deleted because the Board determined it was an unnecessary source of possible confusion.

Table 1: The Board reduced the proposed overall time-frames for acting on an application to operate a shop or a school from 105 days to 90 days. The administrative review time-frame remains 30 days but the substantive review time-frame is reduced to 60 days. The current overall time-frame to act on an application to operate a shop is seven days and to act on an application to operate a school is 60 days.

It has been the Board's practice to issue a receipt when an administratively complete application to operate a shop was submitted. This enabled the shop to be opened and fully operational before an initial inspection was conducted. The Board has determined that greater protection is provided to public health and safety, which is the mission of the Board, if an initial inspection is conducted before a license to operate a shop is issued. The greater protection to public health and safety is also enhanced by the safety and infection control and required equipment provisions added in this rulemaking. Data from FY2015, which showed that most rule violations identified during annual inspections related to safety and infection control, emphasize the importance of conducting the initial inspection before a license is issued. Conducting the initial inspection before issuing a license also is more consistent with A.R.S. § 32-328(A)(15), which contemplates that an application and initial inspection occur together.

Including the initial inspection in the time-frame requires the time-frame be more than seven days. The Board believed the proposed 105 days to act on an application to operate a shop was reasonable but understands it is important to enable shops to open quickly. The 90-day time-frame recognizes that the Board has a small staff, no member of which only conducts inspections, but also requires the staff to act expeditiously. The 90-day time-frame is consistent with the time-frames used by other similar boards.

Increasing the overall time-frame for acting on an application to operate a school from 60 to 90 days is required because the Board's small staff needs additional time in which to ensure that a thorough initial inspection is conducted. The Board believed the proposed 105 days to act on an application to operate a school was reasonable but understands it is important for the Board to quickly. This time-frame is also consistent with the time-frames used by other similar boards.

R4-5-202(A)(4) and R4-5-203(A)(5): To reduce economic impact, the requirement that a photograph be professionally produced was deleted. A photograph is acceptable if it is suitable for use in an identification card.

R4-5-301(A): Was amended to clarify that an application to operate a shop is not a license.

R4-5-302(A)(2): Two changes were made. First, the allowable distance between a chair used to provide barbering services and sink was increased from three to six feet. Second, a clear typographical error was corrected. The word "less" was changed to "more." The Board is confident no one would have relied on the error and believed a sink was required to be located more than six feet from the chair used to provide barbering services.

R4-5-404(A)(10): The word "time" was inserted before "clock" to clarify that the clock is for tracking attendance by students.

R4-5-404(B)(3): Language that was redundant of that in the lead to the subsection was deleted and a cross reference to R4-5-101 was added.

R4-5-405(G)(2): Was amended to cross reference the photograph standards in R4-5-202(A)(4).

None of the changes made, in particular increasing the allowed distance between a chair used to provide barbering services and sink, is substantial under the standard at A.R.S. §41-1025(B). The persons affected by and subject matter of the final rule is the same as that of the proposed rule. While the effect of the final rule differs somewhat from the effect of the proposed rule, the different effect is not substantial. The difference simply provides additional flex-

ibility. A licensee who wishes to comply with the proposed three foot limitation is free to do so.

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

No written comments were submitted. Six individuals attended the oral proceeding held on July 20, 2015. They were: Josie and David Burden, shop licensees representing Your Style, Gilbert, AZ; Javier Cota, shop licensee representing Vintage American Barbershop, Gilbert, AZ; Brock Graham, licensed barber; Will Mitchell, shop licensee representing Sigma Cuts, Glendale, AZ; and Shannon Roberts, shop licensee representing Cut It Up Barber Lounge, Tucson, AZ. The following issues were discussed:

Comment	Analysis	Board Response
R4-5-302(A)(2): It will be burdensome if all shop licensees must retrofit their establishments to comply with the rule regarding sinks. Cota, Graham, Mitchell, and Roberts	The comment is correct.	A provision was added to clarify that the subsection applies only to those who obtain a new license after the effective date of the rules. To further reduce any burden, the distance from the barber or shop chair to the sink was made more flexible.
R4-5-305(B): Attendees thanked the Board for trademarking the barber pole as a symbol of barbering services.	The Board appreciates the support.	No change
R4-5-305(C): The phrase "is available to provide barber services" is too restrictive. Some barbers work at multiple shops or only part-time. It is too expensive to change signage when the barber is not available to provide services. Roberts and others	Displaying a barber pole without having a barber available to provide barbering services is contrary to A.R.S. § 32-355(A)(4). It is also unfair and harmful to the economic wellbeing of barbers in shops that may be nearby. And, it is misleading to consumers who enter a shop wanting to avail themselves of barbering services. If a barber is not available to provide barbering services, the shop licensee can cover the barber pole or simply put a notice on the door informing the public that a barber is not available. Or, the shop licensee can use a temporary sign such as a sandwich board to provide notice when a barber is available to provide barbering services.	No change

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

None

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

The licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

No federal law is applicable to the subject matter of the rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

None of the rules was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. BOARD OF BARBERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-5-101. Definitions
R4-5-102. Fees and Service Charges
R4-5-103. Fee Payment
R4-5-104. Safety and ~~Sanitation~~ Infection Control Provisions
R4-5-105. ~~Disinfectants: Approval; Usage Guidelines~~ Repealed
R4-5-106. Change of Ownership or Location
R4-5-107. Inspections
R4-5-108. Licensing Time-frames
Table 1. Time-frames (in days)
~~R4-5-204.~~R4-5-109. License Renewal

ARTICLE 2. EXAMINATION; ~~AND PRACTITIONER LICENSING~~ BARBER AND INSTRUCTOR LICENSE APPLICATION

Section
R4-5-201. Examinations
R4-5-202. Barber License Application
R4-5-203. Instructor License Application
R4-5-204. ~~License Renewal~~Renumbered

ARTICLE 3. SHOPS

Section
R4-5-301. ~~Shop License~~ Application for a License to Operate a Shop
R4-5-302. ~~Shop Premises and~~ Basic Equipment Required in a Shop
R4-5-303. Shop Supervision
R4-5-304. Shop Mobile Units
R4-5-305. Display of Barber Pole

ARTICLE 4. SCHOOLS

Section
R4-5-401. ~~Barber School~~ Application for a License to Operate a School
R4-5-402. Notification of Changes
R4-5-403. Use of "Accredited," "Approved," or Similar Terms
R4-5-404. School Premises and Basic Equipment
R4-5-405. School Operations ~~and Enrollment~~
Exhibit 1. Required Age and Education Notice to a Barber Trainee
Exhibit 2. Required Age and Education Notice to an Instructor Trainee
R4-5-406. Student Training and Supervision
R4-5-407. School Curriculum
R4-5-408. School Records
R4-5-409. School Closure
R4-5-410. ~~Multiple-location Schools~~ Repealed
R4-5-411. Offsite Training Facility

ARTICLE 5. HEARINGS

Section
R4-5-501. Hearing Procedures
R4-5-502. Rehearing and Review of Decision

ARTICLE 1. GENERAL PROVISIONS

R4-5-101. Definitions

The definitions in A.R.S. § 32-301 apply to this Chapter. Additionally, the following definitions apply to this Chapter unless the context otherwise requires:

"Barber pole" means a stationary or revolving sign compose of a vertical cylinder or pole with alternating, diagonal, stripes of any combination including red, white, and blue or a likeness of the sign.

"Barbering implement" means any tool or device used for barbering.

"Certified hour" means instructional hours for which a barber school has issued a student a Certification of Completion or Withdrawal.

"Change of ownership" means there is a change of 10 percent or more of the owners holding a license to operate a shop or school.

"Diploma from a high school or its equivalent," as used in A.R.S. § 32-323(B), means any of the following:

A document that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country;
~~A cumulative score of no fewer than 45 points on a General Education Development "GED" test;~~
A high school equivalency diploma that certifies successful passing of a General Education Development "GED" test; or
An academic degree from an accredited college or university ~~in the United States, a U.S. territory, the District of Columbia, or a foreign country~~.

"Direct supervision" means a supervisor is physically present and observing the work of a supervisee.

"Disinfect" means the use of chemicals to kill most microbial life that can lead to infection in humans.

"Domestic administration" means barbering performed:

On oneself, or
On another person to whom the practitioner is related as follows:
Father,
Mother,
Grandfather,
Grandmother,
Child,
Step-child,
Brother,
Sister,
Foster parent,
Legal guardian,
Step-parent, or
Spouse.

"~~Dry sanitizer" means a container large enough to store any barbering implement that requires:~~

~~Sanitation by a Board-approved fumigant or ultraviolet radiation, and~~

~~Maintenance of the implement's sanitary condition~~.

"EPA" means the United States Environmental Protection Agency.

"Establishment" means a distinct physical location in which a shop or school is located but does not include an offsite training facility.

"Instructional hour" means 60 minutes during which a student receives classroom or practical instruction.

"Liquid sanitizer" means a container large enough to immerse completely any barbering implement that requires disinfecting by a solution made from an EPA-registered disinfectant ~~by solution sanitization~~.

"One year's experience as a licensed barber," as used in A.R.S. § 32-322(C), means that during ~~any period of~~ 12 consecutive months, ~~a person~~ an individual:

Maintained a valid license prescribed under A.R.S. § 32-322, and
Engaged in barbering at least ~~1,200~~ 1,500 hours.

"Owner" means a person ~~who~~ that has controlling interest in a barber shop or school or the owner's designee.

"Patron" means ~~a person~~ an individual who receives barbering services.

"Practiced barbering for at least two years," as used in A.R.S. § 32-323(B), means that during ~~any period of~~ 24 consecutive months, ~~a person~~ an individual engaged in barbering at least ~~1,200~~ 1,500 hours during each 12-month consecutive period.

~~"Shop" has the meaning prescribed under A.R.S. § 32-301(6) and when used in this Chapter includes the term "salon."~~

~~"Study" means to receive classroom or practical instruction in a subject.~~

"Tool drawer" means an ultraviolet electrical sanitizer or a clean, dust-proof cabinet, drawer, or other container that is disinfected with an EPA-registered disinfecting agent and used exclusively to store disinfected barbering implements.

"Two years of high school education or its equivalent," as used in A.R.S. § 32-322(B), means either of the following:

~~Receipt of~~ Successfully completing 10 high school credits,
~~Receipt of an overall score of no fewer than 39 points on a GED test,~~ or
Passing a GED test.

"Workstation" means a specific location within a shop, mobile unit, offsite training facility, or school where barbering is performed not including hair-cleaning activity.

R4-5-102. Fees and Service Charges

A. Under authority of A.R.S. § 32-328, the Board charges the following fees:
1. Barber:
   a. No change
   b. No change
   c. No change
   d. No change
2. Instructor:
   a. No change
   b. No change
   c. No change
3. Shop:
   a. No change
   b. No change
   c. No change
   d. Renewal $50 annually.
4. Late-renewal ~~penalty~~ fee for any license issued under subsections (A)(1) through (A)(3):
   a. First time in a five-year period $25 plus the renewal fee.
   b. Second time in a five-year period $50 plus the renewal fee.
   c. Third time in a five-year period $75 plus the renewal fee.
5. School:
   a. No change
   b. No change
   c. No change
   d. Renewal $400 annually.
   e. Late-renewal ~~penalty~~ fee:
      i. First time in five-year period $50 plus the renewal fee.
      ii. Second time in five-year period $100 plus the renewal fee.
      iii. Third time in five-year period $150 plus the renewal fee.
6. No change
   a. No change
   b. No change
7. A duplicate of any license issued under this ~~Section~~ Chapter $20.

B. The Board charges the following for copies of non-confidential records:
1. Name and address of licensee $.25 per licensee.
2. Public records $.50 per page.

C. As authorized under A.R.S. § 44-6852, the Board shall charge and collect from an applicant that provides the Board with a check that is dishonored by the bank the actual amount assessed by the bank plus a $10 service fee.

R4-5-103. Fee Payment

A. A person shall pay any fee required by the Board in full, in cash~~,~~ or by certified instrument.

B. The Board shall consider a fee payment timely if:
1. The Board receives the fee on or before the date due~~;~~, or
2. The fee is postmarked on or before the date due.

R4-5-104. Safety and ~~Sanitation~~ Infection Control Provisions

A. A licensee under A.R.S. Title 32, Chapter 3, and this Chapter shall ~~conduct~~ adhere to the following safety and ~~sanitation~~ infection control procedures:
1. Use barbering implements that are:
   a. New if intended for use on a single patron and disposed of immediately after use in a covered waste receptacle; or
   b. In good repair, ~~and~~ free of defect, and disinfected as described in subsection (A)(2) if intended for multiple use;
2. ~~Sanitize~~ Disinfect any barbering implement intended for multiple use according to the following procedure:

a. For ~~any immersible~~ a non-electric barbering implement and removable parts of an electric barbering implement, other than a scissors or razor~~, a licensee shall~~:
   i. Remove all hair or debris~~,~~;
   ii. Wash with soap and water~~,~~;
   iii. Rinse with clean water;
   ~~iii.~~iv.Completely immerse in ~~a disinfectant solution that is approved and used as prescribed under R4-5-105~~ an EPA-registered disinfectant used according to manufacturer's instructions~~,~~;
   ~~iv. Rinse with water,~~
   v. Dry ~~completely~~ with a clean cloth or air dry~~,~~; and
   vi. Store in a ~~dry sanitizer~~ tool drawer;
b. For a scissors or a razor~~, a licensee may~~:
   i. ~~follow~~ Follow the procedure under subsection (A)(2)(a); or
   ii. ~~wipe~~ Wipe the ~~implement~~ scissors or razor with a cloth bearing ~~a disinfectant solution approved and used as prescribed under R4-5-105. The licensee shall store an implement sanitized under this subsection in a dry sanitizer~~ an EPA-registered disinfectant used according to manufacturer's instructions and store the scissors or razor in a tool drawer; and
c. For ~~a non-immersible~~ an electric barbering implement~~, a licensee shall~~:
   i. Remove all hair or debris;
   ii. ~~wipe~~ Wipe or spray any parts that contact a patron with ~~a disinfectant solution approved and used as prescribed under R4-5-105. The licensee shall store an implement sanitized under this subsection in a dry sanitizer~~ an EPA-registered disinfectant used according to manufacturer's instructions; and
   iii. Store in a tool drawer.

3. Care and storage of barbering products. ~~Dispense~~ A licensee shall dispense any barbering ~~preparation~~ product listed under subsection (A)(3)(a) according to the procedure prescribed under subsection (A)(3)(b).
   a. A barbering ~~preparation~~ product under this subsection includes any:
      i. Oil,
      ii. Gel,
      iii. Shampoo,
      iv. Cream,
      v. Antiseptic,
      vi. Clay,
      vii. Ointment,
      viii. Waxes, or
      ~~viii.~~ ix.Other ~~preparation~~ product intended for use on a patron,
   b. ~~Preparation~~ Product-dispensing procedure. ~~A licensee shall avoid~~ Avoid direct manual contact with a barbering ~~preparation~~ product by:
      i. Using a manufacturer's dispensing device included with the original container; or
      ii. Using a new disposable or ~~sanitized~~ disinfected reusable spoon, spatula, or ~~other~~ similar dispensing implement when no manufacturer dispensing device is included with the original container;
   c. After a barbering product is dispensed, do not return any portion of the dispensed product to the original container; and
   d. Maintain all barbering product containers with clear, correct labels indicating contents and intended use;
4. ~~Maintain a sufficient quantity of uncontaminated sanitizing~~ Ensure that the disinfecting solution ~~approved for use as prescribed under R4-5-105 at all times during the performance of barbering~~ required under subsection (A)(2) is changed if it becomes contaminated or according to the manufacturer's instructions;
5. Maintain towels or cloths for patron use that are:
   a. New and disposed immediately after use if intended for single use,
   b. ~~Sanitized~~ Disinfected by laundering with detergent and chlorine bleach if intended for multiple use,
   c. Stored in a closed container when ~~sanitized~~ disinfected before use, and
   d. Stored in a closed, ventilated, container separate from ~~sanitized~~ disinfected towels or cloths after use;
6. Maintain a separate, covered, non-leaking, receptacle for garbage and hair and empty, clean, and disinfect the receptacle daily;
~~7. Maintain all barbering product containers with clear, correct labels indicating contents and intended use;~~
7. Exposure to blood or other body fluids. If there is a blood spill or exposure to other body fluids while performing a barbering service, a licensee shall stop the service and:
   a. If the blood spill or body fluid is on a patron, the licensee shall:
      i. Put disposable gloves on both of the licensee's hands;
      ii. Use a disposable instrument to clean the wound with an antiseptic solution and dispose of the soiled instrument immediately;

iii. Use a disposable instrument to apply powdered alum, styptic powder, or a cyanoacrylate to stop bleeding and dispose of the soiled instrument immediately;
iv. Cover the wound with a sterile bandage; and
v. Dispose of the gloves used;
b. If the blood spill or body fluid results from an injury to the licensee, the licensee shall comply with subsections (A)(7)(a)(ii) through (iv) and cover the affected area with a clean, fluid-proof glove or finger cover;
c. If the blood spill or body fluid contacts any surface area, the licensee shall disinfect the surface area with an EPA-registered disinfectant used according to the manufacturer's instructions; and
d. If the blood spill or body fluid contacts any barbering instrument, the licensee shall disinfect the barbering instrument as specified in subsection (A)(2);

8. Patron protection. A licensee shall protect the health and safety of a patron by:
a. ~~Wash~~ Washing the licensee's hands with liquid or powder soap and water before serving each patron;
b. Disinfecting the head rest of the barber or styling chair after each use or at least daily;
c. Placing a clean towel or paper sheet on the head rest of the barber or styling chair for each patron;
d. Using a clean neck strip with each patron to avoid having the patron contact a non-sanitized object;
e. Not performing a barbering service on a patron while the licensee has a contagious disease unless a medically-approved measure is used to prevent transmission of the disease; and
f. Not knowingly performing a barbering service on a patron who has a contagious disease;

9. ~~Not use a styptic pencil or lump alum in barbering;~~ Prohibited products. To protect the health and safety of a patron, a licensee shall not use any of the following products when performing barbering services:
a. Methyl Methacrylate liquid monomers;
b. Alum or other astringents in stick or lump form;
c. Fumigants such as formalin (formaldehyde) tablets or liquids;
d. Any product that penetrates the dermis layer of the skin; and
e. Any product that is banned or deemed to be poisonous or unsafe by any responsible federal, state, or local governmental entity.

10. ~~Not reuse a neck strip, end paper, or depilatory wax on multiple patrons;~~ Prohibited practices. To protect the health and safety of a patron, a licensee shall not engage in the following practices when performing barbering services:
a. Allow any animal except a service animal on the establishment premises. A covered aquarium that is maintained in a sanitary condition is allowed; or
b. Use a shaving brush and mug unless the shaving brush and mug are personally owned by the patron.

~~11. Use a neck strip to prevent a patron's neck from contacting a non-sanitized object; and~~
~~12. Store each neck duster not in use in a dry sanitizer.~~

B. In addition to licensee requirements under subsection (A), the holder of a ~~licensed~~ license to operate a shop or school ~~owner~~ shall:
1. Ensure that flooring within six feet of each workstation is ~~comprised~~ made of smooth, durable, and impervious material; ~~and~~
2. Maintain all furniture and fixtures of each ~~facility~~ establishment in a clean and orderly manner at all times~~.~~;
3. Provide at least one restroom located on or near the establishment premises; and
4. Comply with all state, local, and federal requirements.

R4-5-105. ~~Disinfectants: Approval; Usage Guidelines~~ Repealed

~~**A.** Approval. For barbering purposes, the Board approves any disinfectant, sanitation, or sterilization product or method registered by the U.S. Environmental Protection Agency for use as:~~
~~1. A virucide,~~
~~2. A bactericide, or~~
~~3. A fungicide.~~

~~**B.** Usage guidelines. Unless a product manufacturer's instructions specify otherwise, a licensee shall disinfect barbering implements according to the following guidelines:~~
~~1. Liquid sanitizing. A licensee shall use one or more of the following:~~

~~**Solution type**~~	~~**Strength**~~	~~**Minimum immersion time**~~
~~Quaternary Ammonium Compounds "Quats" — liquid or dissolved tablet~~	~~1:1000~~	~~20 minutes~~
~~Formalin~~	~~25%~~	~~10 minutes~~
~~Formalin~~	~~10%~~	~~20 minutes~~
~~Alcohol*: Ethyl, Grain, or Isopropanol~~	~~70%~~	~~10 minutes~~

~~Sodium Hypochlorite~~	~~10%~~	~~10 minutes~~

~~* Note: for sharp cutting implement or electrode sanitization~~

~~2. Dry sanitizing. A licensee shall use either of the following:~~

~~a. A fumigant prepared as a mixture of:~~

~~i. One tablespoon of borax; and~~

~~ii. One tablespoon, one premanufactured tablet, or one container of formalin; or~~

~~b. An ultraviolet-ray electric sanitizer manufactured specifically for sanitation purposes.~~

R4-5-106. Change of Ownership or Location

A. A license issued to operate a shop or school is not transferable to:

1. A location other than the location specified on the license; or
2. An owner other than the owner specified on the license.

B. A change in the owner or location of a shop or school requires that the owner apply for a new license.

C. ~~Within~~ At least 15 days ~~after~~ before a change in location or ownership of a shop or school, the owner of the re-located shop or school or the new owner shall submit the following to the Board:

1. Written notification of the change;
2. A completed application to operate a shop, as prescribed under R4-5-301, or school, ~~operation application~~ as prescribed under R4-5-401; and
3. The applicable fee prescribed under R4-1-102(A)(3)(b), (A)(3)(c), (A)(5)(b), or (A)(5)(c).

R4-5-107. Inspections

A. Applicability. This Section applies to any barbering establishment operating within Arizona and any establishment for which application for licensure has been made.

B. Time of inspection. An inspector designated by the Board:

1. Shall inspect the premises of each establishment for which an application for licensure has been made,

~~1.~~2. Shall inspect each establishment's premises ~~at least twice~~ one or more times per calendar year, and

~~2.~~3. May inspect an establishment at any time permitted under A.R.S. § 32-304(B)(2).

C. Inspection procedure. According to the requirements of A.R.S. Title 32, Chapter 3, and this Chapter, the Board's inspector shall document that:

1. Each applicable license issued is current and displayed as prescribed under A.R.S. § 32-351;
2. Equipment and barbering implements are present, clean, and in appropriate quantity to the number of employees in the establishment;
3. Each ~~sanitary~~ product, implement, and procedure is ~~appropriately~~ maintained or followed appropriately by ~~facility~~ establishment staff; and
4. All applicable statutes and rules are followed.

D. Inspection findings. An inspector shall submit a copy of a completed inspection report to:

1. The ~~owner of~~ license holder or individual assigned by the license holder to operate the inspected establishment; and
2. The Board.

E. Disciplinary action. The Board shall follow disciplinary procedures prescribed under A.R.S. §§ 32-352 through 32-356 for any inspection finding indicating a violation of any provision under A.R.S. Title 32, Chapter 3, or this Chapter.

R4-5-108. Licensing Time-frames

A. ~~Licensure and renewal. For purposes of~~ The overall time-frame described in A.R.S. § ~~41-1073(E)(2)~~ 41-1072(2)~~, the Board shall issue or deny~~ for all licenses ~~and renewals~~ issued by the Board under A.R.S. Title 32, Chapter 3, and this Chapter ~~within seven days of receipt of an application except for an initial school license~~ is specified in Table 1. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame.

B. ~~Initial school licensure. For purposes of A.R.S. Title 41, Chapter 6, Article 7.1, the Board shall issue an initial school license according to the following time-frame:~~

~~1. The overall time-frame for issuance of a license under this subsection is 60 days. The Board and an applicant may agree in writing to extend the substantive review time-frame and the overall time-frame.~~

~~2.~~ The administrative completeness review time-frame described in A.R.S. §41-1072(1) for a license ~~under this subsection is 15 days beginning the day~~ issued by the Board is specified in Table 1 and begins on the date the Board receives a ~~school~~ license application.

1. ~~a.~~ If the application is incomplete,~~The~~ the Board shall send the applicant a notice of administrative ~~completeness or deficiencies within the administrative completeness time-frame.~~

~~b.~~ ~~In a notice of~~ deficiency~~, the Board shall list~~ specifying ~~each deficiency and items~~ the information or documents required to complete the application. The administrative completeness review and overall time-frames are suspended until the Board receives the missing information or documents.

~~c. The Board shall suspend for a maximum of 30 days the administrative completeness time-frame and the overall time-frame to provide the applicant time to submit the items specified in the notice of deficiency under subsection (B)(2)(b).~~

~~d. If the applicant fails to submit the deficient items within 30 days after the date of the notice of deficiency, the Board shall consider the application withdrawn.~~

2. If the application is complete, the Board shall send the applicant a notice of administrative completeness.

C. ~~3.~~ The substantive review time-frame described in A.R.S. § 41-1072(3) for a license ~~under this subsection is 45 days beginning~~ issued by the Board begins on the postmark date of ~~a~~ the notice of administrative completeness sent under subsection (B)(2)~~(a)~~.

1.~~a.~~ As part of the substantive review for ~~a~~ an initial shop or school license ~~under this subsection~~, the Board shall inspect the applicant's premises according to the procedure prescribed under R4-5-107.

~~b. The Board shall send a license or a written notice of denial to an applicant within the substantive review time-frame.~~

2. ~~c.~~ During the substantive review time-frame, the Board may send a single comprehensive written notice of request for additional information that includes a written statement of the additional information needed for the Board to make a decision. The substantive review and overall time-frames are suspended from the postmark date of the comprehensive written request for additional information until the Board receives the additional information. The Board and the applicant may agree in writing to allow the Board to submit additional supplemental requests for information.

~~d. An applicant shall submit all required information within 15 days after the date of a notice of request for additional information sent under subsection (B)(3)(c).~~

~~e. The Board may suspend the substantive review time-frame if the Board and applicant agree in writing to a specified amount of time necessary for the applicant to return all information required under subsection (B)(3)(c) to the Board. The Board shall not grant a substantive time-frame extension that exceeds the amount of time allowed under A.R.S. § 41-1075(B).~~

D. ~~f.~~ The Board shall close the file of an applicant if the applicant fails to submit all required information to the Board within~~:~~ the time specified in Table 1. If a person whose file is closed wishes to be considered further for licensure, the person shall submit another application and fee.

~~i. The number of days specified under subsection (B)(3)(d); or~~

~~ii. The amount of time specified by written agreement under subsection (B)(3)(e) if applicable.~~

~~g. If the Board denies a license under this subsection, the Board shall send a written denial notice to the applicant that specifies each reason for denial.~~

E. Within the overall time-frame specified in Table 1, the Board shall:

1. Grant a license to a person that meets all requirements in A.R.S. Title 32, Chapter 3 and this Chapter; or
2. Deny a license to a person that fails to meet all requirements in A.R.S. Title 32, Chapter 3 and this Chapter. The Board shall include in the notice of denial the reason for the denial and information regarding the right to

~~4. A person denied a school license under this Section may immediately reapply according to the provisions of R4-5-401 and may~~ appeal the denial under A.R.S. Title 41, Chapter 6, Article 10.

Table 1. Time-frames (in days)

License	Authority	Overall Time-frame	Administrative Time-frame	Time to Respond	Substantive Time-frame	Time to Respond
Barber	A.R.S. §§ 32-322; 32-327	28	21	90	7	30
Instructor	A.R.S. §§ 32-323; 32-327	28	21	90	7	30
School	A.R.S. §§ 32-325; 32-327	90	30	30	60	60
Shop	A.R.S. §§ 32-326; 32-327	90	30	30	60	60

~~R4-5-204.~~R4-5-109. License Renewal

A. ~~A licensee shall~~ To renew ~~a~~ any license issued under this Chapter, a licensee shall submit to the Board:

1. The application for renewal form attached to the license issued by the Board;
2. ~~by submitting the~~ The renewal fee for the applicable license ~~type~~ as prescribed under R1-4-102(A)(1)(d), (A)(2)(c), (A)(3)(d), or (A)(5)(d) ~~to the Board~~:

   ~~1.~~ a. No earlier than 30 days before the expiration date~~;~~, and

   ~~2.~~ b. No later than midnight on the expiration date~~.~~; and
3. If the documentation submitted under R4-5-202(D)(3), R4-5-203(C)(4), R4-5-301(B)(2)(a)(v), or R4-5-401(C)(4)(a)(iii) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired.

B. ~~The~~ As provided under A.R.S. § 32-355, a licensee ~~shall pay the fee according to R4-1-103~~ that fails to renew a license timely shall immediately cease providing the services authorized by the license.

C. An expired license issued under this Chapter may be renewed within five years after the date of expiration by complying with subsection (A) and paying the late-renewal fee prescribed under R4-5-102.

ARTICLE 2. EXAMINATION; ~~AND PRACTITIONER LICENSING~~ BARBER AND INSTRUCTOR LICENSE APPLICATION

R4-5-201. Examinations

A. Required examinations.

1. Except for an applicant for licensure by reciprocity, an applicant for:
   a. A barber license shall pass an examination covering the topics listed in A.R.S. § 32-324(C); and
   b. An instructor license shall pass the examination described in A.R.S. § 32-324(D);
2. As authorized under A.R.S. § 32-322(A)(2) and A.R.S. § 32-323(A)(2), the Board shall ensure that applicants for licensure by reciprocity possess necessary qualifications by requiring:
   a. All applicants for licensure by reciprocity to pass an examination regarding A.R.S. Title 32, Chapter 3 and this Chapter; and
   b. Applicants for licensure by reciprocity as an instructor to pass an examination regarding procedures the Board uses to measure the practical skills of barbering students.

B. In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:

1. The Board shall send an applicant written notification of an assigned examination time and location ~~to an applicant for a license under A.R.S. Title 32, Chapter 3, and this Chapter~~ at least seven days before a scheduled examination.
2. Examination language provision. The Board shall:
   a. Administer an examination under this Section in ~~the~~ English ~~language~~; and
   b. Allow an applicant for a barber license to provide a reader or personal foreign language interpreter ~~that~~ who shall not be:
      i. A currently or previously licensed barber or cosmetologist,
      ii. A barber or cosmetology instructor, or
      iii. A barber or cosmetology student in any state ~~of the U.S.~~ or foreign country.
3. Examination integrity provision. The Board shall not:
   a. ~~Provide advance disclosure of~~ Disclose examination questions; or
   b. Return a completed examination or other examination records kept by the Board to a school or applicant.
4. The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the applicant:
   a. Cheats, or
   b. Solicits any information from another person except the examiner.
5. The Board shall require re-examination if an applicant fails to apply for a license within one year after ~~successfully completing~~ passing an examination.
6. For purposes of an examination's practical portion, an applicant for a barber license shall supply:
   a. All necessary barbering implements and supplies; and
   b. ~~Any necessary~~ A live model who shall not be:
      i. A currently or previously licensed barber or cosmetologist,
      ii. A barber or cosmetology instructor, or
      iii. A barber or cosmetology student in any state ~~of the U.S.~~ or foreign country.
7. If an applicant fails ~~to pass~~ a portion of an examination, the Board shall allow the applicant to ~~review~~ meet with Board staff and participate in a general discussion of the failed portion of the examination if the applicant submits a written ~~review~~ request ~~notice~~ to the Board within 30 days after the examination.

R4-5-202. Barber License Application

A. ~~On a form provided by the Board, an initial barber license applicant shall submit the following:~~ An applicant for licensure as a barber shall attach the following to the application attachments required under subsections (B) or (C):

1. ~~Full name;~~ Proof that the applicant is at least 16 years old;
2. ~~Full address;~~ Proof that the applicant has at least two years of high school education or its equivalent. Acceptable proof includes an official transcript from the high school attended or a copy of a high school diploma or GED;
3. ~~Telephone number;~~ Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;
4. ~~Social Security number;~~ A photograph, as prescribed under A.R.S. § 32-322(A)(3), that is suitable for use on an identification card and:
   a. Of the applicant only;
   b. U.S. passport sized; and
   c. Signed by the applicant across the front without blocking the face;
5. ~~Birth date;~~ If currently licensed as a barber in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and
6. ~~Name and location of high school attended;~~ The applicable fee specified in R4-5-102(A)(1).
7. ~~Highest school grade completed;~~
8. ~~Alternate school enrollment name if different from that provided under subsection (A)(1);~~
9. ~~Dates of high school attendance;~~
10. ~~Proof of an earned GED, if applicable;~~

~~11. A statement and explanation if the applicant has had a barber license suspended or revoked in the five-year period before the application date;~~
~~12. A statement of any current reciprocal license in another state and state name;~~
~~13. Any other information required by the Board; and~~
~~14. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.~~

B. ~~In addition to the requirements under subsections (A), (D)(1), and (D)(2), the Board shall require the following information on a special application form if an applicant applies for licensure by examination~~ License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:
1. ~~A statement whether the applicant was ever previously a licensed barber in Arizona~~ Full name;
2. ~~A statement whether the applicant was ever licensed as a barber or apprentice in another state or country and the state or country, if applicable~~ Other names, if any, by which the applicant has been known;
3. ~~The date of first barber or apprentice license~~ Full address;
4. ~~The name and location of barber school attended~~ Telephone number;
5. ~~Total number of earned credit hours~~ Social Security number;
6. ~~Attendance dates~~ Date and place of birth;
7. ~~Proof that the applicant graduated from barber school~~ Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, name and location of barber school attended; ~~and~~
8. ~~The applicant's verification that the information contained on the special application is correct and complete, and the applicant's notarized signature.~~ Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, the number of certified hours obtained from a barber school;
9. A statement whether the applicant has ever been licensed as a barber in Arizona and if so, when;
10. A statement whether the applicant has ever been licensed in another state or country as a barber or apprentice barber and if so, when and where;
11. A statement whether the applicant has had a barber license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;
12. Any other information required by the Board; and
13. The applicant's notarized signature and verification that the information provided is correct and complete.

C. ~~In addition to the requirements under subsections (A), (D)(1), and (D)(2), an applicant for a barber license by reciprocity shall submit to the Board the following documentation~~ License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (13), an applicant for licensure by reciprocity shall submit the following:
1. ~~Proof the applicant is at least 16 years old~~ A copy of a current barber license issued by a state with which Arizona has a reciprocity agreement; and
2. ~~Proof of a minimum tenth grade education in one of the following forms:~~ Documentation of at least one year of barbering work experience. The documentation shall contain the notarized signature of the barber where the work was performed.
   ~~a. A copy of a high school diploma;~~
   ~~b. A high school transcript or letter that verifies the minimum education requirement under this subsection;~~
   ~~c. Military discharge documentation that verifies the minimum education requirement under this subsection; or~~
   ~~d. A GED grade report indicating an overall passing grade as prescribed under R4-5-101 for two years of high school education or its equivalent;~~

~~3. A copy of a current barber license from a state that has a reciprocity agreement with Arizona; and~~
~~4. Documentation of at least one year of barbering work experience, notarized by the barber where the work was performed.~~

~~**D.** The Board shall require any applicant under this Section to submit the following application attachments:~~
~~1. A photograph as prescribed under A.R.S. § 32-322(A)(3) that is:~~
   ~~a. A professionally produced photograph of the applicant only;~~
   ~~b. U.S. passport sized; and~~
   ~~c. Signed by the applicant across the front, but without blocking the face;~~
~~2. The applicable fee in cash or by certified instrument for the type of license for which application is made.~~

R4-5-203. Instructor License Application

A. An applicant for licensure as an instructor shall attach the following to the application required under subsections (B) and (C):
1. Proof that the applicant is at least 19 years old;
2. Proof that the applicant has a high school diploma or its equivalent;
3. Proof that the applicant has practiced barbering for at least two years. The proof shall contain the notarized signature of the barber or barbers where the work was performed;
4. Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;

5. A photograph that is suitable for use on an identification card and:
   a. Of the applicant only;
   b. U.S. passport sized; and
   c. Signed by the applicant across the front without blocking the face;
6. If currently licensed as a barber instructor in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and
7. The applicable fee specified in R4-5-102(A)(2).

B. ~~On a form provided by the Board, an applicant for a barbering instructor license~~ License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:
1. Full name;
2. Other names, if any, by which the applicant has been known;
~~2.~~3. Full address;
~~3.~~4. Telephone number;
5. Social Security number;
~~4.~~6. Birth date;
~~5.~~7. Current Arizona barber license number;
~~6.~~8. If the applicant attended school for training as a barber instructor:
   a. Name and address of barbering school attended for instructor training;
   ~~7.~~b. Total hours of instructor training; and
   ~~8.~~c. ~~Attendance dates~~ Dates during which instructor training was obtained;
9. ~~An indication~~ A statement regarding whether the applicant:
   a. ~~Completed more than one instructor examination in Arizona before the current application~~ Has ever been licensed as a barber instructor in Arizona and if so, when;
   b. Has ever been a licensed barber instructor in any other country or state ~~of the U.S.~~ and if so, the country or state and dates of licensure as a barber instructor; and
   c. ~~Had~~ Has had a former instructor license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;
~~10. Name and location of high school attended;~~
~~11. Highest school grade completed;~~
~~12. Alternate school enrollment name if different from that provided under subsection (A)(1);~~
~~13. Dates of high school attendance;~~
~~14. Proof of an earned GED, if applicable;~~
~~15.~~10. Any other information required by the Board; and
~~16.~~11. The applicant's ~~verification~~ notarized signature verifying that the information ~~contained on the license application~~ provided is correct and complete~~, and the applicant's notarized signature~~.

~~**B.**~~**C.** ~~An applicant shall submit the instructor license fee in cash or by certified instrument with the completed application.~~ License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (11), an applicant for an instructor license by reciprocity shall submit the following:
1. A copy of the current license to instruct barber students issued by a state that has a reciprocity agreement with Arizona; and
2. Documentation of at least one year's experience as a licensed instructor of barber students. The documentation shall contain the notarized signature of the owner of the barber school at which instruction was provided.

R4-5-204. ~~License Renewal~~Renumbered

ARTICLE 3. SHOPS

R4-5-301. ~~Shop License~~ Application for a License to Operate a Shop

A. ~~Application time-frame.~~ ~~An applicant~~ To apply for a license to operate a shop, a person shall submit to the Board the items under subsections (B) and (C) ~~no fewer than seven business days before the opening date of the applicant's shop~~. A person that intends to operate more than one shop shall apply for and be issued a separate license to operate each shop. A person shall not operate a shop before a license is issued.

B. On a form ~~provided by~~ available from the Board, ~~a shop license~~ an applicant for a license to operate a shop shall ~~submit~~ provide the following information:
1. Indicate the applicant's requested licensing action:
   a. A license to operate a new shop;
   b. A change of location of an operating shop including the following information:
      i. The Board file number, and
      ii. Both the old and new addresses of the shop; or
   c. A change of ownership of an operating shop including the following information:
      i. Former owner's name;
      ii. Former shop name, if the shop name is changed;

iii. Board file number; and
iv. A copy of the shop's bill of sale or the signature of the former owner on the application;

~~1.~~2. Ownership information:
a. ~~Name and Social Security number of~~ If the owner is an individual or partnership~~;~~:
i. Name,
ii. Address,
iii. Telephone number,
iv. Social Security number of the individual or each partner owning at least 10 percent of the partnership, and
v. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual or each partner owning at least 10 percent of the partnership is authorized under federal law; or
b. ~~Partnership~~ If the owner is a corporation:
i. ~~or corporate~~ Corporate name~~,~~;
ii. ~~names~~ Names of ~~the~~ all individuals ~~comprising~~ owning at least 10 percent of the ~~partnership or~~ corporation~~,~~; ~~and~~
iii. ~~the tax~~ Tax identification number of the ~~partnership or~~ corporation;
iv. Name and telephone number of a contact person;
v. Name and address of the statutory agent, if required by law;
vi. Address of the corporation; and
vii. Telephone number of the corporation;

~~2.~~3. Shop information:
a. Shop name,
b. Full physical address of the shop,
c. Telephone number, and
d. A map of approximate shop location indicating the names of major cross streets~~, and~~;
~~e. Any applicable corporate information that includes:~~
~~i. Corporate name if different from subsection (B)(2)(a);~~
~~ii. Name of contact person;~~
~~iii. Address of corporate headquarters; and~~
~~iv. Telephone number;~~

~~3.~~4. If known at the time of application, the name and Arizona license number of the barber who will ~~manage~~ directly supervise the shop on behalf of the ~~licensed owner~~ license holder;

~~4.~~5. A projected date for the ~~Board's initial inspection~~ shop to open;

~~5. Indicate the applicant's requested licensing action:~~
~~a. A new shop license;~~
~~b. A shop relocation; or~~
~~c. A change of ownership including the following information:~~
~~i. Former owner's name,~~
~~ii. Former shop name,~~
~~iii. Board file number, and~~
~~iv. A copy of the shop's bill of sale or the signature of the former owner on the application;~~

6. A ~~listing~~ list of equipment in the ~~applicant's~~ shop including the total number of the following:
a. Barber or styling chairs,
b. Sinks with hot and cold running water,
c. ~~Dry sanitizers~~ Tool drawers,
d. Liquid sanitizers,
e. Workstations,
~~e.~~f. Soiled-towel receptacles, and
~~f.~~g. Garbage and hair receptacles;
7. A description of the shop's floor covering;

8. An indication of whether ~~the applicant's shop is~~ a license to operate the shop has been or will be ~~licensed by~~ obtained from the Board of Cosmetology;
9. Any other information required by the Board; and
10. The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.

C. Fee. In addition to ~~a~~ the completed ~~shop~~ application form required under subsection (B), an applicant shall submit to the Board ~~in cash or by certified instrument~~ the ~~appropriate~~ fee specified in R4-5-102(A)(3) for the licensing action requested under subsection (B)(1).

R4-5-302. ~~Shop Premises and~~ Basic Equipment Required in a Shop

A. The holder of a license to operate a shop ~~owner~~ shall ensure that ~~each~~ the shop has at least the following equipment:
1. A barber or styling chair;

~~1.~~2. ~~A~~ One sink, ~~that~~ which has hot and cold running water, for every two barber or styling chairs and located no more than six feet from the barber or styling chairs;
~~2.~~3. ~~Soap~~ Liquid or powder soap and ~~clean~~ paper towels for use at each sink; ~~and~~
~~3.~~4. A separate, covered, receptacle for each of the following:
a. Garbage and hair, and
b. Reusable towels or cloths that are soiled~~.~~;
5. One tool drawer and one liquid sanitizer for each barber or styling chair and the necessary EPA-registered disinfectants for each;
6. One wall mirror located near each barber or styling chair;
7. One workstation for each barber or styling chair; and
8. Cabinet in which to store additional supplies.

B. Subsection (A)(2) applies only to shops licensed under R4-5-301 after the effective date of this Section.

R4-5-303. Shop Supervision

A. The holder of a license to operate a shop shall designate a barber licensed under this Chapter to directly supervise the shop during all hours of operation.

~~**A.**~~**B.** A ~~shop owner~~ license holder or supervising barber ~~licensed under this Chapter~~ shall ensure that:
1. ~~Each~~ Every individual, whether an employee~~,~~ or independent contractor, ~~or supervisor that~~ who practices barbering in the shop has a current license ~~that meets the requirements of~~ issued under A.R.S. § 32-322 and R4-5-202;
2. Each required license and the most recent Board inspector's record are displayed according to A.R.S. § 32-351(A); and
3. Each licensee complies with ~~any~~ all applicable ~~provision~~ provisions of A.R.S. Title 32, Chapter 3, and this Chapter.

~~**B.**~~**C.** The Board shall hold a ~~shop owner~~ license holder and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3, or this Chapter.

~~**C.**~~**D.** ~~A~~ The holder of a license to operate a shop ~~owner~~ who is ~~a~~ an Arizona-licensed barber may directly supervise ~~a~~ the shop.

R4-5-304. Shop Mobile Units

A. To operate a mobile unit as a shop, the owner of the mobile unit shall make application for a license under R4-5-301.

B. The Board shall issue a license to operate a mobile unit as a shop only if:
1. The mobile unit is self-contained~~,~~;
2. The mobile unit meets all requirements for a shop specified under A.R.S. Title 32, Chapter 3, and this Chapter~~,~~; and
3. The owner of the mobile ~~unit's owner~~ unit agrees to provide the Board with ~~15-day~~ written or oral ~~advance~~ notice at least 15 days before ~~of~~ the ~~unit's proposed~~ mobile unit is placed in a location or moved to a ~~change in~~ new location.

R4-5-305. Display of Barber Pole

A. Under A.R.S. § 32-355(A)(4), it is unlawful to display a sign or advertise as being engaged in the practice or business of barbering without being licensed under A.R.S. Title 32, Chapter 3, and this Chapter.

B. The Board has trademarked through the Office of the Secretary of State the barber pole as a sign of the barbering business.

C. A business shall not display a barber pole unless a barber licensed under A.R.S. Title 32, Chapter 3, and this Chapter is available to provide barbering services during the business hours that the barber pole is displayed.

ARTICLE 4. SCHOOLS

R4-5-401. ~~Barber School~~ Application for a License to Operate a School

A. Before submitting an application under this Section, an applicant for a license to operate a school may request that Board staff review the proposed application and perform a courtesy inspection of the proposed school location.

B. The owner of a barber school that operates in more than one location, except at an offsite training facility, shall apply for and obtain a separate license to operate the barber school at each location.

~~**A.**~~**C.** ~~Application form.~~ On a form ~~provided by~~ available from the Board an applicant for a license to operate a barber school shall ~~submit~~ provide the following information:
1. Indicate the applicant's requested licensing action:
a. A license to operate a new school;
b. A change of location of an operating school including the following information:
i. The Board file number, and
ii. Both the old and new addresses of the school; or
c. A change of ownership of an operating school including the following information:
i. Former owner's name;
ii. Former school name, if the school name is changed;
iii. Board file number; and
iv. A copy of the school's bill of sale or the signature of the former owner on the application;
2. School information:
~~1.~~ a. School name;
~~2.~~ b. Physical location address of the school; and

~~3.~~ c. Telephone number;

~~4.~~3. Applicant information:

a. Name,

b. Address, and

c. Telephone number;

~~5.~~4. Owner information~~. If the school owner is other than the person specified under (A)(4), the applicant shall supply the following owner information~~:

a. ~~Owner name,~~ If the owner is an individual or partnership:

i. Name of the individual and all partners owning at least 10 percent of the partnership,

ii. Social Security number of the individual and all partners owning at least 10 percent of the partnership, and

iii. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual and all partners owning at least 10 percent of the partnership is authorized under federal law; or

b. ~~Home address, and~~ If the owner is a corporation:

i. Corporate name;

ii. Names of all individuals owning at least 10 percent of the corporation;

iii. Tax identification number of the corporation;

iv. Name and telephone number of a contact person;

v. Name and address of the statutory agent, if required by law;

vi. Address of corporation; and

vii. Telephone number of corporation;

~~c. Telephone number;~~

~~6.~~5. School ~~manager~~ supervisor information:

a. Name, and

b. ~~Applicable barber or instructor~~ Arizona instructor license number;

~~7. An indication of whether the school is or will be licensed by the Board of Cosmetology;~~

~~8. An indication of the requested licensing action:~~

~~a. A new school license,~~

~~b. A school move, or~~

~~c. A change of ownership;~~

~~9. If the applicant indicates a school move under subsection (A)(8)(b):~~

~~a. The Board file number, and~~

~~b. The school's new address;~~

~~10. If the applicant indicates a change of ownership under subsection (A)(8)(c):~~

~~a. The Board file number,~~

~~b. The school's former name if applicable, and~~

~~c. A copy of the bill of sale or the signature of the former owner on the application;~~

~~11.~~6.A ~~listing~~ list of equipment in the ~~applicant's~~ school including the total number of the following:

a. Barber chairs,

b. Sinks,

c. ~~Dry sanitizers~~ Tool drawers,

d. Liquid sanitizers,

e. Latherizers,

f. Soiled-towel receptacles,

g. Garbage and hair receptacles,

h. Workstations, and

~~h.~~i. Student lockers;

~~12.~~7.A description of the ~~establishment's~~ floor covering in the area in which students practice barbering skills;

8. Number and square footage of classrooms;

9. Number of students to be admitted;

10. Number of licensed instructors;

11. Hours during which instruction will be provided;

~~13.~~12.A projected ~~ready~~ date for the Board's initial inspection;

~~14.~~13.Any other information required by the Board; and

~~15.~~14.The applicant's verification, under oath, that the information contained on the application is correct and complete, and the applicant's notarized signature.

D. An applicant for a license to operate a school shall attach the following to the application required under subsection (C):

1. A current school catalog,

2. A list of all courses offered at the school and the number of instructional hours devoted to each course, and

~~**B.**~~ 3. ~~Bond. An applicant for a license to operate a school shall attach to the completed application a~~ A copy of the bond in the amount required under A.R.S. § 32-325(C)(6).

~~**C.**~~**E.** Fee. In addition to ~~a~~ the completed ~~barber school~~ application ~~form~~ required under subsections (C) and (D), an applicant

shall submit to the Board ~~in cash or by certified instrument~~ the ~~appropriate~~ fee specified under R4-5-102(A)(5) for the ~~applicant's indicated~~ licensing action requested under subsection (C)(1).

R4-5-402. Notification of Changes

~~A~~ The holder of a license to operate a school ~~owner~~ shall send written ~~notification~~ notice and updated information to the Board within 15 days if the ~~school owner~~ license holder:

1. Amends the school catalog,
2. ~~Offers a new curriculum~~ Stops offering a course,
3. Offers a new course,
4. Changes the number of instructional hours devoted to a course listed under R4-5-401(D),

~~4.~~5. Changes the ~~school operating schedule~~ hours during which instruction is provided,
~~5.~~6. Changes the school name,
~~6.~~7. Changes the school ~~manager~~ supervisor,
~~7. Opens an additional location,~~ or
8. Establishes an offsite training facility in a shop under the provisions of R4-5-411.

R4-5-403. Use of "Accredited," "Approved," or Similar Terms

If "accredited," "approved," or a similar term appears in a school catalog or advertisement, the ~~school's owner~~ holder of the license to operate the school shall ensure that the catalog or advertisement includes the name of the accrediting or approving organization.

R4-5-404. School Premises and Basic Equipment

A. In addition to the requirements of A.R.S. § 32-325(C)(2) and (C)(3), the holder of a license to operate a school ~~owner~~ shall ensure that the school has at least the following ~~at a minimum~~:

1. An instructor, licensed in Arizona, to teach each required course ~~of instruction~~;
2. Instructional furnishings and fixtures for instructor and student use;
3. A workstation for each student scheduled for practical instruction;
4. Filing cabinets for school and student records;
5. Chalkboards or other writing boards;
6. A dispensary to prepare, mix, store, and dispose of supplies and chemicals used to ~~sanitize~~ disinfect barbering implements;

~~7. One liquid sanitizer and one dry sanitizer at each workstation;~~
~~8.~~7. ~~At least one~~ One latherizer for every ~~10 students~~ five barber chairs;
~~9.~~8. ~~At least one~~ One sink, with hot and cold running water, liquid or powder soap, and towels for every ~~three students~~ two barber chairs; ~~and~~
~~10.~~9.A student library that contains ~~at least the following~~:

a. A dictionary;
b. Current barbering manuals and textbooks;
c. A current copy of A.R.S. Title 32, Chapter 3; and
d. A current copy of this Chapter; ~~and~~

10. A time clock; and
11. All equipment, implements, materials, and supplies necessary for student instruction.

B. ~~A~~ The holder of a license to operate a school ~~owner~~ shall ensure that each student workstation has at least the following:

1. A barber chair;

~~1.~~2. A wall mirror located behind the barber chair;
~~2.~~3. A ~~work stand~~ tool drawer that meets the standard in R4-5-101; and
~~3.~~4. ~~A chair for the patron~~ One liquid sanitizer and one spray disinfectant.

C. ~~A~~ The holder of a license to operate a school ~~owner~~ shall ensure that each student at a workstation has access to the following:

1. A covered receptacle for soiled towels and cloths;
2. A covered receptacle for garbage and hair; and
3. A sufficient supply of ~~tonics, lotions, shampoos, and chemical preparations used to process hair~~ barbering products listed under R4-5-104(A)(3).

R4-5-405. School Operations ~~and Enrollment~~

A. ~~A~~ The holder of a license to operate a school ~~owner~~ shall file the school's operating schedule with the Board before the first scheduled class begins.

B. ~~A~~ The holder of a license to operate a school ~~owner~~ shall ensure that ~~any item~~ all equipment provided under this Chapter is of ~~shop~~ sufficient quality to meet the educational needs of students and maintained in good repair.

C. Unless a student who is studying barbering possesses ~~items~~ the equipment listed under this subsection at the time of enrollment, ~~a~~ the holder of a license to operate a school ~~owner~~ shall provide ~~each~~ the student with a non-returnable training kit that includes the following equipment, all of which are new:

1. Course textbooks,
2. One mannequin for barbering practice,

3. Twelve combs and ~~six~~ four brushes ~~without defects~~,
4. One hair dryer,
5. One straight razor with interchangeable blades,
6. One pair of haircutting shears with at least six-inch blades,
7. One pair of thinning shears,
8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper, ~~and~~
9. One neck duster, and
10. One copy of the current statutes and rules governing the Board.

D. Trainee ~~age and education requirement~~ notices. At the time ~~a~~ the holder of a license to operate a school ~~owner~~ enrolls a student, the ~~school owner~~ license holder shall give Exhibit 1 or 2 to the student, as appropriate, and maintain the completed document for ~~five years~~ the time specified in R4-5-408(H).

E. An instructor trainee shall not teach students until the instructor trainee has received 40 instructional hours of training in methods of teaching. An instructor trainee shall complete all training in no more than six months.

F. ~~A person~~ An individual who is not ~~a~~ an Arizona-licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when the ~~person~~ individual is under the supervision of ~~a~~ an Arizona-licensed instructor.

G. Within five days after enrolling a student, ~~a~~ the holder of a license to operate a school ~~owner~~ shall send the following to the Board:

1. A copy of the student's written application to attend the school ~~that contains~~ containing the following:
   a. The student's name and address,
   b. The student's enrollment date,
   c. ~~Indicate~~ An indication regarding whether the student is enrolled in a barber or instructor course, and
   d. The student's signature, and
2. Two ~~passport-size~~ photographs of the student that meet the standards specified in R4-5-202(A)(4).

H. Within 90 days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:

1. Proof that the student is at least 16 years old if enrolled in a barber course or at least 19 years old if enrolled in an instructor course;
2. Proof that the student has at least a tenth-grade education if enrolled in a barber course or graduated from high school or its equivalent if enrolled in an instructor course; and
3. Documentation specified under A.R.S. § 41-1080(A) that the student's presence in the U.S. is authorized under federal law.

~~**H.**~~**I.** ~~Upon receipt of enrollment information under subsection (G), the~~ The Board shall use the information provided under subsection (G) to prepare and issue an educational card to a student. The ~~student~~ holder of a license to operate a school shall ensure that a student:

1. ~~Display~~ Displays the card at the student workstation, and
2. ~~Return~~ Returns the card to the Board upon completion of, ~~the course~~ or ~~upon~~ withdrawal from, the course ~~for any reason~~.

Exhibit 1. Required ~~Age and Education~~ Notice to a Barber Trainee

NOTICE
This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber in Arizona. The Arizona State Board of Barbers will not issue you a license unless: ~~you~~

1. You are at least 16 years of age when you apply for the license, ~~and you can~~
2. You demonstrate to the Board ~~of Barbers~~ that you have completed and received appropriate credits for at least two years of high school education or its equivalent, and
3. You document that your presence in the U.S. is authorized under federal law.

It is your responsibility to make sure ~~that~~ you ~~can~~ meet the requirements of the Board of Barbers~~, particularly regarding the completion of two years of high school or its equivalent~~. If you are unsure about whether you ~~can~~ meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I ~~hereby~~ acknowledge that I ~~have~~ received and understand the foregoing Notice.
(student signature and date)

~~(signature date)~~

Exhibit 2. Required ~~Age and Education~~ Notice to an Instructor Trainee

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training that will qualify you to apply for a license to be a barber instructor in Arizona. The Arizona State Board of Barbers will not issue you a license unless: ~~you~~

1. You are at least 19 years of age when you apply for the license, ~~and you can~~
2. You demonstrate to the Board ~~of Barbers~~ that you hold a high school diploma or its equivalent; and
3. You document that your presence in the U.S. is authorized under federal law.

It is your responsibility to make sure ~~that~~ you ~~can~~ meet the requirements of the Board of Barbers~~, particularly regarding the holding of a high school diploma or its equivalent~~. If you are unsure about whether you ~~can~~ meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I ~~hereby~~ acknowledge that I ~~have~~ received and understand the foregoing Notice.
(student signature and date)

~~(signature date)~~

R4-5-406. Student Training and Supervision

A. ~~A~~ The holder of a license to operate a school ~~owner~~ shall ~~grade~~ ensure that students are graded at least monthly and ~~inform the students~~ informed of their grades and instructional hours completed.
B. ~~An~~ A licensed instructor may assist students in the performance of barbering.
C. A student shall not dismiss a patron until a licensed instructor inspects and approves the student's work.
D. A student shall not attend a school for ~~longer~~ more than eight hours per day.
E. A student may receive a maximum of 20 ~~credit~~ instructional hours for field trips pertaining to barbering.
F. A student may receive up to 50 percent of the student's ~~total~~ training at an offsite training facility operated under the provisions of R4-5-411.
G. ~~The~~ A licensed instructor shall not ask a student to perform barbering on ~~the public~~ a patron while the student is engaged in classroom instruction or taking a written examination.
H. A student shall wear a name tag during school attendance that clearly identifies the student by name and student status.

R4-5-407. School Curriculum

A. ~~A~~ The holder of a license to operate a school ~~owner~~ shall ~~offer~~ ensure that the barbering curriculum offered ~~that~~ complies with A.R.S. § 32-325(B).
B. In addition to the minimum requirements under A.R.S. § 32-325(B)(1), ~~a school owner~~ the license holder shall include instruction in the following:
1. Professional ethics,
2. Shop management, and
3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3, and this Chapter.

R4-5-408. School Records

A. ~~A~~ The holder of one license to operate a school ~~owner of one school~~ shall keep a student's records at the student's enrollment location.
B. ~~A~~ The holder of multiple licenses to operate multiple ~~school owner of a multiple location school~~ schools may keep a student's records at the student's enrollment location or ~~as prescribed at R4-5-410~~ a location that serves all the schools operated by the same license holder.
~~**B.**~~**C.**~~A~~ The holder of a license to operate a school ~~owner~~ shall at least weekly enter into each student's record the following:
1. The date of the recorded entry,
2. Each subject studied and the number of ~~clock~~ instructional hours ~~earned~~ for each subject,
3. An indication whether instruction in a subject listed under subsection ~~(B)(2)~~ (C)(2) was classroom or practical ~~instruction~~, and
4. The student's signature on a paper copy of the record to acknowledge ~~modification~~ accuracy of information in ~~of~~ the record within three days after each record update.

~~**C.**~~**D.**~~A~~ The holder of a license to operate a school ~~owner~~ shall maintain a ~~permanent~~ complete and accurate record file for each student that includes:
1. The signed contract made between the student and the school,
2. The student's current transcript,
3. The applicable original notice required under R4-5-405(D), and
4. ~~The records~~ Both the record created under subsection ~~(B)~~ (C) and the student-signed paper copy of the record.

~~**D.**~~**E.** Within 15 days after the end of each month, ~~a~~ the holder of a license to operate a school ~~owner~~ shall submit a report to the Board that includes:
1. A list of each student who graduated during the ~~reporting period~~ month;
2. The name and license number of:
   a. The ~~school's chief~~ supervising instructor, and

b. Each ~~licensed~~ instructor providing classroom or practical instruction during the month;

3. A list of all students currently enrolled and:

a. A list of total instructional hours earned by each student during the ~~reporting period~~ month;

~~4.~~ b. A list of each student's cumulative instructional hours; and

c. A copy of the student-signed reports required under subsection (C)(4) and prepared during the month;

~~5.~~4. The name of any student who, during the ~~applicable reporting period~~ month:

a. ~~Transfers~~ Transferred to another school,

b. ~~Withdraws~~ Withdrew, or

c. ~~Takes~~ Took a leave-of-absence;

~~6. A copy of the documents signed by a student under R4-5-408(B)(4) during the reporting period;~~ and

~~7.~~5. The signature of the holder of the license to operate the school ~~owner~~ or the ~~owner's~~ license holder's representative verifying that all information provided is correct and complete.

F. If a student transfers from one school to another, the holder of the license to operate the school from which the student transferred shall:

1. Make final entries to ensure the student's transcript is complete and accurate, and
2. Forward a copy of the student's transcript to the student and Board within three days after the student provides notice of transfer.

G. When a student graduates or withdraws from a school, the holder of the license to operate the school shall:

1. Complete a Student's Completion of Hours or Withdrawal form;
2. Certify the number of hours completed by the student;
3. Have the form notarized; and
4. Forward a copy of the form to the graduating or withdrawing student and the Board.

H. The holder of a license to operate a school shall maintain the student record file required under subsection (D) permanently unless required under R4-5-409(E) to forward the records to the Board.

R4-5-409. School Closure

A. The Board shall consider a school closed if the school fails ~~to provide instruction~~ for ~~a~~ five consecutive ~~five-day period~~ school days to provide instruction in accordance ~~that does not comply~~ with the operating schedule on file with the Board.

B. Closure notification. ~~A~~ The holder of the license to operate a school ~~owner~~ that is closing shall deliver written or oral ~~notification~~ notice of ~~a~~ the school's closure to each currently enrolled student and the Board:

1. Ten days ~~in advance of~~ before closure ~~in a case when the owner anticipates~~ if the license holder can reasonably anticipate the school closure, or
2. Within five days after closure if the school's closure ~~was~~ could not be reasonably anticipated by the ~~owner~~ license holder.

C. The holder of the license to operate a school that is closing shall ensure that the notice provided to currently enrolled students under subsection (B) includes the following information:

1. When a full refund of paid tuition will be provided to the student,
2. How to make a claim against the bond required under A.R.S. § 32-325(C)(6) and R4-5-401(D)(3),
3. How to obtain a copy of the student's transcript and certification of hours completed,
4. How to obtain possession of the training kit provided under R4-5-405(C) and other personal possessions, and
5. How to access the student's records in the future.

D. The holder of the license to operate a school that is closing shall obtain a signed statement from each currently enrolled student verifying that the license holder complied with subsection (C).

~~C.~~**E.** Disposition of student records. ~~A~~ The holder of the license to operate a school ~~owner~~ that is closing shall:

1. Ensure that all student records are updated as required under R4-5-408(C) through the last day on which instruction was provided;
2. ~~forward~~ Forward all records for ~~each student~~ currently enrolled students to the Board within 10 days after the school ~~closure~~ closes; and
3. Forward to the Board a copy of all the signed statements required under subsection (D).

R4-5-410. ~~Multiple-location Schools~~ Repealed

~~The following provisions apply to a school that operates in more than one location:~~

~~1. The operator of a multiple-location school shall obtain a license for each school location; and~~

~~2. The owner of a multiple-location school may keep school records in a single location.~~

R4-5-411. Offsite Training Facility

A. ~~A~~ The holder of a license to operate a school ~~owner~~ may operate an offsite training facility in a shop that complies with the provisions of A.R.S. § 32-325(C) and R4-5-404(A)(11), R4-5-405(B), (E), and (F), and R4-5-406(B), (C), (D), (G), and (H).

B. In addition to subsection (A), a ~~school owner~~ license holder operating an offsite training facility shall comply with the following:

1. R4-5-404(A)(1), (3), (6), (7), (8), and (9) if ~~training~~ only practical instruction is provided at the facility ~~is practical only~~; or

2. Requirements of subsection (B)(1) and R4-5-404(A)(2) and (A)(5) if ~~training~~ classroom instruction is provided at the facility ~~includes classroom study~~.

C. In addition to the requirements of ~~subsection (A)~~ subsections (A) and (B), a ~~school owner~~ license holder operating an offsite training facility shall:
1. Clearly indicate to the public the specific portion of the shop designated as an offsite training facility,
2. Post a sign indicating that barbering services at the offsite training facility are provided by students,
3. Require a student to ~~orally~~ give oral notice of status as a student to each patron, and
4. Restrict student barbering ~~only~~ to the portion of the shop designated as an offsite training facility.

ARTICLE 5. HEARINGS

R4-5-501. Hearing Procedures

For purposes of A.R.S. § 32-354(D), the Board shall conduct all formal ~~proceedings~~ hearings according to A.R.S. Title 41, Chapter 6, Article 10.

R4-5-502. Rehearing and Review of Decision

A. The Board shall provide for a rehearing and review of a decision under A.R.S. Title 41, Chapter 6, Article ~~1~~10.

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

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. ~~That the~~ The Board's decision is a result of passion or prejudice; or
8. ~~That the~~ The findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. If a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days~~, for good cause as described in subsection (I)~~ if the parties agree.

G. Not later than 30 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

I. ~~The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:~~
~~1. A ruling on the motion will further administrative convenience, expedition, or economy; or~~
~~2. A ruling on the motion will avoid undue prejudice to any party.~~ If the Board makes a specific finding that a particular administrative decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final administrative decision without an opportunity for rehearing or review.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

[R15-154]

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R12-4-202 — Amend

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-333 and 17-336(A)(2)

3. The effective date of the rules:
December 5, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:
Notice of Rulemaking Docket Opening: 21 A.A.R. 759, May 29, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 747, May 29, 2015

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

Name: Celeste Cook, Rules Analyst
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

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

An exemption from Executive Order 2015-01 was provided for this rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated April 7, 2015.

The Commission's Disabled Veteran's License was selected for the first wave of the Lean Transformation of Arizona State Government. The Commission proposes to amend the rule to allow the Department to accept a benefits letter issued by the U.S. Department of Veterans Affairs (DVA) or an *e*Benefits letter downloaded from the DVA website as proof of eligibility and allow applicants to attest that application information is true and correct, instead of requiring a notarized signature. If the applicant fails to obtain the required certification, as a courtesy, the Department will mail the form to DVA on behalf of the applicant. It can take as long as 60 days for DVA to return the completed form to the Department and during this time the applicant may call the Department numerous times to inquire about the status of their application. DVA provides an online *e*Benefits for veterans. Through this website, a veteran can access the DVA website, create an account, and immediately obtain documentation that provides proof of the applicant's disability rating. Expanding the types of documents that can be used to verify an applicant's disability rating will greatly reduce the amount of time taken to verify the applicant's disability rating as well as the administrative burden the Department takes on when mailing the form to DVA on behalf of the applicant. The amendment that replaces the notary requirement with an attestation statement that affirms the information provided on the application is true and correct is made to reduce the regulatory burden placed on the regulated community.

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

The Commission did not rely on any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule.

8. A showing of good cause why the rulemaking 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

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

The Commission's intent in proposing the amendments indicated in item #5 is to benefit the regulated community, members of the public, and the Department by allowing the Department to accept a benefits letter issued by the DVA or an *e*Benefits letter downloaded from the DVA website as proof of eligibility and allowing applicants to attest that application information is true and correct, instead of requiring a notarized signature. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. Expanding the types of documents that can be used to verify an applicant's disability rating will greatly reduce the amount of time taken to verify the applicant's disability rating as well as the administrative burden the Department takes on when mailing the form to DVA on behalf of the applicant. Replacing the notarization requirement with an attestation statement will reduce costs incurred by the veteran when having their signature notarized. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

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

The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

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

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

R12-4-202 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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

The subject matters covered in the rulemaking are governed by state law rather than any corresponding federal law.

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

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

Section
R12-4-202. Disabled Veteran's License

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

R12-4-202. Disabled Veteran's License

A. A disabled veteran's license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's license is only available at a Department office.

B. The disabled veteran's license is a complimentary license and is valid for a three-year period from the issue date or the license holder's lifetime, as established under subsection (F).

C. An eligible applicant is a disabled veteran who:
1. Has been a resident of Arizona for at least one year immediately preceding application, and
2. Is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling. Eligibility for the disabled veteran's license is based on the disability rating, not on the compensation received by the veteran.

D. A person applying for a disabled veteran's license shall submit an application to the Department. The application form is furnished by the Department and ~~is~~ available at any Department office and online at www.azgfd.gov. The applicant shall provide all of the following information on the application:
1. The applicant's personal information:
   a. Name;
   b. Date of birth,
   c. Physical description, to include the applicant's eye color, hair color, height, and weight;
   d. Department identification number, when applicable;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available;
2. Affirmation that:
   a. The applicant meets the eligibility requirements prescribed under A.R.S. § 17-336(A)(2),
   b. The applicant has been a resident of this state for at least one year immediately preceding application for the license, and
   c. The information provided on the application is true and accurate~~; and~~
3. Applicant's signature and date. ~~The applicant's signature shall be either notarized by a notary public or witnessed by a Department employee~~.

E. In addition to the requirements established under subsection (D), an applicant for a disabled veteran's license shall, at the time of application, also submit an original certification ~~at the time of application~~ or a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or obtained from the DVA website that meets the requirements specified in subsections (D)(1), (2), and (3). The certification form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. The certification shall be completed by an agent of the United States Department of Veteran's ~~Services~~ Affairs. The certification shall include all of the following information:
1. The applicant's full name,
2. Certification that the applicant is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling,
3. Certification that the 100% rating is permanent, and:
   a. Will not require reevaluation or
   b. Will be reevaluated in three years, and
4. The signature and title of the Department of Veterans' ~~Services~~ Affairs agent who issued or approved the certification.

F. If the certification or benefits letter required under subsection (E) ~~indicates that~~ indicate the applicant's disability rating of 100% is permanent and:
1. Will not be reevaluated, the disabled veteran's license will not expire.
2. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.

G All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.

H. The Department shall deny a disabled veteran's license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(2),
2. Fails to comply with the requirements of this Section, or
3. Provides false information during the application process.

I. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

J. A disabled veteran's license holder may request a no-fee duplicate paper license provided:
1. The license was lost or destroyed,
2. The license holder submits a written request to the Department for a duplicate license, and
3. The Department's records indicate a disabled veteran's license was previously issued to that person.

K. A person issued a disabled veteran's license prior to January 1, 2014 shall be entitled to the privileges established under

subsection (A).

L. For the purposes of this Section, "disabled veteran" means a veteran of the armed forces of the United States with a service connected disability.

32-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Barber" means a person licensed to practice barbering pursuant to this chapter.

2. "Barbering" means any one or a combination of the following practices if they are performed on a person's head, face, neck or shoulders for cosmetic purposes:

(a) Cutting, clipping or trimming hair.

(b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.

(c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.

(d) Hair attachments, extensions, hairpieces and wigs when performed by a barber.

(e) Shaving or trimming a beard.

(f) Skin care.

3. "Board" means the board of barbers.

4. "Instructor" means a person licensed to teach barbering pursuant to this chapter.

5. "School" means an establishment operated for the purpose of teaching barbering.

6. "Shop" or "salon" means an establishment operated for the purpose of engaging in the practice of barbering.

32-302. Board of barbers; appointment; qualifications; terms

A. A board of barbers is established consisting of the following five members appointed by the governor:

1. One barber who has been actively practicing barbering in this state for at least five years.

2. One member who is a holder of a barber school license who is a barber or a holder of a shop or salon license who is a barber or a barber who has been actively practicing barbering in this state for at least five years. Preference will be given to a holder of a barber school license then to a holder of a barber shop or salon license and then to a barber.

3. One holder of a barber shop or salon license who is a barber.

4. Two public members preferably one of whom is an educator.

B. A public member shall not be associated, directly or indirectly, with the manufacture of barber appliances or supplies or their rental, sale or distribution to licensees or represent the barbering industry in any manner.

C. The terms of office of board members are five years beginning and ending June 30. Members shall not serve more than two consecutive terms.

D. The governor may remove a board member for neglect of duty, malfeasance or misfeasance.

32-303. Organization; meetings; compensation

A. The board shall annually elect a chairman and vice-chairman from its membership.

B. The board may hold meetings at times and places it designates.

C. A majority of the members of the board constitutes a quorum.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board.

32-304. Powers and duties

A. The board shall:

1. Make and adopt rules which are necessary or proper for the administration of this chapter, including sanitary and safety requirements for schools and shops or salons, sanitary and safety standards for the practice of barbering and mobile unit requirements.
2. Administer and enforce the provisions of this chapter and rules adopted pursuant to this chapter.
3. Maintain a record of its acts and proceedings, including issuance, refusal, renewal, suspension and revocation of licenses, and a record of the name, address and license date of each licensee.
4. Keep the records of the board open to public inspection at all reasonable times.
5. Furnish a copy of its rules to a barber or to the owner or manager of each shop or salon on request.
6. Have a seal, the imprint of which shall be used to evidence its official acts.
7. Prescribe minimum school curriculum requirements.

B. The board may:

1. Employ an executive director who has been a licensed barber for at least five years preceding employment and other permanent or temporary personnel it deems necessary. The board shall compensate its executive director and other permanent and temporary personnel as determined pursuant to section 38-611.
2. Inspect the premises of any school, shop or salon during business hours.

32-305. Board of barbers fund

A. A board of barbers fund is established. Except as provided in subsection C of this section, before the end of each calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of barbers fund.

B. Monies deposited in the board of barbers fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-352 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-321. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Practices done for the treatment of physical or mental ailments or disease by medical practitioners licensed pursuant to this title.
2. Services performed without compensation in case of emergency or in domestic administration.
3. Commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.

4. Students attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons licensed pursuant to chapter 5 or 12 of this title.
6. Shampoo assistants who shampoo hair under the direction of a barber licensed pursuant to this chapter.
7. Services performed by and for persons in the custody of the state department of corrections.

32-322. Barber license; application; qualifications; reciprocity

A. An applicant for a barber license shall file the following with the board:
1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.
3. One signed photograph.
B. Each applicant shall:
1. Be at least sixteen years of age.
2. Have completed and received appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Be a graduate of a school licensed pursuant to this chapter or a graduate of a school or program in another state which at the time of his graduation met the barber licensing requirements of that state.
C. An applicant who holds a valid license to practice barbering issued by another state which has, in the opinion of the board, licensure requirements that are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state and who has at least one year's experience as a licensed barber is exempt from subsection B, paragraph 3.
D. Notwithstanding subsection B, paragraph 5, an applicant for a barber license who holds a cosmetologist license issued pursuant to chapter 5 of this title shall complete a seven hundred fifty hour course of study consisting of barbering techniques in a barbering school licensed pursuant to this chapter.

32-323. Instructor license; application; qualifications

A. An applicant for an instructor license shall file the following with the board:
1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.
B. An applicant shall:
1. Be at least nineteen years of age.
2. Hold a diploma from a high school or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Have practiced barbering for at least two years.
C. An applicant who holds a valid instructor's license to instruct barber students issued by another state which has, in the opinion of the board, licensure requirements which are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state

and who has at least one year's experience as a licensed instructor is exempt from subsection B, paragraph 3.

32-324. Examinations

A. Examinations shall be given at least every three months at times and places determined by the board.
B. Examinations shall contain a written part and a practical demonstration part which may include oral questions.
C. Barber examinations shall test the applicant's knowledge:
1. Of sanitary practices and safety for all barbering procedures.
2. In the use of all instruments, equipment or chemicals permitted in barbering.
D. Instructor examinations shall be limited to the subjects taught in courses that the applicant seeks to teach.
E. A passing grade on an examination is a score of seventy-five per cent or better on both the written and practical parts of the examination.
F. If an applicant who is eligible to take an examination fails to do so at either of the next two scheduled examinations, the application is deemed to be cancelled and the application fee is forfeited.
G. If an applicant fails an examination he is entitled to a reexamination.
H. If an applicant fails either part of the examination he shall only retake the part of the examination he failed.
I. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed reexamination fee.

32-325. School license; application; qualifications

A. An applicant for a license to operate a school shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.
B. A course of instruction in a licensed school which teaches barbering shall consist of at least one thousand five hundred hours of instruction of not more than eight hours in any one working day. The course of instruction shall include:
1. At least two hundred fifty hours devoted to the study of the fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics and diseases of the skin, hair and glands.
2. At least one thousand two hundred fifty hours devoted to the practice and study of massaging and manipulating muscles of the scalp, face and neck, hair cutting, shaving and chemical work relating to permanent waves and hair straightening, coloring and bleaching.
C. A licensed school shall:
1. Be operated under the general supervision of a licensed instructor.
2. Have and maintain sufficient equipment to properly train all its students in the use, function and operation of equipment which is at the time in use in barbering.
3. Provide:
(a) Separate lecture rooms or classrooms.

(b) Locker spaces for students.
(c) An area appropriate in size for the placement of the training equipment.
4. Require that a student pass examinations in all phases of barbering before he graduates.
5. Pass an inspection by the board before a school license is issued.
6. Furnish to the board and maintain in force a bond in the sum of twenty-five thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and conditioned that the school licensed pursuant to this chapter shall afford to its students the full course of instruction required pursuant to this chapter, in default of which the full amount of the tuition paid by the student shall be refunded.
D. The student to instructor ratio in a school shall be not more than twenty to one.
E. Instructors shall not apply their time to private practice with or without compensation in a school or during school hours.
F. Students shall not teach other students.
G. Students shall be under the constant supervision of an instructor.

32-326. Shop or salon license; application; qualifications
A. An applicant for a license to operate a shop or salon shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.
B. An applicant shall:
1. Comply with the rules of the board concerning health, safety and sanitation.
2. Comply with the applicable health and safety laws and rules of other state agencies and political subdivisions.
3. Pay the prescribed fee.
C. A shop or salon licensed pursuant to this chapter shall be under the direct supervision of a barber.

32-327. License expiration and renewal
A. Except as provided in section 32-4301, a barber or instructor license expires every two years on the licensee's birth date, unless it is renewed within thirty days before the licensee's birth date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
B. Except as provided in section 32-4301, a school or shop or salon license expires June 30 each year, unless it is renewed within thirty days before its expiration date by payment of the prescribed renewal fee and compliance with other requirements for renewal.
C. A barber or instructor license which is not renewed before it expires may be renewed within five years after its expiration by payment of the prescribed renewal fee and late renewal fee for each year the license is expired and compliance with other requirements for renewal.
D. Any license paid for with an insufficient funds check is deemed null and void until such time as a certified check, money order or cash is tendered as payment for the license.

32-328. Fees; penalty

A. The board shall establish and collect fees, not to exceed the following amounts:

1. Barber examination, two hundred dollars.
2. Barber license, one hundred dollars.
3. Barber license by reciprocity, two hundred dollars.
4. Barber license renewal fee, one hundred dollars.
5. Barber late renewal fee, one hundred fifty dollars.
6. Instructor examination, two hundred dollars.
7. Instructor license, one hundred dollars.
8. Instructor license renewal fee, one hundred dollars.
9. Instructor late renewal fee, one hundred fifty dollars.
10. Application for school license and initial inspection fee, one thousand dollars.
11. School license after change of location, five hundred dollars.
12. School license after change of ownership, five hundred dollars.
13. School license renewal fee, five hundred dollars.
14. School late renewal fee, five hundred fifty dollars.
15. Application for shop or salon license and initial inspection fee, two hundred fifty dollars.
16. Shop or salon license after change of location, two hundred dollars.
17. Shop or salon license after change of ownership, one hundred fifty dollars.
18. Shop or salon license renewal fee, one hundred dollars.
19. Shop or salon late renewal fee, one hundred fifty dollars.
20. Practical reexamination, fifty dollars.
21. Written reexamination, twenty-five dollars.

B. A duplicate license shall be issued to replace a lost license if a licensee files a verified statement as to its loss and pays a twenty dollar fee. Each duplicate license issued shall have the word "duplicate" stamped across the face.

C. If the board receives an insufficient funds check, it may charge a ten dollar penalty fee.

32-351. Display of license

A. Barbers and holders of shop licenses shall display their licenses in a conspicuous place within the shop.

B. Instructors and holders of school licenses shall display their licenses in a conspicuous place within the school.

32-352. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.
2. Suspend a license.
3. Impose a civil penalty in an amount not to exceed five hundred dollars.

4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.
5. Publicly reprove a licensee.
6. Issue a letter of concern.

32-353. Grounds for refusal to issue or renew a license or disciplinary action

The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:
1. Continued performance of barbering by a person knowingly having an infectious or communicable disease.
2. Malpractice or incompetency.
3. Advertising by means of known false or deceptive statements.
4. Advertising, practicing or attempting to practice under a trade name other than the one in which the license is issued.
5. Violating any provision of this chapter or any rule adopted pursuant to this chapter.
6. Making false statements to the board.

32-354. Procedure for disciplinary action; appeal

A. The board on its own motion may investigate any information which appears to show the existence of any of the causes set forth in section 32-353. The board shall investigate the report of any person which appears to show the existence of any of the causes set forth in section 32-353. A person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.
B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:
1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against his license.
C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.
D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. If, after an informal interview, the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:
1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license.
3. Impose probation requirements.
F. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-355. Unlawful acts; violation; classification
A. A person shall not:
1. Practice or attempt to practice barbering without a current barber license issued pursuant to this chapter.
2. Practice or teach in or operate a school or operate a shop or salon which does not have a current license issued pursuant to this chapter.
3. Operate a shop or salon unless it is under the direct supervision of a barber.
4. Display a sign or in any way advertise or hold oneself out as a barber or as being engaged in the practice or business of barbering without being licensed pursuant to this chapter.
5. Knowingly make a false statement on an application for a license pursuant to this chapter.
6. Permit an employee or another person under his supervision or control to practice barbering without a license issued pursuant to this chapter.
7. Practice barbering in any place other than in a shop or salon licensed pursuant to this chapter unless he is requested by a customer to go to a place other than a shop or salon licensed pursuant to this chapter and is sent to the customer from the shop or salon.
8. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.
9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.
B. An instructor shall not render barbering services in a school unless the services are directly incidental to the instruction of students.
C. A school shall clearly indicate to the public that all services are performed by students under the direct supervision of an instructor.
D. A person who violates this section is guilty of a class 1 misdemeanor.
32-356. Injunctions
The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

ARIZONA STATE BOARD OF NURSING (F-16-0107)
Title 4, Chapter 19, Article 5, Advanced Practice Registered Nursing

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

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-3**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: February 12, 2016

SUBJECT: **ARIZONA STATE BOARD OF NURSING (F-16-0107)**
Title 4, Chapter 19, Article 5, Advanced Practice Registered Nursing

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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 State Board of Nursing (Board) is "to promote the safe and professional practice of nursing and its related professions." Laws 2012, Ch. 33 § 3.

A.A.C. Title 4, Chapter 19, Article 5 titled "Advanced Practice Registered Nursing" contains 13 Sections that provide for the roles, duties, standards, and certification requirements for Advanced Practice Registered Nurses (APRN), Registered Nurse Practitioners (RNP), and APRN certification programs.

Section Contents and Subject Matter

R4-19-501 titled "Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Program", identifies the roles and populations of care for advanced practice nursing, as well as prescribes the standards for acceptance of national certification for APRN nurses.

R4-19-502 titled "Requirements for APRN Programs" informs educational institutions of the approval requirements for APRN programs.

R4-19-503 titled "Application for Approval of an Advanced Practice Registered Nursing Program; Approval Board", specifies the application requirements for schools seeking to establish an APRN program.

R4-19-504 titled “Notice of Deficiency; Unprofessional Program Conduct”, informs regulated APRN programs of the Board’s process and their rights if a rule violation is found, and prescribes acts that constitute unprofessional conduct.

R4-19-505 titled “Requirements for Initial APRN Certification”, provides details regarding application requirements for certification including grandfathering clauses.

R4-19-506 titled “Expiration of APRN Certificate; Practice Requirement; Renewal”, informs certificate holders of the qualifications to renew an APRN certificate.

R4-19-507 titled “Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority”, provides applicants information on the qualifications for obtaining temporary APRN certification and prescribing/dispensing authority.

R4-19-508 titled “Standards Related to Registered Nurse Practitioner Scope of Practice”, establishes the standards related to the scope of RNP practice.

R4-19-509 titled “Delegation to Medical Assistants”, delineates the conditions of delegation and the activities that may be delegated to medical assistants.

R4-19-511 titled “Prescribing and Dispensing Authority; Prohibited Acts”, establishes the requirements for prescribing and dispensing authority and informs RNPs of acts of unprofessional conduct specifically related to prescribing and dispensing.

R4-19-512 titled “Prescribing Drugs and Devices”, describes the actions and conditions necessary for safe prescribing.

R4-19-513 titled “Dispensing Drugs and Devices”, establishes the required acts when Nurse Practitioners (NP) dispense medications.

R4-19-514 titled “Standards Related to Clinical Nurse Specialist Scope of Practice”, establishes the standards related to scope of clinical nurse specialist practices.

Year Each Rule was Last Amended or Newly Made

- July 6, 2013: Sections 501, 502, 503, 504, 505, 506, 507, 508, 509, 511, 512, 513, and 514

Proposed Action

The Board proposes amendment to R4-19-501 which aims to include added certification exams to be initiated in December of 2016. No other amendments are planned.

Summary of Reasons for the Proposed Action

The purpose of the amendment to R4-19-501 is to keep the list of identified roles and populations of care current.

Substantive or Procedural Concerns

Staff identifies no substantive or procedural concerns regarding the Board's report.

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 all of 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 indicates that it has not received any written criticisms of these rules during the past five years.

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

   Yes. The Board indicates, pursuant to A.R.S. § 32-1606(A)(1), it may "[a]dopt and revise rules necessary to carry into effect the provisions of this chapter". Specific authorizing statutes include A.R.S. §§ 32-1605.1(B)(3) which calls for the Board to "[i]ssue and renew temporary and permanent licenses, certificates and prescribing or dispensing authority" and 32-1606(B)(1), prescribing the Board shall "[a]pprove regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board".

   Other specific authorizing statutes include: A.R.S. §§ 32-1606 (A)(8), (B)(2), (B)(8), (B)(10), (B)(12),(B)(15), (B)(17), (B)(18), (B)(21), (B)(22), 32-1456, 32-1921, and 32-3208.

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

   Yes. The Board indicates that the rules are consistent with state statutes and state and federal regulations.

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

   Yes. The Board indicates that the rules are currently 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.

8. **Stringency of the Rules:**

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

No. The Board indicates the rules regarding DEA licenses, such as found in R4-19-512(B) stating any RNP with P&D Authority [Prescribing and Dispensing] who wishes to "prescribe a controlled substance shall obtain a DEA registration number before prescribing… and shall file the DEA registration number with the Board", are consistent with federal law and are not any more stringent.

   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?**

Yes. R4-19-505 requires the issuance of certification by the Board.

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

The Board indicates that R4-19-505 is in compliance with A.R.S. § 41-1037 and the general permit requirements are met.

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

Yes. The Board indicates that the rules were amended as planned in 2013, as demonstrated by the latest dates of amendment enumerated in A.A.C. Title 4, Chapter 19.

11. **Has the agency included a proposed course of action?**

Yes. The Board indicates the rulemaking revision for R4-19-501 to include added certification exams will be initiated in December of 2016. No other amendments are planned.

Conclusion

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

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-3**

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA STATE BOARD OF NURSING (F-16-0107)**
Title 4, Chapter 19, Article 5, Advanced Practice Registered Nursing

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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 5 rules contained in the five-year-review report.

The Article 5 rules reviewed address advanced practice nursing (APRN) certification requirements and governs the requirements for dispensing authority. Table 1 shows the number registered practitioners licensed in 2013 versus current licensee counts. Overall, the number of registered practitioners has increased, however, an exception to this trend is seen for both Practical Nurses and Clinical Nurse Specialists.

According to program directors, there is strong demand for Practical Nurse (LPN) graduates, however programs are constrained by lack of suitable clinical sites as more agencies are prohibiting LPN students from engaging in clinical experiences.

Table 1 **Number Licensed**

	2013 1/	**Current** 2/	% change	# change
Registered Nurses	72,000	82,050	14%	10,050
Practical Nurses	11,000	10,592	-4%	(408)
Nursing Assistant	26,000	27,824	7%	1,824
Nurse Practitioners	3,700	5,649	53%	1,949
Certified- Nurse-Midwives	205	255	24%	50
Clinical Nurse Specialists	188	183	-3%	(5)
Certified Registered Nurses	569	845	49%	276

1/ Counts included in the EIS submitted in 2013
2/ Counts from the Boards website.

The Board reported a number of recent accomplishments; many of which directly benefit the regulated community. For example, they instituted on-line license renewal, developed a licensure data verification website, upgraded the phone system to enhance customer service, and reduced application processing times from 14 to 3 days. In general, the Board believes the economic impact has been as predicted for the rules in Article 5.

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

The Board has determined that the rules impose the least burden and costs to the regulated community. Compliance costs are necessary to achieve the regulatory objective.

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.

Doug Ducey
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

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October 30, 2015

Governor's Regulatory Review Council
100 N 15th AV STE 402
Phoenix, AZ 85007

Dear Council:

Enclosed is the 5-year-review of the Arizona State Board of Nursing for Title 4, Chapter 19 Article 5. This agency certifies that it is compliant with A.R.S. § 41-1091. Please contact Pamela Randolph at 4747 N. 7th St., Phoenix, AZ, 85014, (602) 771-7803 or prandolph@azbn.gov with any questions or concerns.

Sincerely;

Joey Ridenour RN MN FAAN

Joey Ridenour, RN, MS, FAAN
Executive Director

Enclosures:
Agency overview
5 year rule review
Copy of rules being reviewed
Last EIS statement of rules being reviewed

Agency Overview

Arizona State Board of Nursing

Background

At the turn of the 19th century, nurse registration emerged in order to separate trained from untrained nurses as a means to protect the public. In 1921, the Arizona Legislature determined, as a matter of public policy, that the practice of nursing is a privilege granted by the people of Arizona as defined by the laws enacted by the elected representatives. It is not a natural right of individuals. Therefore, in the interest of public health, safety and welfare and to protect people from unprofessional and incompetent nursing practices, only qualified persons hold the privilege to be licensed as a nurse. The Nurse Practice Act's fundamental purpose is to protect the public and any license/certificate issued pursuant to the statutes shall be a revocable privilege; thereby no holder shall acquire any irrevocable right.

General Purpose of the Agency

The purposes of the Board of Nursing are to:

- Establish eligibility standards for licensure for Advanced Practice Nurses (APN's), Registered Nurses (RN's), Licensed Practical Nurses (LPN's) and Certified Nursing Assistants (CNA's).
- Determine eligibility, examine and license/certify qualified applicants.
- Provide for interstate/foreign endorsements.
- Renew licenses/certificates, grant temporary licenses/certificates, and provide for inactive status for those already licensed as requested.
- Set procedures for relicensure/reinstatement/recertification for previously licensed and certified individuals.
- Establish minimum educational standards for programs of nursing.
- Approve/accredit nursing education programs.
- Investigate and resolve complaints against licensees/certificate holders and impose disciplinary sanctions.
- Monitor probationers as nursing practice is resumed to ensure patient safety.
- Deny licensure/certification to applicants deemed unsafe to practice due to serious convictions or acts.
- Enforce legal prohibitions against the unlicensed practice of registered nursing/licensed practical nursing and use of title.

- Order evaluations of licensees/certificate holders to determine their ability to practice safely; take disciplinary action based on the results of the evaluation.
- Establish scope of practice for nurses.
- Promulgate rules that regulate nursing.
- Issue Advisory Opinions regarding the function of nursing practice and education.
- Establish a non-disciplinary rehabilitation option for impaired nurses entitled CANDO (Chemically Addicted Nurse Diversion Option) as an alternative to traditional disciplinary action.
- Promote public protection through education and informational services to prevent violations of the Nurse Practice Act.
- Overall enforcement of the provisions of the statutes/rules.
- Establish competency standards for maintaining a license

Changes in agency objectives since establishment.

The Arizona State Board of Nursing (ASBN) has made a number of regulatory improvements since the agency began in 1921.

- Disciplinary Actions were rare during the early days (1921-1977) when few complaints were received by the board. Beginning in the 1980's the number of drug related cases increased significantly. In 1987, the ASBN developed an effective non-disciplinary confidential program titled CANDO (Chemically Addicted Nurse Diversion Option) to assist nurses entering into rehabilitation when impaired by substance abuse and thereby reduce the risk to the public. The nurse is out of practice during a period of rehabilitation and can only return when an experienced evaluator assures safety for practice. CANDO averages 50-70 admissions per year with approximately 200 individuals participating in the program on an annual basis.
- The Executive Director may now accept a voluntary surrender of a license or certificate if a respondent chooses this option instead of Board imposed disciplinary action.
- In 1995, the legislature authorized the Board to certify and maintain a register of nursing assistants, a workforce of approximately 24,000. Combined with the 68,000 RNs and 11,000 LPN's, the ASBN manages the largest investigator case load of all the health profession licensing boards. This legislative change along with improved investigative procedures has increased the volume of investigative reports to the Board from an average of 64 cases per month in 1996 to approximately 150 in FY2010.
- Initial licensure examinations have been determined to be psychometrically sound and legally defensible as the test questions clearly relate to the practice of the profession at entry level. The National Council Licensing Exam (NCLEX) is based on empirical job analyses that are performed at a national level every 3 years by the National Council of State Boards of Nursing. Test plans and passing standards are re-evaluated on the same triennial basis to ensure the content and NCLEX RN and NCLEX PN are reflective of current competencies required for safe and effective practice.

- In 1994, all boards of nursing began offering computerized adaptive testing (CAT), which is offered year round in testing centers with high speed turn around reports, providing applicants with rapid licensure.
- In 1999, ASBN mandated that applicants for licensure/certificate have criminal history reports from the DPS/FBI to ensure applicants were behavior-free from indications of potential harm to the public, i.e. felony convictions. Applicants must provide information about prior behavior before a decision is made to grant legal authority to practice and issue a license/certificate.
- Mandatory reporting of licensee/certificate holders suspected of violating the Arizona Nurse Practice Act has been required for over 15 years. ASBN must now comply with a Federal mandatory reporting law; when final disciplinary actions are taken, the disciplinary information must be reported to the National Practitioner Data Bank.
- In 1987, the Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. ASBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of ASBN. The basic argument for the jurisdiction was that if nurses are to delegate nursing tasks to nurse aides, then nursing should control that aspect of the nurse aide training and approval. Because the job description of nurse aide's fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable ASBN would assume authority and oversight of the regulation of CNAs.
- In 2001, as part of sunset review, the agency proposed amendments to the Nurse Practice Act to include setting standards for continued competency. The Board established a requirement through rule that all nurses practice nursing for a minimum of 960 hours within the past 5 years to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009 omnibus legislation to amend the Nurse Practice Act allowed the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the Board to engage in pilot studies for innovation in nursing education, practice and regulation; allow the board to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the Board to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.
- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.

Agency's major accomplishments.

As part of the initial strategic plan the Board continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following accomplishments over the past five years:

- Instituted on-line renewal of licenses and certificate holders.
- Developed web-site for verification of licensure data.
- Upgraded phone systems for more effective and efficient customer service.
- Provided annual conferences for nurse educators and nursing assistant educators.
- Published a quarterly Journal.
- Provided outreach education in response to community requests.
- Met with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Live-stream all Board meetings.
- Instituted paperless Board meetings.
- Developed and provided oversight for a pilot study on the use of Certified Nursing Assistants to administer some medications in long term care facilities.
- Decreased backlog of cases from over 1,875 to less than 1000 in 2009. Improved processing and investigation of complaints to an average of less than 7 months from the time a complaint is received until it is placed on a Board agenda.
- Improved processing time of licensure applications from 14 days in 2002 to 7 days in 2009.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Was awarded a grant in 2009 and again in 2011 from National Council of State Boards of Nursing to develop a competency exam for nurses using simulation.
- In 2009 added two new board members: one registered nurse practitioner or clinical nurse specialist and one member being a nursing assistant or nursing assistant instructor to provide representation for disciplines currently regulated.
- Collected data on nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- In 2009, added exemptions to licensure/certification to include nurses who are licensed in another state to be able to teach electronically or consult in person as long as they do not provide direct patient care or directly supervise patient care for more than 6 months in any calendar year.
- In 2009, also provided title protection for nurse practitioners and clinical nurse specialists and now require them to indicate their specialty area of certification when using the title.
- In 2012 began using a competency evaluation examination to identify unsafe practices in nurses reported to the Board for unsafe practice
- In 2015 the legislature authorized the Board to either certify or license nursing assistants. All categories of nursing assistant would be required to complete an approved nursing assistant training and competency evaluation program (NATCEP)

and have the same scope of practice. Licensure would apply to nursing assistants who pass the Board's criminal background check and are under the full authority of the Board. Licensed Nursing Assistants (LNA) would pay application and renewal fees. Certification is open to nursing assistants upon completion of a NATCEP, whereby the nursing assistant would be placed on a registry that meets federal requirements. The jurisdiction of the Board is limited to substantiated instances of abuse, neglect and misappropriation of property.

Rules promulgated in the past 5 years

During the past five years the following rules actions were taken:

- R4-19-601—expired effective August 31, 2011
- R4-19-605-- expired effective August 31, 2011
- R4-19-701-- expired effective August 31, 2011
- Article 2 –amended effective July 6, 2013
- Article 3—amended effective July 6, 2013
- R4-19-311—amended effective May 31, 2013 and Sept. 10, 2013
- Article 5—amended effective July 6, 2013
- R4-19-702—amended effective July 6, 2013
- R4-19-101—amended effective July 6, 2013
- Article 1, Table 1—amended effective July 6, 2013
- Article 8—amended effective September 8, 2014

5 Year Rule Review
Article 5

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

A.A.C. R4-19-501 to 513

The Board amended R4-19-501-514 effective July 6, 2013

Information that is Identical Within All Rules—Article 5

1. Authority

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1); and specifically under A.R.S. §§ 32-1605.01 (B)(3), 32-1606 (A)(1), (A)(8), (B)(1), (B)(2), (B)(8), (B)(10), (B)(12), (B)(15), (B)(17), (B)(18), (B)(21) and (B)(22), 32-1456, 32-1921, and 32-3208.

3. Analysis of Effectiveness in Achieving Objectives

These rules effectively achieve their objectives.

4. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with state statutes (A.R.S. § 32-1456, 32-1921 and 32-3208) and state and federal regulations regarding DEA licenses. (Controlled Substances Act, 21 U.S.C. § 801 et seq., and Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27)

5. Agency Enforcement of the Rules

These rules are currently enforced as written.

6. Clarity Conciseness and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

7. Written Criticisms Of the Rules Over The Past Five Years

The Board has not received any written criticisms of these rules during the past five years.

8. Economic, Small Business and Consumer Impact Summary

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 5 in 2013 projected no substantial economic impact on the regulated community, the Board, or the general public as a result of these rules. As predicted, no substantial economic impact occurred to regulated parties or the public. Although some impact in investigative cases was predicted, complaints have remained stable since 2010. There was one complaint of unprofessional conduct in an advance practice registered nursing (APRN) program which was resolved with a Letter of Concern. There is another complaint currently being investigated against an APRN program.

9. Analysis submitted by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

The Board has not received any analysis as described above.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

These rules were reviewed in 2011 and amended as planned in 2013.

11. Probable Benefits of the Rule Outweigh the Costs

The Board believes that all Article 5 rules impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective.

12. More Stringent than Federal Law

The rules regarding DEA licenses are consistent with federal law and are not any more stringent.

13. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

This article is in compliance with A.R.S. §41-1037. R4-19-102 involves issuing certifications, approvals and prescribing/dispensing authority. The Board believes that the certifications, authorizations, and approvals it issues fall within the definition of general permit. Under ARS § 41-1001 "'General permit'" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing." The Board is authorized to issue certificates to and prescribing authority to advanced practice nurses, and approve APRN nursing programs based upon meeting standards set in rule and statute without a public hearing.

14. Proposed Course of Action

A rulemaking revising R4-19-501 to include added certification exams will be initiated in 2016. No other amendments are planned.

Analysis of Individual Rules Article 1

R4-19-501 Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Program

2. Objective

Through this rule, the Board identifies the roles and populations of care for advanced practice nursing. Additionally the Board identifies the standards for acceptance of national certification for APRN nurses.

14. Proposed Course of Action

The Clinical Nurse Specialist National Certification Exams will be updated in a future rulemaking to include Adult-Gerontological CNS.

R4-19-502 Requirements for APRN Programs

2. Objective

Through this rule, the Board informs educational institutions of the approval requirements for APRN programs.

R4-19-503 Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

2. Objective

In this rule, the Board specifies the application requirements for schools seeking to establish an APRN program.

R4-19-504. Notice of Deficiency; Unprofessional Program Conduct

2. Objective

In this rule, the Board informs regulated APRN programs of the Board process and their rights if a rule violation is found. The second subsection of this rule informs programs of acts that constitute unprofessional conduct.

R4-19-505. Requirements for Initial APRN Certification

2. Objective

In this rule, the Board provides details regarding application requirements for certification including grandfathering clauses.

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

2. Objective

Through this rule, the Board informs certificate holders of the qualifications to renew an APRN certificate.

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

2. Objective

In this rule the Board provides applicants information on the qualifications for obtaining temporary APRN certification and Prescribing/Dispensing authority.

R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

2. Objective

With this rule, the Board establishes the standards related to scope registered nurse practitioner (RNP) practice.

R4-19-509. Delegation to Medical Assistants

2. Objective

In this rule, the Board delineates the conditions of delegation and the activities that may be delegated to medical assistants.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

2. Objective

This rule establishes the requirements for prescribing and dispensing authority and informs RNPs of acts of unprofessional conduct specifically related to prescribing and dispensing.

R4-19-512. Prescribing Drugs and Devices

2. Objective

This rule describes the actions and conditions necessary for safe prescribing.

R4-19-513. Dispensing Drugs and Devices

2. Objective

Through this rule, the Board establishes the required acts when NPs dispense medications.

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

2. Objective

With this rule, the Board establishes the standards related to scope of clinical nurse specialist practice.

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs

A. The Board recognizes the following APRN roles:
   1. Registered nurse practitioner (RNP) in a population focus including Certified Nurse Midwife as a population focus of RNP;
   2. Clinical Nurse Specialist (CNS) in a population focus; and
   3. Certified Registered Nurse Anesthetist (CRNA).

B. RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:
   1. Family-individual across the life span;
   2. Adult-gerontology primary or acute care;
   3. Neonatal;
   4. Pediatric primary or acute care;
   5. Women's health-gender related;
   6. Psychiatric-mental health;
   7. For Certified Nurse Midwives, women's health gender related including childbirth and neonatal care;
   8. Other foci that have been recognized by the Board previously and new foci that meet the following conditions:
      a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and
      b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.

C. The Board shall accept advanced practice certifications from programs that meet the following qualifications:
   1. The certification program:
      a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;
      b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;
      c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and
      d. Is national in the scope of its credentialing.
   2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:
      a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;
      b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;
      c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;
      d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;
      e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;
      f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;
      g. Examination security is maintained through established procedures;
      h. A re-take policy is in place; and
      i. Conditions for taking the certification examination are consistent with standards of the testing community;
   3. Certification is issued upon passing the examination and meeting all other certification requirements;
   4. The certification program periodically provides for re-certification that includes review of qualifications and continued competence;
   5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and
   6. The certification program has an evaluation process to provide quality assurance in its certificate program.

D. The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:
   1. For RNP:
      a. American Academy of Nurse Practitioner certification programs;
         i. Adult nurse practitioner,
         ii. Family nurse practitioner,
         iii. Gerontologic nurse practitioner,
         iv. Adult health-gerontological nurse practitioner.
      b. American Nurses Credentialing Center certification programs:

i. Acute care nurse practitioner (adult/gerontology),
ii. Adult nurse practitioner,
iii. Family nurse practitioner,
iv. Gerontological nurse practitioner,
v. Pediatric nurse practitioner,
vi. Adult psychiatric and mental health nurse practitioner,
vii. Family psychiatric and mental health nurse practitioner,
viii. Adult health-gerontological nurse practitioner,

c. Pediatric Nursing Certification Board certification programs:
i. Pediatric nurse practitioner primary care,
ii. Pediatric nurse practitioner acute care,

d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs;
i. Women's health nurse practitioner,
ii. Neonatal nurse practitioner,

e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,

f. AACN Certification Corporation certification programs:
i. Adult acute care nurse practitioner,
ii. Adult-gerontology acute care nurse practitioner,

2. For CNS:
a. AACN Certification Corporation certification programs:
i. Adult acute and critical care CNS,
ii. Pediatric acute and critical care CNS,
iii. Neonatal acute and critical care CNS,

b. American Nurses Credentialing Center certification:
i. Adult psychiatric-mental health CNS,
ii. Family psychiatric-mental health CNS,
iii. Gerontological CNS,
iv. Adult health CNS,
v. Pediatric CNS.

3. For CRNA, National Board of Certification and Recertification for Nurse Anesthetists.

E. The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section IV, Part I. Former Section R4-19-53 renumbered as Section R4-19-501 (Supp. 86-1). Former Section R4-19-501 renumbered to R4-19-502, new Section R4-19-501 adopted effective November 18, 1994 (Supp. 94-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 3213, effective July 12, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-502. Requirements for APRN Programs

A. An educational institution or other entity that offers an APRN program in this state for RNP or CNS roles shall ensure that the program:
1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including;
a. Three separate graduate level courses in:
i. Advanced physiology and pathophysiology, including general principles across the lifespan;
ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;

b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and
e. Role preparation in an identified population focus under R4-19-501.

6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);
8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
    a. Scope of the program, or
    b. Level of educational preparation provided.

B. A CNS or RNP program shall appoint the following personnel:
1. An APRN program administrator who:
    a. Holds a current unencumbered RN license or multi-state privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
    b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
    c. Has at least two years clinical experience as an APRN; and
    d. Holds current national certification as an APRN.
2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
    a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
    b. A current unencumbered Arizona APRN certificate,
    c. A graduate degree in nursing or a health related field in the population focus,
    d. Two years of APRN clinical experience, and
    e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty qualifications for the APRN program they are teaching.
5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
    a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
    b. Have at least one year clinical experience as a physician or an advanced practice nurse
    c. Practice in a population focus comparable to that of the APRN program;
    d. For nurse preceptors, have at least one of the following:
        i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
        ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
        iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii), educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.

C. An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

Historical Note

Former Section IV, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-54 repealed,

new Section R4-19-54 adopted effective July 20, 1981 (Supp. 81-4). Former Section R4-19-54 renumbered as Section R4-19-502 (Supp. 86-1). Section repealed, new Section R4-19-502 renumbered from R4-19-501 and Section heading amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section R4-19-502 adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

A. An administrator of an educational institution that proposes to offer a CNS or RNP program shall submit an application that includes all of the following information to the Board:
   1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);
   2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
   3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced practice education in the role and population focus of the program;
   4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
   5. A proposed time schedule for implementation of the program and attaining national accreditation;
   6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
   7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
   8. A self-study that provides evidence of compliance with R4-19-502;

B. An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.

C. The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.

D. An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

E. Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.

Historical Note

Former Section IV, Part III; Amended effective Nov. 17, 1978 (Supp. 78-6). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsection (F) effective July 20, 1981 (Supp. 81-4). Amended by adding subsection (G) effective September 15, 1982 (Supp. 82-5). Former Section R4-19-55 renumbered as Section R4-19-503 (Supp. 86-1). Former Section R4-19-503 repealed, new Section adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-503 renumbered to Section R4-19-504; new Section R4-19-503 adopted effective November 25, 1996 (Supp. 86-1). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-504. Notice of Deficiency; Unprofessional Program Conduct

A. The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether criteria for approval are being met.

B. The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.
   1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
   2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
   3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.

C. The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.
   1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to

submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.

D. A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:
   1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
   2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
   3. Utilization of students to meet staffing needs in health care facilities;
   4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;
   5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
   6. Student enrollments without adequate faculty, facilities, or clinical experiences;
   7. Ongoing or repetitive employment of unqualified faculty;
   8. Failure to comply with Board requirements within designated time-frames;
   9. Fraud or deceit in advertising, promoting or implementing a nursing program;
   10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
   11. Failure to allow Board staff to visit the program or conduct an investigation;
   12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty or potential patients.

Historical Note

Former R4-19-504 renumbered to R4-19-505; new R4-19-504 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-505. Requirements for Initial APRN Certification

A. An applicant for certification as an advanced practice registered nurse, shall:
   1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges; and
   2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
      a. Full legal name and all former names used by the applicant;
      b. Current mailing address, including primary state of residence and telephone number;
      c. Place and date of birth:
      d. RN license number, application for RN license, or copy of a multistate compact RN license;
      e. Social security number for an applicant who lives or works in the United States;
      f. Current e-mail address;
      g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
      h. Role and population focus, as applicable for which the applicant is applying;
      i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
      j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
      k. For applicants holding a multistate compact RN license in a state other than Arizona:
         i. State of original licensure and license number;
         ii. State of current compact RN license, license number and expiration date;
         iii. Date of taking RN licensure exam and name of exam;
         iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
         v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
         vi. State of licensure and license number of all RN licenses held,
      l. Responses regarding the applicant's background on the following subjects:
         i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;

ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
iv. Actions taken on a nursing license by any other state;
v. Unprofessional conduct as defined in A.R.S. § 32-1601;
vi. Substance use disorder within the last five years;
vii. Current participation in an alternative to discipline program in any other state; and

m. Information that the applicant meets the criteria in R4-19-506(A) or (C).

3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
   a. A graduate degree with a major in nursing for RNP and CNS Applicants, or
   b. A graduate degree associated with a CRNA program for a CRNA applicant.
5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:
   a. The program was part of a graduate degree, or post-masters program at an institution accredited under A.R.S. § 32-1644; or
   b. The program was approved or recognized in the U.S jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.

B. If the applicant satisfies all other requirements, the Board shall continue to certify:
1. An RNP without a graduate degree with a major in nursing if the applicant:
   a. Meets all other requirements for certification; and
   b. Ensures that the U.S. jurisdiction of an applicant's previous RNP licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
      i. Before January 1, 2001, if the RNP applicant lacks a graduate degree; or
      ii. Before November 13, 2005 if the RNP's graduate degree is in a health-related area other than nursing.
2. An RNP or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.
5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
   a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(6);
   b. One of the following:
      i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
      ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
      iii. A letter from a physician, RNP, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
   c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.

C. The Board shall issue a certificate to practice as an RNP in a population focus, a CNS in a population focus, or a registered nurse anesthetist to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-56 repealed, new Section R4-19-56 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-56 renumbered as Section R4-19-504 (Supp. 86-1). Former Section R4-19-504 renumbered to R4-19-505, new Section R4-19-504 adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-504 renumbered to Section R4-10-505; new Section R4-19-504

renumbered from R4-19-503 and amended effective November 25, 1996 (Supp. 96-4). Amended effective January 10, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 3911, effective September 28, 1999 (Supp. 99-3). Former R4-19-505 renumbered to R4-19-508; new R4-19-505 renumbered from R4-19-504 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (A)(7)(a) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

A. An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
   1. Completed an advanced practice nursing education program within the past five years; or
   2. Practiced for a minimum of 960 hours within the past five years where the nurse:
      a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(6) for a CNS, A.R.S. § 32-1601(19) for an RNP or A.R.S. § 32-1634.04 for a CRNA; or
      b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.

B. A registered nurse requesting renewal of an advanced practice certificate or an RNP certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.

C. An advanced practice nurse who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection;
   1. Precepted clinical practice shall be directly supervised by an advanced practice nurse in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
   2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
      a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
      b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
      c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
      d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.

D. An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.

E. The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Section R4-19-506 renumbered from R4-19-505 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-506 renumbered to R4-19-510, new Section R4-19-506 adopted effective November 25, 1996 (Supp. 96-4). Former R4-19-506 renumbered to R4-19-510; new Section R4-19-506 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (A)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
   1. Apply for certification as an advanced practice nurse;
   2. Submit an application for a temporary certificate;
   3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
   4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for RNP and CNS applicants unless exempt under R4-19-505(B); and
   5. Submit evidence that the applicant:
      a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
      b. Has requested that the certification program transmit all exam results directly to the Board; or
      c. For a CRNA, holds national certification according to R4-19-501.

B. If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.

C. The Board may issue temporary prescribing and dispensing authority for RNP applicants, if the applicant:
   1. Meets all application requirements for temporary certification in this Section,
   2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
   3. Has been certified or licensed as a nurse practitioner or nurse midwife with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
   4. Either holds current national certification as a registered nurse practitioner or nurse midwife in the population focus of the application or is exempt from national certification under R4-19-505(B), and
   5. Meets the practice requirement of R4-19-506(A)(2).

D. Temporary certification as an advanced practice nurse and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.

E. Notwithstanding subsection (D), the Board shall withdraw a temporary advanced practice certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
   1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
   2. Fails to renew the RN license upon expiration,
   3. Loses the multistate compact privilege,
   4. Fails the national certifying examination, or
   5. Violates a statute or rule of the Board.

F. An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

A. An RNP shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's knowledge and experience.

B. In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601 (19) and 32-1606(B)(12), may perform the following acts within the limits of the population focus of certification:
   1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.
   2. For a patient who requires the services of a health care facility:
      a. Admit the patient to the facility,
      b. Manage the care the patient receives in the facility, and
      c. Discharge the patient from the facility.
   3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.
   4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy.

5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
6. Perform therapeutic procedures that the RNP is qualified to perform.
7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
8. Perform additional acts that the RNP is qualified to perform and that are generally recognized as being within the role and population focus of certification.

C. An RNP shall only provide health care services including prescribing and dispensing within the RNP's population focus and role and for which the RNP is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

Historical Note

Adopted effective February 25, 1987 (Supp. 87-1). Former Section R4-19-505 renumbered to R4-19-506, new Section R4-19-505 renumbered from R4-19-504 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-505 repealed, new Section R4-19-505 renumbered from R4-19-504 and amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-508 renumbered to R4-19-513; new R4-19-508 renumbered from R4-19-505 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (B) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-509. Delegation to Medical Assistants

A. Under A.R.S. §§ 32-1456 and 32-1601(19)(d)(vii), an RNP may delegate patient care to a medical assistant in an office or outpatient setting. The RNP shall verify that a medical assistant to whom the RNP delegates meets at least one of the following qualifications:
1. Completed an approved medical assistant training program as defined in A.A.C. R4-16-101(3);
2. If a graduate of an unapproved medical assistant training program, passed the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists;
3. Completed an unapproved medical assistant training program and was employed as a medical assistant on a continuous basis since completion of the program before February 2, 2000;
4. Was directly supervised by the same registered nurse practitioner for at least 2000 hours before February 2, 2000; or
5. Completed a medical services training program of the Armed Forces of the United States.

B. An RNP may delegate the following acts to a medical assistant who is under the direct supervision of the RNP and demonstrates competency in the performance of the act:
1. Obtain vital signs;
2. Perform venipuncture and draw blood;
3. Perform capillary puncture;
4. Perform pulmonary function testing;
5. Perform electrocardiography;
6. Perform patient screening using established protocols;
7. Perform dosage calculations as applicable to written orders;
8. Apply pharmacology principles to prepare and administer oral, inhalant, topical, otic, optic, rectal, vaginal and parenteral medications (excluding intravenous medications);
9. Maintain medication and immunization records;
10. Assist provider with patient care;
11. Perform Clinical Laboratory Improvement Amendments (CLIA) waived hematology, chemistry, urinalysis, microbiological and immunology testing;
12. Screen test results;
13. Obtain specimens for microbiological testing;
14. Obtain patient history;
15. Instruct patients according to their needs to promote health maintenance and disease prevention;
16. Prepare a patient for procedures or treatments;
17. Document patient care and education;
18. Perform first aid procedures;
19. Perform whirlpool treatments;
20. Perform diathermy treatments;
21. Perform electronic galvation stimulation treatments;
22. Perform ultrasound therapy;
23. Perform massage therapy (subject to regulation by massage therapy board);
24. Apply traction treatments;
25. Apply Transcutaneous Nerve Stimulation unit treatments;

26. Apply hot and cold pack treatments; and
27. Administer small volume nebulizer treatments.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (A) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-510. Expired

Historical Note

Section renumbered from R4-19-506 and amended effective November 25, 1996 (Supp. 96-4). Section repealed made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Section R4-19-510 renumbered from R4-19-506 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1093, effective March 24, 2011 (Supp. 11-2).

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

A. The Board shall authorize an RNP to prescribe and dispense (P&D) drugs and devices within the RNP's population focus only if the RNP does all of the following:
   1. Obtains authorization by the Board to practice as a registered nurse practitioner;
   2. Applies for prescribing and dispensing privileges on the application for registered nurse practitioner certification;
   3. Submits a completed verified application on a form provided by the Board that contains all of the following information:
      a. Name, address, e-mail address and home telephone number;
      b. Arizona registered nurse license number, or copy of compact license;
      c. Nurse practitioner population focus;
      d. Nurse practitioner certification number issued by the Board; and
      e. Business address and telephone number;
   4. Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
      a. Pharmacology, or
      b. Clinical management of drug therapy, and
   5. Submits the required fee.

B. An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

C. An RNP shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.

D. In addition to acts listed under R4-19-403, for a nurse who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:
   1. Prescribing a controlled substance to oneself or a member of the nurse's family;
   2. Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
   3. Delegating the prescribing and dispensing of drugs or devices to any other person;
   4. Prescribing for a patient that is not in the registered nurse practitioner’s population focus of education and certification except as authorized in subsection (D)(5)(d); and
   5 .Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the nurse has examined the person and established a professional relationship, except when the nurse is engaging in one or more of the following:
      a. Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
      b. Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
      c. Furnishing a prescription drug to prepare a patient for a medical examination; or
      d. Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP even if the contact is not in the population focus of the registered nurse practitioner’s certification.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-512. Prescribing Drugs and Devices

A. An RNP granted P & D authority by the Board may:
   1. Prescribe drugs and devices;
   2. Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.

B. An RNP with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance. The RNP shall file the DEA registration number with the Board.

C. An RNP with a DEA registration number may prescribe:
   1. A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription;
   2. A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
   3. A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.

D. An RNP whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP whose DEA registration is revoked or limited shall report the action to the Board.

E. In all outpatient settings or at the time of hospital discharge, an RNP with P & D authority shall personally provide a patient or the patient's representative with the name of the drug, directions for use, and any special instructions, precautions, or storage requirements necessary for safe and effective use of the drug if any of the following occurs:
   1. A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
   2. In the RNP's professional judgment, these instructions are warranted; or
   3. The patient or patient's representative requests instruction.

F. An RNP with P & D authority shall ensure that all prescription orders contain the following:
   1. The RNP's name, address, telephone number, and population focus;
   2. The prescription date;
   3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP;
   4. The full name of the drug, strength, dosage form, and directions for use;
   5. The letters “DAW”, “dispense as written”, “do not substitute”, “medically necessary” or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
   6. The RNP's DEA registration number, if applicable; and
   7. The RNP's signature.

Historical Note

Former R4-19-512 renumbered to R4-19-514; new R4-19-512 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-513. Dispensing Drugs and Devices

A. A registered nurse practitioner (RNP) granted prescribing and dispensing authority by the Board may:
   1. Dispense drugs and devices to patients;
   2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
   3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
   4. Allow other personnel to assist in the delivery of medications provided that the RNP retains responsibility and accountability for the dispensing process.

B. If dispensing a drug or device, an RNP with dispensing authority shall:
   1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP or by a pharmacy of the patient's choice;
   2. Affix a prescription number to each prescription that is dispensed;
   3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of their duties; and
   4. Report the dispensing of controlled substances to the Board of Pharmacy’s Controlled Substance Prescription Monitoring Program as required in A.R.S. § 36-2608.

C. An RNP practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.

D. An RNP who dispenses a drug shall ensure that a label is affixed that contains all of the following information:
   1. Dispensing RNP's name and population focus;
   2. Address and telephone number of the location from which the drug is dispensed;
   3. Date dispensed;
   4. Patient's name and address;
   5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
   6. Manufacturer and lot number; and
   7. Prescription order number.

E. An RNP who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:
   1. Name of the drug, strength, quantity, directions for use, and number of refills;
   2. Date dispensed;
   3. Therapeutic reason;
   4. Manufacturer and lot number; and
   5. Prescription order number.

F. An RNP with dispensing authority shall:
   1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
   2. If dispensing a controlled substance:
      a. Control access by a written policy that specifies:
         i. Those persons allowed access, and
         ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
      b. Maintain and make available to the Board upon request an ongoing inventory and record of:
         i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
         ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.

G. If a prescription order is refilled, an RNP with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:
   1. Date refilled,
   2. Quantity dispensed if different from the full amount of the original prescription,
   3. RNP's name or identifiable initials, and
   4. Manufacturer and lot number.

H. Under the supervision of an RNP with P & D authority, other personnel may:
   1. Receive and record a prescription refill request from a patient or a patient's representative;
   2. Receive and record a verbal refill authorization from the RNP including:
      a. The RNP's name;
      b. Date of refill;
      c. Name, directions for use, and quantity of drug; and
      d. Manufacturer and lot number;
   3. Prepare and affix a prescription label; and
   4. Prepare a drug or device for delivery, provided that the dispensing RNP:
      a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
      b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-513 renumbered to R4-19-515; new R4-19-513 renumbered from R4-19-508 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

In addition to the functions of a registered nurse, a CNS, under A.R.S. § 32-1601(6), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:
   1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
   2. Establish primary and differential health status diagnoses;
   3. Direct health care as an advanced clinician;

4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
6. Manage health care according to written protocols;
7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
10. Prescribe and dispense durable medical equipment; or
11. Perform additional acts that the clinical nurse specialist is qualified to perform.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section R4-19-514 renumbered from R4-19-512 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-515. Repealed

Historical Note

Section adopted by final rulemaking at 6 A.A.R. 335, effective December 20, 1999 (Supp. 99-4). Section R4-19-515 renumbered from R4-19-513 by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

R4-19-516. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

R4-19-601 Expired

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 618, effective December 31, 2001 (Supp. 02-1). Section R4-19-601 renumbered from R4-19-602 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

R4-19-602. Letter of Concern

AUTHORIZING STATUTES

ARTICLE 5

§32-1605.01. Executive director; compensation; powers; duties

B. The executive director or the executive director's designee shall:

3. Issue and renew temporary and permanent licenses, certificates and prescribing or dispensing authority.

§32-1606. Powers and duties of board

A. The board may:

1. Adopt and revise rules necessary to carry into effect the provisions of this chapter.

8. Collect or assist in the collection of workforce data.

B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.

2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.

10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.

12. Adopt rules establishing those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.

15. Require each applicant for initial licensure to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public

safety may exchange this fingerprint data with the federal bureau of investigation.

17. Revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions five or more years before the date of filing an application pursuant to this chapter.

18. Establish standards for approving and reapproving nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it deems necessary.

21. Adopt rules to establish competency standards for obtaining and maintaining a license.

22. Adopt rules for the qualification and certification of clinical nurse specialists.

32-1456. <u>Medical assistants; use of title; violation; classification</u>

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.

2. Administer injections.

B. The board by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may perform the following tasks:

1. Billing and coding.

2. Verifying insurance.

3. Making patient appointments.

4. Scheduling.

5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records.

6. Performing visual acuity screening as part of a routine physical.

7. Taking and recording patient vital signs and medical history on medical records.
D. The board by rule shall prescribe medical assistant training requirements.
E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

32-1921. <u>Exempted acts; exemption from registration fees; definition</u>

A. This chapter does not prevent:

1. The prescription and dispensing of drugs or prescription medications by a registered nurse practitioner pursuant to rules adopted by the board of nursing in consultation with the Arizona medical board, the board of osteopathic examiners in medicine and surgery and the board of pharmacy.

D. A public health facility operated by this state or a county and a qualifying community health center may dispense medication or devices to patients at no cost without providing a written prescription if the public health facility or the qualifying community health center meets all storage, labeling, safety and record keeping rules adopted by the board of pharmacy.

F. For the purposes of this section, "qualifying community health center" means a primary care clinic that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code and whose board of directors includes patients of the center and residents of the center's service area

32-3208. <u>Criminal charges; mandatory reporting requirements; civil penalty</u>
A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.
B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony

after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.

C. On receipt of this information the regulatory board may conduct an investigation.

D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than one thousand dollars in addition to other disciplinary action it takes.

E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.

F. On request a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0108)
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

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

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-4**

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

FROM: Chris Kleminich, Staff Attorney

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0108)**
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

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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 Health Services (Department) is to "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 21 rules, one table, and two exhibits in A.A.C. Title 9, Chapter 4, Article 6, related to the licensing of environmental laboratories.

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

Article 6 contains 21 rules that address definitions; exemptions for applicability; license application and process, transferability; third party accreditation; compliance monitoring; provisional licensing; fees; installment payment of fees by small businesses; proficiency evaluation testing; approved methods and references; drinking water compliance testing; wastewater compliance testing; solid waste compliance testing; air and stack compliance testing; quality assurance; operation; laboratory records and reports; mobile laboratories; out-of-state environmental laboratory licensing; changes to a license; and time-frames.

Year that Each Rule was Last Amended or Newly Made

All of the rules were last amended on December 5, 2006.

Proposed Action

By August 2017, the Department plans to amend R9-14-601 through R9-14-603, R9-14-606, R9-14-607, R9-14-609 through R9-14-615, and Exhibits I and II.

Summary of Reasons for the Proposed Action

The Department indicates that the rules should be amended to increase effectiveness and to improve clarity, conciseness, and understandability.

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 in achieving their objectives, with the following exceptions:

- Section 601: The definitions for a number of terms should be amended.
- Section 602: Two new categories of exemptions should be added, in accordance with A.R.S. § 36-495.02(B). The first category consists of hospitals that add chlorine dioxide to its water supply to reduce cross-infection rates and increase patient safety. The second category consists of municipal wastewater laboratories that perform ultra-low chlorine testing of a water supply at specific satellite sites away from a licensed environmental laboratory.
- Section 603: Subsection (A)(14), which requires license application forms to include the name, title, and educational background of each individual authorized to sign final reports for the laboratory, is overly burdensome and should be removed.
- Section 607: The Department indicates that the rule is ineffective in two ways. First, the Department indicates that a credit card fee should be added to offset the cost that the Department incurs for offering the option of credit card payment. Second, the specified fees are, in the Department's view, no longer high enough to cover the costs of the licensure program.
- Section 610: Some of the methods incorporated by reference are obsolete and need to be updated or removed. References to newer methods need to be incorporated by reference into the rule. In addition, the rule would be more effective if parties had the ability to request the use of an alternate method.
- Section 611: The rule needs to be cleaned up to prevent licensees from being confused about which method is required to be used. In addition, the rule should clarify that a licensee of a laboratory performing compliance testing of bottled water is required to comply with the requirements for a licensee of a laboratory performing compliance testing of drinking water. Furthermore, the rule should clarify that a licensee is required to ensure that quality assurance guidelines, associated with an approved method, are being followed.
- Sections 612, 613, and 614: The rules need to be cleaned up to prevent licensees from being confused about which method is required to be used. In addition, the rules should clarify that

a licensee is required to ensure that quality assurance guidelines, associated with an approved method, are being followed.

- Section 615: The rule should require, in a quality assurance plan, specifications for appropriate manual integration of chromatography results, including descriptions of inappropriate manual integration. In subsection (C)(11), a licensee or applicant should be required to maintain a record showing the traceability of standards and other laboratories supplies or equipment that may affect the accuracy or validity of test results.
- Exhibit I: The listed methods, references, and instrumentation should be updated to reflect changes in the field.
- Exhibit II: To benefit the regulated community, more default limits should be added.

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>

Yes. The Department has received three written comments related to R9-14-610.[i] The Department has summarized the nature of the comments:

- First, in 2013, an employee of an environmental lab commented about the methods for analysis of Hexavalent Chromium and Total Chromium in the Standard Methods for the Examination of Water and Wastewater (19th ed. 1995), incorporated by reference in subsection (B) as Key Reference C, being obsolete. The Department agrees that the methods incorporated by reference as Key Reference C are obsolete since the current version is the 22nd edition, 2012. The Department plans to update the reference when the rules are revised.
- Second, in 2014, an employee of an environmental lab commented about the methods for analysis of Nitrate, Nitrate, and Total Kjeldahl Nitrogen (TKN) in the Standard Methods for the Examination of Water and Wastewater (20th ed. 1998), incorporated by reference in subsection (B) as Key Reference C2, being obsolete. The Department agrees that the methods incorporated by reference as Key Reference C2 are obsolete since the current version is the 22nd edition, 2012. The Department plans to update the reference when the rules are revised.
- Third, in 2014, an employee of an environmental lab commented about the methods for analysis of Polychlorinated biphenyls (PCBs) in the EPA Pub. No. SW-846, incorporated by reference in subsection (B) as Key Reference F, being obsolete. The Department agrees that the methods incorporated by reference as Key Reference F are obsolete since the rules include updates to the 3rd edition only up to July 2005, and many updates have been added since then. The Department plans to update the reference when the rules are revised.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Department cites to A.R.S. §§ 36-132(A)(1) and 36-136(F) as general statutory authority. Under A.R.S. § 36-136(F), the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." The Department cites to A.R.S. §§ 36-495.01 and 36-495.13 as specific statutory authority. In

[i] The full text of these comments has been included as an attachment for this agenda item.

particular, staff would note that A.R.S. § 36-495.01(B) provides, in relevant part, that the Department "shall prescribe rules providing for minimum standards of proficiency, methodology, quality assurance, operation and safety for environmental laboratories…."

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, with the exception of R9-14-611. Because the cited Key Reference D4 is obsolete, the rule is inconsistent with federal standards and guidelines for drinking water.

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

Yes. The Department indicates that the rules are enforced as written, with the exception of R9-14-602. The Department does not license personnel of hospitals that add chlorine dioxide to their water supplies and municipal wastewater laboratories that perform ultra-low chlorine testing at satellite sites.

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, with the following exceptions:

- Section 601: The definitions for a number of terms should be amended.
- Section 603: Semicolons in subsection (A)(5) should be replaced with commas.
- Section 606: It should be noted that "the corrective action plan" specified in subsection (G) is the "plan" specified in subsection (A). In addition, to improve understandability, subsection (D) should be moved to another place in the rule.
- Section 609: Because the Food and Drug Administration (FDA) recommends that bottled water should be tested under drinking water standards, the rule could be improved by clarifying that an applicant or licensee of a laboratory performing compliance testing of bottled water is required to comply with the proficiency testing requirements for an applicant or licensee of a laboratory performing compliance testing of drinking water.
- Section 610: A comma, after "editions or amendments" in subsection (B), should be replaced with a semicolon. In subsection (C)(3), the words "at a" should be removed from the phrase "performed by a laboratory at a designated by the Department."
- Section 613: The requirements in subsections (B)(3) and (C) should be clarified.
- Section 615: The term "line of authority" in subsection (B)(3) should be replaced with the term "lines of authority". In subsection (B)(14), the word "of" should be added after the phrase "limit of quantitation". Requirements in subsection (C)(3)(f) should be clarified.
- Section 616: A redundant citation to A.R.S. § 36-495.02(A) should be removed. In subsection (5)(e), the word "by" in the phrase "as required by each" should be replaced by the word "for".
- Section 617: The word "a" in the phrase "a longer period of time agreed upon" in subsection (5) should be replaced with the word "the." In addition, the term "critical step" in subsection (7)(f) should be defined or explained.

- Section 620: For clarity, subsections (A) and (B) should be combined. In addition, subsection (E) should be clarified to read "for the fourth request and each subsequent request for deletion during a license period."

8. Stringency of the Rules:

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

No. The Department indicates that the rules are not more stringent than any 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?

Not applicable, as the rules were adopted prior to 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. The Department planned to amend the rules by March 2013. Because of the continuance of the moratorium, the Department did not complete the proposed course of action.

11. Has the agency included a proposed course of action?

Yes. As noted above, the Department plans to amend R9-14-601 through R9-14-603, R9-14-606, R9-14-607, R9-14-609 through R9-14-615, and Exhibits I and II, by August 2017.

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
M E M O R A N D U M

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-4**

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0108)**
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

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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 6 rules contained in the five-year-review report.

The Arizona Department of Health Services promotes and protects the health of Arizona's children and adults. Its mission is to set the standard for personal and community health through direct care, science, public policy, and leadership. The Department operates programs in behavioral health, disease prevention and control, health promotion, community public health, environmental health, maternal and child health, emergency preparedness and regulation of childcare and assisted living centers, nursing homes, hospitals, other health care providers and emergency services.

The rules in Chapter 14, Article 6, establish application and fee requirements and the process for licensing environmental laboratories that perform compliance testing. The rules include minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; minimum standards for laboratory records and reports; specific requirements for mobile laboratories and out-of-state laboratories; and time-frames. Under these rules, the Department licenses approximately 141 environmental laboratories, including 62 environmental laboratories that are located out-of-state.

Out-of-state labs are licensed pursuant to A.R.S. § 36-495.14(A), which states, "Except as provided in this section, a laboratory located outside of this state that performs compliance testing shall be licensed pursuant to this chapter." The laboratories in the State of Arizona do not currently have the laboratory capacity or expertise to test all of the required Arizona compliance

samples. Out-of-state laboratories are treated equally to in-state laboratories except, unlike in-state laboratories, the out-of-state laboratories pay all travel costs for inspections. In addition, the Department has 30 additional days to complete the initial inspection.

DHS believes the economic impact has been as predicted for the rules in Articles 6 with the exception of the R9-14-607 (Fees). The Department reports that revenue estimates at the time of the rulemaking were higher than what was actually received in fees. To maintain program expenditures within revenues, temporary personnel measures were made (furlough and temporary reassignment) along with delaying purchase of software and supplies. When providing information for individual rules, the Department states that the fees are not high enough to cover the costs of the licensure program; however, since 2012 program revenue has exceeded expenditures –

2012: Revenues - 771,332.60	Expenditures - 767,244.06
2013: Revenues - 734,616.51	Expenditures - 732,969.16
2014: Revenues - 782,046.49	Expenditures - 659,688.11
2015: Revenues - 762,575.60	Expenditures - 735,713.22

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

DHS has determined that the rules in Article 6 are effective and enforced as written with the exception of the following that require amendment to correct cross-references or otherwise clarify the rules. DHS anticipates amending R9-14-601 through R9-14-603, R9-14-606, R9-14-607, R9-14-609 through R9-14-615, and Exhibits I and II by August 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.

Division for Planning and Operations
Administrative Counsel and Rules

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DOUGLALS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

November 3, 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 14, Article 6

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 14, Article 6 is due to the Council no later than November 30, 2015. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories, 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 intends to request an exception from the rulemaking moratorium established by Executive Order 2015-01 to amend these rules and to submit a Notice of Final Rulemaking to the Council within 18 months after receiving the exception.

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:rms

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

November 2015

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

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TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-495.01 requires the Arizona Department of Health Services (Department) to license environmental laboratories engaged in compliance testing and to adopt rules establishing minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories. A.R.S. § 36-495.01 also authorizes the Department to adopt rules prescribing standards for personnel education, training, and experience to meet federal environmental statutes or regulations; enabling reciprocity with other states; and prescribing the manner and form in which compliance testing results are reported. A.R.S. § 36-495.01 requires that the rules be developed in cooperation with the Arizona Department of Environmental Quality (ADEQ) and that the rules be consistent with A.R.S. Title 49 and the rules administered or enforced by ADEQ. A.R.S. § 36-495.13 allows the Department to adopt other rules necessary for the administration and enforcement of the Chapter.

The remaining statutes in A.R.S. Title 36, Chapter 4.3 establish exemptions from A.R.S. Title 36, Chapter 4.3; provide authority for further exemptions; establish provisions for environmental laboratory licensure, laboratory director duties, provisional licenses, fees, inspections and investigations, and laboratory reports; provide enforcement authority; establish the powers of the director; establish provisions for out-of-state laboratories; and establish the environmental laboratory licensure revolving fund and the environmental laboratory advisory committee.

The rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 14, Article 6, implement the statutes in A.R.S. Title 36, Chapter 4.3 by establishing application and fee requirements and the process for licensing environmental laboratories; minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; minimum standards for laboratory records and reports; specific requirements for mobile laboratories and out-of-state laboratories; and time-frames.

The rules in 9 A.A.C. 14, Article 6, were last amended in a rulemaking, effective in December 2006, that addressed issues identified in the previous five-year-review report. Although some of these rules are effective; consistent with state and federal statutes and rules; enforced; and clear, concise, and understandable, this five-year-review report lists Sections requiring revision and describes the revisions that are needed. The Department plans to request an exception from the rulemaking moratorium and to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council within 18 months after receiving the exception. This timetable is subject to change based on the Department's priorities and staffing.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

The rules in 9 A.A.C. 14, Article 6, have A.R.S. §§ 36-132(A)(1) and 36-136(F) as general statutory authority.

The rules in 9 A.A.C. 14, Article 6, have specific statutory authority in A.R.S. §§ 36-495.01 and 36-495.13.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 14, Article 6, is to implement the requirements in A.R.S. Title 36, Chapter 4.3 to ensure the health and safety of the public, as well as of employees of environmental laboratories.

4. Analysis of consistency with state and federal statutes and rules

Except as described for R9-14-611, the rules in 9 A.A.C. 14, Article 6, are consistent with cited state and federal statutes and rules.

7. Summary of the written criticisms of the rule received within the last five years

Except for comments about obsolete methods in R9-14-610, the Department has not received any written criticisms of the rules in 9 A.A.C. 14, Article 6, in the past five years.

8. Economic, small business, and consumer impact comparison

The rules in Chapter 14, Article 6, establish application and fee requirements and the process for licensing environmental laboratories that perform compliance testing. The rules include minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; minimum standards for laboratory records and reports; specific requirements for mobile laboratories and out-of-state laboratories; and time-frames. Under these rules, the Department licenses approximately 141 environmental laboratories, including 62 environmental laboratories that are located out-of-state. From these environmental laboratories, the Department annually collects over $700,000 in licensing fees, with approximately half of the funds submitted in March through June. These funds are deposited into the environmental laboratory licensure revolving fund established under A.R.S. § 36-495.15, from which the Department receives a legislative appropriation to run the Environmental Laboratory Licensure Program (Program) within the Department. Because of the inconsistent cash flow, the Department had relied on monies kept in the fund to run the Program during times with lower cash flows. During the FY 2009 budget crisis, the Legislature swept the monies remaining in the fund, leaving the Department with only the monies coming in from licensure fees to run the Program. In FY 2015, the Department imposed no civil penalties and denied no licenses.

With the 2006 rulemaking, the Department submitted an Economic, Small Business, and Consumer Impact Statement (EIS) to GRRC. While the actual economic impact of most of the rules is as estimated in the 2006 EIS, for two of the rules the actual economic impact differs from

that estimated in the 2006 EIS. R9-14-607 specifies the fees an applicant is required to submit to the Department with an application for an initial or renewal license, and Exhibit I specifies method and instrumentation fees. In the 2006 EIS, the Department estimated that the Department would receive a moderate benefit from requiring out-of-state laboratories to pay an annual update fee and a substantial benefit from increased application fees, including cumulative method and instrumentation fees determined according to Tables 1 and 2 in Exhibit I.

While these estimates of moderate and substantial benefits are correct, the dollar amount estimated to be received from increased application fees, including cumulative method and instrumentation fees, was more than was actually received. The Department estimated receiving $858,654 in revenue for FY2007 with the fee increases in the rulemaking. However, the revenue since the rules fee increase has fallen short each fiscal year, with the fee collection for FY 2015 being only $758,623. While the Department continued to license approximately the same number of environmental laboratories as before the 2006 rulemaking, many of the environmental laboratories reduced the number of methods and instruments for which licensing was requested, thereby reducing the cumulative method and instrumentation fees and consequently the Department's revenue. The Department adjusted to the reduced revenue through salary cost savings from the furloughs and temporarily shifting personnel to other duties and by delaying expenditures for laboratory software and supplies.

Otherwise, the actual economic impact of the rule is as estimated in the 2006 Economic, Small Business, and Consumer Impact Statement.

9. <u>Summary of business competitiveness analyses of the rules</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 indicated in the previous five-year-review report</u>

As stated in the previous five-year-review report, the Department planned to amend the rules in 9 A.A.C. 14, Article 6, by March 2013, which is 21 months after the rulemaking moratorium was scheduled to be lifted on June 30, 2011. Since the moratorium, established January 22, 2009 and continued through legislative and executive actions to the present day, is still in effect, the Department is complying with the rulemaking action proposed in the previous five-year-review report.

12. <u>Analysis of stringency compared to federal laws</u>

The rules are not more stringent than federal laws.

13. <u>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</u>

Although the rules do establish licensing, certification, or permit requirements, the rules were adopted before July 29, 2010.

14. Proposed course of action

The Department intends to request an exception from the rulemaking moratorium established by Executive Order 2015-01 to amend the following rules as described in the information for individual rules: R9-14-601 through R9-14-603, R9-14-606, R9-14-607, R9-14-609 through R9-14-615, and Exhibits I and II. Changes may also be made to other rules, as necessary, to correct cross-references or otherwise clarify the rules. Assuming that the Department obtains the exception by February 2016, the Department anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council (GRRC) by August 2017. This timetable is subject to change based on when an exception/approval to conduct rulemaking is received and the Department's priorities and staffing.

INFORMATION FOR INDIVIDUAL RULES

R9-14-601. Definitions

2. <u>Objective</u>

The objective of the rule is to define terms used in Article 6 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective but could be improved if the issues described in paragraph 6 were addressed.

5. <u>Status of enforcement of the rule</u>

The Department is enforcing the rule to the extent that definitions can be enforced.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable. However, the definitions of several terms need to be amended. For example, the definition of "approved method" uses the defined term in the definition. The term "Initial Demonstration of Capability" does not need to be capitalized and can be combined with the definition of "IDOC," which is the abbreviation for the term. The definition of "laboratory inspection" needs to be amended to clarify that the term also refers to the assessment of an applicant's compliance with A.R.S. Title 36, Chapter 4.3 and 9 A.A.C. Chapter 14, Article 6. The definition of "limit of detection" needs to be amended to remove from the definition the requirement that the estimate be developed according to R9-14-615(C)(7). The definition of "statistical outlier" also needs to be amended to insert the word "been" after the phrase "determined through statistical analysis to have" to make the definition understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-602. Exemptions from Applicability

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-495.02 as additional specific statutory authority.

2. <u>Objective</u>

The objective of the rule is to establish exemptions from the Article's applicability.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective in achieving its objective but should be amended to add two new categories of exemptions, as allowed under A.R.S. § 36-495.02(B). The first category is a hospital that adds chlorine dioxide to its water supply to reduce cross-infection

rates and increase patient safety and monitors these chlorine levels. The second category consists of municipal wastewater laboratories that perform ultra-low chlorine testing of the water supply at specific satellite sites away from the licensed environmental laboratory. Currently, a licensee would have to pay almost $1,900 for the licensure of each of these locations as satellite laboratories.

5. Status of enforcement of the rule

While the Department provides training and technical assistance to the personnel of hospitals that add chlorine dioxide to their water supplies and municipal wastewater laboratories that perform ultra-low chlorine testing at satellite sites, the Department does not license these entities. Otherwise, the rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

Because of the issues described in paragraphs 3 and 5 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-603. License Application and Process

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-495.03 and 36-495.06 as additional specific statutory authority.

2. Objective

The objectives of the rule are to specify:

a. The content of an initial or renewal license application;

b. The time period for submission of a license application;

c. The criteria for the Department's issuance of a single laboratory license;

d. The conditions under which a license is valid;

e. That non-payment of applicable fees constitutes a violation of the requirements for licensure; and

f. That no fee is charged for a new license issued in response to a change in laboratory name, laboratory director, or ownership reported to the Department within 20 days after the change.

3. Analysis of effectiveness in achieving the objective

The rule is effective but would be just as effective and less burdensome if subsection (A)(14) were removed since the laboratory director and licensee are responsible for a final report

submitted to the U.S. Environmental Protection Agency (EPA) or ADEQ for compliance monitoring, regardless of who signs the final report.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule could be improved if the semicolons in subsection (A)(5) were replaced with commas.

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

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-604. Third Party Accreditation

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-495.07 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the conditions under which accreditation of a laboratory by a third party is acceptable in lieu of licensure.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

R9-14-605. Compliance Monitoring

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-495.07 and 36-495.09 as additional specific statutory authority.

2. Objective

The objective of the rule is to establish requirements for compliance monitoring to help ensure the health of members of the public, including specifying:

a. Requirements for mandatory and permissive inspections, investigations, and proficiency testing;

b. The actions the Department may take in response to deficiencies found during compliance monitoring; and

c. Requirements related to corrective action plans.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

R9-14-606. Provisional Licensing

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-495.05 as additional specific statutory authority.

2. Objective

The objectives of the rule are to specify:

a. The conditions under which the Department may issue a provisional license to a licensee,

b. The elements the Department will consider in deciding whether to issue a provisional license,

d. The period of time during which a provisional license is valid, and

e. How a licensee with a provisional license may request and obtain a regular license.

3. Analysis of effectiveness in achieving the objective

The rule is effective but could be improved if the issues described in paragraph 6 were addressed.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule could be improved by clarifying that the "plan" specified in subsection (A) is a "corrective action plan" and that this "plan" is "the corrective action plan" specified in subsection (G). Subsection (D) also seems to be out of place and, to improve the understandability of the rule, should either be moved into a different Section or be more closely associated with another subsection, such as subsection (A).

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

Because of the issues described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-607. Fees

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-495.06, 36-495.14, and 36-495.15 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the fees an applicant is required to submit to the Department with an application for an initial or renewal license to sustain the environmental laboratory licensure program.

3. Analysis of effectiveness in achieving the objective

The rule is partly effective in achieving its objective. The Department needs to add a credit card fee for those applicants who want to pay their licensure fees by credit card to offset the cost credit card providers charge the Department for this service. In addition, the fees specified in rule are no longer high enough to cover the costs of the licensure program, as required by A.R.S. § 36-495.15.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule necessary to achieve the regulatory objective.

R9-14-608. Installment Payment of Fees by Small Businesses

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-495.06 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the conditions of and requirements for fee installment payments by a small business.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

R9-14-609. Proficiency Testing

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-495.07 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the frequency of proficiency testing and the mechanism by which an applicant or licensee may demonstrate proficiency in the type of compliance testing performed by the laboratory to help ensure the health of members of the public.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective but could be improved by addressing the issue in paragraph 6.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable. However, the Food and Drug Administration (FDA) recommends that bottled water, which is regulated by the FDA as a food, should be tested under drinking water standards. Therefore, the rule could be improved by clarifying that an applicant or licensee of a laboratory performing compliance testing of bottled water is required to comply with the proficiency testing requirements for an applicant or licensee of a laboratory performing compliance testing of drinking water.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issue described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-610. Approved Methods and References

2. <u>Objective</u>

The objectives of the rule are to:

a. Require that compliance testing be performed by an approved method or a method alteration approved by the Department,

b. Incorporate by reference the publications containing the approved methods,

c. Specify the mechanism by which a person may request approval of a different method or method alteration, and

d. Establish the criteria the Department will use in making the decision of whether or not to approve a different method or method alteration.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objectives. Some of the references incorporated in the rule are obsolete and need to be updated or removed. In addition, other newer methods have been approved by the Environmental Protection Agency (EPA), the Department, or another regulatory body, and references to these methods need to be incorporated into the rule. The rule would also be more effective if an applicant or person exempt from licensure under A.R.S. § 36-495.02(A)(3), as well as a licensee, were able to request an alternate method. The rule's effectiveness would also be improved by addressing the issues in paragraph 6.

5. <u>Status of enforcement of the rule</u>

Because of the Department's ability to add newer methods under subsection (C), the Department is able to enforce the rule as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the rule could be improved by replacing the comma after "editions or amendments" in subsection (B) with a semicolon. In subsection (C)(3), the words "at a" should be removed from the phrase "performed by a laboratory at a designated by the Department."

7. Summary of the written criticisms of the rule received within the last five years

Criticism 1: An employee of an environmental lab in 2013 commented about the methods for analysis of Hexavalent Chromium and Total Chromium in the Standard Methods for the Examination of Water and Wastewater (19th ed. 1995), incorporated by reference in subsection (B) as Key Reference C, being obsolete.

Response 1: The Department agrees that the methods incorporated by reference as Key Reference C are obsolete since the current version is the 22nd edition, 2012. The Department plans to update the reference when the rules are revised.

Criticism 2: An employee of an environmental lab in 2014 commented about the methods for analysis of Nitrate, Nitrate, and Total Kjeldahl Nitrogen (TKN) in the Standard Methods for the Examination of Water and Wastewater (20th ed. 1998), incorporated by reference in subsection (B) as Key Reference C2, being obsolete.

Response 2: The Department agrees that the methods incorporated by reference as Key Reference C2 are obsolete since the current version is the 22nd edition, 2012. The Department plans to update the reference when the rules are revised.

Criticism 3: An employee of an environmental lab in 2014 commented about the methods for analysis of Polychlorinated biphenyls (PCBs) in the EPA Pub. No. SW-846, incorporated by reference in subsection (B) as Key Reference F, being obsolete.

Response 3: The Department agrees that the methods incorporated by reference as Key Reference F are obsolete since the rules include updates to the 3rd edition only up to July 2005, and many updates have been added since then. The Department plans to update the reference when the rules are revised.

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

Because of the issues described in paragraphs 3 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-14-611. Drinking Water Compliance Testing

2. Objective

The objective of the rule is to specify requirements for laboratories performing compliance testing of drinking water to help ensure the health of members of the public.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is mostly effective in achieving its objective. However, the effectiveness of the rule is compromised because an approved method by which drinking water samples are required to be analyzed may be obsolete, such as Key Reference C2 as described in the response to a criticism of R9-14-610. Although the Department can add new methods under R9-14-610(C), methods previously approved by this route may also become obsolete, leading to a situation where licensees may be confused about which method is required to be used. Since bottled water should be tested under drinking water standards, the rule could also be improved by clarifying that a licensee of a laboratory performing compliance testing of bottled water is required to comply with the requirements for a licensee of a laboratory performing compliance testing of drinking water. The rule would also be more effective if the rule clarified that a licensee is required to ensure that compliance testing is performed not only using an approved method but also following quality assurance guidelines associated with the approved method.

4. <u>Analysis of consistency with state and federal statutes and rules</u>

The rule is consistent with cited state and federal statutes and rules. However, the rule is not consistent with EPA standards and guidelines for drinking water, since the cited Key Reference D4 is obsolete.

5. <u>Status of enforcement of the rule</u>

Because of the Department's ability to add newer methods under R9-14-610(C), the Department is able to enforce the rule as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule or achieve the regulatory objective.

R9-14-612. Wastewater Compliance Testing

2. <u>Objective</u>

The objective of the rule is to specify requirements for laboratories performing compliance testing of wastewater to help ensure the health of members of the public.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective. However, the effectiveness of the rule is compromised because an approved method by which wastewater samples are required to be analyzed may be obsolete, such as Key Reference C2 as described in the response to a criticism of R9-14-610. Although the Department can add new methods under R9-14-610(C), as mentioned earlier, methods previously approved by this route may also become obsolete, leading to a situation where licensees may be confused about which method is required to be used. The rule would also be more effective if the rule clarified that a licensee is required to ensure that compliance testing is performed not only using an approved method but also following quality assurance guidelines associated with the approved method.

5. Status of enforcement of the rule

Because of the Department's ability to add newer methods under R9-14-610(C), the Department is able to enforce the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule or achieve the regulatory objective.

R9-14-613. Solid Waste Compliance Testing

2. Objective

The objective of the rule is to specify requirements for laboratories performing solid waste compliance testing to help ensure the health of members of the public.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective. However, the effectiveness of the rule is compromised because an approved method by which solid waste samples are required to be analyzed may be obsolete, such as Key Reference F as described in the response to a criticism of R9-14-610. Although the Department can add new methods under R9-14-610(C), as mentioned earlier, methods previously approved by this route may also become obsolete, leading to a situation where licensees may be confused about which method is required to be used. The rule would also be more effective if the rule clarified that a licensee is required to ensure that solid waste compliance testing is performed not only using an approved method but also following

quality assurance guidelines associated with the approved method. The rule's effectiveness would also be improved if the issues described in paragraph 6 were addressed.

5. <u>Status of enforcement of the rule</u>

Because of the Department's ability to add newer methods under R9-14-610(C), the Department is able to enforce the rule as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable. However, the rule could be improved by clarifying that a licensee of a laboratory performing solid waste compliance testing using an 8000 series method from Key Reference F is not required to follow the applicable procedures in all three of the references specified in subsection (B)(3) but may choose an applicable procedure from any of the three. Similarly, the rule should clarify that a licensee of a laboratory performing solid waste compliance testing using a non-8000 series method from Key Reference F is not required to follow the applicable procedures in both of the references specified in subsection (C) but may choose an applicable procedure from either.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraphs 3 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule or achieve the regulatory objective.

R9-14-614. Air and Stack Compliance Testing

2. <u>Objective</u>

The objective of the rule is to specify requirements for laboratories performing air or stack compliance testing to help ensure the health of members of the public.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective. However, the rule would be more effective if the rule clarified that a licensee is required to ensure that air or stack compliance testing is performed not only using an approved method but also following quality assurance guidelines associated with the approved method. Although the Department can add new methods under R9-14-610(C), as mentioned earlier, methods previously approved by this route may become obsolete, leading to a situation where licensees may be confused about which method is required to be used.

5. <u>Status of enforcement of the rule</u>

Because of the Department's ability to add newer methods under R9-14-610(C), the Department is able to enforce the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

Because the issue described in paragraph 3 may affect the health of members of the public, while the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, the underlying regulatory objective cannot be achieved with these rules.

R9-14-615. Quality Assurance

2. Objective

The objectives of the rule are to establish:

a. Minimum standards for quality assurance, including the development and implementation of a quality assurance plan and standard operation procedures, to help ensure the health of members of the public; and

b. Requirements and processes for obtaining an exemption from the requirement for a licensee or applicant to have available at the laboratory all methods, equipment, reagents, and glassware necessary for compliance testing of all licensed parameters.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objectives. The rule would be more effective if the rule required in the quality assurance plan specifications for appropriate manual integration of chromatography results, including descriptions of inappropriate manual integration. The rule should also require in subsection (C)(11) that the licensee or applicant maintain a record showing the traceability of standards and other laboratories supplies or equipment that may affect the accuracy or validity of test results. The rule's effectiveness would also be improved if the issues described in paragraph 6 were addressed.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule could be improved by replacing the term "line of authority" in subsection (B)(3) with the term "lines of authority" and adding the word "of" after the phrase "limit of quantitation" in subsection (B)(14). Subsection (C)(3)(f) would also be more understandable if the rule required a statement of the quantitative methods

used to calculate the final concentration of analyte in the sample, including any factors used in the calculations, rather than "calculations for the quantitation … and the calibration algorithm."

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraph 3 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule or achieve the underlying regulatory objective.

R9-14-616. Operation

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-495.04 as additional specific statutory authority.

2. <u>Objective</u>

The objective of the rule is to establish the minimum standards for environmental laboratory operations.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

5. <u>Status of enforcement of the rule</u>

The Department is enforcing the rule as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the rule could be improved if the redundant citation to A.R.S. §36-495.02(A) were removed from subsection (1)(c) since the statute is included as a subsection in R9-14-602. Subsection (5)(e) would be clearer if the word "by" in the phrase "as required by each" were replaced by the word "for."

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Despite the rule's minor clarity issue, 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.

R9-14-617. Laboratory Records and Reports

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-495.08 as additional specific statutory authority.

2. Objective

The objective of the rule is to establish the minimum standards for compliance testing records and reports and for the maintenance and accessibility of records and reports.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule could be improved if the word "a" in the phrase "a longer period of time agreed upon" in subsection (5) were replaced with the word "the." The term "critical step" in subsection (7)(f) should also be defined or explained.

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

Despite the rule's minor clarity issues, 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.

R9-14-618. Mobile Laboratories

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-495.03 and 36-495.08 as additional specific statutory authority.

2. Objective

The objectives of the rule are to require that:

a. A mobile laboratory be licensed and comply with the Article; and

b. The licensee for a mobile laboratory provide to the Department, upon request, the mobile laboratory's location and a list of the parameters for which testing is performed at the mobile laboratory.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

R9-14-619. Out-of-State Environmental Laboratory Licensing

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-495.14 as additional specific statutory authority.

2. Objective

The objective of the rule is to require an out-of-state environmental laboratory to comply with the statutes and rules applicable to an out-of-state environmental laboratory and to pay the Department's expenses incurred as a result of the laboratory's out-of-state location.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

R9-14-620. Changes to a License

2. Objective

The objective of the rule is to specify the mechanism by which a licensee may request a change to the parameters for which the laboratory is licensed and the Department will process the request.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule could be improved if subsections (A) and (B) were combined and subsection (E) were clarified to read "for the fourth request and each subsequent request for deletion during a license period."

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

Despite the rule's minor clarity issue, 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.

R9-14-621. Time-frames

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-495.07, 36-495.09, and 41-1073 through 41-1076 as additional specific statutory authority.

2. Objective

The objective of the rule is to specify the administrative processes the Department will perform during the time-frames in Table 1.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 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.

Table 1. Time-frames (in days)

1. Authorization of the rule by existing statute

The table has A.R.S. §§ 36-495.07, 36-495.09, and 41-1073 through 41-1076 as additional specific statutory authority.

2. Objective

The objective of the table is to establish the time-frames for the Department's administrative processes for the approvals issued under this Article.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective.

5. <u>Status of enforcement of the rule</u>

The Department is enforcing the rule as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, having three Tables 1 in the Article may be confusing.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

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.

Exhibit I. Approved Methods; Method Fees; Instrument Fees

Table 1. Approved Methods; Method Fees

Table 2. Instrumentation Fees

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. § 36-495.06 as additional specific statutory authority.

2. <u>Objective</u>

The objectives of the tables in the exhibit are to:

a. Provide a list of drinking water parameters, wastewater parameters, solid waste parameters, air and stack parameters, and director-approved methods;

b. Specify the methods by which each analyte under the different types of parameters may be tested, the licensing fee for each method, and a reference for the method; and

c. Specify the licensing fee associated with each type of instrument used in compliance testing.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is partly effective in achieving its objectives. The listed methods, references, and instrumentation need to be updated to reflect changes in the field, some of which may also require other Sections to be amended and this rule to be amended to be consistent with the other Sections of the rules.

5. <u>Status of enforcement of the rule</u>

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, having three Tables 1 in the Article may be confusing.

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

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

Exhibit II. Alternate Default Limits

Table 1. Default Limits

2. Objective

The objective of the table is to specify the default limits for quality control parameters without acceptance criteria specified in the method.

3. Analysis of effectiveness in achieving the objective

The rule is effective but could be improved by adding more default limits to benefit the regulated community.

5. Status of enforcement of the rule

The Department is enforcing the rule as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, having three Tables 1 in the Article may be confusing.

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

Because of the issue described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

ATTACHMENT D

Comment on Method C

From: Matt Sowards [MattS@acz.com]
Sent: Thursday, August 01, 2013 9:05 AM
To: Prabha Acharya
Subject: RE: Methods change request

Hi Prabha,

I never received any response to the email below, or at least none that I can find. We have now added SM3500-Cr-B-2009 to our other state certificates and would like to start reporting this method. The problem is that I don't feel it's appropriate to report both methods (i.e. SM3500-Cr-B-2009/3500-Cr-D 19th edition) as there are some discrepancies in the chemistry. What is AZ's position on this? Are labs expected to segregate work from AZ so that we can follow and report the old method?

Thanks in advance for your assistance.

Matt Sowards
QA Officer
ACZ Laboratories, Inc.
matts@acz.com
970-879-6590 x531

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From: Matt Sowards
Sent: Tuesday, March 26, 2013 1:57 PM
To: 'Alicia Mayfield'; Elizabeth A. Ryan; Prabha Acharya
Cc: Steve Baker; Isaac Robert
Subject: RE: Methods change request

Hi Alicia,

If the department will not issue director approval for the methods in the 2010 EPA MUR, then ACZ would like the alternatives, 3500-Cr-D (19th edition), 3114B (19th ed), D6888-04, & D516-02. All these methods are on ACZ's current license.

I do ask the department to reconsider the decision not to approve the versions requested through director approval. The older versions are no longer listed in 40 CFR, Part 136.3. Please correct me if I'm wrong, but my understanding is that the old versions are no longer technically compliant with federal NPDES regulations. Lastly, there are some differences between 3500-Cr-D (19th) and 3500-Cr-B-2009 that, in my assessment, affect the chemistry of the method. It may be appropriate to consider to hexavalent chromium separately.

Thanks, and please let me know if you have any questions.

Matt Sowards
QA Officer

ACZ Laboratories, Inc.
matts@acz.com
970-879-6590 x531

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From: Alicia Mayfield [mailto:Alicia.Mayfield@azdhs.gov]
Sent: Tuesday, March 26, 2013 11:10 AM
To: Elizabeth A. Ryan
Cc: Steve Baker; Isaac Robert; Prabha Acharya; Matt Sowards
Subject: RE: Methods change request
Importance: High

Good Morning Ms. Ryan,

Do you want to go ahead and add the methods per our rules as explained by Ms. Prabha Acharya in the email below?

Please advice,

Ali Mayfield

Arizona Department of Health Services
Bureau of Laboratory Services
Office of Laboratory Licensure & Certification
250 North 17th Avenue, 1st Floor
Phoenix, AZ 85007-3231
Office: (602) 364-0720
Direct: (602) 364-0728
Fax: (602) 364-0759
Email: Alicia.Mayfield@azdhs.gov
Website: www.azdhs.gov/lab/license/env.htm

"Health and Wellness for all Arizonans"

From: Prabha Acharya
Sent: Friday, March 15, 2013 10:12 AM
To: elizabethr@acz.com
Cc: Steve Baker; Isaac Robert; Prabha Acharya; Alicia Mayfield
Subject: Methods change request

Elizabeth,

This is in response to your request for adding to your lab's license the newer versions of SM and ASTM methods that were recently promulgated by MUR. Unfortunately we will not be able to director approve newer versions of methods that are currently in our rules due to massive confusion it would create to keep track of different versions licensed by labs. Our goal is to add all the newer version methods when we do the next rule update. We require the current revisions that are in our rules or the current director approved methods to be used by the labs for compliance testing in Arizona. We have addressed each request below:

1) **Hex Chrome by 3500-Cr-B:** we have 3500-Cr-D from 19th edition in our rules, which is equivalent to 3500-Cr-B in the 20th edition onwards (see MUR from March 1997). SM does this switching of letters sometimes which causes a lot of confusion. Since it appears like you are already licensed for the "D" version, you do not have to switch over to "B".
2) **Selenium by SM 3114C** ; EPA has approved 3114B-2009 and 3114C-2009; we have 3113B and 3114B from the 19th edition; you can request either one of the methods that are in our rules to be added to your license.
3) **Available cyanide by D6888 -09;** we have -04 version in our rules.
4) **Sulfate by D516-07**; we have D516-02 in our rules.

Hope this helps. Please contact one of us if you need further clarification. Thank you.

Prabha Acharya
Manager, Technical Resources
Arizona DHS
Lab Licensure
Tel: 480 284 6869/602 364 0720

Comment on Method C2

From: Prabha Acharya
Sent: Tuesday, May 27, 2014 10:09 AM
To: Frank Martinez
Cc: Steve Baker; Isaac Robert; Prabha Acharya
Subject: RE: Standard Methods

Frank,

The current Arizona environmental rules specify the 20th edition of Standard Methods for the inorganic wet chemistry methods and therefore for compliance testing in Arizona the 20th edition methods must be used.

The Lab Licensure program is not able to incorporate the MUR updated methods into the rules because the Governor has put a moratorium on any new rule making process; it might be about a year or more before we can update our rules.

Hope this helps.

You may forward this email to Surjit.

Prabha Acharya
Manager, Technical Resources
Arizona DHS
Lab Licensure
Tel: 480 284 6869/602 364 0720

From: Surjit Saini [surjits@accutest.com]
Sent: Wednesday, May 21, 2014 3:34 PM
To: Frank Martinez
Cc: Brad Madadian; Beth Proffitt; Elvin Kumar
Subject: Standard Methods

Good Afternoon Frank,

I am writing to you for some advice in reference to one of our client requests. This is regarding use of Standard Methods for Examination of Water and Wastewater.

We are in the continuous improvement process to reference the most recent edition of the Standard Methods, and in accordance to the Method Update Rule to cite the year of publication of the method instead of the edition of Standard methods. We have an AZ client who has specifically requested that we report Nitrate, Nitrite, and TKN by 20th edition. Please advise how we should address this request.

Thanks,
Surjit Saini
Quality Assurance Manager

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Your opinion is important to us. Please take our brief survey..Thank You !
The survey can be found at the following link:
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Comment on Method F

From: Prabha Acharya
Sent: Thursday, March 27, 2014 10:07 AM
To: Matt Sowards
Cc: L. Juanita Rastello; Frank Martinez; Galan Larson; Imelda Guevara; Isaac Rober[illegible] Acharya, Steve Baker
Subject: RE: Methods change request

Matt,

You are correct in that we do not currently director approve new revisions of methods unless the lab can show that there is a distinct advantage in using the revised method. If you can think of any advantage (like better QA/QC) you may email us and we may consider.

As far as the SW 846 status table, the website has the following:

Status of Methods Questions

Test Methods
Frequently Asked Questions

Question: How can I find out which is the most recent version of an SW-846 method?

Answer: The simplest way is to consult the Method Status Table on the SW-846 on-line page. This table shows the chronological progression of new and revised methods in the manual. It lists:

- each method in numerical order,
- shows in which update to the 3rd Edition the method appeared,
- provides the method title,
- its location in the manual (e.g., volume, chapter, and section), and
- **lists the most recent version that was formally promulgated.**

Hope this helps.

Prabha Acharya
Manager, Technical Resources
Arizona DHS
Lab Licensure
Tel: 480 284 6869/602 364 0720

From: Matt Sowards [mailto:MattS@acz.com]
Sent: Wednesday, March 26, 2014 12:45 PM
To: Prabha Acharya
Cc: L. Juanita Rastello
Subject: RE: Methods change request

Hi Prabha,

ACZ is working on our renewal application for AZ right now. We would like to add PCBs by EPA method 8082A but this version is not currently an option. Would we be wasting our time to request director approval? If not, does AZ consider SW-846 methods appearing in the status table to be EPA approved?

Thanks in advance!

Matt Sowards
QA Officer

ACZ Laboratories, Inc.
matts@acz.com
970-879-6590 x531

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TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 1. DIRECT ACCESS TESTS AND LABORATORY STANDING ORDERS

Article 1, consisting of Sections R9-14-101 through R9-14-103, made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3).

Article 1, consisting of Sections R9-14-101 through R9-14-115, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

Section
R9-14-101. Definitions
R9-14-102. Direct Access Test List
R9-14-103. Laboratory Standing Orders
R9-14-104. Expired
R9-14-105. Expired
R9-14-106. Expired
R9-14-107. Expired
R9-14-108. Expired
R9-14-109. Expired
R9-14-110. Expired
R9-14-111. Expired
R9-14-112. Expired
R9-14-113. Expired
R9-14-114. Expired
R9-14-115. Expired
R9-14-116. Repealed

ARTICLE 2. EXPIRED

Article 2, consisting of Sections R9-14-211 through R9-14-215, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

Section
R9-14-201. Reserved
R9-14-202. Reserved
R9-14-203. Reserved
R9-14-204. Reserved
R9-14-205. Reserved
R9-14-206. Reserved
R9-14-207. Reserved
R9-14-208. Reserved
R9-14-209. Reserved
R9-14-210. Reserved
R9-14-211. Expired
R9-14-212. Expired
R9-14-213. Expired
R9-14-214. Expired
R9-14-215. Expired

ARTICLE 3. EXPIRED

Article 3, consisting of Sections R9-14-301 through R9-14-302, expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Section
R9-14-301. Expired
R9-14-302. Expired

ARTICLE 4. EXPIRED

Section
R9-14-401. Expired
R9-14-402. Expired
R9-14-403. Expired
R9-14-403. Expired
R9-14-404. Expired
R9-14-405. Expired
R9-14-406. Expired
R9-14-407. Expired
R9-14-408. Expired
R9-14-409. Expired
R9-14-410. Repealed
R9-14-411. Renumbered
R9-14-412. Repealed
Exhibit 1. Expired
Exhibit 2. Expired
Exhibit 2A. Expired
Exhibit 3. Expired
Exhibit 3A. Expired
Exhibit 4. Expired
Exhibit 5. Expired
Exhibit 6. Expired
Exhibit 6A. Expired
Exhibit A. Expired
Exhibit B. Expired
Exhibit C. Expired
Exhibit D. Expired
Exhibit E. Expired
Exhibit EE. Expired
Exhibit F. Expired
Exhibit G. Expired
Exhibit H. Expired
Exhibit I. Expired
Exhibit II. Expired
Exhibit J. Expired
Exhibit K. Expired
Exhibit KK. Expired
Exhibit L. Expired
Exhibit M. Expired
Exhibit N. Expired
Exhibit NN. Expired
Exhibit O. Expired
Exhibit OO. Expired
Exhibit OOO.Expired
Exhibit P. Expired
Exh. P-EN. Expired
Exhibit PP. Expired
Exh. PP-EN. Expired
Exhibit Q. Expired
Exh. Q-EN. Expired
Exhibit QQ. Expired
Exh. QQ-EN.Expired
Exhibit R. Expired
Exhibit RR. Expired
Exhibit S. Expired
Exhibit T. Expired
Exhibit U. Expired
Exhibit UU. Expired
Exhibit V. Expired
Exhibit W. Expired
Exhibit WW. Expired
Exh. WWW. Expired
Exh. WWW-EN.Expired
Exhibit X. Expired

Exhibit Y. Expired
Exhibit Z. Expired

ARTICLE 5. RECODIFIED

Article 5, consisting of Sections R9-14-501 through R9-14-505, recodified to R9-13-201 through R9-13-205, effective August 31, 2005 (Supp. 05-3).

Section
R9-14-501. Recodified
R9-14-502. Recodified
R9-14-503. Recodified
R9-14-504 Recodified
R9-14-505. Recodified
R9-14-506. Reserved
R9-14-507. Reserved
R9-14-508. Reserved
R9-14-509. Reserved
R9-14-510. Reserved
R9-14-511. Repealed
R9-14-512. Renumbered
R9-14-513 Renumbered
R9-14-514. Renumbered
R9-14-515. Renumbered

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

Article 6, consisting of Sections R9-14-601 through R9-14-617 adopted effective December 20, 1991 (Supp. 91-4).

Article 6, consisting of Sections R9-14-601 through R9-14-607 repealed effective December 20, 1991 (Supp. 91-4).

Article 6 consisting of Sections R9-14-601 through R9-14-607 adopted effective August 16, 1985.

Section
R9-14-601. Definitions
R9-14-602. Exemptions from Applicability
R9-14-603. License Application and Process; Transferability
R9-14-604. Third Party Accreditation
R9-14-605. Compliance Monitoring
R9-14-606. Provisional Licensing
R9-14-607. Fees
R9-14-608. Installment Payment of Fees by Small Businesses
R9-14-609. Proficiency Evaluation Testing
R9-14-610. Approved Methods and References
R9-14-611. Drinking Water Compliance Testing
R9-14-612. Wastewater Compliance Testing
R9-14-613. Solid Waste Compliance Testing
R9-14-614. Air and Stack Compliance Testing
R9-14-615. Quality Assurance
R9-14-616. Operation
R9-14-617. Laboratory Records and Reports
R9-14-618. Mobile Laboratories
R9-14-619. Out-of-State Environmental Laboratory Licensing
R9-14-620. Changes to a License
R9-14-621. Time-frames
Table 1. Time-frames (in days)
Exhibit I. Approved Methods; Method Fees; Instrumentation Fees
Exhibit II. Alternate Default Limits

ARTICLE 7. HEALTH SCREENING SERVICES

Article 7, consisting of Sections R9-14-701 through R9-14-709, adopted effective December 2, 1993 (Supp. 93-4).

Section
R9-14-701. Health Screening Laboratory Services
R9-14-702. Expired
R9-14-703. Expired
R9-14-704. Expired
R9-14-705. Expired
R9-14-706. Expired
R9-14-707. Expired
R9-14-708. Expired
R9-14-709. Expired

ARTICLE 1. DIRECT ACCESS TESTS AND LABORATORY STANDING ORDERS

R9-14-101. Definitions

In this Article, unless otherwise specified:

1. "ALT" means alanine amino transferase.
2. "AST" means aspartate amino transferase.
3. "BUN" means blood urea nitrogen.
4. "CBC" means complete blood count.
5. "Clinical laboratory" means the same as in A.R.S. § 36-451.
6. "CMP" means comprehensive metabolic panel.
7. "Component" means a test included in a panel or profile.
8. "Direct access test" means the same as in A.R.S. § 36-466.
9. "Hct" means hematocrit.
10. "HDL" means high-density lipoprotein.
11. "Hgb" means hemoglobin.
12. "Hgb A1c" means glycosylated hemoglobin.
13. "Laboratory standing order" means a written directive by a licensed practitioner to a clinical laboratory to perform a test.
14. "LDL" means low-density lipoprotein.
15. "Licensed practitioner" means:
    a. A podiatrist licensed under A.R.S. Title 32, Chapter 7;
    b. A doctor of chiropractic licensed under A.R.S. Title 32, Chapter 8;
    c. A doctor of medicine licensed under A.R.S. Title 32, Chapter 13 or licensed in another state;
    d. A doctor of naturopathic medicine licensed under A.R.S. Title 32, Chapter 14;
    e. A doctor of osteopathic medicine licensed under A.R.S. Title 32, Chapter 17 or licensed in another state;
    f. A homeopathic physician licensed under A.R.S. Title 32, Chapter 29;
    g. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2;
    h. A physician assistant who is licensed under Title 32, Chapter 25 and who has the supervising physician's delegation required in A.R.S. § 32-2531; or
    i. A registered nurse practitioner licensed under A.R.S. Title 32, Chapter 15 and certified under A.A.C. R4-19-504.
16. "MCH" means mean corpuscular hemoglobin.
17. "MCHC" means mean corpuscular hemoglobin concentration.
18. "MCV" means mean corpuscular volume.
19. "MPV" means mean platelet volume.
20. "Panel" means a group of clinical laboratory tests associated with specific organs or diseases.
21. "Patient" means an individual receiving services from a licensed practitioner.
22. "pH" means acidity-alkalinity status.
23. "Profile" means a group of clinical laboratory tests frequently done together or in combinations.

24. "PSA" means prostatic specific antigen.
25. "RBC" means red blood cells.
26. "RDW" means red cell distribution width.
27. "Reflex testing" means a follow-up test automatically initiated by a clinical laboratory after an abnormal test result.
28. "State" means the same as in A.R.S. § 36-841.
29. "Supervising physician" means the same as in A.R.S. § 32-2501.
30. "Test" means a clinical laboratory's examination or analysis of material from an individual's body.
31. "T4" means thyroxine.
32. "TSH" means thyroid stimulating hormone.
33. "WBC" means white blood cells.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3).

R9-14-102. Direct Access Test List

A. Unless expressly excluded in subsection (B), a component is a direct access test.

B. The direct access test list includes:
1. Lipid profile, including the following components:
   a. Total cholesterol,
   b. Triglycerides,
   c. HDL, and
   d. LDL;
2. Glucose;
3. Dipstick urinalysis, including the following components:
   a. Specific gravity,
   b. Glucose,
   c. Bilirubin,
   d. Ketone,
   e. Blood,
   f. pH,
   g. Protein,
   h. Urobilinogen,
   i. Nitrite,
   j. Leukocytes, and
   k. Ascorbic acid;
4. TSH with T4 reflex testing;
5. PSA;
6. Blood typing;
7. CBC, including the following components:
   a. RBC,
   b. WBC,
   c. Hgb,
   d. Hct,
   e. Platelets,
   f. WBC differential,
   g. MCV,
   h. MCH,
   i. MCHC,
   j. MPV, and
   k. RDW;
8. Fecal occult blood;
9. Hgb A1C;
10. Urine pregnancy; and
11. CMP:
    a. Including the following components:
       i. Carbon dioxide,
       ii. Sodium,
       iii. Potassium,
       iv. Chloride,
       v. Albumin,
       vi. Alkaline phosphatase,
       vii. ALT,
       viii. AST,
       ix. Total bilirubin,
       x. BUN,
       xi. Creatinine,
       xii. BUN-creatinine ratio,
       xiii. Glucose,
       xiv. Albumin-globulin ratio,
       xv. Calcium,
       xvi. Globulin, and
       xvii. Total protein; and
    b. Excluding anion gap.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3).

R9-14-103. Laboratory Standing Orders

A laboratory standing order:
1. Shall specify:
   a. The licensed practitioner's name, type of license, and licensing state;
   b. The patient's name;
   c. One or more tests; and
   d. The frequency of testing; and
2. Remains in effect up to one year.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3).

R9-14-104. Expired

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-105. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-106. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-107. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-108. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-109. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R.

1382, effective February 28, 2001 (Supp. 01-1).

R9-14-110. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-111. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-112. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-113. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-114. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-115. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-116. Repealed

Historical Note
Adopted effective May 24, 1976 (Supp. 76-3). Repealed effective August 15, 1989 (Supp. 89-3).

ARTICLE 2. EXPIRED

R9-14-201. Reserved

R9-14-202. Reserved

R9-14-203. Reserved

R9-14-204. Reserved

R9-14-205. Reserved

R9-14-206. Reserved

R9-14-207. Reserved

R9-14-208. Reserved

R9-14-209. Reserved

R9-14-210. Reserved

R9-14-211. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-212. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-213. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-214. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-215. Expired

Historical Note
Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

ARTICLE 3. EXPIRED

R9-14-301. Expired

Historical Note
Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-302. Expired

Historical Note
Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

ARTICLE 4. EXPIRED

R9-14-401. Expired

Historical Note
Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule identical to the emergency (Supp. 82-5). Former Section R9-14-411 renumbered without change as Section R9-14-401 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-401 repealed, new Section R9-14-401 renumbered from R9-14-402 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-402. Expired

Historical Note
Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended Paragraph (11) as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended Paragraph (11) as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-412 renumbered without change as Section R9-14-402 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-402 renumbered to R9-14-401, new Section R9-14-402 renumbered from R9-14-403 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S.

§ 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-403. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-413 renumbered without change as Section R9-14-403 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-403 renumbered to R9-14-402, new Section R9-14-403 renumbered from R9-14-404 and amended effective August 27, 1992 (Supp. 92-3). Amended by emergency action effective June 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Amended again by emergency action effective September 16, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Amended again by emergency action effective December 13, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Emergency amendments permanently adopted effective February 28, 1994 (Supp. 94-1). Amended effective February 12, 1996 (Supp. 96-1). Amended by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Amended by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 for 180 days (Supp. 05-2). Amended by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 for 180 days (Supp. 05-3). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 for 180 days (Supp. 05-4). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 for 180 days (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-404. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-414 renumbered and amended as Section R9-14-404 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-404 renumbered to R9-14-403, new Section R9-14-404 renumbered from R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Amended effective February 12, 1996 (Supp. 96-1). Amended by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Amended by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 for 180 days (Supp. 05-2). Amended by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 for 180 days (Supp. 05-3). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 for 180 days (Supp. 05-4). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 for 180 days (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-405. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-415 renumbered and amended as Section R9-14-405, Exhibits E through U amended, and Exhibits V through X adopted effective March 3, 1987 (Supp. 87-1). Former Section R9-14-405 renumbered to R9-14-404 and Exhibits E through X moved to end of Article, new Section R9-14-405 renumbered from R9-14-406 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-406. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-416 renumbered and amended as R9-14-406 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-406 renumbered to R9-14-405, new Section R9-14-406 renumbered from R9-14-407 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-407. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Correction to emergency adoption, subsection (C) should include Paragraph (4) as follows: “Receive a score of 70% or better on an examination administered by the Department.” Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-417 renumbered and amended as Section R9-14-407 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-407 renumbered to R9-14-406, new Section R9-14-407 renumbered from R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-408. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency. Exhibits A and B initially adopted as part of the emergency amendment now adopted as part of the permanent rule (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 20, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984. Exhibits C and D initially adopted as part of the emergency (Supp. 84-4). Editorial correction, Supp. 84-3, should read Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Former Section R9-14-418 renumbered without change as R9-14-408, Exhibits A through D amended effective March 3, 1987 (Supp. 87-1). Former Section R9-14-408 renumbered to R9-14-407 and Exhibits A through D moved to end of Article, new Section R9-14-408 renumbered from R9-14-409 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-409. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Section R9-14-419 renumbered without change as Section R9-14-409 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-409 renumbered to R9-14-408, new Section R9-14-409 renumbered from R9-14-411 and amended effective August 27, 1992 (Supp. 92-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-410. Repealed

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule identical to the emergency (Supp. 82-5). Former Section R9-14-420 renumbered without change as Section R9-14-410 effective March 3, 1987 (Supp. 87-1). Section R9-14-410 repealed effective August 27, 1992 (Supp. 92-3).

R9-14-411. Renumbered

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-421 renumbered and amended as Section R9-14-411 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-411 renumbered to R9-14-409 effective August 27, 1992 (Supp. 92-3).

R9-14-412. Repealed

Historical Note

Adopted as an emergency effective 12:00 midnight, May 20, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as a permanent rule effective August 27, 1984 (Supp. 84-4). Editorial correction, Supp. 84-3, should read Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Former Section R9-14-422 renumbered and amended as Section R9-14-412 effective March 3, 1987 (Supp. 87-1). Section R9-14-412 repealed effective August 27, 1992 (Supp. 92-3).

EXHIBIT 1. Expired

Historical Note

Exhibit 1 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 1 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 2. Expired

Historical Note

Exhibit 2 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 2 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 2A. Expired

Historical Note

Exhibit 2A made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 2A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 3. Expired

Historical Note

Exhibit 3 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 3 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 3A. Expired

Historical Note

Exhibit 3A made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 3A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 4. Expired

Historical Note

Exhibit 4 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23,

2006 (Supp. 06-1). Exhibit 4 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 5. Expired

Historical Note

Exhibit 5 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 5 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 6. Expired

Historical Note

Exhibit 6 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 6 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT 6A. Expired

Historical Note

Exhibit 6A made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 6A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT A. Expired

Historical Note

Exhibit A moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT B. Expired

Historical Note

Exhibit B moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit B expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT C. Expired

Historical Note

Exhibit C moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit C expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT D. Expired

Historical Note

Exhibit D moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit D expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT E. Expired

Historical Note

Exhibit E moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit E expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT EE. Expired

Historical Note

Exhibit EE adopted effective August 27, 1992 (Supp. 92-3). Exhibit EE expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT F. Expired

Historical Note

Exhibit F moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit F expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT G. Expired

Historical Note

Exhibit G moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit G expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT H. Expired

Historical Note

Exhibit H moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit H expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT I. Expired

Historical Note

Exhibit I moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit I expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT II. Expired

Historical Note

Exhibit II adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit II expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT J. Expired

Historical Note

Exhibit J moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit J expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT K. Expired

Historical Note

Exhibit K moved from Section R9-14-405 and repealed, new Exhibit K renumbered from Exhibit M and amended effective August 27, 1992 (Supp. 92-3). Exhibit K expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT KK. Expired

Historical Note

Exhibit KK adopted effective August 27, 1992 (Supp. 92-3). Exhibit KK expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT L. Expired

Historical Note

Exhibit L moved from Section R9-14-405 and repealed, new Exhibit L renumbered from Exhibit N and amended effective August 27, 1992 (Supp. 92-3). Exhibit L expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT M. Expired

Historical Note

Exhibit M moved from Section R9-14-405 and renumbered to Exhibit K; new Exhibit M renumbered from Exhibit O and amended effective August 27, 1992 (Supp. 92-3). Exhibit M expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT N. Expired

Historical Note

Exhibit N moved from Section R9-14-405 and renumbered to Exhibit L, new Exhibit N renumbered from Exhibit R and amended effective August 27, 1992 (Supp. 92-3). Exhibit N expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT NN. Expired

Historical Note

Exhibit NN adopted effective August 27, 1992 (Supp. 92-3). Exhibit NN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT O. Expired

Historical Note

Exhibit O moved from Section R9-14-405 and renumbered to Exhibit M, new Exhibit O renumbered from Exhibit S and amended effective August 27, 1992 (Supp. 92-3). Exhibit O expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT OO. Expired

Historical Note

Exhibit OO adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit OO expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT OOO. Expired

Historical Note

Exhibit OOO adopted effective February 28, 1994 (Supp. 94-1). Exhibit OOO expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT P. Expired

Historical Note

Exhibit P moved from Section R9-14-405 and repealed, new Exhibit P renumbered from Exhibit T and amended effective August 27, 1992 (Supp. 92-3). Exhibit P expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT P-EN. Expired

Historical Note

New Exhibit P-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit P-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT PP. Expired

Historical Note

Exhibit PP adopted effective February 28, 1994 (Supp. 94-1). Exhibit PP expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT PP-EN. Expired

Historical Note

New Exhibit PP-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit PP-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT Q. Expired

Historical Note

Exhibit Q moved from Section R9-14-405 and repealed, new Exhibit Q renumbered from Exhibit U and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit Q expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT Q-EN. Expired

Historical Note

New Exhibit Q-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit Q-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT QQ. Expired

Historical Note

Exhibit QQ adopted effective February 28, 1994 (Supp. 94-1). Exhibit QQ expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT QQ-EN. Expired

Historical Note

New Exhibit QQ-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit QQ-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT R. Expired

Historical Note

Exhibit R moved from Section R9-14-405 and renumbered to Exhibit N, New Exhibit R renumbered from Exhibit V and amended effective August 27, 1992 (Supp. 92-3). Exhibit R expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT RR. Expired

Historical Note

Exhibit RR adopted effective August 27, 1992 (Supp. 92-3). Exhibit RR expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT S. Expired

Historical Note
Exhibit S moved from Section R9-14-405 and renumbered to Exhibit O, new Exhibit S renumbered from Exhibit W and amended effective August 27, 1992 (Supp. 92-3). Exhibit S expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT T. Expired

Historical Note
Exhibit T moved from Section R9-14-405 and renumbered to Exhibit P, new Exhibit T renumbered from Exhibit X and amended effective August 27, 1992 (Supp. 92-3). Exhibit T expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT U. Expired

Historical Note
Exhibit U moved from Section R9-14-405 and renumbered to Exhibit Q, new Exhibit U adopted effective August 27, 1992 (Supp. 92-3). Exhibit U expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT UU. Expired

Historical Note
Exhibit UU adopted effective August 27, 1992 (Supp. 92-3). Exhibit UU expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT V. Expired

Historical Note
Exhibit V moved from Section R9-14-405 and renumbered to Exhibit R, new Exhibit V adopted effective August 27, 1992 (Supp. 92-3). Exhibit V expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT W. Expired

Historical Note
Exhibit W moved from Section R9-14-405 and renumbered to Exhibit S, new Exhibit W adopted effective August 27, 1992 (Supp. 92-3). Exhibit W expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT WW. Expired

Historical Note
Exhibit WW adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit WW expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT WWW. Expired

Historical Note
Exhibit WWW adopted effective February 28, 1994 (Supp. 94-1). Exhibit WWW expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT WWW-EN. Expired

Historical Note
New Exhibit WWW-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit WWW-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT X. Expired

Historical Note
Exhibit X moved from Section R9-14-405 and renumbered to Exhibit T effective August 27, 1992 (Supp. 92-3). New Exhibit X adopted effective February 12, 1996 (Supp. 96-1). Exhibit X expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT Y. Expired

Historical Note
Exhibit Y adopted effective February 12, 1996 (Supp. 96-1). Exhibit Y expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

EXHIBIT Z. Expired

Historical Note
Exhibit Y adopted effective February 12, 1996 (Supp. 96-1). Exhibit Z expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

ARTICLE 5. RECODIFIED

R9-14-501. Recodified

Historical Note
Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-501 renumbered from R9-14-512 and amended effective June 14, 1990 (Supp. 90-2). Amended by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Amended again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-201 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-502. Recodified

Historical Note
Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-502 renumbered from R9-14-513 and amended effective June 14, 1990 (Supp. 90-2). Amended by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Amended again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-202 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-503. Recodified

Historical Note
Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-503 renumbered from R9-14-514 and amended effective June 14, 1990 (Supp. 90-2). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-203 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-504. Recodified

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-504 renumbered from R9-14-515 and amended effective June 14, 1990 (Supp. 90-2). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-204 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-505. Recodified

Historical Note

Adopted by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Adopted again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-205 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-506. Reserved

R9-14-507. Reserved

R9-14-508. Reserved

R9-14-509. Reserved

R9-14-510. Reserved

R9-14-511. Repealed

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Repealed effective June 14, 1990 (Supp. 90-2)

R9-14-512. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-512 renumbered to R9-14-501 effective June 14, 1990 (Supp. 90-2).

R9-14-513. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-512 renumbered to R9-14-502 effective June 14, 1990 (Supp. 90-2)

R9-14-514. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-514 renumbered to R9-14-503 effective June 14, 1990 (Supp. 90-2).

R9-14-515. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-515 renumbered to R9-14-504 effective June 14, 1990 (Supp. 90-2).

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

R9-14-601. Definitions

In addition to the definitions in A.R.S. § 36-495, the following definitions apply in this Article, unless otherwise specified:

1. "Acceptance criteria" means the range of satisfactory test results for a parameter.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Affiliate" means a business organization that:
   a. Controls or has the power to control the business organization that owns the laboratory,
   b. Is controlled by or could be controlled by the business organization that owns the laboratory, or
   c. Could be controlled by a third business organization that could also control the business organization that owns the laboratory.
4. "Alternate method" means an analytical test procedure or technique that is not an approved method and for which approval is requested under R9-14-610(C).
5. "Analyst" means an individual who performs compliance testing at a laboratory.
6. "Analyte" means the substance or chemical constituent being sought or measured in an analytical procedure.
7. "Applicant" means a person or persons requesting an initial or renewal license under R9-14-603, approval of an alternate method or method alteration under R9-14-610(C), or approval of an exemption under R9-14-615(D), and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
8. "Approved method" means an analytical test procedure or technique authorized by the Department to test for the presence of a particular contaminant or characteristic and includes an alternate method approved by the Department under R9-14-610(C) and an approved method used with a method alteration approved by the Department under R9-14-610(C).
9. "ASTM" means American Society for Testing and Materials.
10. "Blind proficiency testing" means the Department's determination of a laboratory analyst's ability to analyze samples correctly, accomplished by submitting samples for testing in such a manner that the laboratory analyst is not aware that the proficiency testing is occurring.
11. "Business organization" means an entity such as a sole proprietorship, an unincorporated association, a corporation, a limited liability company, a partnership, or a governmental entity.
12. "Calibration curve" means a graphical display of the functional relationship between the instrument or analytical device response and the analyte amount.
13. "Calibration model" means a mathematical form for a calibration curve.
14. "CCC" means calibration check compounds.
15. "CCV" means continuing calibration verification standard.
16. "Client" means a person that submits a sample to a laboratory for compliance testing.
17. "Contaminant" means a matter, pollutant, hazardous substance, or other substance for which a sample is being tested.
18. "Contiguous grounds" means real property that can be enclosed by a single unbroken boundary line that does not enclose property owned or leased by another.
19. "Critical step" means a task in the testing procedure that is required to be performed within a specified time period by regulation, method, standard operating procedure, or quality assurance plan.
20. "Current" means up-to-date and extending to the present time.
21. "Data outlier" means a test result that falls outside of acceptance criteria.

22. "Days" means calendar days, excluding the day of the act, event, or default from which a designated period of time begins to run and excluding the last day of the period if it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
23. "DBCP" means 1,2-Dibromo-3-chloropropane.
24. "DDT" means dichloro-diphenyl-trichloroethane.
25. "DOC" means dissolved organic carbon.
26. "ECD" means electron capture detector.
27. "EDB" means 1,2-Dibromoethane.
28. "Effluent" means an outflow, as of a stream that flows out of a facility.
29. "EOX" means extractable organic halides.
30. "EP" means extraction procedure.
31. "EPA" means the United States Environmental Protection Agency.
32. "FID" means flame ionization detector.
33. "FL" means fluorescence.
34. "FT-IR" means Fourier transform infrared.
35. "GC" means gas chromatography.
36. "HEM" means n-Hexane extractable material.
37. "HPLC" means high performance liquid chromatography.
38. "HRGC" means high resolution gas chromatography.
39. "HRMS" means high resolution mass spectrometry.
40. "ICV" means initial calibration verification.
41. "IDOC" means initial demonstration of capability.
42. "Initial Demonstration of Capability" means a test performed by an analyst, as prescribed by a method, to document the analyst's ability to perform the method.
43. "Investigation" means an evaluation of a licensee's or applicant's compliance with A.R.S. Title 36, Chapter 4.3 and this Article conducted by the Department upon its own initiative or upon receipt of a written complaint and may include a laboratory inspection.
44. "IPC" means instrument performance check.
45. "Key reference" means a document incorporated by reference in R9-14-610(B).
46. "Laboratory inspection" means the Department's assessment of operations at a laboratory to determine a licensee's compliance with A.R.S. Title 36, Chapter 4.3 and this Article.
47. "LCS" means laboratory control sample.
48. "Level I license" means an approval issued by the Department authorizing compliance testing of one to nine total parameters at a laboratory.
49. "Level II license" means an approval issued by the Department authorizing compliance testing of 10 to 17 total parameters at a laboratory.
50. "Level III license" means an approval issued by the Department authorizing compliance testing of more than 17 total parameters at a laboratory.
51. "LFB" means laboratory fortified blank.
52. "LFM" means laboratory fortified sample matrix.
53. "Licensee" means a person or persons to whom the Department issues a license to operate a laboratory and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
54. "Limit of detection" means an analyte- and matrix-specific estimate of the minimum amount of a substance that an analytical process can reliably detect, which may be laboratory dependent and is developed according to R9-14-615(C)(7).
55. "Limit of quantitation" means the minimum levels, concentrations, or quantities of a target variable such as an analyte that can be reported with a specific degree of confidence.
56. "LOQ" means limit of quantitation.
57. "LRMS" means low resolution mass spectrometry.
58. "Method" means an analytical test procedure or technique.
59. "Method alteration" means a change to an established method.
60. "Method reporting limit" means the minimum concentration of a contaminant reported after analyzing a sample in a given parameter, determined after corrections have been made for sample dilution and sample weight.
61. "Mobile laboratory" means a non-stationary facility where compliance testing is performed.
62. "MPN" means most probable number.
63. "MRL" means minimum reporting level.
64. "MS" means mass spectrometry.
65. "MSE" means microscale solvent extraction.
66. "NPD" means nitrogen phosphorous detector.
67. "NPDES" means national pollutant discharge elimination system.
68. "NTU" means nephelometric turbidity units.
69. "ONPG-MUG" means ortho-nitrophenyl-ß-D-galactopyranoside-4-methylumbelliferyl-ß-D-glucuronide.
70. "Owner" means a person that has controlling legal or equitable interest in and authority over a laboratory's operations.
71. "PAH" means polynuclear aromatic hydrocarbon.
72. "Parameter" means the combination of a particular type of sample with a particular approved method by which the sample will be analyzed for a particular analyte or characteristic.
73. "PB" means particle beam.
74. "PCB" means polychlorinated biphenyls.
75. "PCDD" means polychlorinated dibenzodioxins.
76. "PCDF" means polychlorinated dibenzofurans.
77. "PDA" means photodiode array.
78. "PID" means photoionization detection.
79. "POX" means purgeable organic halides.
80. "Precision" means repeatability of measurement data, specifically the similarity of successive independent measurements of a single magnitude generated by repeated applications of a process under specified conditions.
81. "Proficiency testing" means a proficiency testing service's determination of a laboratory analyst's ability to analyze samples correctly, accomplished by submitting samples to the laboratory for testing and then analyzing the acceptability of the results.
82. "Proficiency testing service" means an independent service acceptable to the EPA or, if the EPA has not indicated acceptance of a proficiency testing service for a parameter, acceptable to the Department based on recognition from a national organization such as the National Environmental Laboratory Accreditation Program.
83. "Qualified" means explained in documentation.
84. "Quality assurance plan" means documentation that meets the requirements of R9-14-615(B).
85. "Quality control checks" means the steps taken by laboratory analysts to monitor the accuracy and precision of sample analysis.
86. "QCS" means quality control sample.
87. "RDX" means Hexahydro-1,3,5-trinitro-1,3,5-triazine.
88. "Records" means all written, recorded, and electronic documentation necessary to reconstruct all laboratory activities that produce data and includes all information

relating to the laboratory's equipment, analytical test methods, and related activities.
89. "RPD" means relative percent difference.
90. "Ruggedness" means the ability of a method to withstand changes in environmental factors and produce repeatable results.
91. "Sample" means a specimen that is a representative part of a whole or a single item from a group.
92. "Single laboratory" means an individual laboratory facility or multiple laboratory facilities located on contiguous grounds and having the same owner.
93. "Small business" means a business organization, including its affiliates, that is independently owned and operated, that is not dominant in its field, and that employs fewer than 100 full-time employees or had gross annual receipts of less than $4 million in its last fiscal year.
94. "SOUR" means specific oxygen uptake rate.
95. "SPE" means solid-phase extraction.
96. "SPLP" means synthetic precipitation leaching procedure.
97. "Standard operating procedure" means a documented process for carrying on business, analysis, or action, with instructions for performing routine or repetitive tasks.
98. "Statistical outlier" means an individual data point that has a value far from those of the other data points in a set and that has been determined through statistical analysis to have derived from a different population than the other data points.
99. "TCLP" means toxicity characteristics leaching procedure.
100. "TDS" means total dissolved solids.
101. "TE" means thermal extraction.
102. "TNT" means trinitrotoluene.
103. "TOC" means total organic carbon.
104. "TOX" means total organic halides.
105. "Traceability" means the establishment of an unbroken chain of comparisons to the reference of origin.
106. "TS" means thermospray.
107. "TSS" means total suspended solids.
108. "UV" means ultraviolet.
109. "Valid" means that a license, certificate, or other form of authorization is in full force and effect and not suspended.
110. "VOC" means volatile organic compound.
111. "VOST" means volatile organic sampling train.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-601 repealed, new Section R9-14-601 adopted effective December 20, 1991 (Supp. 91-4). Amended effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-602. Exemptions from Applicability

This Article does not apply to:
1. The laboratories exempted by A.R.S. § 36-495.02(A);
2. Compliance testing performed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y; or
3. An out-of-state laboratory at which only microbiology testing of bottled water is performed and for which the owner holds a current and valid environmental laboratory license or certificate, issued by another state of the United States, that specifically authorizes drinking water testing.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-602 repealed, new Section R9-14-602 adopted effective December 20, 1991 (Supp. 91-4). Amended effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-603. License Application and Process; Transferability

A. To obtain an initial or renewal license to operate a laboratory, an applicant shall submit to the Department, within the time prescribed in subsection (C), an application completed using a Department-provided form and including:
1. The name of the laboratory;
2. The current Arizona license number for the laboratory, if any;
3. The current EPA certification number for the laboratory, if any;
4. The physical and mailing addresses for the laboratory;
5. The telephone number; fax number; and e-mail address for the laboratory;
6. The name and address of the owner and of each additional person that has an ownership interest in the laboratory;
7. For the owner and each additional business organization with an ownership interest in the laboratory, the name of each officer, principal, and statutory agent;
8. The name of the laboratory director;
9. The type of laboratory:
   a. Governmental;
   b. Company, performing internal work only;
   c. Commercial, for profit; or
   d. Other, with a description of the type of laboratory operation;
10. The license Level for which the applicant is applying;
11. Whether the applicant is applying to license a single laboratory or multiple laboratories;
12. If the applicant is applying to license a mobile laboratory, the vehicle make, vehicle identification number, and Arizona vehicle license number of the mobile laboratory;
13. If the applicant is applying to license a mobile laboratory that is affiliated with a non-mobile laboratory, the name of the non-mobile laboratory;
14. The name, title, and educational background of each individual authorized to sign final reports for the laboratory;
15. A list of the parameters for which the applicant is requesting to be licensed or, if an application for a renewal license, an indication that the applicant desires to be licensed for the same parameters as on the current license;
16. A list of the instruments and equipment to be used at the laboratory for compliance testing or, if an application for a renewal license, an indication that the applicant is using the same instruments and equipment as used under the current license;
17. A list of the software to be used at the laboratory for instrument control and data reduction interpretation or, if an application for a renewal license, an indication that the applicant is using the same software as used under the current license;
18. If the applicant is applying for an out-of-state laboratory, whether the applicant wants to receive technical updates at the laboratory by fax or through the Internet;
19. If an application for an initial license:

a. A copy of a proficiency testing report, for the current or most recently completed year, for the state in which the laboratory is located or, if that state does not require proficiency testing, for another state in which the laboratory is licensed or certified, for each of the parameters for which licensure is requested;
b. A list of the states in which the laboratory is licensed or certified and the corresponding license or certificate number for each state; and
c. A copy of a current quality assurance plan for the laboratory;

20. If an application for a renewal license:
a. A copy of a current standard operating procedure, limit of detection, and proficiency testing report, if available, for each parameter newly requested on the application; and
b. If the applicant desires to make payments in installments as permitted under R9-14-608, an indication of this and the monthly, bimonthly, or quarterly schedule for the payments;

21. Except as provided in subsection (J), the fees required under R9-14-607 and R9-14-608, payable to the Arizona Department of Health Services by credit card; certified check; business check; or money order; or, if the owner is an Arizona state agency, purchase order;

22. Attestation, made under oath, that the owner and the laboratory director are aware of all applicable requirements in A.R.S. Title 36, Chapter 4.3 and this Article and that the information provided in the application, including the information in the documents accompanying the application form, is accurate and complete; and

23. The dated and notarized signature of the laboratory director and:
a. If the owner is an individual, the individual;
b. If the owner is a corporation, an officer of the corporation;
c. If the owner is a partnership, one of the partners;
d. If the owner is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;
e. If the owner is an association or cooperative, a member of the governing board of the association or cooperative;
f. If the owner is a joint venture, one of the individuals signing the joint venture agreement;
g. If the owner is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual; or
h. If the owner is a business organization type other than those described in subsections (A)(23)(b) through (f), an individual who is a member of the business organization.

B. An application may include an agreement between the applicant and the Department that the Department may submit supplemental requests for additional information.

C. An applicant shall submit an application:
1. For an initial license for an in-state laboratory, at least 30 days before the applicant intends to begin operating the in-state laboratory;
2. For an initial license for an out-of-state laboratory, at least 60 days before the applicant intends to begin performing Arizona compliance testing;
3. For a renewal license for an in-state laboratory, at least 30 days before the expiration date of the current license; and
4. For a renewal license for an out-of-state laboratory, at least 60 days before the expiration date of the current license.

D. The Department may issue a single laboratory license for:
1. A single laboratory;
2. Multiple laboratories that are located on contiguous grounds and have the same owner, if the applicant submits one application and combined fees for the laboratories; or
3. Multiple laboratories, including mobile laboratories, that have the same owner but are not located on contiguous grounds, if:
a. The applicant submits a separate application and fees for each laboratory,
b. Each non-mobile laboratory is located in Arizona, and
c. Each mobile laboratory has a current and valid Arizona vehicle registration.

E. The Department shall not issue a single laboratory license for multiple laboratories that do not meet the requirements of subsection (D)(2) or (3).

F. The Department shall not consider an applicant to be in compliance with the requirements for licensure, as provided under A.R.S. § 36-495.09(A)(5), if the applicant does not pay the appropriate fees required under R9-14-607 and R9-14-608.

G. The Department shall process an application as provided in R9-14-621.

H. A laboratory license is valid only for the facility or facilities for which the license is issued and cannot be transferred to another facility.

I. A laboratory license is valid only in the name of the persons to whom it is issued and expires upon a change in laboratory name, laboratory director, or ownership, unless within 20 business days after the change, the Department receives written notice of the change and an application for a new license.

J. The Department shall not charge a fee for a license application submitted under subsection (I) and shall issue a new license reflecting the change upon determining continued compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-603 repealed, new Section R9-14-603 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; Section amended effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-604. Third Party Accreditation

A. A laboratory that holds current and valid accreditation issued by the National Voluntary Laboratory Accreditation Program administered by the National Institute of Standards and Technology is exempt from licensure under this Article, as authorized under A.R.S. § 36-495.02, for the term of the accreditation.

B. If a laboratory's accreditation issued by the National Voluntary Laboratory Accreditation Program expires or is suspended, revoked, or voluntarily terminated, the laboratory is required to be licensed as provided under A.R.S. Title 36, Chapter 4.3 and this Article.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-604 repealed, new Section R9-14-604

adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-604 renumbered to R9-14-605; new Section adopted effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-605. Compliance Monitoring

A. The Department may conduct a laboratory inspection, investigation, or proficiency testing, or any combination of the three, at any time before or during a laboratory's license period.

B. The Department shall conduct at least two laboratory inspections before determining whether to conduct annual laboratory inspections as provided under subsection (C).

C. In determining whether to conduct an annual laboratory inspection, the Department shall consider:
1. The Department's findings at the last two laboratory inspections;
2. The licensee's adherence to any corrective action plans created as a result of the last two laboratory inspections;
3. Whether there has been a change in ownership or laboratory director since the last laboratory inspection;
4. The extent to which the compliance testing performed at the laboratory has changed since the last laboratory inspection or would change as a result of a renewal application; and
5. Performance on the most recent proficiency testing completed at the laboratory.

D. For a laboratory at which drinking water compliance testing is performed, the Department shall conduct a laboratory inspection at least every three years or as otherwise required by the EPA.

E. The Department shall comply with A.R.S. § 41-1009 in conducting laboratory inspections and investigations that occur at a laboratory.

F. If the Department determines based on a laboratory inspection, investigation, or proficiency testing, or any combination of the three, that a laboratory owner, officer, agent, or employee has engaged in conduct described under A.R.S. § 36-495.09(A) the Department shall request that the licensee or applicant submit to the Department a written corrective action plan, unless the Department determines one of the following, in which case the Department may take action under A.R.S. § 36-495.09:
1. That the deficiencies were committed intentionally;
2. That the deficiencies cannot be corrected within a reasonable period of time;
3. That the deficiencies are evidence of a pattern of noncompliance;
4. That the deficiencies are a risk to any person; the public health, safety, or welfare; or the environment; or
5. That there is a reasonable belief, as stated in A.R.S. § 36-495.09(B), that a violation of A.R.S. § 36-495.09(A)(5) has occurred and that the life or safety of the public is immediately affected.

G. Within 30 days after receiving a request for a written corrective action plan, a licensee or applicant shall submit to the Department a written corrective action plan that includes the following for each identified deficiency:
1. A description of how the deficiency will be corrected, and
2. A date of correction for the deficiency.

H. The Department shall accept a written corrective action plan if the plan:
1. Describes how each identified deficiency will be corrected, and
2. Includes a date for correcting each deficiency as soon as practicable based upon the actions necessary to correct the deficiency.

I. If the Department disapproves a corrective action plan, the Department shall send to the licensee or applicant a written notice of disapproval requesting that the licensee or applicant submit to the Department a revised corrective action plan for the items that the Department disapproves.
1. A licensee or applicant shall submit a revised corrective action plan to the Department within 21 days after the date of a written notice of disapproval.
2. If a licensee or applicant does not submit a revised corrective action plan within 21 days after the date of a written notice of disapproval, the Department may take action under A.R.S. § 36-495.09.

J. A licensee or applicant shall notify the Department when corrective action has been completed.

K. Within 30 days after receiving notice that corrective action has been completed, the Department shall determine whether each deficiency has been corrected and whether the corrective action brings the laboratory operations into substantial compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

L. If the Department determines that a licensee or applicant has not corrected a deficiency or that the licensee or applicant has not corrected a deficiency within a reasonable period of time, the Department may take any enforcement action authorized by law as a result of the deficiency.

M. Under A.R.S. § 41-1009(G), the Department's decision regarding whether a licensee or applicant may submit a corrective action plan or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as defined by A.R.S. § 41-1092.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-605 repealed, new Section R9-14-605 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-605 renumbered to R9-14-606; new Section R9-14-605 renumbered from R9-14-604 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-605 renumbered to R9-14-606; new Section R9-14-605 adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-606. Provisional Licensing

A. The Department may issue a provisional license to a licensee when the Department suspends the licensee's regular license because of deficiencies identified in an investigation, laboratory inspection, or proficiency testing, or any combination of the three, if the licensee agrees to carry out a plan acceptable to the Department to eliminate the deficiencies.

B. In determining whether to issue a provisional license, the Department shall consider:
1. The nature of the deficiencies upon which the suspension is based;
2. The licensee's history of compliance with A.R.S. Title 36, Chapter 4.3 and this Article;
3. The extent to which the public health and safety may be impacted by the continued operation of the laboratory with a provisional license; and
4. The extent to which the public's interests are served by allowing the licensee the opportunity to correct the deficiencies and continue operating with a provisional license.

C. The Department shall issue an amended list of parameters for a provisional license.
D. A licensee shall return its regular license to the Department within 14 days after receiving written notification of license suspension.
E. A provisional license is valid for a period established by the Department, not to exceed 12 months.
F. A licensee with a provisional license who desires to obtain a regular license shall apply for an initial license at least 30 days before the provisional license expires.
G. The Department shall issue a regular license as described in subsection (F) only upon determining that a licensee is in full compliance with the corrective action plan; A.R.S. Title 36, Chapter 4.3; and this Article.
H. The Department shall not issue a provisional license to an applicant for an initial license.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-606 repealed, new Section R9-14-606 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-606 renumbered to R9-14-607; new Section R9-14-606 renumbered from R9-14-605 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-606 renumbered to R9-14-607; new Section R9-14-606 renumbered from R9-14-605 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-607. Fees

A. Except as provided in R9-14-608, an applicant shall submit the following fees to the Department with each application for an initial or renewal license:
1. The cumulative method and instrumentation fees for each laboratory, as determined according to Tables 1 and 2 in Exhibit I;
2. The following application fees:
   a. If applying for a single license for a single laboratory, which may include multiple laboratories located on contiguous grounds and having the same owner, the following fee:
      i. For a Level I license, $1,677;
      ii. For a Level II license, $2,130; or
      iii. For a Level III license, $2,348; or
   b. If applying for a single license for multiple laboratories not located on contiguous grounds, the following fee for each laboratory:
      i. For a Level I license, $1,442;
      ii. For a Level II license, $1,895; and
      iii. For a Level III license, $2,130;
3. An administrative fee of $130 for the proficiency testing to occur during the license period; and
4. If applying for an out-of-state laboratory, an annual information update fee of $126.

B. The fees paid to the Department under this Article are nonrefundable, unless A.R.S. § 41-1077 applies.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-607 repealed, new Section R9-14-607 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-607 renumbered to R9-14-608; new Section R9-14-607 renumbered from R9-14-606 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-607 renumbered to R9-14-609; new Section R9-14-607 renumbered from R9-14-606 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-608. Installment Payment of Fees by Small Businesses

A. A licensee may, for license renewal, pay the fees calculated under R9-14-607(A)(1), (3), and (4) to the Department in 12 or fewer installments if the laboratory owner is a small business.
B. A licensee who desires to make payments in installments as described in subsection (A) shall indicate this on the application for license renewal and shall indicate a monthly, bimonthly, or quarterly schedule for the payments, which shall result in full payment within 12 or fewer months.
C. A licensee making installment payments shall submit the first installment to the Department along with the application for license renewal and the application fee calculated under R9-14-607(A)(2), and each subsequent installment on a monthly, bimonthly, or quarterly basis, as indicated on the application, or until the fees are paid in full, whichever comes first.
D. A licensee shall ensure that each installment payment is:
1. Paid by the first day of the month in which it is due; and
2. At least equal to the amount calculated by dividing the total fees due under R9-14-607(A)(1), (3), and (4) by the number of payments indicated on the application for license renewal.

E. If a licensee fails to submit an installment within seven days after its due date, the Department shall charge a $50 fee for processing the late payment.
F. If a licensee fails to submit an installment within 30 days after its due date, the Department may initiate action under A.R.S. § 36-495.09.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-608 repealed, new Section R9-14-608 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; Section R9-14-608 renumbered to R9-14-609; new Section R9-14-608 renumbered from R9-14-607 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-608 renumbered to R9-14-610; new Section R9-14-608 adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-609. Proficiency Testing

A. At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant that performs drinking water compliance testing shall have at least one laboratory analyst demonstrate proficiency in drinking water compliance testing by participating in proficiency testing provided by the Department, the EPA, or a proficiency testing service.
B. Each proficiency testing for drinking water compliance testing shall include at least one proficiency testing sample for each parameter for which an initial license or renewal license has been issued or requested. If more than one method is used to test for an analyte, a different lot shall be used for each method.
C. At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant that performs non-drinking-water compliance testing shall have at

least one laboratory analyst demonstrate proficiency in non-drinking-water compliance testing by participating in proficiency testing provided by the Department, the EPA, or a proficiency testing service, if proficiency testing is available.

D. Each proficiency testing for non-drinking-water compliance testing shall include at least one proficiency testing sample for each parameter for which an initial license or renewal license has been issued or requested and for which proficiency testing samples are available.

E. To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established by:
1. For drinking water inorganic chemistry parameters, the EPA, as provided in 40 CFR 141.23;
2. For drinking water organic chemistry parameters, the EPA, as provided in 40 CFR 141.24;
3. For lead or copper in drinking water, the EPA, as provided in 40 CFR 141.89;
4. For disinfection byproducts in drinking water, the EPA, as provided in 40 CFR 141.131; and
5. For other parameters, the EPA or the proficiency testing service.

F. A licensee or applicant shall ensure that:
1. Each proficiency testing sample accepted at the licensee's or applicant's laboratory is analyzed at the licensee's or applicant's laboratory;
2. Each proficiency testing sample is tested within the holding times required for its parameter, using the same procedures and techniques employed for routine sample testing, and calculating the holding time from the time the sample seal is broken or as indicated in the instructions accompanying the sample;
3. A proficiency testing service provides proficiency testing results directly to the Department;
4. If proficiency testing is provided by the Department, the licensee or applicant submits to the Department payment for the actual costs of the proficiency testing materials; and
5. If proficiency testing is not provided by the Department or the EPA, the licensee or applicant selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.

G. The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-609 renumbered to R9-14-610; new Section R9-14-609 renumbered from R9-14-608 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-609 renumbered to R9-14-611; new Section R9-14-609 renumbered from R9-14-607 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-610. Approved Methods and References

A. A licensee or applicant shall ensure that compliance testing is performed according to an approved method and may use method alterations approved by the Department under subsection (C).

B. The approved methods listed by parameter in Exhibit I, Table 1 are found in the following references, which are incorporated by reference with the modifications described below; are on file with the Department; include no future editions or amendments, and are available as provided below.

Key Reference

A Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA-600/4-79-020, Methods for Chemical Analysis of Water and Wastes (rev. March 1983), available at http://nepis.epa.gov/pubtitleord.htm.

A1 Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-94/111, Methods for the Determination of Metals in Environmental Samples: Supplement I (May 1994), available at http://nepis.epa.gov/pubtitleord.htm.

A2 Environmental Monitoring Systems Laboratory, EPA, Pub. No. EPA/600/R-93/100, Methods for the Determination of Inorganic Substances in Environmental Samples (August 1993), available at http://nepis.epa.gov/pubtitleord.htm, modified to increase the maximum holding time from 48 hours to 14 days at 4° C for chlorinated, unacidified drinking water samples collected for determination of nitrate.

A3 Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (July 1977), available from Bran & Luebbe Analyzing Inc., 1025 Busch Parkway, Buffalo Grove, IL 60089.

A4 Office of Water, EPA, Pub. No. EPA-821-R-02-019, Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (August 2002), available at http://www.epa.gov/waterscience/methods/1631.html.

A5 Technicon Industrial Systems, Industrial Method No. 129-71W, Fluoride in Water and Wastewater (December 1972), available from Bran & Luebbe Analyzing Inc., 1025 Busch Pkwy., Buffalo Grove, IL 60089.

A6 Herbert P. Wagner et al., EPA, Pub. No. EPA 815-B-01-001, Method 317.0: Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis (rev. 2.0 July 2001), available at www.epa.gov/safewater/methods/sourcalt.html.

A7 Herbert P. Wagner et al., EPA, Pub. No. EPA 815-R-05-007, Method 326.0: Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis (rev. 1.0 June 2002), available at www.epa.gov/safewater/methods/sourcalt.html.

A8 Teri A. Dattilio et al., EPA, Pub. No. EPA 815-R-05-008, Method 327.0: Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry (rev. 1.1 May 2005), available at www.epa.gov/safewater/methods/sourcalt.html.

A9 B.B. Potter and J.C. Wimsatt, EPA, Pub. No. EPA/600/R-05/055, Method 415.3: Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source and Drinking Water (rev. 1.1 February 2005), available at www.epa.gov/nerlcwww/ordmeth.htm.

B Herman L. Krieger, EPA, Pub. No. EPA-600/4-75-008, Interim Radiochemical Methodology for Drinking Water (March 1976), available from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161.

C American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (19th ed. 1995), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001.

C1 Hach Company, Hach Water Analysis Handbook (3rd ed. 1997), available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.

C2 American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (20th ed. 1998), available from American Public Health Association, 800 I St., NW, Washington, DC 20001, modified to require:
- a. For drinking water TOC testing:
  - i. That inorganic carbon be removed from each TOC sample before analysis,
  - ii. That each TOC sample not be filtered before analysis,
  - iii. That the pH of each TOC sample be checked and documented before analysis and that the test result be qualified in the final report if the sample pH was >2, and
  - iv. That each acidified TOC sample be analyzed within 28 days; and
- b. For drinking water DOC testing:
  - i. That each DOC sample be filtered through a 0.45 um pore-diameter filter as soon as practical and no later than 48 hours after sampling,
  - ii. That each DOC sample be acidified after filtration to achieve a pH 2 with minimal addition of the acid specified in the method or by the instrument manufacturer,
  - iii. That each acidified DOC sample be analyzed within 28 days after sample collection,
  - iv. That inorganic carbon be removed from each DOC sample before analysis,
  - v. That water passed through the filter before filtration of the DOC sample serve as the filtered blank, and
  - vi. That the filtered blank be analyzed using procedures identical to those used for analysis of the DOC sample and have DOC < 0.5 mg/L;
- c. For drinking water testing of UV-absorbing organic constituents:
  - i. That UV absorption be measured at 253.7 nm or 254 nm,
  - ii. That each UV sample be filtered through a 0.45 um pore-diameter filter before analysis,
  - iii. That the pH of UV samples not be adjusted, and
  - iv. That each UV sample be analyzed as soon as practical and no later than 48 hours after sampling; and
- d. For drinking water disinfection byproducts testing by micro liquid-liquid extraction/GC-ECD using method 6251B, that each sample be extracted within 14 days after sample collection.

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D9 Ed K. Price et al., EPA, Pub. No. 815-R-05-005, Method 527: Determination of Selected Pesticides and Flame Retardants in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS) (rev. 1.0 April 2005), available at http://www.epa.gov/safewater/methods/sourcalt.html.

D10 J.W. Munch, EPA, Pub. No. 600/R-05/052, Method 529: Determination of Explosives and Related Compounds in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS) (rev. 1.0 September 2002), available at http://www.epa.gov/nerlcwww/ordmeth.htm.

D11 J.A. Shoemaker and M.V. Bassett, EPA, Pub. No. EPA/600/R-05/053, Method 535: Measurement of Chloroacetanilide and Other Acetamide Herbicide Degradates in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS) (version 1.1 April 2005), available at http://www.epa.gov/nerlcwww/ordmeth.htm.

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1994; Update IIB, January 1995; Update III, December 1996; Update IIIA, June 1999; and Update IIIB, July 2005, available from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161, and at http://www.epa.gov/epaoswer/hazwaste/test/main.htm.

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F4 EPA, Method 3570: Microscale Solvent Extraction (MSE) (rev. 0 November 2002), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

F5 EPA, Method 3511: Organic Compounds in Water by Microextraction (rev. 0 November 2002), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

F6 EPA, Method 5030C: Purge-and-Trap for Aqueous Samples (rev. 3 May 2003), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

F7 EPA, Method 8015D: Nonhalogenated Organics Using GC/FID (rev. 4 June 2003), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

F8 EPA, Method 5021A: Volatile Organic Compounds in Various Sample Matrices Using Equilibrium Headspace Analysis (rev. 1 June 2003), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

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F11 EPA, Method 7000B: Flame Atomic Absorption Spectrophotometry (rev. 2 January 1998), available at http://www.epa.gov/epaoswer/hazwaste/test/up4a.htm#7_series.

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Z EPA, Pub. No. EPA 815-R-00-014, Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://nepis.epa.gov/pubtitleOW.htm, modified to require the following when testing for bromate using method 321.8:

a. That each sample be analyzed within 28 days after sampling, and

b. That the test result be qualified in the final report if the sample was not preserved with 50 mg of ethylenediamine per liter of sample at the time of sampling.

Z1 EPA, Pub. No. EPA 821/R/01/034, EPA Method 1605: *Aeromonas* in Finished Water by Membrane Filtration Using Ampicillin-Dextrin Agar with Vancomycin (ADA-V) (October 2001), available at http://www.epa.gov/safewater/methods/pdfs/met1605.pdf.

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Z11 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

Z12 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

Z13 EPA, Pub. No. EPA-821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (5th ed. October 2002), available at www.epa.gov/waterscience/WET/disk2/.

C. If an approved method is not available for a particular parameter, or a different method or method alteration is required or authorized to be used for a particular parameter by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, a licensee may request approval of an alternate method or method alteration.

1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the request shall include:

a. The name, address, and telephone number of the licensee submitting the request;

b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
c. Identification of the parameter for which approval of the alternate method or method alteration is requested;
d. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement or authorization for the use of the alternate method or method alteration for which approval is requested; and
e. An alternate method or method alteration approval fee of $50 payable to the Arizona Department of Health Services in the form of a certified check, business check, money order, or credit card payment.

2. For an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the request shall include:
a. The name, address, and telephone number of the licensee submitting the request;
b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
d. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
i. A detailed description of the alternate method or method alteration;
ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and
e. An alternate method or method alteration approval fee of $50 payable to the Arizona Department of Health Services in the form of a certified check, business check, money order, or credit card payment.

3. Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory at a designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).

4. The Department may approve an alternate method or method alteration if the Department determines:
a. One of the following:
i. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or
ii. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and
b. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-610 renumbered to R9-14-611; new Section R9-14-610 renumbered from R9-14-609 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-610 renumbered to R9-14-612; new Section R9-14-610 renumbered from R9-14-608 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 1687, effective April 6, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-611. Drinking Water Compliance Testing

A licensee for a laboratory at which drinking water compliance testing is performed shall ensure that:
1. The laboratory is operated in compliance with the guidelines in Key Reference D4, excluding the requirements for laboratory personnel education and experience;
2. Each drinking water sample for Arizona compliance testing is analyzed using an approved method:
a. Listed under Exhibit I, Table 1, Section A, Drinking Water Parameters; or
b. Approved for drinking water compliance testing under R9-14-610(C); and
3. If the licensee desires to be licensed to perform testing for vinyl chloride, the licensee also obtains licensure to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-(21).

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-611 renumbered to R9-14-612; new Section R9-14-611 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-611 renumbered to R9-14-613; new Section R9-14-611 renumbered from R9-14-609 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-612. Wastewater Compliance Testing

A licensee for a laboratory at which wastewater compliance testing is performed shall ensure that each wastewater sample for Arizona compliance testing is analyzed using an approved method:
1. Listed under Exhibit I, Table 1, Section B, Wastewater Parameters; or
2. Approved for wastewater compliance testing under R9-14-610(C).

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-612 renumbered to R9-14-613; new Section R9-14-612 renumbered from R9-14-611 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-612 renumbered to R9-14-614; new Section R9-14-612 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective

December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-613. Solid Waste Compliance Testing

A. A licensee for a laboratory at which solid waste compliance testing is performed shall ensure that each solid waste sample for Arizona compliance testing is analyzed using an approved method:
1. Listed under Exhibit I, Table 1, Section C, Solid Waste Parameters; or
2. Approved by the Department for solid waste compliance testing under R9-14-610(C).

B. A licensee for a laboratory at which solid waste compliance testing is performed using an 8000 series method from Key Reference F shall:
1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;
2. If the method does not include specific quality control requirements, follow all requirements in EPA, Method 8000C: Determinative Chromatographic Separations (rev. 3 March 2003), incorporated by reference, on file with the Department, including no future editions or amendments, and available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm; and
3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
   a. Method 3500B,
   b. Method 3600C, and
   c. Method 5000.

C. A licensee for a laboratory at which solid waste compliance testing is performed using a non-8000 series method from Key Reference F shall comply with the following from Key Reference F, as applicable according to the requirements of the specific method:
1. Method 4000, and
2. Method 7000A.

D. A licensee for a laboratory at which solid waste compliance testing is performed using a method from Key Reference F shall comply with Chapters 1 through 8 of Key Reference F, as applicable according to the requirements of the specific method.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-613 renumbered to R9-14-614; new Section R9-14-613 renumbered from R9-14-612 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-613 renumbered to R9-14-615; new Section R9-14-613 renumbered from R9-14-611 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-614. Air and Stack Compliance Testing

A licensee for a laboratory at which air or stack compliance testing is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:
1. Listed under Exhibit I, Table 1, Section D, Air and Stack Parameters; or
2. Approved by the Department for air or stack compliance testing under R9-14-610(C).

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-614 renumbered to R9-14-615; new Section R9-14-614 renumbered from R9-14-613 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-614 renumbered to R9-14-616; new Section R9-14-614 renumbered from R9-14-612 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-615. Quality Assurance

A. A licensee or applicant shall ensure that the analytical data produced at the licensee's or applicant's laboratory are of known and acceptable precision and accuracy, as prescribed by the approved method for each analysis or as prescribed by the limits described under subsection (C)(9), and are scientifically valid and defensible.

B. A licensee or applicant shall have, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:
1. A title page identifying the laboratory and date of review and including the laboratory director's signature of approval;
2. A table of contents;
3. An organization chart or list of the laboratory personnel, including names, line of authority, and identification of principal quality assurance personnel;
4. A copy of the current laboratory license and a list of licensed parameters;
5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
6. Specifications for:
   a. Sample containers,
   b. Preparation of sample containers,
   c. Preservation of samples, and
   d. Maximum allowable holding times;
7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (C);
9. A procedure for compliance testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
10. A statement of the frequency of all quality control checks;
11. A statement of the acceptance criteria for all quality control checks;
12. Preventive maintenance procedures and schedules;
13. Assessment procedures for data acceptability;
14. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation the reported compliance testing result is affected by the interference; and
15. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements listed in this Section.

C. A licensee or applicant shall:
1. Have available at the laboratory all methods, equipment, reagents, and glassware necessary for the compliance

testing for which the licensee or applicant is licensed or is requesting a license;

2. Use and document the use of only reagents of a grade equal to or greater than that required by the approved methods;
3. Maintain and require each analyst to comply with a complete and current standard operating procedure for each licensed method, which shall include at least:
   a. A requirement that the method be performed in compliance with the requirements in the approved method;
   b. A description of all procedures to be followed when the method is performed;
   c. A list of the concentrations for calibration standards, check standards, and spikes;
   d. Requirements for instrumental conditions and set up;
   e. A requirement for frequency of calibration;
   f. Calculations for the quantitation of the final concentration of samples, with the actual sample dilution factors and the calibration algorithm used, which reflect the procedures followed; and
   g. Requirements for preventative maintenance;
4. Calibrate each instrument as required by each approved method for which the equipment is used, as follows:
   a. If a calibration model is specified in the method, using the specified calibration model or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration;
   b. If multiple calibration models are included as options in the method, using one of the included calibration models or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration; or
   c. If the method does not include a calibration model, using the manufacturer's specifications for calibration;
5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
6. Develop, document, and maintain a current limit of detection and limit of quantitation for each compliance parameter for each instrument;
7. Develop each limit of detection using:
   a. The protocol in the applicable test method;
   b. The protocol in the applicable federal regulation; or
   c. A process that complies with the guidelines in Section D.1.2 of Chapter 5, Appendix D—Essential Quality Control Requirements, in National Environmental Laboratory Accreditation Conference, EPA Pub. No. EPA/600/R-04/003, 2003 NELAC Standard (June 5, 2003), including no future editions or amendments, which is incorporated by reference, on file with the Department, and available from the National Environmental Laboratory Accreditation Conference, US EPA ORD/NERL, Mailcode E243-05, RTP, NC 27711, or at www.epa.gov/nelac/;
8. Maintain all compliance testing equipment in proper operating condition;
9. For each parameter tested at the laboratory for which quality control acceptance criteria are not specified in the approved method or by EPA or ADEQ:
   a. Use default limits provided in Exhibit II; or
   b. Statistically develop limits from historical data by:
      i. Determining the mean and standard deviation for a minimum of 20 data points not invalidated for cause, excluding statistical outliers;
      ii. Setting the limits no more than three standard deviations from the mean and in the detectable range, using as the lower end of the detectable range the limit of quantitation or the lowest standard value represented in the initial calibration; and
      iii. Explaining the origin of the lower end of the detectable range in the laboratory's standard operating procedure;
10. Discard or segregate all expired standards or reagents;
11. Maintain a record showing the traceability of reagents; and
12. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.

D. A licensee or applicant may submit a written request to the Department for an exemption from subsection (C)(1) for a specific parameter if the licensee or applicant:
1. Documents that the approved method has been performed at the laboratory and that the analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
2. Documents the licensee's or applicant's ability to obtain the equipment, reagent, or glassware necessary to perform the approved method.

E. The written request for an exemption under subsection (D) shall include:
1. The name, address, and main telephone number of the laboratory;
2. The name, address, and telephone number of the licensee or applicant submitting the request;
3. Identification of the parameter and the equipment, reagent, or glassware for which the licensee or applicant is requesting an exemption; and
4. The documentation described in subsections (D)(1) and (2).

F. The Department may approve a request for an exemption under subsection (D) if it determines:
1. That the approved method has been performed at the laboratory;
2. That the analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
3. That the license or applicant is able to obtain the equipment, reagent, or glassware necessary to perform the approved method.

G. A licensee or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but a licensee or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents such as standard operating procedures.

H. A licensee or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (C)(3), but a licensee or applicant may satisfy the components required in subsections (C)(3)(f) and (g) through incorporating by reference provisions in separate documents such as other standard operating procedures.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-615 renumbered to R9-14-616; new Section R9-14-615 renumbered from R9-14-614 and amended effective June 20, 1997 (Supp. 97-2). Former

Section R9-14-615 renumbered to R9-14-617; new Section R9-14-615 renumbered from R9-14-613 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-616. Operation

A licensee shall ensure that:

1. A compliance testing sample accepted at the licensee's laboratory is analyzed:
   a. At the licensee's laboratory,
   b. At another laboratory licensed under this Article, or
   c. At a laboratory exempted under A.R.S. § 36-495.02(A) or R9-14-602;
2. The facility and utilities required to operate equipment and perform compliance testing are maintained;
3. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
4. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
5. The following information is maintained for all supervisory, quality assurance, and analytical personnel:
   a. A summary of each individual's education and professional experience;
   b. Documentation of each individual's review of the quality assurance plan required under R9-14-615(B) and the approved methods and laboratory standard operating procedures for each area of testing performed by the individual or for which the individual has supervisory or quality assurance responsibility;
   c. Documentation of each analyst's completion of training on the use of equipment and of proper laboratory technique, including the name of the analyst, the name of the instructor, the duration of the training, and the date of completion of the training;
   d. Documentation of each analyst's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the analyst for compliance testing;
   e. Documentation of each analyst's completion of Initial Demonstration of Capability as required by each approved method performed by the analyst, as applicable;
   f. Documentation of each analyst's performance of proficiency testing, as applicable;
   g. Documentation of each analyst's completion of training related to instrument calibration that includes:
      i. Instruction on each calibration model that the analyst will use or for which the analyst will review data;
      ii. For each calibration model described in subsection (5)(g)(i), the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and
      iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance; and
   h. Documentation of each individual's applicable certifications and specialized training; and
6. The licensee complies with all applicable federal, state, and local occupational safety and health regulations.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-616 renumbered to R9-14-617; new Section R9-14-616 renumbered from R9-14-615 effective June 20, 1997 (Supp. 97-2). Former Section R9-14-616 repealed; new Section R9-14-616 renumbered from R9-14-614 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-617. Laboratory Records and Reports

A licensee or applicant shall ensure that:

1. Each record and report required to be maintained by this Article is available for inspection and copying by the Department during normal business hours;
2. The Department is permitted to remove copied records and reports from a laboratory;
3. The licensee or applicant maintains records and reports of compliance testing for at least five years after the date of compliance testing, with:
   a. All records and reports for at least the most current two years maintained onsite at the laboratory and the remaining records and reports stored in a secure storage facility;
   b. Each hard copy document containing data either maintained as a hard copy document or scanned into a PDF file or another electronic file format that preserves an exact copy of the hard copy data; and
   c. All instrument-generated electronic data maintained in a reproducible format from which reports can be produced and printed;
4. No portion of a record or report of compliance testing is altered or deleted to hide or misrepresent any part of the data;
5. The licensee or applicant produces all records and reports requested by the Department within 24 hours after the request or, if the licensee or applicant requests a period longer than 24 hours, a longer period of time agreed upon by the Department;
6. Upon Department request, the licensee or applicant makes available for inspection and copying the requested data from non-Arizona compliance samples;
7. A compliance testing record contains:
   a. Sample information, including the following:
      i. A unique sample identification assigned at the laboratory,
      ii. The location or location code of sample collection,
      iii. The sample collection date and time,
      iv. The type of testing to be performed, and
      v. The name of the individual who collected the sample;
   b. The name and address of the client submitting the sample to the laboratory;
   c. The name of the individual who submitted the sample to the laboratory;
   d. The date and time of receipt of the sample at the laboratory;

e. The name of the individual who received the sample at the laboratory;
f. The dates and times of testing, including the date and time of each critical step;
g. The actual results of compliance testing, including all raw data, work sheets, and calculations performed;
h. The actual results of quality control data validating the test results, including the calibration and calculations performed;
i. The name of each analyst or who performed the testing; and
j. A copy of the final report;

8. A final report of compliance testing contains:
   a. The name, address, and telephone number of the laboratory;
   b. The license number assigned to the laboratory by the Department;
   c. Actual scientifically valid and defensible results of compliance testing in appropriate units of measure, obtained in accordance with an approved method and quality assurance plan;
   d. Qualified results of compliance testing not obtained in accordance with an approved method and quality assurance plan;
   e. A list of each approved method used to obtain the reported results;
   f. Sample information, including the following:
      i. The unique sample identification assigned at the laboratory,
      ii. The location or location code of sample collection,
      iii. The sample collection date and time,
      iv. The name of the individual who collected the sample,
      v. The name of the client that submitted the sample to the laboratory, and
      vi. The name of the individual who submitted the sample to the laboratory;
   g. The date of analysis for each parameter reported;
   h. The date of the final report; and
   i. The laboratory director's or designee's signature.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-617 renumbered to R9-14-618; new Section R9-14-617 renumbered from R9-14-616 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-617 renumbered to R9-14-618; new Section R9-14-617 renumbered from R9-14-615 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-618. Mobile Laboratories

A. An applicant shall obtain a license for each mobile laboratory, unless the applicant chooses the single license option for multiple laboratories as described in R9-14-603(D).

B. A licensee or applicant for a mobile laboratory shall ensure that the mobile laboratory is operated in compliance with all of the requirements of this Article.

C. Upon Department request, a licensee or applicant for a mobile laboratory shall provide to the Department the mobile laboratory's location and a list of the parameters for which testing is performed at the mobile laboratory.

Historical Note

R9-14-618 renumbered from R9-14-617 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-618 renumbered to R9-14-619; new Section R9-14-618 renumbered from R9-14-617 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-619. Out-of-State Environmental Laboratory Licensing

A. A licensee or applicant for an out-of-state laboratory at which Arizona compliance testing is performed shall comply with the requirements of A.R.S. Title 36, Chapter 4.3 and this Article.

B. A licensee or applicant for an out-of-state laboratory shall pay all actual expenses incurred by the Department as a result of the laboratory's location, including:
1. The estimated costs of each laboratory inspection or investigation at the laboratory;
2. The amount by which the actual costs of each laboratory inspection or investigation at a laboratory exceed the estimated costs;
3. Additional expenses incurred by the Department for each investigation at the laboratory; and
4. A zone fee for each Department representative required to appear at the laboratory to perform the laboratory inspection or investigation, as follows:
   a. For zone 1, including California, Nevada, Utah, Colorado, and New Mexico: $114;
   b. For zone 2, including all states west of the Mississippi River not listed in subsection (B)(4)(a): $179;
   c. For zone 3, including all states east of the Mississippi River and Alaska and Hawaii: $290; and
   d. For zone 4, including all countries outside of the United States: $516.

C. The Department shall:
1. Determine the estimated costs and zone fees for a laboratory inspection or investigation after making travel arrangements to visit an out-of-state laboratory;
2. Send the licensee or applicant for an out-of-state laboratory a bill for the estimated costs and zone fees, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; and
3. After a laboratory inspection or investigation is completed, determine the actual costs for the inspection or investigation and any additional expenses incurred for an investigation and:
   a. If the actual costs and additional expenses exceed the estimated costs and zone fees already paid, send a bill to the licensee or applicant for the out-of-state laboratory for the amount by which the actual costs and expenses exceed the estimated costs and zone fees paid, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; or
   b. If the actual costs and expenses are less than the estimated costs and zone fees already paid, notify the licensee or applicant, determine whether the licensee or applicant desires a refund or a credit, and send a refund or issue a credit within 45 days after the date that the licensee or applicant specifies the desired form of payment.

Historical Note

New Section R9-14-619 renumbered from R9-14-618 and amended by final rulemaking at 7 A.A.R. 184, effec-

tive December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-620. Changes to a License

A. During the term of a license, a licensee may request to have one or more parameters added to the license.

B. To request to have one or more parameters added to a license, a licensee shall submit to the Department:
1. A written request that includes:
   a. The name, address, and telephone number of the licensee submitting the request;
   b. The name, address, and telephone number of the laboratory for which the addition is requested; and
   c. Identification of each parameter requested to be added;
2. The applicable method and instrumentation fees, as determined according to Tables 1 and 2 in Exhibit I, payable to the Arizona Department of Health Services by credit card; certified check; business check; or money order; or, if the owner is an Arizona state agency, purchase order;
3. If the addition results in a different Level of license, the difference between the application fee paid with the most recent application and the application fee for the new Level of license required under R9-14-607(A)(2), payable to the Arizona Department of Health Services as provided in subsection (B)(2); and
4. The following for each parameter requested to be added:
   a. The limit of detection, if applicable;
   b. A copy of a proficiency testing report; and
   c. A copy of the standard operating procedure.

C. The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a license.

D. The Department shall process a request to have one or more parameters added to a license as provided in R9-14-621.

E. A licensee may request deletion of parameters at no charge three times during a license period, but shall pay $17 per parameter for the fourth and each subsequent deletion requested during a license period.

Historical Note

Former R9-14-620 renumbered to R9-14-621; new R9-14-620 made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-621. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 1.
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 1 and begins on the date that the Department receives an application or request for approval.
1. The Department shall send a notice of administrative completeness or deficiencies to an applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application or request for approval.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that a notice of deficiencies is sent until the date that the Department receives all of the missing information or items from an applicant.
2. If an applicant fails to submit to the Department all of the information and items listed in a notice of deficiencies within 60 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn and deny the license or other approval requested.
3. If the Department issues a license or other approval to an applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1 and begins on the date of a notice of administrative completeness.
1. As part of the substantive review for an initial license application, the Department may conduct a laboratory inspection, investigation, or proficiency testing, or a combination of the three, as described in R9-14-605.
   a. The Department shall commence a laboratory inspection, investigation, or proficiency testing, or combination of the three, no more than 30 days after notice of administrative completeness has been mailed for an in-state laboratory or no more than 60 days after notice of administrative completeness has been mailed for an out-of-state laboratory.
   b. The Department and an applicant may mutually agree in writing to schedule a laboratory inspection, proficiency testing, or investigation later than the date required under subsection (C)(1)(a).
2. The Department shall send written notification of approval or denial of a license or other approval to an applicant within the substantive review time-frame.
3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and applicant have agreed in writing to allow the Department to submit supplemental requests for information.
4. If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date that the Department issues the request until the date that the Department receives all of the information requested.
5. If an applicant fails to submit to the Department all of the information and items listed in a comprehensive written request or a supplemental request for information within 60 days after the date that the Department sent the comprehensive written request or supplemental request for information, the Department shall deny the license or other approval requested.
6. The Department shall grant a license or other approval unless:
   a. An applicant fails to submit requested information or a requested item as described in subsection (B)(2) or (C)(5);
   b. For an initial license application or a regular license renewal application where the regular license is not suspended, the Department determines that grounds to deny the license exist under A.R.S. § 36-495.09;
   c. For a regular license renewal application where the regular license is suspended, the Department determines that the licensee is not in full compliance with

the corrective action plan; A.R.S. Title 36, Chapter 4.3; or this Article;

d. For a request for approval of an alternate method or method alteration, the Department determines that the alternate method or method alteration does not meet the standard for approval under R9-14-610(C)(4); or

e. For a request for approval of an exemption under R9-14-615(D), the Department determines that the request does not meet the standard for approval under R9-14-615(F).

7. If the Department denies a license or other approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Section R9-14-621 renumbered from R9-14-620 and amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Initial License–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	201	21	180
Initial License–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	231	21	210
Regular License Renewal–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	37	14	23
Regular License Renewal–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07, 36-495.14	67	14	53
Regular License Renewal–In-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07	70	21	49
Regular License Renewal–Out-of-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07, 36-495.14	100	21	79
Request for Approval of an Alternate Method or Method Alteration–Required or Authorized by EPA/ADEQ	A.R.S. §§ 36-495.01, 36-495.06	105	15	90
Request for Approval of an Alternate Method or Method Alteration–Not Required or Authorized by EPA/ADEQ	A.R.S. §§ 36-495.01, 36-495.06	210	30	180
Request for Approval of an Exemption under R9-14-615(D)	A.R.S. § 36-495.01	60	15	45
Request to Have One or More Parameters Added to a License under R9-14-620 – In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	91	21	70
Request to Have One or More Parameters Added to a License under R9-14-620 – Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	121	21	100

Historical Note

New Table adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

EXHIBIT I. APPROVED METHODS; METHOD FEES; INSTRUMENTATION FEES

Table 1. Approved Methods; Method Fees

SECTION A. DRINKING WATER PARAMETERS			
1. Microbiology of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aeromonas	Z1	1605	$228
Coliforms, Fecal	C2	9221E	$228
		9222D	$228
	C1	Hach 8001	$228
Coliforms, Total, by Colilert (ONPG-MUG)	C2	9223B	$152
Coliforms, Total, by Colisure	C2	9223B	$152
Coliforms, Total, by Membrane Filtration	C2	9222B	$228
		9222C	$228
Coliforms, Total and *E. coli*, by Membrane Filtration	Z8	1604	$228
Coliforms, Total, by Multiple Tube Fermentation	C2	9221B and C	$228
	C1	Hach 8001	$228
Coliforms, Total, by Presence/Absence	C2	9221D	$228
Escherichia coli	X	Tube Procedure	$228
		Membrane Filter Procedure	$228
Cryptosporidium	P4	1622	$381
Giardia and *Cryptosporidium*	P5	1623	$381
Heterotrophic Plate Count	C2	9215B	$152
	Z4	SimPlate	$152
Microscopic Particulate Analysis	P1	910/9-92-029	$228
Viruses	P2	600/R-95/178	$381
2. Inorganic Chemistry and Physical Properties of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alkalinity	C2	2320B	$19
Asbestos	H1	100.1	$503
	H2	100.2	$503
Bromate	A6	317.0	$76
	A7	326.0	$76
	Z	300.1	$26
		321.8	$152

Bromide	A2	300.0	$26
	A6	317.0	$76
	A7	326.0	$76
	Z	300.1	$26
Calcium	A1	200.7	$10
	C	3111B	$26
		3500-Ca D	$76
Carbon, Dissolved Organic	A9	415.3	$76
	C2	5310B	$39
		5310C	$39
		5310D	$39
Carbon, Total Organic	A9	415.3	$76
	C2	5310B	$39
		5310C	$39
		5310D	$39
Chloride	A2	300.0	$26
	C2	4500-Cl B	$39
		4500-Cl D	$39
		4110B	$26
Chloramine	C2	4500-Cl D	$39
		4500-Cl F	$39
		4500-Cl G	$76
Chlorine	C2	4500-Cl D	$39
		4500-Cl E	$39
		4500-Cl F	$39
		4500-Cl G	$39
		4500-Cl H	$39
		4500-Cl I	$39
	C1	Hach 8168	$39
		Hach 8167	$39
		Hach 8370	$39
		Hach 8021	$39
Chlorine Dioxide	A8	327.0	$76
	C2	4500-ClO_2 C	$39
		4500-ClO_2 D	$76
		4500-ClO_2 E	$39

Chlorite	A2	300.0	$26
	A6	317.0	$76
	A7	326.0	$76
	A8	327.0	$76
	Z	300.1	$26
Color	C2	2120B	$32
Corrosivity	C2	2330B	$39
Cyanide	A2	335.4	$76
	C2	4500-CN B	$7
		4500-CN C	$13
		4500-CN E	$76
		4500-CN F	$76
	Z9	QuikChem 10-204-00-1-X	$76
Cyanide, Amenable	C2	4500-CN G	$76
Fluoride	A2	300.0	$26
	A3	380-75WE	$39
	C2	4500-F B	$39
		4500-F C	$26
		4500-F D	$39
		4500-F E	$39
		4110B	$26
	C1	Hach 8029	$39
Hardness	A1	200.7, Sum of Ca and Mg as their carbonates	$10
	C2	2340 B, Sum of Ca and Mg as their carbonates	$10
		2340 C	$39
Magnesium	A1	200.7	$10
	C	3111B	$26
Methylene Blue Active Substances	C2	5540 C	$39
Nitrate	A2	353.2	$76
		300.0	$26
	C2	4500-NO_3 D	$39
		4500-NO_3 E	$76
		4500-NO_3 F	$76
		4110B	$26

Nitrite	A2	353.2	$76
		300.0	$26
	C2	4500-NO_2 B	$76
		4500-NO_3 E	$76
		4500-NO_3 F	$76
		4110B	$26
Odor	C2	2150B	$32
Orthophosphate	A2	365.1	$76
		300.0	$26
	C2	4500-P E	$76
		4500-P F	$76
		4110B	$26
Ozone	C	4500-O_3 B	$39
Perchlorate	Z	314.0	$76
		314.1	$76
		331	$152
		332	$152
pH (Hydrogen Ion)	A	150.1	$39
		150.2	$39
	C2	4500-H B	$39
	C1	Hach 8156	$39
Residue, Filterable (TDS)	C2	2540 C	$39
Sediment Concentration	Z6	D 3977-979	$13
Silica	A1	200.7	$10
	C2	4500-Si C	$76
		4500-Si D	$76
		4500-Si E	$76
Sodium	A1	200.7	$10
	C	3111B	$26
Specific Conductance	C2	2510B	$39
	C1	Hach 8160	$39
Sulfate	A2	300.0	$26
		375.2	$76
	C2	4500-SO_4 C	$76
		4500-SO_4 D	$76
		4500-SO_4 E	$76
		4500-SO_4 F	$76
		4110B	$26
Temperature, Degrees Celsius	C2	2550	$13

Turbidity, Nephelometric (NTU)	A2	180.1	$39
	C2	2130B	$39
UV-Absorbing Organic Constituents	C2	5910B	$76
3. Metals in Drinking Water			
a. Sample Preparation for Metals in Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Extractable Metals	C	3030C	$7
Microwave Assisted Digestion	C	3030K	$7
Nitric Acid	C	3030E	$7
Nitric Acid/Hydrochloric Acid	C	3030F	$7
Nitric Acid/Perchloric Acid	C	3030H	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I	$7
Nitric Acid/Sulfuric Acid	C	3030G	$7
Preliminary Filtration	C	3030B	$7
b. Methods to Analyze Metals in Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111D	$26
		3113B	$26
Antimony	A1	200.8	$26
		200.9	$26
	C	3113B	$26
Arsenic	A1	200.8	$26
		200.9	$26
	C	3113B	$26
		3114B	$76
Barium	A1	200.7	$10
		200.8	$26
	C	3111D	$26
		3113B	$26
Beryllium	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26

Cadmium	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26
Chromium, Total	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26
Copper	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
Iron	A1	200.7	$10
		200.9	$26
	C	3111B	$26
		3113B	$26
Lead	A1	200.8	$26
		200.9	$26
	C	3113B	$26
Manganese	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
Mercury	A	245.2	$52
	A1	245.1	$52
		200.8	$26
	C	3112B	$52
Nickel	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
Selenium	A1	200.8	$26
		200.9	$26
	C	3113B	$26
		3114B	$76

Silver	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
Strontium	A1	200.7	$10
	C	3500-Sr B	$26
		3500-Sr C	$20
		3500-Sr D	$26
Thallium	A1	200.8	$26
		200.9	$26
Uranium	A1	200.8	$26
Zinc	A1	200.7	$10
		200.8	$26
	C	3111B	$26
4. Organic Chemistry of Drinking Water			
a. Methods to Comply with National Primary Drinking Water Regulations			
Description	**Reference**	**Method/s**	**Fee Per Method**
Disinfectant Byproducts, Solvents and Pesticides: Alachlor Atrazine Dibromochloropropane Endrin Ethylene dibromide Heptachlor Heptachlorepoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Simazine 1,1,2-Trichloroethane Trichloroethylene 1,1,1-Trichloroethane Tetrachloroethylene Carbontetrachloride Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	D3	551.1 (1.0)	$116

VOCs by GC: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane 1,2-Dichloropropane Ethylbenzene Styrene Tetrachloroethylene 1,1,1-Trichlorothane Trichloroethylene Toluene 1,2,4-Trichlorobenzene 1,1-Dichloroethylene 1,1,2-Trichloroethane Vinyl chloride Xylenes, Total Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	D3	502.2 (2.1)	$152
VOCs by GC-MS: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane 1,2-Dichloropropane Ethylbenzene Styrene Tetrachloroethylene 1,1,1-Trichlorothane Trichloroethylene Toluene 1,2,4-Trichlorobenzene 1,1 Dichloroethylene 1,1,2-Trichloroethane Vinyl Chloride Xylenes, Total Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	D3	524.2 (4.1)	$152
EDB/DBCP	D3	504.1 (1.1)	$116

Pesticides and PCBs by GC (Microextraction): Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	505 (2.1)	$152
Phthalate and Adipate Esters by GC-PID: Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate	D3	506 (1.1)	$116
Pesticides by GC-NPD Atrazine Alachlor Simazine	D3	507 (2.1)	$116
Chlorinated Pesticides by GC-ECD: Chlordane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Toxaphene	D3	508 (3.1)	$152

Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD: Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	508.1(2.0)	$152
Organics by GC-MS: Alachlor Atrazine Benzo(a)pyrene Chlorodane Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Pentachlorophenol Simazine Toxaphene	D3	525.2 (2.0)	$152
Carbamates by HPLC/Post Column: Carbofuran Oxamyl	D3	531.1 (3.1)	$116
	D7	531.2	$116
Chlorinated Acids and Dalapon by GC-ECD: 2,4-D Dalapon Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D	515.1 (4.0)	$116
	D6	515.3 (1.0)	$116
	D8	515.4 (1.0)	$116
Chlorinated Acids By GC-ECD 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D3	515.2 (1.1)	$116

PAHs By HPLC/UV/FL: Benzo(a)pyrene	D1	550	$116
		550.1	$116
Haloacetic Acids and Dalapon by GC-ECD: Dalapon Monochloracetic Acid Dichloracetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid HAA5	D2	552.1 (1.0)	$116
	D3	552.2 (1.0)	$116
Haloacetic Acids: Monochloroacetic Acid Dichloroacetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid HAA5	D13	552.3	$116
Disinfection Byproducts by Micro Liquid-Liquid Extraction/GC-ECD	C2	6251B	$116
Chlorinated Acids By HPLC/PDA/UV: 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D2	555 (1.0)	$116
Dioxin	E	1613	$258
Diquat	D5	549.2 (1.0)	$116
Endothall	D2	548.1 (1.0)	$116
Glyphosate	D1	547	$116
PCBs (as decachlorobiphenyl)	D	508A (1.0)	$152
b. Additional Methods and Compounds Required by Other Programs			
Description	**Reference**	**Method/s**	**Fee Per Method**
Disinfectant Byproducts, Solvents and Pesticides	D3	551.1 (1.0)	$26
VOCs by GC	D3	502.2 (2.1)	$26
VOCs by GC-MS	D3	524.2 (4.1)	$26
EDB/DBCP	D3	504.1 (1.1)	$26
Pesticides and PCBs by GC (Microextraction)	D3	505 (2.1)	$26
Phthalate and Adipate Esters by GC-PID	D3	506 (1.1)	$26
Pesticides by GC-NPD	D3	507 (2.1)	$26
Chlorinated Pesticides by GC-ECD	D3	508 (3.1)	$26
Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD	D3	508.1(2.0)	$26
Organics by GC-MS	D3	525.2 (2.0)	$26
Carbamates by HPLC/Post Column	D3	531.1 (3.1)	$26
	D7	531.2	$26

Chlorinated Acids and Dalapon by GC-ECD	D	515.1 (4.0)	$26
	D6	515.3 (1.0)	$26
	D8	515.4 (1.0)	$26
Chlorinated Acids By GC-ECD	D3	515.2 (1.1)	$26
PAHs By HPLC/UV/FL	D1	550	$26
		550.1	$26
Haloacetic Acids and Dalapon by GC-ECD	D2	552.1 (1.0)	$26
	D3	552.2 (1.0)	$26
Chlorinated Acids By HPLC/PDA/UV	D2	555 (1.0)	$26
Dioxins and Furans	E	1613	$65
Diquat and Paraquat	D5	549.2 (1.0)	$26
Benzidines and Nitrogen Compounds	D2	553 (1.1)	$116
Carbonyl Compounds	D2	554 (1.0)	$116
Phenols	Z	528	$152
Phenylurea Compounds	Z	532	$116
Selected Semivolatiles	Z	526	$152
Pesticides and Flame Retardants by GCMS	D9	527	$152
Explosives and Related Compounds	D10	529	$152
Acetanilide Degradation Products	D11	535 (1.1)	$194
Acetanilide Parent Compound	D3	525.2 (2.0)	$26
Nitrosamines by MS/MS	D12	521	$194
5. Radiochemistry of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Cesium	B	Cesium-134	$206
	C2	7500-Cs B	$206
		7120	$206
	J1	R-1110-76	$206
		R-1111-76	$206
	L	901	$206
		901.1	$206
	U	4.5.2.3	$206
	W	Gamma Spectra	$206
Gamma Emitting Isotopes	C2	7500-Cs B	$206
		7500-I B	$206
		7120	$206
	L	901.1	$206
		901	$206
		902	$206
	W	Gamma Spectra	$206

Gross Alpha	B	Gross Alpha	$206
	C2	7110B	$206
		7110C	$206
	J1	R-1120-76	$206
	L	900	$206
	V	00-01	$206
		00-02	$206
	W	Gross Alpha	$206
Gross Beta	B	Gross Beta	$206
	C2	7110B	$206
	J1	R-1120-76	$206
	L	900	$206
	V	00-01	$206
	W	Gross Beta	$206
Iodine	B	Precipitation Method, Distillation Method	$206
	C2	7500-I B	$206
		7500-I C	$206
		7500-I D	$206
		7120	$206
	L	902	$206
		901.1	$206
	U	4.5.2.3	$206
	W	Gamma Spectra	$206
Radium 226	B	Radon Emanation, Precipitation Method	$206
	C2	7500-Ra B	$206
		7500-Ra C	$206
	J1	R-1140-76	$206
		R-1141-76	$206
	L	903	$206
		903.1	$206
	U	Ra-05	$206
	V	Ra-03	$206
		Ra-04	$206
	W	Radium 226	$206

Radium 228	B	Radium 228	$206
	C2	7500-Ra D	$206
	J1	R-1142-76	$206
	L	904	$206
	V	Ra-05	$206
	W	Radium 228	$206
Strontium	B	Strontium	$206
	C2	7500-Sr B	$206
	J1	R-1160-76	$206
	L	905	$206
	U	Sr-01	$206
		Sr-02	$206
	V	Sr-04	$206
	W	Strontium	$206
Tritium	B	Tritium	$206
	C2	7500-^{3}H B	$206
	J1	R-1171-76	$206
	L	906	$206
	V	H-02	$206
	W	Tritium	$206
Uranium	C2	7500-U B	$206
	I	D5174-91	$206
	J1	R-1180-76	$206
		R-1181-76	$206
		R-1182-76	$206
	L	908	$206
		908.1	$206
	U	U-02	$206
		U-04	$206
	V	00-07	$206
	W	Uranium	$206
SECTION B. WASTEWATER PARAMETERS			
1. Microbiology of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Ascaris lumbricoides	C2	10550	$228
	P3	UofA2000	$228
Coliforms, Fecal, by Membrane Filter	C2	9222D	$228
Coliforms, Fecal, by Multiple Tube Fermentation (may be used for sludge)	C2	9221E	$228

Coliforms, Total, by Membrane Filter	C2	9222B	$228
Coliforms, Total, by Multiple Tube Fermentation	C2	9221B	$228
Entamoeba histolytica	C2	10550	$228
	C	9711C	$228
Enteric viruses	I	D4994-89	$381
Escherichia coli (NPDES) by Colilert MPN, in conjunction with SM 9221B and 9221C	C2	9223B	$152
Escherichia coli (NPDES) in conjunction with SM 9221B and 9221C	C2	9221F	$152
Giardia and *Cryptosporidium*	C2	9711B	$381
	P2	600/R-95/178	$381
Helminth Ova in sludge	Z5	600/1-87-014	$381
Salmonella in sludge	C2	9260D	$228
Streptococcus, Fecal, by Membrane Filter	C2	9230C	$194
Streptococcus, Fecal, by Multiple Tube Fermentation	C2	9230B	$194
Tapeworm, Common	C2	10550	$228
Viruses	C2	9510	$381
	P	Methods for Virology	$381
	P2	600/R-95/178	$381
2. Wastewater Inorganic Chemistry, Nutrients and Demand			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acidity	C2	2310B	$39
	C1	Hach 8010	$39
Alkalinity, Total	A	310.2	$19
	C2	2320B	$19
Ammonia	A2	350.1	$39
	C2	4500-NH_3 B	$39
		4500-NH_3 C	$39
		4500-NH_3 D	$39
		4500-NH_3 E	$39
		4500-NH_3 G	$39
	C1	Hach 8038	$39
Biochemical Oxygen Demand	C2	5210B	$152
	C1	Hach 8043	$152
Boron	A1	200.7	$10
	C2	4500-B B	$76
Bromide	A2	300.0	$26

Calcium	A1	200.7	$10
	C	3111B	$26
		3500-Ca D	$39
	C1	Hach 8222	$39
Carbon, Total Organic (TOC)	C2	5310 B	$39
		5310 C	$39
		5310D	$39
Chemical Oxygen Demand	A	410.3	$39
	A2	410.4	$76
	C2	5220 C	$39
		5220 D	$76
	C1	Hach 8000	$39
		Hach 8230	$39
Chloride	A2	300.0	$26
	C2	4500-Cl B	$39
		4500-Cl C	$39
		4500-Cl E	$39
	C1	Hach 8225	$39
Chlorine, Free	C1	Hach 8021	$39
Chlorine, Total Residual	C2	4500-Cl B	$39
		4500-Cl C	$39
		4500-Cl D	$39
		4500-Cl F	$39
		4500-Cl G	$39
	C1	Hach 8167	$39
		Hach 8168	$39
		Hach 10014	$39
Color	C2	2120 B	$32
		2120 C	$32
		2120 E	$32
Cyanide, Amenable to Chlorination	A	335.1	$76
	C2	4500-CN G	$76
Cyanide, Available	Y	OIA-1677	$76
Cyanide, Total	A	335.3	$76
	C2	4500-CN B and either (a) 4500-CN C, (b) 4500-CN D, or (c) 4500-CN E	$89

Fluoride	A2	300.0	$26
	C2	4500-F B	$39
		4500-F C	$39
		4500-F D	$39
		4500-F E	$39
	C1	Hach 8029	$39
Hardness	A	130.1	$10
	A1	200.7	$10
	C2	2340B	$39
		2340C	$39
	C1	Hach 8226	$39
Kjeldahl, Total Nitrogen	A	351.1	$76
		351.4	$76
	A2	351.2	$76
	C2	Combination of 4500-NH_3 B and either (a) 4500-N_{org} B or (b) 4500-N_{org} C	$115
		4500-NH_3 C	$39
	Z10	PAI-DK01	$76
	Z11	PAI-DK02	$76
	Z12	PAI-DK03	$76
Methylene Blue Active Substances	C2	5540C	$39
Nitrate (as N)	A	352.1	$76
	A2	300.0	$26
Nitrate-Nitrite (as N)	A2	300.0	$26
		353.2	$76
	C2	4500-NO_3 E	$76
		4500-NO_3 F	$76
		4500-NO_3 H	$76
Nitrite (as N)	A	354.1	$76
	A2	300.0	$26
	C2	4500-NO_2 B	$76
	C1	Hach 8507	$76
Oil and Grease and Total Petroleum Hydrocarbons	C2	5520B	$76
	K1	1664A	$76

Orthophosphate	A	365.3	$76
	A2	300.0	$26
		365.1	$76
	C2	4500-P E	$76
		4500-P F	$76
	C1	Hach 8048	$39
Oxygen-consumption Rate (SOUR)	C2	2710B	$39
Oxygen, Dissolved	C2	4500-O C	$26
		4500-O G	$26
	C1	Hach 8229	$26
pH (Hydrogen Ion)	A	150.1	$39
	C2	4500-H B	$39
	C1	Hach 8156	$39
Phenols	A	420.1	$116
	C1	Hach 8047	$116
Phosphorus, Total	A	365.3	$76
		365.4	$76
	A2	365.1	$76
	C2	4500-P B	$76
		4500-P E	$76
		4500-P F	$76
	C1	Hach 8190	$76
Potassium	A	258.1	$26
	A1	200.7	$10
	C	3111B	$26
		3500-K D	$26
Residue, Filterable (TDS)	C2	2540C	$39
Residue, Nonfilterable (TSS)	C2	2540D	$39
	C1	Hach 8158	$39
Residue, Settleable Solids	A	160.5	$39
	C2	2540F	$39
Residue, Total	A	160.3	$39
	C2	2540B	$39
Residue, Volatile	A	160.4	$39
Silica, Dissolved	A	370.1	$76
	A1	200.7	$10
	C	4500-Si D	$76
	C2	4500-SiO_2 C	$76

Sodium	A1	200.7	$10
	C	3111B	$26
Sodium Azide	C2	4110C	$76
Specific Conductance	A	120.1	$39
	C2	2510B	$39
	C1	Hach 8160	$39
Sulfate	A	375.1	$76
	A2	300.0	$26
	C2	4500-SO_4 C	$76
		4500-SO_4 D	$76
	C1	Hach 8051	$39
Sulfide (includes total and soluble)	C2	4500-S D	$76
		4500-S F	$39
	C1	Hach 8131	$39
Sulfite	C2	4500-SO_3 B	$76
	C1	Hach 8071	$39
Temperature, Degrees Celsius	C2	2550B	$13
Total, Fixed and Volatile Solids in Solid and Semi-solid Samples in Sludge	C2	2540G	$39
Turbidity, NTU	A2	180.1	$39
	C2	2130B	$39
3. Metals in Wastewater			
a. Sample Preparation for Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Extractable Metals	C	3030C	$7
Microwave Digestion	Z7	CEM Microwave Digestion	$7
Nitric Acid	C	3030E	$7
Nitric Acid/Hydrochloric Acid	C	3030F	$7
Nitric Acid/Perchloric Acid	C	3030H	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I	$7
Nitric Acid/Sulfuric Acid	C	3030G	$7
Preliminary Filtration	C	3030B	$7
b. Methods to Analyze Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26
		3111D	$26

Antimony	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
Arsenic	A	206.5	$39
	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26
		3500-As C	$76
	C1	Hach 8013	$39
Barium	A1	200.7	$10
		200.8	$26
	C	3111D	$26
		3113B	$26
Beryllium	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111D	$26
		3113B	$26
		3500-Be D	$76
Cadmium	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
		3500-Cd D	$76
Chromium (VI) Hexavalent	A	218.4	$26
	C	3500-Cr D	$39
		3111C	$26
	C1	Hach 8023	$39

Chromium, Total	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
		3500-Cr D	$76
	C1	Hach 8023	$39
Cobalt	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
Copper	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
		3500-Cu D	$76
	C1	Hach 8506	$39
Gold	A	231.2	$26
	C	3111B	$26
Iridium	A	235.2	$26
	C	3111B	$26
Iron	A1	200.7	$10
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
		3500-Fe D	$76
	C1	Hach 8008	$39

Lead	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
		3500-Pb D	$76
	C1	Hach 8033	$39
Lithium	A1	200.7	$10
Magnesium	A1	200.7	$10
	C	3111B	$26
		3500-Mg D	$76
Manganese	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3113B	$26
		3500-Mn D	$76
	C1	Hach 8034	$39
Mercury	A	245.2	$52
	A1	245.1	$52
	A4	1631E	$152
	C	3112B	$52
Molybdenum	A1	200.7	$10
		200.8	$26
	C	3111D	$26
		3113B	$26
Nickel	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
	C1	Hach 8037	$39
Osmium	A	252.2	$26
	C	3111D	$26
Palladium	A	253.2	$26
	C	3111B	$26

Platinum	A	255.2	$26
	C	3111B	$26
Rhodium	A	265.2	$26
	C	3111B	$26
Ruthenium	A	267.2	$26
	C	3111B	$26
Selenium	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3113B	$26
		3114B	$76
Silver	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3113B	$26
Strontium	A1	200.7	$10
	C	3111B	$26
		3500-Sr B	$26
		3500-Sr C	$20
		3500-Sr D	$26
Thallium	A	279.2	$26
	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
Tin	A1	200.7	$10
		200.9	$26
	C	3111B	$26
		3113B	$26
Titanium	A	283.2	$26
	C	3111D	$26
Vanadium	A1	200.7	$10
		200.8	$26
	C	3111D	$26
		3500-V D	$76

Zinc	A	289.2	$26
	A1	200.7	$10
		200.8	$26
		200.9	$26
	C	3111B	$26
		3111C	$26
		3500-Zn E	$76
		3500-Zn F	$76
	C1	Hach 8009	$39
4. Aquatic Toxicity Bioassay of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Toxicity, Acute	M1	EPA/600/4-90/027F	$194
	Z13	821-R-02-012	$194
Toxicity, Chronic	N1	EPA/600/4-91/002	$194
	Z3	821-R-02-013	$194
5. Organic Chemicals of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Volatile Organics for Pharmaceuticals	D3	524.2 (4.1)	$152
Purgeable Hydrocarbons	E	601	$76
Purgeable Aromatics	E	602	$76
Acrolein and Acrylonitrile	E	603	$76
		624 (Approved for screening only, not for quantification)	$152
		1624B	$152
Phenols	E	604	$116
Phthalate ester	E	606	$116
Nitrosamines	E	607	$116
Organochlorine Pesticides and PCBs	E	608	$152
Nitroaromatics and Isophorone	E	609	$116
PAHs	E	610	$116
Haloethers	E	611	$116
Chlorinated Hydrocarbons	E	612	$116
2, 3, 7, 8-Tetrachlorodibenzo-p-Dioxin	E	613	$457
Carbon-, Hydrogen-, and Oxygen-Containing Pesticides	Z2	616	$116
Purgeables	E	624	$152
Base/Neutrals and Acids (all analytes excluding pesticides)	E	625	$152
Base/Neutrals and Acids (pesticides only)	E	625	$152

Tetra- through Octa-Chlorinated Dioxins and Furans	E	1613B	$258
VOCs by Isotope Dilution GC/MS	E	1624B	$152
Semivolatile Organic Compounds by Isotope Dilution GC/MS	E	1625B	$152
Organophosphorus Pesticides	E	1657	$116
VOCs Specific to the Pharmaceutical Manufacturing Industry by Isotope Dilution GC/MS	K2	1666 (A)	$152
Herbicides	C2	6640B	$116
Ethylene Glycol	K	BLS-188	$152
6. Radiochemistry of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Gross Alpha	C2	7110B	$206
	L	900	$206
Gross Beta	C2	7110B	$206
	L	900.0	$206
Radium, Total	C2	7500-Ra B	$206
	L	903.0	$206
Radium 226	C2	7500-Ra C	$206
	L	903.1	$206
SECTION C. SOLID WASTE PARAMETERS			
1. Microbiology of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Coliforms, Total, by Membrane Filter	F	9132	$228
Coliforms, Total, by Multiple Tube Fermentation	F	9131	$228
2. Physical Properties Testing of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Corrosive to Steel	F	1110A	$63
Corrosivity—pH Determination	F	9040C	$63
EP Toxicity	F	1310B	$76
Ignitability (Flashpoint Determination)	F	1010A	$32
		1020B	$32
Paint Filter Liquids Test	F	9095B	$19
TCLP	F	1311	$303
3. Sample Preparation for Metals in Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Dissolved in Water	F	3005A	$7
Microwave Assisted Digestions	F	3015A	$7
		3051	$7
		3052	$7

Oils, Greases, and Waxes	F	3040A	$7
		3031	$7
Sediments, Sludges, and Soils	F	3050B	$7
Total Metals	F	3010A	$7
		3020A	$7
Total Recoverable in Water	F	3005A	$7
4. Inorganic Chemistry and Metals of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	F	6010B	$10
		6020	$26
	F11	7000B	$26
Ammonia	A	350.3	$39
Antimony	F	6010B	$10
		6020	$26
		7062	$76
	F11	7000B	$26
	F12	7010	$26
Arsenic	F	6010B	$10
		7061A	$76
		7062	$76
		7063	$76
		6020	$26
	F12	7010	$26
Barium	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Beryllium	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Bomb Preparation Method for Solid Waste	F	5050	$7
Boron	F	6010B	$10
Bromide	F	9056	$26
		9211	$39
Cadmium	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26

Calcium	F	6010B	$10
	F11	7000B	$26
Cation-Exchange Capacity of Soils	F	9080	$34
		9081	$34
Chloride	F	9056	$26
		9057	$76
		9212	$39
		9250	$76
		9251	$76
		9253	$39
Chlorine, Total, in New and Used Petroleum Products	F	9075	$76
		9076	$39
		9077	$39
Chromium, Hexavalent	F	7195	$26
		7196A	$76
		7197	$26
		7198	$40
		7199	$76
Chromium, Total	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Cobalt	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Compatibility Test for Wastes and Membranes Liners	F	9090A	$152
Copper	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Cyanide	F	9010C	$13
		9012B	$76
		9213	$76
		9014	$76
	F9	9015	$76
Cyanide Extraction for Solids and Oils	F10	9013A	$39
Dermal Corrosion	F	1120	$63

EP for Oily Wastes	F	1330A	$76
Flashpoint Determination	F	1030	$32
Fluoride	F	9056	$26
		9214	$39
Iron	F	6010B	$10
	F11	7000B	$26
	F12	7010	$26
Kjeldahl Total, Nitrogen	A	351.4	$76
Lead	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Liquid Release Test Procedure	F	9096	$39
Lithium	F	6010B	$10
	F11	7000B	$26
Magnesium	F	6010B	$10
	F11	7000B	$26
Manganese	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Mercury	F	7470A	$52
		7471A	$52
		7472	$152
Molybdenum	F	6010B	$10
	F11	7000B	$26
	F12	7010	$26
Multiple EP	F	1320	$152
Nickel	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Nitrate	F	9210	$39
		9056	$26
Nitrite	F	9056	$26
Oil and Grease and Petroleum Hydrocarbons	K1	1664A	$76
O-Phosphate-P	F	9056	$26
Osmium	F	6010B	$10
	F11	7000B	$26

Paint Filter Liquids Test	F	9095B	$19
Perchlorate	Z	314.0	$76
pH (Hydrogen Ion)	F	9041A	$39
		9045D	$39
Phosphorus	F	6010B	$10
Phosphorus, Total	A	365.3	$76
Potassium	F	6010B	$10
	F11	7000B	$26
Saturated Hydraulic and Leachate Conductivity and Intrinsic Permeability	F	9100	$152
Selenium	F	6010B	$10
		7741A	$26
		7742	$76
	F12	7010	$26
Silica	F	6010B	$10
Silver	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
Sodium	F	6010B	$10
	F11	7000B	$26
Sodium Azide	C2	4110C	$76
Specific Conductance	F	9050A	$39
SPLP	F	1312	$303
Strontium	F	6010B	$10
	F11	7000B	$26
Sulfate	F	9035	$76
		9036	$76
		9038	$76
		9056	$26
Sulfides	F	9030B	$76
		9031	$76
		9215	$76
		9034	$76
Thallium	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26

Tin	F	6010B	$10
	F11	7000B	$26
Titanium	F	6010B	$10
Vanadium	F	6010B	$10
	F11	7000B	$26
	F12	7010	$26
White Phosphorus by GC	F	7580	$116
Zinc	F	6010B	$10
		6020	$26
	F11	7000B	$26
	F12	7010	$26
5. Organics Procedures in Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Separatory Funnel Liquid-Liquid Extraction	F	3510C	$13
Organic Compounds in Water by Microextraction	F5	3511	$13
Continuous Liquid-Liquid Extraction	F	3520C	$13
SPE	F	3535	$13
Soxhlet Extraction	F	3540C	$13
Automated Soxhlet Extraction	F	3541	$13
Pressurized Fluid Extraction	F	3545	$13
Ultrasonic Extraction	F	3550B	$13
Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons	F	3560	$13
Supercritical Fluid Extraction of PAHs	F	3561	$13
MSE	F4	3570	$13
Waste Dilution	F	3580A	$13
Waste Dilution for Volatile Organics	F	3585	$13
Alumina Cleanup	F	3610B	$13
Alumina Column Cleanup and Separation of Petroleum Wastes	F	3611B	$13
Florisil Cleanup	F	3620B	$13
Silica Gel Cleanup	F	3630C	$13
Gel-Permeation Cleanup	F	3640A	$13
Acid-Base Partition Cleanup	F	3650B	$13
Sulfur Cleanup	F	3660B	$13
Sulfuric Acid/Permanganate Cleanup	F	3665A	$13
Screening for Pentachlorophenol by Immunoassay	F	4010A	$76
Screening for 2,4-Dichlorophenoxyacetic Acid by Immunoassay	F	4015	$76
Screening for PCBs by Immunoassay	F	4020	$76

Screening for PCDDs and PCDFs by Immunoassay	F3	4025	$76
Soil Screening for Petroleum Hydrocarbons by Immunoassay	F	4030	$76
Soil Screening for PAHs by Immunoassay	F	4035	$76
Soil Screening for Toxaphene by Immunoassay	F	4040	$76
Soil Screening for Chlordane by Immunoassay	F	4041	$76
Soil Screening for DDT by Immunoassay	F	4042	$76
TNT Explosives in Soil by Immunoassay	F	4050	$76
RDX in Soil by Immunoassay	F	4051	$76
VOCs in Various Sample Matrices Using Equilibrium Headspace Analysis	F8	5021A	$13
Purge-and-Trap for Aqueous Samples	F6	5030C	$13
Volatile, Nonpurgeable, Water-Soluble Compounds by Azeotropic Distillation	F	5031	$13
VOCs by Vacuum Distillation	F	5032	$13
Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples	F2	5035A	$13
Analysis for Desorption of Sorbent Cartridges from VOST	F	5041A	$13
EDB and DBCP by Microextraction and GC	F	8011	$116
$C_{10} – C_{32}$ Hydrocarbons	K	8015AZ 1	$116
Nonhalogenated Organics Using GC/FID	F7	8015D	$116
Aromatic and Halogenated Volatiles by GC Using Photoionization and/or Electrolytic Conductivity Detectors	F	8021B	$152
Acrylonitrile by GC	F	8031	$76
Acrylamide by GC	F	8032A	$76
Acetonitrile by GC with Nitrogen-Phosphorus Detection	F	8033	$76
Phenols by GC	F	8041	$116
Phthalate Esters by GC/ECD	F	8061A	$116
Nitrosamines by GC	F	8070A	$116
Organochlorine Pesticides by GC	F	8081A	$152
PCBs by GC	F	8082	$152
Nitroaromatics and Cyclic Ketones by GC	F	8091	$116
PAHs	F	8100	$116
Haloethers by GC	F	8111	$116
Chlorinated Hydrocarbons by GC: Capillary Column Technique	F	8121	$116
Aniline and Selected Derivatives by GC	F	8131	$116
Organophosphorus Compounds by GC	F	8141A	$152
Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzylation Derivatization	F	8151A	$152

VOCs by GC/MS	F	8260B	$152
Semivolatile Organic Compounds by GC/MS	F	8270C	$152
Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Wastes Using TE/GC/MS	F	8275A	$152
8280A: Polychlorinated Dibenzo-*p*-Dioxins and PCDFs by HRGC/LRMS	F	8280A	$258
PCDDs and PCDFs by HRGC/HRMS	F	8290	$258
PAHs	F	8310	$116
Determination of Carbonyl Compounds by HPLC	F	8315A	$116
Acrylamide, Acrylonitrile, and Acrolein by HPLC	F	8316	$116
N-Methylcarbamates by HPLC	F	8318	$116
Solvent-Extractable Nonvolatile Compounds by HPLC/TS/MS or UV Detection	F	8321A	$152
Solvent Extractable Nonvolatile Compounds by HPLC/PB/MS	F	8325	$152
Nitroaromatics and Nitramines by HPLC	F	8330	$116
Tetrazene by Reverse Phase HPLC	F	8331	$116
Nitroglycerine by HPLC	F	8332	$116
GC/FT-IR Spectrometry for Semivolatile Organics: Capillary Column	F	8410	$116
Analysis of Bis (2-chloroethyl) Ether and Hydrolysis Products by Direct Aqueous Injection GC/FT-IR	F	8430	$116
Total Recoverable Petroleum Hydrocarbons by Infrared Spectrophotometry	F	8440	$116
Colorimetric Screening Method for TNT in Soil	F	8515	$76
TOX	F	9020B	$76
POX	F	9021	$76
TOX by Neutron Activation Analysis	F	9022	$114
EOX in Solids	F	9023	$114
TOCs	F	9060A	$76
Phenolics	F	9065	$152
		9066	$152
		9067	$152
HEM for Aqueous Samples	F	9070A	$76
HEM for Sludge, Sediment, and Solid Samples	F	9071B	$76
PCBs in Waste Oil	F1	600/4-81-045	$152
6. Bulk Asbestos Analysis of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Bulk Asbestos Analysis	G	9002	$228
	H	Bulk Asbestos	$228

Fiber Counting	G	7400	$228
		7402	$228
7. Radiochemistry of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alpha-Emitting Radium Isotopes	F	9315	$206
Gross Alpha and Beta	F	9310	$206
Radium-228	F	9320	$206
SECTION D. AIR AND STACK PARAMETERS			
1. Ambient Air Primary and Secondary Pollutants			
Description	**Reference**	**Method/s**	**Fee Per Method**
Carbon Monoxide	O	Appendix C	$393
Formaldehyde	F	8520	$393
Hydrocarbons	O	Appendix E	$393
Lead	O	Appendix G	$393
Nitrogen Dioxide	O	Appendix F	$393
Ozone	O	Appendix D	$393
		Appendix H	$393
Particulate Matter	O	Appendix B	$393
		Appendix J	$393
		Appendix K	$393
Sulfur Oxides	O	Appendix A	$393

2. Stationary and Stack Sources			
Description	**Reference**	**Method/s**	**Fee Per Method**
Carbon Dioxide, Oxygen, and Excess Air	Q	Method 3	$393
Carbon Monoxide	Q	Method 10	$393
		Method 10A	$393
		Method 10B	$393
Carbonyl Sulfide, Hydrogen Sulfide, and Carbon Disulfide	Q	Method 15	$393
Fluoride	Q	Method 13A	$393
		Method 13B	$393
		Method 14	$393
Fugitive Emissions	Q	Method 22	$393
Gaseous Organic Compounds	Q	Method 18	$393
		Method 25	$393
		Method 25A	$393
		Method 25B	$393
Hydrogen Sulfide	Q	Method 11	$393
Inorganic Lead	Q	Method 12	$393
Moisture Content	Q	Method 4	$393
Nitrogen Oxide	Q	Method 7	$393
		Method 7A	$393
		Method 7B	$393
		Method 7C	$393
		Method 7D	$393
		Method 7E	$393
		Method 19	$393
		Method 20	$393
Particulate Emissions by Asphalt Processing	Q	Method 5A	$152
Particulate Emissions by Fiberglass Insulation	Q	Method 5E	$152
Particulate Emissions by Nonsulfate	Q	Method 5F	$152
Particulate Emissions by Nonsulfuric Acid	Q	Method 5B	$152
Particulate Emissions by Pressure Filters	Q	Method 5D	$152
Particulate Emissions by Stationary Sources	Q	Method 5	$152
		Method 17	$152
Particulate Emissions by Sulfur Dioxide	Q	Method 19	$152
Particulate Emissions by Wood Heaters	Q	Method 5G	$152
		Method 5H	$152
Petroleum Products, Heat of Combustion	I	D240-92	$76
		D240-87	$76

Petroleum Products, Hydrometer Method	I	D287-92	$76
Petroleum Products, Sulfur	I	D4294-90	$152
Sulfur and Total Reduced Sulfur	Q	Method 15A	$393
		Method 16	$393
		Method 16A	$393
		Method 16B	$393
Sulfur Dioxide	Q	Method 6	$393
		Method 6A	$393
		Method 6B	$393
		Method 6C	$393
		Method 8	$393
		Method19	$393
		Method 20	$393
Sulfuric Acid Mist	Q	Method 8	$393
Vapor Tightness, Gasoline Delivery Tank	Q	Method 27	$393
Volatile Matter Density, Solids and Water	Q	Method 24	$393
		Method 24A	$393
VOCs	Q	Method 21	$393
	S1	TO-15	$152
Wood Heaters, Certification and Burn Rates	Q	Method 28	$393
		Method 28A	$393
3. ADEQ Emission Test			
Description	**Reference**	**Method/s**	**Fee Per Method**
Particulate Emissions, Dry Matter	R	Method A2	$393
Particulate Emissions, Sulfuric Acid Mist/Sulfur Oxides	R	Method A1	$393

4. National Emission Standards for Hazardous Air Pollutants			
Description	**Reference**	**Method/s**	**Fee Per Method**
Arsenic	S	Method 108	$393
		Method 108A	$393
		Method 108B	$393
		Method 108C	$393
Beryllium	S	Method 103	$393
		Method 104	$393
Mercury	S	Method 101	$393
		Method 101A	$393
		Method 102	$393
		Method 105	$393
Polonium 210	S	Method 111	$393
Vinyl Chloride	S	Method 106	$393
		Method 107	$393
		Method 107A	$393
SECTION E. METHODS DIRECTOR APPROVED UNDER R9-14-610(C)			
Description	**Reference**	**Method/s**	**Fee Per Method**
Chromatographic Method	-	Any	$116
Mass Spectrometric Method	-	Any	$152
Toxicity Method	-	Any	$194
Other Method	-	Any	$75

Table 2. Instrumentation Fees

Description	**Subtype, if any**	**Fee Per Instrument**
Atomic Absorption	Cold Vapor	$76
	Flame Burner	$76
	Graphite Furnace	$76
	Hydride Generator	$76
	Other	$76
Counters for Radioactivity	-	$76
Gas Chromatograph	Electron Capture	$76
	Flame Ionization	$76
	Flame Photometric	$76
	Halide Specific	$76
	Nitrogen/Phosphorus	$76
	Photoionization	$76
	Other	$76

Gas Chromatograph/Mass Spectrometer	High Resolution	$194
	Other than High Resolution	$152
High Pressure Liquid Chromatograph	Ultraviolet	$76
	Fluorescence	$76
	Other	$76
High Pressure Liquid Chromatograph/Mass Spectrometer	-	$152
Inductively Coupled Plasma	-	$76
Inductively Coupled Plasma/Mass Spectrometer	-	$152
Ion Chromatograph	-	$76
Automated Autoanalyzer	-	$76
Mercury Analyzer	-	$76
Organic Halide, Total	-	$76
Transmission Electron Microscope	-	$396
X-Ray Diffraction Unit	-	$76

Historical Note

Exhibit I made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

EXHIBIT II. ALTERNATE DEFAULT LIMITS

Table 1. Default Limits

QUALITY CONTROL PARAMETERS WITHOUT ACCEPTANCE CRITERIA SPECIFIED IN THE METHOD	DEFAULT LIMITS
Matrix Spike/LFM (processed or non-processed)	LCS/LFB
LCS/LFB (processed or non-processed)/Second source reference standard	CCV/continuing IPC
LOQ/MRL (non-processed)	CCV/continuing IPC or ± 50%
LOQ/MRL (processed)	LCS/LFB or ± 50%
QCS (non-processed)	ICV/continuing IPC/manufacturer's limits
QCS (processed)	LCS/LFB/manufacturer's limits
IDOC limits	LFB/LCS
LFB/LCS/LFM/duplicate RPD	IDOC limits/≤20%
Non-CCC compounds	CCC limits
ICV/CCV	± 10%

A. For 8000 methods that do not specify the QC limits for Matrix Spike/LCS, a licensee may use the default limit of ±30%.

B. For 500, 600, 1600, and 8000 series methods that do not specify surrogates or acceptance limits for surrogates, a licensee may use the default limits of 70-130%.

C. For 500, 600, 1600, and 8000 series methods that do not specify internal standards or acceptance limits for internal standards, a licensee may use the default limits of 70-130%.

D. For methods that do not list a precision measurement, a licensee may use 20% RPD.

E. For methods that do not specify the LOQ/MRL, a licensee may use the default limit of ± 50%.

Historical Note

Exhibit II made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

ARTICLE 7. HEALTH SCREENING SERVICES

R9-14-701. Health Screening Laboratory Services

A. In this Section, unless otherwise specified, the following definitions apply:
1. "Activities of daily living" means the tasks that support everyday life, such as toileting, bathing, dressing, eating, moving about, and getting in or out of bed.
2. "Assist" means to give help, support, or aid to an individual in performing a task.
3. "Caregiver" means an individual, such as a home health aide, who receives monetary compensation for assisting another individual with activities of daily living.
4. "Certified laboratory" means the same as in A.R.S. § 36-451.
5. "Drug of abuse" means a chemical substance, such as a narcotic or hallucinogen, that is used by an individual for non-medicinal reasons.
6. "Family member" means an individual related to another individual by birth, marriage, or adoption.
7. "Forensic" means relating to the use of science or technology in the investigation and establishment of facts or evidence intended for use in a court of law.
8. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction.
9. "Health screening laboratory services" means health screening services that determine the need for medical services, as defined in A.R.S. § 36-401, through the performance of laboratory analyses.
10. "Health screening services" means the same as in A.R.S. § 36-401.
11. "Home health aide" means an individual who receives monetary compensation from a home health agency, as defined in A.R.S. § 36-151, or a hospice service agency, as defined in A.R.S. § 36-401, to provide assistance to another individual who is not physically or mentally able to perform one or more of the activities of daily living.
12. "In vitro diagnostic device" means a piece of equipment or tool:
    a. Approved by the U.S. Food and Drug Administration for home use,
    b. Used for the measurement of specific chemicals in materials derived from the human body,
    c. Sold without a prescription, and
    d. Specified in a list available at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfIVD/Search.cfm.
13. "Laboratory analysis" means a test performed by a laboratory on body fluid, tissue, or excretion for the purpose of determining the presence, absence, or concentration of various substances in the human body.
14. "Research" means a systematic investigation to establish facts that may contribute to knowledge from which an individual may draw inferences or a general conclusion.

B. Except as specified in subsection (C), only a certified laboratory shall perform health screening laboratory services.

C. This Section does not apply when:
1. A test is performed by an individual, a family member or guardian of the individual, or another individual under A.R.S. § 32-1471:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
2. An individual's caregiver assists the individual to perform a test:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
3. A laboratory analysis is performed solely for forensic or research purposes;
4. A laboratory analysis is performed on urine to test for drugs of abuse solely for employment purposes; or
5. A laboratory analysis is performed under the jurisdiction of the U.S. Department of Veteran's Affairs or a component of the U.S. Department of Defense.

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4694, effective February 3, 2007 (Supp. 06-4).

R9-14-702. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-703. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-704. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-705. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-706. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-707. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-708. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-709. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

ATTACHMENT B

AUTHORIZING AND IMPLEMENTING STATUTES

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 the developmentally disabled. 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.

36-136. <u>Powers and duties of director; compensation of personnel</u>

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 and 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 and drink that is not potentially hazardous and that is displayed in an area of less than ten lineal feet.

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.
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 (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:

1. Only one cooking school meal per day is prepared and served.
2. The meal is served to not more than fifteen cooking school students.
3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

36-495.01. <u>Licensure program; rules</u>

A. On or before July 1, 1991, the department shall license environmental laboratories engaged in compliance testing. Upon application for an environmental laboratory license, the department shall issue the license if, after investigation, the department determines that the application conforms with the standards established by the department.

B. The director shall prescribe rules providing for minimum standards of proficiency, methodology, quality assurance, operation and safety for environmental laboratories and may prescribe standards for personnel education, training and experience to meet federal environmental statutes or regulations, or enabling reciprocity with other states and the manner and form in which compliance testing results are reported. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with title 49 and rules administered or enforced by the director of environmental quality.

C. The director shall prescribe rules providing minimum standards for third party accreditation.

D. Unless exempted by section 36-495.02, no person may operate or maintain an environmental laboratory without a license issued by the department pursuant to this chapter.

36-495.02. <u>Exemptions</u>

A. This chapter does not apply to an environmental laboratory in this state that is:

1. Certified or designated by the United States environmental protection agency as the laboratory which provides analytical services to this state required for the delegation of primary enforcement responsibility under a federal law or regulation administered by that agency.
2. Operated by the Arizona department of agriculture or the radiation regulatory agency.
3. Performing only compliance testing of parameters which require analysis at the time of sample collection as long as the testing methodologies employed are approved by the director of the department of health services or the department of environmental quality.
4. Licensed to perform those analyses for which it is licensed or certified by another agency of this state.
5. Accredited by a national voluntary laboratory accreditation program administered by the national institute of standards and technology and approved by the department.

B. In addition to the exemptions established in subsection A, the director may also exempt by rule certain classes of environmental laboratories and types of compliance testing, parameters and methods, if the director determines that the exemptions will not adversely affect the public health or the environment. The rules shall be developed in cooperation with the director of the department of environmental quality and the director of the Arizona department of agriculture.

36-495.03. License application; issuance; expiration

A. Unless exempted pursuant to section 36-495.02, a person who operates or maintains an environmental laboratory located in this state shall file an application with the department at least thirty days before the anticipated operation of a new laboratory for an environmental laboratory license accompanied by the license application fee established by this chapter. A person shall obtain a license for each laboratory, except that only one license is required for contiguous or coterminous laboratories under the same ownership. The director, by rule, shall prescribe when noncontiguous laboratories with the same owners may be operated under a single license.

B. The application shall be on a form prescribed and furnished by the department. The application shall be under oath and shall contain:

1. The name and location of the environmental laboratory.

2. The name of the person owning the facility and the name of the individual directing the laboratory.

3. A description of the services and tests provided by the environmental laboratory.

4. Other information the department deems necessary to carry out its powers and duties under this chapter.

C. The department shall issue a regular license to an applicant to operate an environmental laboratory to provide the services and tests described in the application if the department determines that the applicant is in compliance with the provisions of this chapter and rules adopted pursuant to this chapter.

D. If the owner is not the laboratory director, the director shall issue a license jointly to the owner and the laboratory director who are jointly responsible for the maintenance and operation of the laboratory and for violations of this chapter or rules adopted pursuant to this chapter.

E. A license issued by the department is valid only in the name of the persons to whom it is issued and cannot be sold, assigned or transferred. A license is valid only for the facility or facilities for which it is issued. If there is a change in the laboratory name, directorship or ownership or an appointment of an acting laboratory director, the license automatically expires, unless within twenty business days after the change the department is notified in writing of the change and an application for a new license is submitted to the department. A fee shall not be charged for this application. The director shall issue a new license reflecting the change if the laboratory is still in compliance with the provisions of this chapter and rules adopted pursuant to this chapter.

F. A regular license expires one year after the date of issuance and shall be renewed on submission of a renewal application and payment of the renewal application fee prescribed in section 36-495.06, at least thirty days before expiration of the license, unless the director determines pursuant to section 36-495.09 that grounds exist to deny the application.

36-495.04. Laboratory director; duties

The director of an environmental laboratory shall:

1. Ensure that all services and tests provided by the laboratory are performed in compliance with this chapter or rules adopted pursuant to this chapter.
2. Direct and supervise services and tests provided by the laboratory and be responsible for the work of all personnel in the laboratory.
3. Be responsible for safety and hazardous substance control in the laboratory.

36-495.05. Provisional licenses

A. The department may issue a provisional license for a period of not more than twelve months at the time it issues a notice of suspension of a regular license. The department may suspend a regular license if an inspection or investigation of a laboratory reveals a violation of the rules adopted by the director pursuant to this chapter and the director believes that the immediate interests of the public are best served by affording the laboratory the opportunity to correct the deficiencies. The director shall issue a provisional license only if the licensee agrees to carry out a plan acceptable to the department to eliminate the deficiencies within the term of the provisional license or period of time specified by the department.
B. A licensee's agreement to carry out a plan of correction does not constitute a waiver of its right to have a hearing on the notice of suspension. A hearing on the notice of suspension may include review of the appropriateness of the laboratory's plan of correction.
C. An application for a regular license may be submitted thirty days before the expiration of a provisional license issued pursuant to this section. The department shall condition its issuance of a regular license at the expiration of the term of the provisional license on the licensee being in full compliance with the correction plan and this chapter or rules adopted pursuant to this chapter.

36-495.06. Fees

A. The department shall charge and collect a nonrefundable fee for a regular or a renewal license.
B. The director shall establish by rule a fee schedule that does not exceed the cost to the department to conduct an on-site inspection, approve third party accreditation, verify information submitted with the application and other activities related to licensure of environmental laboratories pursuant to this chapter or rules adopted pursuant to this chapter. The fee schedule for application for a regular or renewal license shall be based on the types of compliance testing that the laboratory is licensed to provide.

36-495.07. Inspection; investigations

A. The department may make an initial inspection, and thereafter an annual inspection, of each laboratory to determine compliance with this chapter or rules adopted pursuant to this chapter.
B. An application for licensure pursuant to this chapter constitutes permission for the department's entry or inspection of the laboratory during the pendency of the application and, if licensed, during the term of the license for the purpose of determining compliance with this chapter or rules adopted pursuant to this chapter.
C. The department may require, as part of its inspections, that the laboratory demonstrate proficiency in performing tests that it offers by examining specimens submitted by the department, the United States environmental protection agency or other proficiency testing services approved by the department.
D. In addition to the inspections provided for in subsection A of this section, the department, on its own initiative or on the receipt of a written complaint from a person setting forth facts which, if proven, constitute a violation of this chapter or rules adopted pursuant to this chapter, may make an

investigation of the laboratory's operations, techniques and procedures. If the investigation or an inspection conducted pursuant to this section discloses past or current noncompliance with statutes and rules, the director, in accordance with section 36-495.09, may deny, suspend or revoke a license issued by the department pursuant to this chapter.
E. At any time the department may conduct an investigation of the operation of an unlicensed laboratory performing compliance testing and may conduct on-site inspections of the laboratory, records, procedures and methods to determine whether the laboratory must be licensed pursuant to this chapter.
F. The director by rule shall establish standards and procedures for third party accreditation and exempting inspections and inspection fees for a laboratory that is accredited by a third party.

36-495.08. Reports by laboratories

A laboratory shall make available to the department on written request information and data concerning its operation, techniques and procedures. The department may require that the information be submitted under oath and signed by the owner or director of the laboratory. The department may require the laboratory director or owner to submit other reports or information that it deems necessary to administer this chapter.

36-495.09. Suspension, revocation or denial of license; hearing

A. Pursuant to title 41, chapter 6, article 10, the director may deny, revoke or suspend the license of a laboratory if its owners, officers, agents or employees do any of the following:
1. Violate this chapter or rules adopted pursuant to this chapter.
2. Issue or cause to be issued a report on environmental laboratory work performed in another laboratory without designating the name and address of the laboratory that performed the work.
3. Commit a felony under the laws of any state or of the United States arising out of or in connection with the operation of a laboratory. The record of conviction or a certified copy is conclusive evidence of conviction.
4. Knowingly aid, permit or abet the submission of false or inaccurate information required by this chapter or rules adopted pursuant to this chapter.
5. Violate the requirements for licensure of the laboratory pursuant to this chapter
B. If the director reasonably believes that a violation of subsection A, paragraph 5 of this section has occurred and that the life or safety of the public is immediately affected, on written notice to the owner or director of the laboratory, the director may order the immediate termination of specific testing services, procedures or practices.
C. Except as provided in subsection B of this section and section 41-1092.11, subsection B, the director shall not suspend, revoke or deny a license without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.
D. A person whose application for a license is denied by the director or who has been ordered pursuant to subsection B of this section to immediately terminate specific services, procedures or practices, at any time within thirty days after notice of the denial or order, may request in writing a hearing before the director or a person designated by the director to review the director's action. The hearing shall be held within thirty days after the written request.
E. All hearings shall be held in accordance with title 41, chapter 6, article 10.

36-495.13. Powers of the director

A. In addition to the rules required by section 36-495.01, the director may adopt other rules and prescribe forms that are necessary for the administration and enforcement of this chapter.

B. The director may issue interpretive guidelines on subjects relating to the rules adopted under this chapter.

C. The director may enter into intergovernmental agreements with other agencies of this state for the purpose of licensing environmental laboratories performing compliance testing.

36-495.14. Out-of-state laboratories; licensure; reciprocity

A. Except as provided in this section, a laboratory located outside of this state that performs compliance testing shall be licensed pursuant to this chapter. The laboratory shall pay all applicable fees and is subject to the same investigatory and disciplinary powers of the department. In addition, the department, by rule, may require that the laboratory post a bond with the department to cover the travel costs of prelicensure and postlicensure inspections and evaluations.

B. A laboratory which is located outside of this state and is licensed by this state shall renew the license by submitting an application and fee at least sixty days before the expiration of the license. The department, by rule, may also prescribe that an out-of-state application be accompanied by an additional fee to cover the costs of prerelicensure on-site evaluation and inspection.

C. The director shall designate the location of hearings held in relation to disciplinary matters or the issuance of a license.

D. The director may enter into a reciprocity agreement with the licensing agency of another state if the director determines that the licensing requirements of that state are substantially equal to those of this state. The agreement shall provide that the licensing agencies of both states shall recognize a current license issued by the other state for the purpose of meeting the licensure requirements of either state. The agreement shall also provide that both states, on the request of either state, shall conduct necessary investigations to determine compliance and shall allow on-site inspections by investigators from either state.

E. If a reciprocal state revokes, suspends or refuses to renew the license of a laboratory located in that state, this state shall recognize that action unless the laboratory notifies the department within five business days of the action that it wishes this state to undertake an independent review and investigation and posts a bond as prescribed by the department to conduct the review. If, at the conclusion of that review, this state determines that the laboratory meets the licensure requirements of this state, it shall issue a license to that laboratory on payment of all fees required by this chapter. Notwithstanding the terms of a reciprocity agreement, if either state takes action contrary to the action of the other, neither state has to recognize the license issued by the other.

36-495.15. Environmental laboratory licensure revolving fund; use

A. The environmental laboratory licensure revolving fund is established in the department which consists of monies from gifts, grants, donations, fees derived from department sponsored workshops, conferences and seminars and fees collected pursuant to this chapter.

B. Subject to legislative appropriation, monies in the fund shall be used to support the administration of this chapter and for the costs incurred in administering this chapter and rules adopted for the implementation of this chapter

C. Monies in the fund are exempt from section 35-190. Interest earned on monies in the fund shall be credited to the fund.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-16-0201)
Title 18, Chapter 12, Article 1 Definitions; Applicability, Article 2 Technical Requirements, Article 3 Financial Responsibility, Article 4 Underground Storage Tank Excise Tax, Article 5 Fees, Article 6 Underground Storage tank Assurance Account, Article 7 Underground Storage Tank Grant Program, Article 8 Tank Service Provider Certification, Article 9 Regulated Substance Fund

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

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

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

FROM: Matthew Rippentrop, Legal Intern

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0201)**
Title 18, Chapter 12, Article 1, Definitions, Applicability; Article 2, Technical Requirements; Article 3, Financial Responsibility; Article 4, Underground Storage Tank Excise Tax; Article 5, Fees; Article 6, Underground Storage Tank Assurance Account; Article 7, Underground Storage Tank Grant Program; Article 8, Tank Service Provider Certification; Article 9 Regulated Substance Fund

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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.

A.A.C. Title 18 Chapter 12 relates to the Underground Storage Tank (UST) program, administered by the Department, and designed to prevent, detect, and clean up releases of petroleum and other hazardous substances from USTs into groundwater, surface soils, and subsurface soils. The state program also provides financial assistance to UST owners and operators for upgrading and removing old or failing tanks and cleaning up site contamination from leaking USTs, which are also known as LUSTs. The UST Program was established in 1986 by the legislature to implement UST regulations adopted by Congress in 1984 as part of the federal Resource Conservation and Recovery Act (RCRA).

This report covers 114 Sections that provide specific rules for the regulation of USTs by the Department.

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

Article 1 contains two rules concerning definitions of terms and acronyms used in Chapter 12, relating to definitions; and applicability.

Article 2 contains thirty-seven rules providing the regulated community with technical and procedural requirements regarding UST and LUST systems, which address applicability; prohibition of certain UST systems; performance standards for new UST systems; notification requirements; spill and overfill control; operation and maintenance of corrosion protection; compatibility; repairs allowed; reporting and recordkeeping; general release detection requirements for all UST systems; release detection for petroleum UST systems; release detection for hazardous substance UST systems; methods of release detection for tanks; methods of release detection for piping; release detection recordkeeping; applicability and scope; suspected release; release notification, and reporting; initial response, abatement, and site characterization; LUST site classification; free product; LUST site investigation; remedial response; risk-based corrective action standards; corrective action plan; LUST case closure; groundwater LUST case closures; general reporting requirements; public participation; temporary closure; permanent closure and change-in-services; assessing the UST site at closure or change-in-service; application of closure requirements to previously closed systems; release reporting and corrective action for closed systems; sampling requirements; and UST system codes of practice and performance standards.

Article 3 contains twenty-four rules prescribing mechanisms by which UST owners/operators may establish they are financially responsible in remedying UST systems releases, which address financial responsibility: applicability; financial responsibility: compliance dates: allowable mechanisms: evidence; amount and scope of required financial responsibility; financial test of self-insurance; guarantee; insurance and risk retention group coverage; surety bond; letter of credit; certificate of deposit; state fund or other state assurance; trust fund; standby trust fund; local government bond rating test; local government financial test; local government guarantee; local government fund; substitution of financial assurance mechanisms by owner and operator; cancelation or nonrenewal by a provider of financial assurance; reporting by owner and operator; drawing on financial assurance mechanisms; release from financial responsibility requirements; bankruptcy or other incapacity of owner, operator, or provider of financial assurance; and replenishment of guarantees, letters of credit, or surety bonds.

Article 4 contains nine rules prescribing the duties and responsibilities of suppliers and retailers of certain regulated substances to implement a one cent per gallon excise tax, which addresses duties and responsibilities of a supplier: certain regulated substances; periodic payments: deductions; reporting requirements for suppliers; invoice requirements for suppliers; reports and returns, net gallons required to be indicated; payment of tax: annual return: affidavit of tax responsibility; refunds; and exemption certificates.

Article 5 contains one rule which reiterates the statutory annual UST fee requirement as well as options and time frames for fee payment.

Article 6 contains fifteen rules which implemented the UST assurance account (also known as the state assurance fund or SAF). Due to the recent repeal of controlling state statutes A.R.S. § 49-1051 through § 49-1055, this Article is no longer consistent with state law and the Department proposes to substantially amend these rules. The rules as they stand address eligibility; applicability; general application and direct payment request requirements; reimbursement application process; preapproval application process; direct payment request process; schedule of corrective action costs; scope and standard of review; copayments: applicability, waivers, and credits; interim determination, informal appeals and requests for information; final determinations and formal appeals; priority of assurance account payments; determining financial need priority ranking points; financial documents for determining financial need priority ranking points; and risk priority ranking points.

Article 7 contains fourteen rules that enabled the grant account, which enabled grants to small UST operations. The controlling statute A.R.S. § 49-1071 "The Grant Account" was recently repealed and replaced by A.R.S. § 49-1071 "Grants; Purposes; Priority". Further, the grant account itself was also eliminated effective July 3, 2015. Due to these changes, the Department proposes to substantially amend these rules. The rules as they stand address allocation of grant account funds; eligible projects; amount of grant per applicant or facility; grant application submission period; grant application process; grant application contents; work plan; business plan; review of application; feasibility determination; criteria for determining priority ranking points for applicants other than local governments; criteria for determining priority ranking points for applicants that are local governments; determination of grants to be issued; and grant issuance: notification: payment.

Article 8 contains nine rules describing tank service certification procedures and requirements for tank service providers, which address applicability: presentation of certification; transition; categories of certification; international fire code institute certification: additional certification; alternative certification; application: certification; duration: renewal: changes; discontinuation of tank services; and suspension: revocation.

Article 9 contains three rules which describe the Regulated Substance Fund (RSF) and the Monitored Natural Attenuation (MNA) account within the RSF. As of July 3, 2015 the MNA program has been discontinued, and the Department proposes to repeal this Article in full. The rules as they stand address regulated substance fund; monitored natural attenuation (MNA) account; and monitored natural attenuation (MNA) program.

Year Each Rule was Last Amended or Newly Made

- February 2, 2008: Sections 101, 263, 263.04 264.01, 901, 902, and 903
- June 4, 2006: Sections 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, and 615
- August 20, 2002: Sections 102, 250, 251, 260, 261, 261.01, 261.02, 262, 263.02, 263.03, 264, and 280
- October 21, 1998: Sections 705, 706, 707, 710, 712, and 714
- December 6, 1996: Sections 801, 802, 803, 804, 805, 806, 807, 808, and 809

- July 30, 1996: Sections 210, 211, 220, 221, 222, 230, 231, 232, 233, 234 , 240, 241, 242, 243, 244, 245, 270, 271, 272, 273, 281, 300, 301, 303, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, 316, 317, 318, 320, 322, 323, 324, and 325
- May 23, 1996: Sections 701, 702, 703, 704, 708, 709, 711, and 713
- September 21, 1992: Sections 313, and 319
- December 26, 1991: Sections 402, 403, 404, 405, 406, 407, 408, 409, 410, and 501

Proposed Action

The Department proposes a number of actions to be taken on the rules. These changes would occur during a Chapter-wide rulemaking, which is currently scheduled to be submitted to the Counsel in December of 2017. The proposed changes are enumerated by Article as follows:

Article 1: The Department would make some technical changes to definitions, including corrections to R18-12-12-101 of "RCRA" and "remediation" definitions and replacing "IFCI" (International Fire Code Institute) with "ICC" (International Code Council). The Department plans to insert language into R18-12-102(C) specifying certain pre-existing orders will supersede 18 A.A.C. 12.

Article 2: The Department would make technical and other changes to R18-12-220, R18-12-221, R18-12-230, R18-12-231, R18-12-232, R18-12-233, R18-12-234, R18-12-240 R18-12-241, R18-12-242, R18-12-243, R18-12-244, R18-12-245 R18-12-263.04, R18-12-264, R18-12-270, R18-12-271, R18-12-280, and R18-12-281.

Article 3: The Department would update the incorporations by reference throughout the Article, such as R18-12-300(D) which incorporates the 1994 version of EPA regulations that have since been updated effective October 13, 2015, insert "of this section" in R18-12-306, and repeal R18-12-311.

Article 4: The Department plans to retain current rules as long as the tax remains in effect, which is currently scheduled for repeal on December 31, 2023. The Department would fix the statutory reference in R18-12-404 and the incorrect citations in R18-12-409(D) and R18-12-410(C), as well as remove the ID number requirement for R18-12-405.

Article 5: The Department would fix a typographical error in R18-12-501(C)(2).

Article 6: The Department plans to substantially amend the rules with respect to Laws 2015, Chapter 247 repealing A.R.S. §§ 49-1051 through 49-1055, which effectively replaced the SAF program with a new "preapproval" program.

Article 7: The Department plans to substantially amend the rules with respect to Laws 2015, Chapter 247 repealing A.R.S. § 49-1071 titled "The Grant Account" and replacing with the new A.R.S. § 49-1071 titled "Grants; Purposes; Priority".

Article 8: The Department would update terminology found in R18-12-804 and R18-12-805, Replacing "IFCI" (International Fire Code Institute) with a new term "ICC". ICC (International Code Council) is the new name of the organization. The Department would also repeal R18-12-802.

Article 9: This article was adopted to regulate and prescribe the new Regulated Substance Fund (RSF) and the Monitored Natural Attenuation (MNA) account. As of July 3, 2015 the RSF has been officially removed and the MNA account has concluded; due to this development the Department would repeal this Article.

Summary of Reasons for the Proposed Course of Action

The Department indicates that these proposed changes will successfully and effectively keep the Department rules and procedures in compliance with both state statutory requirements and policy and federal statutory requirements, where they exist. Further, the proposed changes will address any deficiencies in either the clarity or effectiveness of the rules.

Substantive or Procedural Concerns

Staff recognizes no substantive or procedural concerns regarding the Department's report.

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 of the rules are effective in achieving their objectives, with exception to the rules enumerated below:

Article 2: R18-12-233 could be made more effective by adopting new codes in current federal rules. R18-12-263 is effective to a limited extent due to reference to chemicals of concerns with no indication of which chemicals they are; R18-12-263 could be made more effective with language updates to subsection (A).

Article 3: The Department indicates an Auditor General Report from 2013 found the overall effectiveness of the UST Financial Responsibility program controlled by this Article could be improved by conducting outreach to supervisors and clarifying responsibility requirements for staff; no specific findings were made concerning the effectiveness of individual rules.

Article 7: Prior to the repeal of A.R.S. § 49-1071 titled "The Grant Account" and replacement with A.R.S. § 49-1071 titled "Grants; Purposes; Priority", the Department indicates the rules were very effective in achieving these goals.

Article 8: R18-12-802, adopted in December of 1996, was effective in providing time for service providers to obtain permanent certification without interrupting business or the date of March 31, 1997, whichever came first; however, the need for temporary certification has passed and the rule is no longer necessary.

Article 9: As the RSF has been officially removed and the MNA account has concluded, this article has become obsolete and thus no longer effective.

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, over the past five years, there have been no public comments or criticisms on any Sections within the Chapter, nor have there been any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Yes. The Department cites to A.R.S. § 49-104(B), under which it may, "through the director… [a]dopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title", and A.R.S. § 49-1014(A), which states the Department shall "[f]ormulate policies, plans and programs to implement this title to protect the environment". Specific authorizing statutes are enumerated by section below:

Article 1: A.R.S. § 49-1014(A) authorizes the making of rules for the UST program.

Article 2: Additional authorizing statutes include: A.R.S. §§ 49-1001.01(F), 49-1003(C), 49-1004(C) and (D), 49-1005(E) and (F), 49-1008, 49-1009(F), 49-1013, 49-1017, 49-1021.

Article 3: Additional authorizing statute A.R.S. § 49-1006(B) dictates "[e]vidence of financial responsibility… shall be established in a manner prescribed by the director by rule".

Article 4: Additional authorizing statute A.R.S. § 49-1031(H) prescribes the "director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification".

Article 5: Additional authorizing statute A.R.S. § 49-1020 prescribes "[e]ach owner and operator of an underground storage tank that is subject to regulation under this chapter shall pay annually to the department a fee".

Article 6: Additional authorizing statutes A.R.S. §§ 49-1051 through 49-1055 contain statutory requirements prescribing "[a]n owner (or operator)… must follow the preapproval process pursuant to this section to be eligible for reimbursement from the underground storage tank revolving fund for corrective actions taken".

Article 7: Former additional authorizing statutes A.R.S. §§ 49-1071 and 49-1072 created the purpose of the grant account; these statutes have since been repealed and replaced with the new A.R.S. § 49-1071 titled "Grants; Purposes; Priority", which prescribes "[s]ubject to the availability of monies in the underground storage tank revolving fund… an owner (or operator)… may request that the department provide monies for that person to conduct" one or more of the enumerated actions that follow.

Article 8: Additional authorizing statute A.R.S. § 49-1082 declares "a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this section and the rules adopted pursuant to this section, or is supervised by a person certified in accordance with this section and the rules adopted pursuant to this section".

Article 9: Laws 2004, Ch. 273 § 12 (session law) authorized rules to implement the regulated substance fund established in former A.R.S. § 49-1015.01. Former A.R.S. § 49-1052(N) authorized no further action letters to accompany approval of the MNA Program application.

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, with exception of the rules enumerated below:

Article 1: R18-12-101 requires terminology updates to remain consistent with the state; R18-12-102(C) requires clarity in language to convey its intent to preserve judicial and administrative orders in spite of any contradictory new standards. Changes to both rules are included in the proposed course of action.

Article 2: Following changes to federal regulations in 2015, slight variations with federal statutes exist in rules specific to notification (R18-12-222), closure (R18-12-270 through 272) and sampling requirements (R18-12-280). Further minor variations exist due to the 2015 changes to federal regulations between the rules to be enumerated and their corresponding 40 C.F.R. 280 statute: R18-12-210, R18-12-221, R18-12-230 through R18-12-234, R18-12-242, R18-12-245, and R18-12-261. Additionally, the following rules are inconsistent with their corresponding 40 C.F.R. 280 statute and state statute A.R.S. § 49-1009: R18-12-241, R18-12-243, and R18-12-244.

Article 3: Due to changes to federal regulations in 2015, R18-12-300 is no longer consistent with corresponding federal regulation or state law A.R.S. § 49-1006. R18-12-306 does not contain the phrase "of this Section" at the end of the first sentence in subsection (A) which is present in corresponding federal regulation 40 CFR 280.96. R18-12-311 is in direct conflict with

new state UST legislation, specifically A.R.S. § 49-1054(A). These inconsistencies and the conflict of R18-12-311 are addressed in the Department's proposed course of action.

Article 6: The rules of this Article are no longer consistent with state statutes which were substantially amended in 2015. As stated above, the Department plans to address this inconsistency in the proposed course of action by amendment.

Article 7: The rules are no longer consistent with the new state statute that has implemented an entirely new grant program. As stated above, the Department plans to address this inconsistency in the proposed course of action by amendment.

Article 9: This Article is no longer consistent with state statutes. As stated above, the Department to address this inconsistency in the proposed course of action by repeal.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates all rules are currently enforced as written with the exception of:

- R18-12-300(D) due to its conflict with A.R.S. § 49-1006 and the latest federal regulations effective October 13, 2015, and R18-12-311 due to its conflict with 2015 UST legislation, specifically A.R.S. § 49-1054(A).
- Due to recent lawmaking replacing of the SAF program with the new "preapproval" program, Article 6 has not been used or enforced since January 1, 2011
- The grant account implemented by Article 7 has been inactive for the past five years.
- The statutory MNA program within the RSF as of July 3, 2015 is over, thus Article 9 "Regulated Substance Fund" is no longer enforced.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. With respect to the rules the Department has identified requiring amendment or repeal in their proposed course of action, the Department indicates that all of the rules are clear, concise, and understandable.

8. <u>Stringency of the Rules:</u>

a. <u>Are the rules more stringent than corresponding federal law?</u>

Yes. R18-12-222 is more stringent than RCRA § 9002 and 40 CFR 280.22.

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

The Department indicates R18-12-222 requires one more additional notice for tank replacement or upgrade than corresponding federal law, but notes the additional notice is necessary to comply with 40 CFR 281.31 "Upgrading Existing UST Systems". The Department asserts the best alternative to meet the minimal requirements of 40 CFR 281.31 and 40 CFR

281.22, involving compliance monitoring procedures, is to require additional notice of replacement or upgrade. The Department states "the best strategy is to require updates from the facility owner or operator for material changes in facility operation related to Arizona regulations. This allows ADEQ to allocate scarce inspection and compliance resources where most appropriate and make efficient use of traveling personnel."

9. For rules adopted after July 29, 2010:

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

No. The Department asserts no rules adopted or amended after July 29, 2010 require the issuance of a regulatory 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. The Department indicates it did not complete the course of action proposed in the last five-year-review report, specifically for Articles 1-5, and 8. A review of the previous five-year-review report shows that all of the proposed changes of the previous report are present in the current report. All of the previous proposed changes were qualified with the caveat "moratorium permitting". As stated in this current report, the Department anticipated submitting these rule changes to the Council in December 2012. The Department did not believe these actions would meet the moratorium exemption criteria, and thus did not submit the proposed actions to the Council.

11. Has the agency included a proposed course of action?

Yes. The Department proposes specific actions for a number of Articles and rules in their report, enumerated within their report and earlier in this memorandum.

Conclusion

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

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

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

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0201)**
Title 18, Chapter 12, Article 1, Definitions, Applicability; Article 2, Technical Requirements; Article 3, Financial Responsibility; Article 4, Underground Storage Tank Excise Tax; Article 5, Fees; Article 6, Underground Storage Tank Assurance Account; Article 7, Underground Storage Tank Grant Program; Article 8, Tank Service Provider Certification; Article 9 Regulated Substance Fund

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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. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules in Articles 1-9 contained in the five-year-review report (5YRR). All of the rules included in Articles 1–9 have been created or amended prior to the last 5YRR. These rules were primarily initial adopted in 1992 or 1996, with the most recent amendments to any of the rules included in Articles 1 – 9 occurring in 2008.

Within the 5YRR, the Department identified rules that are more stringent than federal requirements that will not be included in the December 2017 rulemaking. Therefore, due to the length of time since an EIS has been completed for these rules, it is recommended that the Council consider requesting an economic analysis report from the Department covering all rules not slated for inclusion in the December 2017 rulemaking that are more stringent than federal requirements. The economic analysis shall be submitted by October 2016 and shall demonstrate that the benefits of the more stringent state rules exceed the costs of the additional regulation.

The rules in Chapter 12 govern the Underground Storage Tank (UST) Program, which is designed to prevent, detect and clean up releases of petroleum and other hazardous substances from USTs into the groundwater and surface/subsurface soils. The UST program was

established in 1986 to implement regulations included in the 1984 Federal Resource Conservation and Recovery Act.

As of November 2015, the Department indicates that there are 28,431 USTs in the State. Of that number there are 6,508 USTs that are 'active'—meaning they are open or only temporarily closed. The remainder, or 21,923, are 'inactive'—meaning they are permanently closed.

The Department also provided information on the number of recorded UST leaks and the number of those that have been cleaned. To date, the Department has been notified of 8,848 USTs leaks and a total of 8,150 USTs (or 92%) have been remediated to applicable standards. The sooner a leak is detected the less resulting contamination: earlier detection means the contamination will have spread less, and perhaps has not yet hit groundwater. Therefore, earlier detection helps to mitigate any potential public health impact.

The Department has processes in place to support timely detection, specifically R18-12-222 requires notifications in the following instances: 1) a tank replacement or upgrade; 2) a change in leak detection status; 3) temporary closure, permanent closure, or a return to active service following temporary closure; 4) certain changes in UST contents; and, 5) when there is a change in the status of financial responsibility for the UST. Please see #2 below for additional discussion on the Department's UST notification requirements.

ADEQ believes the economic impact has primarily been as predicted for the rules in Articles 1 – 9. In a few instances, the EIS is no longer accurate, primarily due to the amount of time that has lapsed since its creation. For example, the EIS for R18-12-263.04 is not accurate due to the elimination of the reimbursement funding source, (i.e., the State Assurance Fund) and for R18-12-272 the costs estimate from 1996 was considerably lower than the current cost of a site assessment. The Department noted one rule, R18-12-270, for which the economic impact has changed due to a redetermination of the possible underlying reasons why a UST closure extension is typically not requested.

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

The Department notes that 2015 enacted legislation (HB 2636), made a number of changes to the state statutes governing the UST program; in addition, a major U.S. Environmental Protection Agency rule went into effect in October 2015. Both the state statutory change and the federal rule change created a number of points that will require subsequent amendment in the Chapter 12 rules in order for the rules and statute to be consistent, clear, and up-to-date.

For example, the Department notes that a number of the rules require amendment to align with state and/or federal statutory changes and to improve their clarity by updating technical definitions and additional specification language (e.g. R18-12-101, R18-12-102(C), R18-12-220, R18-12-221, R18-12-262(C), R18-12-804, and R18-12-805).

In the 5YRR, the Department addressed inconsistencies concerning R18-12-261 (Initial Response, Abatement, and Site Characterization) and suggested that the rule that should be reviewed to determine if the benefits continue to exceed the cost to the regulated community, due to inconsistencies in alignment with federal requirements – specifically the rule is consistent with 40 CFR 280.61 "Initial Response", but not consistent with 40 CRF 280.62 "Initial abatement measures and site check". This issue is currently under review as the "Department is considering whether the exception language in the federal rule would allow it to reduce the economic impact on tank owners while still protecting human health and the environment." Similarly, R18-12-262 (LUST Site Investigations) is consistent with some provisions of federal law (40 CRF 280.65 "Investigations for soil and groundwater cleanup" though inconsistent with 40 CRF 280.63 "Initial site characterization". Again, the Department is reviewing the possibility to "reduce the economic impact while still protecting human health and the environment".

In addition, amendments may be required to R18-12-270 (Temporary Closures) following review of the cost and benefit of the additional notification beyond what is federally required, with the end goal of determining if changes to the rule will facilitate return of parcels with abandoned tanks to commercial use while keeping unsafe tanks out of operation.

Finally, the Department indicates that they have vetted the cost/benefit of the additional notifications required in R18-12-222 (Notification Requirements) which is more stringent than the only a one-time federal notification requirement and has determined that the benefit of the additional notifications exceeds the burden of notifying the Department. Specifically, the Department reports that owners and operators oftentimes discover issues as a result of the notification self-assessment. In addition, the notifications provides the Department inspectors with knowledge of recent changes at the facility.

The Department indicated that the recommended rule revisions addressed in the five-year-review report would be submitted in 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.

Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Misael Cabrera
Director

November 30, 2015

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Submission of Five-Year-Review Report for 18 A.A.C. 12-Underground Storage Tanks

Dear Ms. Ong:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality submits the attached five-year-review report for Chapter 12 of Title 18, Arizona Administrative Code, to the Governor's Regulatory Review Council. I have included copies of the rules that were reviewed, the authorizing statutes, and the economic impact statements previously prepared on the rules.

In the process of conducting the five-year-review report, the Department conducted a thorough analysis of the existing rules subject to the review to determine whether each rule has adequate authority; objectives are being met; the rules are effective, consistent with other state and federal laws, being enforced and clear, concise and understandable. The Department also reviewed its records for any written comments received during the last five years on the rules, and changes to the economic impact of the rules since the time of their adoption.

There is no rule in Chapter 12 for which review was omitted with the intention that the rule expire under A.R.S. § 41-1056(J). Also, Chapter 12 does not contain any rule for which review was omitted because the Council rescheduled the review of the rule under A.R.S. § 41-1056(H). I certify that this agency is in compliance with A.R.S. § 41-1091.

The report identifies a number of corrections needed in Chapter 12 rules and proposes a course of action to make those corrections. The Department will continue to review and seek comment on the existing rules as permitted under the moratorium.

Please do not hesitate to contact us if there are any questions we can answer for you regarding this report. If you have any questions, please contact Mark Lewandowski at 771-2230. Thank you for your assistance in reviewing the Department's rules.

Sincerely,

Misael Cabrera
Director

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
5-YEAR-REVIEW REPORT: Underground Storage Tanks
A.A.C. Title 18, Chapter 12

The state Underground Storage Tank (UST) Program, administered by the Arizona Department of Environmental Quality (ADEQ), is designed to prevent, detect and clean up releases of petroleum and other hazardous substances from USTs into the groundwater, surface soils and subsurface soils. The state program also provides financial assistance to UST owners and operators for upgrading and removing old or failing tanks and cleaning up site contamination from leaking USTs, which are also known as LUSTs. The UST Program was established in 1986 by the Legislature to implement UST regulations adopted by Congress in 1984 as part of the federal Resource Conservation and Recovery Act.

18 A.A.C. 12 contains 9 Articles and 114 Sections that provide specific rules for the regulation of Underground Storage Tanks (USTs) by the Arizona Department of Environmental Quality (ADEQ). None of the current 114 Sections have been created or updated since the last 5-year-review report. The Chapter 12 Articles, with numbers of Sections in parentheses, are:

Article 1. Definitions; Applicability (2)
Article 2. Technical Requirements (37)
Article 3. Financial Responsibility (24)
Article 4. Underground Storage Tank Excise Tax (9)
Article 5. Fees (1)
Article 6. Underground Storage Tank Assurance Fund (15)
Article 7. Underground Storage Tank Grant Program (14)
Article 8. Tank Service Provider Certification (9)
Article 9. Regulated Substance Fund (3)

As of November 9, 2015, ADEQ has recorded 28,431 USTs in the state of Arizona, 6,508 of which are active. Additionally, ADEQ has been notified of 8,848 UST leaks or releases of which 8,150 have been cleaned up to applicable standards.

NOTE: In discussing the consistency of these rules with state and federal statutes and rules, and their stringency compared to corresponding federal law, this report considers significant 2015 Arizona legislation affecting USTs, (HB 2636) as well as a major U.S. Environmental Protection Agency (EPA) rule that was effective in Arizona on October 13, 2015. The EPA rule impacts DEQ's responsibility under 49-1014(A) to adopt rules that will enable Arizona's UST program to be approved by EPA.

40 CFR 280 contains the EPA regulations that apply to USTs containing petroleum or hazardous substances. The EPA regulations for evaluating and approving state UST programs to operate in lieu of the federal underground storage tank (UST) program are in 40 CFR 281. To qualify for final approval, a state's program must be ''no less stringent'' than the federal program. Arizona does not currently have State Program Approval from the EPA for its UST Program, as intended under A.R.S. § 49-1014(A). This is not because of inconsistencies between state and federal rules, but because of an inconsistency between a state statute and federal rules. "Owner," which

is defined in Arizona at A.R.S. § 49-1001.01, differs slightly from the federal definition of "Owner," which is defined in federal rules at 40 CFR 280.12 and in "lender liability" rules, subpart I of part 280. Under the federal definition, the owner of the property is automatically an owner of the UST; however, under the Arizona definition, certain conditions must exist in order for the property owner to incur the liability of an UST owner.

An alternative to State Program Approval is set out at 40 CFR 280.12 in the definition of "implementing agency", allowing a state program to operate either under RCRA § 9004 (42 U.S.C 6991c; "Approval of State programs") or through a memorandum of agreement. EPA and ADEQ entered into such a memorandum of agreement in 1988 and have renewed it periodically. It currently runs through June 30, 2020. EPA continues to recognize ADEQ as the "implementing agency" through cooperative agreements which partially fund the State UST program on an annual basis.

The 2015 EPA rulemaking contains a number of requirements which are arguably more stringent than current Arizona rule requirements and this report is a first step in identifying some of those provisions.

The 9 Articles of 18 A.A.C. 12 are discussed individually in the following sections.

ARTICLE 1. DEFINITIONS; APPLICABILITY

Structure and Purpose of Article 1

18 A.A.C. 12, Article 1 contains definitions for terms and acronyms used in Chapter 12 and general rules of applicability that are basic to all of Chapter 12. Article 1, consisting of Sections R18-12-101 through R18-12-103, was adopted effective September 21, 1992, and has been amended, in whole or in part, in 1996 and 2002.

The current Article 1 is organized as follows:

R18-12-101. Definitions
R18-12-102. Applicability
R18-12-103. Repealed

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 1

1. General and Specific Statutes Authorizing the Rules:

General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of rules for the UST program.

3. Effectiveness of the Rules in Achieving their Objectives: The rules effectively define terms used in the rules and clarify the responsibilities of owners and operators as established in state statute.

5. Status of agency enforcement policy regarding the rules: Definitions of terms are enforced within the Sections where they are used. R18-12-102 is central to the enforcement of the Chapter as a whole and is also being enforced.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 1 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The economic impact of R18-12-101 and R18-12-102 has not differed significantly from that projected in the economic impact statements at last rule adoption published in September 2002 and May 2006, respectively.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Article.

11. Cost benefit determination; least burden and cost: The Department did not evaluate the costs and benefits for individual definitions, but believes that the benefits of the Article as a whole exceed the costs because they are necessary for the Chapter to function effectively.

12. Stringency compared to corresponding federal law: ADEQ believes that no rule or definition in Article 1 is more stringent than corresponding federal law.

13. Compliance with A.R.S. § 41-1037: The rules in this Article do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: ADEQ would make some technical changes to definitions. See below.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 1

R18-12-101. Definitions

2. Objective of the rule: The purpose of the rule is to provide definitions for terms and acronyms used in Chapter 12.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Regarding state consistency, 2015 legislation (HB2636) reorganized, deleted and added major portions of Title 49, Chapter 6. Terms that are no longer used in statute and that could be removed from this rule's definitions include "direct payment", "direct payment request" "eligible person", "substituted work item", "summary of work", "UST grant account", and "work item".

The rules of Article 1 are consistent with other state statutes and rules, including:

- A.R.S. Title 28, Chapter 16, Article 1 (supplier licensing requirements and definition of "supplier identification number")
- A.R.S. § 28-101 (definitions of "aviation fuel"; and "motor vehicle fuel")
- A.R.S. § 28-5601 (definition of "supplier"; and "distributor")
- A.R.S. § 49-101 (definitions of "Department" and "Director")
- A.R.S. § 49-201 (definitions of federal acts, including "CERCLA"; and "Clean Water Act")
- A.R.S. § 49-921 (definition of "federal act" as meaning the "Solid Waste Disposal Act")
- A.A.C. R18-7-201 (definition of "groundwater")
- A.A.C. Title 18, Chapter 12, Articles 2 through 8
- A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, including A.R.S. § 49-1016(A) on separate owner/operator responsibilities

Looking at federal consistency, before October 13, 2015, the Article 1 rules were consistent with and no more stringent than federal statutes and regulations. 40 CFR 280 contains EPA regulations that apply to USTs containing petroleum or hazardous substances. EPA has a program for evaluating and approving state UST programs to operate in lieu of the federal underground storage tank (UST) program. To qualify for final approval, a state's program must be ''no less stringent'' than the federal program.

Arizona does not currently have State Program Approval from the EPA for its UST Program, as intended by A.R.S. § 49-1014(A). This is not because of inconsistencies between state and federal rules, but because of an inconsistency between a state statute and federal rules. "Owner," which is defined in Arizona at A.R.S. § 49-1001.01, differs slightly from the federal definition of "Owner," which is defined in federal rules at 40 CFR 280.12 and in lender liability rules, subpart I. Under the federal definition, the owner of the property is automatically an owner of the UST; however, under the Arizona definition, certain conditions must exist in order for the property owner to incur the liability of an UST owner.

An alternative to State Program Approval is set out at 40 CFR 280.12 in the definition of "implementing agency", allowing a state program to be approved either under RCRA § 9004 (42 U.S.C 6991c; "Approval of State programs") or through a memorandum of agreement. EPA and ADEQ entered into such a memorandum of agreement in 1988. EPA continues to recognize ADEQ as the "implementing agency" through annual Cooperative Agreements which act to partially fund the State UST program on an annual basis.

Until October 13, 2015, the statutory definition aside, the Article 1 rules were consistent with other federal statutes and rules, including:

- 40 CFR 280 (Underground Storage Tanks)
- 18 U.S.C. Section 1151 (definition of "Indian country")
- 40 CFR 280.71(c) (definition of "change-in-service")

Beginning October 13, 2015, there are some inconsistencies between EPA and Arizona definitions. There are several new EPA definitions which are not in Article 1 rules or Title 49 statutes: "Containment sump", "Dispenser", "Dispenser system", "Replaced", "Secondary containment", "Training program", and "Under-dispenser containment". In addition, EPA made arguably substantive changes to the definition of "repair", which is also defined in R18-12-101. EPA also removed a definition and made minor revisions to three others ''Accidental release,'' ''Financial reporting year,'' and ''Provider of financial assurance" in § 280.92. (Subpart H-Financial Responsibility. Finally, EPA amended regulations which indirectly affect the ADEQ definitions of "suspected release discovery date" and "suspected release notification date". This is due to EPA amending 40 CFR §§ 280.41 and 280.42, which are part of the definition of "suspected release" at A.R.S. § 49-1001(18). These inconsistencies will be evaluated further prior to ADEQ's next rulemaking to ensure that changes necessary for program approval or clarity are included where possible.

6. Clarity, conciseness, and understandability of the rules: Two definitions in R18-12-101, "RCRA" and "remediation," added new in 2002, are technically incorrect and make no sense as written. The "RCRA" definition appears to be a sentence fragment that references only a small part of RCRA. The "remediation" definition refers to "soil" in a statutory definition but "soil" no longer appears in the statutory definition. The definition of "IFCI" should be changed in this Article and in Article 8 to reflect the name of the current organization: ICC, or International Code Council. Other than this, the rules are clear, concise, and understandable.

10. Completion of previous proposed courses of action: ADEQ planned to propose technical corrections to the definitions of "RCRA" and "remediation."

ADEQ also planned to propose replacing the definition of "IFCI" (International Fire Code Institute) to reflect the new name of the current organization: "International Code Council" or "ICC". Conforming changes would also be proposed in R18-12-804 and R18-12-805.

ADEQ anticipated submitting these rule changes to the Council in December 2012. ADEQ did not believe the changes to this section would meet the moratorium exemption criteria.

14. Proposed course of action: ADEQ plans to propose technical corrections to the definitions of "RCRA" and "remediation." ADEQ plans to propose replacing the definition of "IFCI" (International Fire Code Institute) to reflect the new name of the current organization: "International Code Council" or "ICC". (Conforming changes would also be proposed in R18-12-804 and R18-12-805.)

ADEQ plans to make the changes in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-102. Applicability

2. Objectives of the rule: The purpose of the rule is to emphasize and clarify the distinct responsibilities of UST owners and operators as established in A.R.S. § 49-1016(A) and (C). The Section also alerts the regulated community to the possibility that certain administrative and judicial directives may take precedence over certain requirements in the rules. (See clarity, conciseness, and understandability, below) The Section states general rules of applicability that are basic to the entire Article.

6. Clarity, conciseness, and understandability of the rules: Although the regulated community requested the language in R18-12-102(C) during a 2006 rulemaking and understood the original intent, the language fails to convey that it is judicial and administrative orders that were in effect before 2006 that the rule preserves in spite of any contradictory new standards. A similar provision inserted at R18-12-250 contains the qualifying language "before the effective date of this Section."

14. Proposed course of action: ADEQ plans to insert language in R18-12-102(C) specifying that only certain pre-existing orders will supersede 18 A.A.C. 12. ADEQ plans to make the changes in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

ARTICLE 2. TECHNICAL REQUIREMENTS

Structure and Purpose of Article 2

18 A.A.C. 12, Article 2 contains rules made by ADEQ to provide the regulated community with technical requirements regarding installing, maintaining, upgrading, and removing UST systems and reporting, investigating, and remediating leaking underground storage tanks. (LUSTs). The unreserved Sections between R18-12-210 through R18-12-245, and R18-12-270 through R18-12-281, were originally adopted effective July 30, 1996. The unreserved Sections between R18-12-250 through R18-12-264.01 were originally adopted effective August 20, 2002. R18-12-263.04 amended in 2008. No rule has been amended in the last five years.

The organization of Article 2 by Section is as follows:

R18-12-201 - 209 (Reserved)

R18-12-210. ----- Applicability
R18-12-211. ----- Prohibition for Certain UST Systems

R18-12-212 - 219 (Reserved)

R18-12-220. ----- Performance Standards for New UST Systems
R18-12-221. ----- Upgrading of Existing UST Systems
R18-12-222. ----- Notification Requirements

R18-12-223 - 229 (Reserved)

R18-12-230. ----- Spill and Overfill Control
R18-12-231. ----- Operation and Maintenance of Corrosion Protection
R18-12-232. ----- Compatibility
R18-12-233. ----- Repairs Allowed
R18-12-234. ----- Reporting and Recordkeeping

R18-12-235 - 239. (Reserved)

R18-12-240. ----- General Release Detection Requirements for all UST Systems
R18-12-241. ----- Release Detection for Petroleum UST Systems
R18-12-242. ----- Release Detection for Hazardous Substance UST Systems
R18-12-243. ----- Methods of Release Detection for Tanks
R18-12-244. ----- Methods of Release Detection for Piping
R18-12-245. ----- Release Detection Recordkeeping

R18-12-246 - 249. (Reserved)

R18-12-250. ----- Applicability and Scope
R18-12-251. ----- Suspected Release

R18-12-252 - 259. (Reserved)

R18-12-260. ----- Release Notification, and Reporting
R18-12-261. ----- Initial Response, Abatement, and Site Characterization
R18-12-261.01 --- LUST Site Classification
R18-12-261.02 --- Free Product
R18-12-262. ----- LUST Site Investigation
R18-12-263. ----- Remedial Response
R18-12-263.01 --- Risk-based Corrective Action Standards
R18-12-263.02 --- Corrective Action Plan
R18-12-263.03 --- LUST Case Closure

R18-12-263.04 --- Groundwater LUST Case Closures
R18-12-264. ----- General Reporting Requirements
R18-12-264.01 --- Public Participation

R18-12-265 - 269. (Reserved)

R18-12-270. ----- Temporary Closure
R18-12-271. ----- Permanent Closure and Change-in-service
R18-12-272. ----- Assessing the UST Site at Closure or Change-in-service
R18-12-273. ----- Application of Closure Requirements to Previously Closed Systems
R18-12-274. ----- Release Reporting and Corrective Action for Closed Systems

R18-12-275 - 279. (Reserved)

R18-12-280. ----- Sampling Requirements
R18-12-281. ----- UST System Codes of Practice and Performance Standards

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 2

1. Authorization of the rules by existing statutes:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. Additional authorizing statutes, applicable to parts of this Article: A.R.S. § 49-1001.01(F); § 49-1003(C); A.R.S. § 49-1004(C) and (D); A.R.S. § 49-1005(E) and (F); A.R.S. § 49-1008; A.R.S. § 49-1009(F); A.R.S. § 49-1013, A.R.S. § 49-1017, and A.R.S. § 49-1021.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Arizona UST statutes routinely require that any Arizona UST rules be consistent with and/or no more stringent than federal regulations in effect on the date on which the rules are adopted. The Article 2 rules are generally no more stringent than federal statutes and regulations. 40 CFR 280 contains the federal regulatory standards that apply to USTs containing petroleum or hazardous substances. As appropriate, the corresponding federal sections are cited under each state rule below.

Prior to October 13, 2015, the technical requirements in Article 2 were consistent with and very similar to the federal regulations. This is less true after the latest federal regulations took effect on October 13, 2015. Slight variations exist in rules specific to notification (R18-12-222), closure (R18-12-270 through R18-12-272) and sampling requirements (R18-12-280). These variances between the federal requirements and the state rules are discussed in the Analysis of Individual Rules below. The corrective action requirements (R18-12-260 through R18-12-264.01) are consistent with and no more stringent than the applicable federal regulations. There are four areas of the corrective action requirements for which there are no comparable provisions in the federal rule; however, they remain consistent with objective and standards of the federal regulations. The areas are leaking underground storage tank (LUST) site classification (R18-12-261.01), risk-based corrective action (RBCA) standards (R18-12-263.01), and LUST case closure (R18-12-263.03) and groundwater LUST case closures (R18-12-263.04). The LUST site

classification process is an integral part of the RBCA process, which provides owners and operators the additional option of determining site-specific clean-up levels. The LUST case closure requirements codify the documentation necessary to demonstrate that the corrective action requirements have been met.

Additionally, the rules are consistent with applicability for UST systems governed under Subtitle C of the Solid Waste Disposal Act (hazardous waste), Section 402 and 307(b) of the Clean Water Act, the Atomic Energy Act of 1954 (42 U.S.C. §§ 2011 et seq.), and 10 CFR 50, Appendix A (Nuclear Regulatory Commission).

The rules of Article 2 are consistent with state statutes and rules, including the environmental laboratory licensing requirements at 9 A.A.C. 14.

5. Status of agency enforcement policy regarding the rules: A considerable amount of enforcement effort with regard to Article 2 relates to making sure owners and operators implement up-to-date release detection requirements and to enforcing proper closure of tanks. Another primary area of enforcement activity concerns the remediation and closure of contaminated sites including the information that needs to be sent to ADEQ.

6. Clarity, conciseness, and understandability of the rules: Except as discussed below, the rules are clear, concise, and understandable to the regulated community and the public in general.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 2 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: Except as discussed under R18-12-263.04, R18-12-270, R18-12-272, the economic impact of the Article 2 rules has not differed significantly from that projected in the original economic impact statements for the two major rulemakings occurring in 1996 and 2002 with respect to the technical requirements.

In addition, the overall trends have not changed since the last EIS in 2008, which stated: “As of June 1, 2007, the cumulative number of UST releases reported to ADEQ was 8,299. Of these, 84 percent, or 6,975 had been closed and 16 percent or 1,324 remained open.” Since June 1, 2007, ADEQ has recorded 549 new releases for a total of 8,848. Of these, 8,150 or 92% have been cleaned up.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on this state’s business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted.

10. Completion of previous proposed courses of action: ADEQ planned to propose technical changes to R18-12-263.04, R18-12-280, and R18-12-281. ADEQ anticipated submitting a rule with these changes to the Council in December of 2012. ADEQ did not complete this course of action because the agency believed the changes to this section would not meet the moratorium exemption criteria.

11. Cost benefit determination; least burden and cost: There has been no change in the cost benefit determination from the previous report and previous rulemakings. The cost is the one cent per gallon tax that is paid by fuel suppliers and passed on to UST owners and operators and ultimately, retail purchasers of gasoline in Arizona. The benefits include protection of human health and the environment through the prevention, detection and cleanup of releases of petroleum and other hazardous substances from USTs into the groundwater, surface soils and subsurface soils. Additional benefits of these rules include risk sharing for the state's retail gasoline industry, and the authority of ADEQ to implement the state's UST program through a cooperative agreement, rather than EPA.

ADEQ believes that these rules impose the least burden and cost on regulated entities because, with a few necessary exceptions as discussed below, it has complied with its statutory mandate to be no more stringent than federal regulations in existence on the date the rules were adopted.

12. Stringency compared to corresponding federal law: Except as noted below in R18-12-222, 261, 262, 270 and 271, ADEQ is not aware of any of the rules in this Article being stricter than federal law.

13. Compliance with A.R.S. § 41-1037: Unless otherwise stated, the Article 2 rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action: ADEQ has identified technical and other changes to R18-12-220, R18-12-221, R18-12-241, R18-12-263.04, R18-12-280, and R18-12-281. ADEQ plans to make the corrections in this Article in a regular Chapter-wide rulemaking.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 2

R18-12-210. Applicability

2. Objectives of the rule: This rule places responsibility for compliance on UST owners and operators. It also provides for the exclusion and partial exclusion of certain UST systems from Article 2, (Technical Requirements) in addition to those which are excluded from the definition of UST by A.R.S. § 49-1001(21).

3. Effectiveness of the rule in achieving the objectives: This rule effectively identifies which UST systems are subject to the requirements of this Article and which UST systems are excluded from all requirements or deferred from certain provisions.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: R18-12-210, especially subsections (C)(4), and (5), is not consistent with 40 CFR 280.10, "Applicability". Under the federal rule, notification, financial responsibility, release reporting and closure requirements, as prescribed in the federal regulations, are now applicable to airport hydrant fuel distribution systems and field-constructed tanks. This is inconsistent with the provisions describing what's applicable to the tanks listed in R18-12-210(C). In the same way, subsection (C)(4) and (C)(5) are inconsistent with A.R.S.§ 49-1006(A), under which financial responsibility requirements are to match the

current federal regulations.

5. Status of agency enforcement policy regarding the rule: As of October 13, 2015, ADEQ did not apply the financial responsibility exclusion in subsection (C) of this rule to airport hydrant fuel distribution systems and field-constructed tanks because A.R.S. § 49-1006(A) would be applicable instead. See also the discussion under Article 3.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: With one exception, there would be no new economic impact unless and until ADEQ changed its rules to match the federal rules. However, A.R.S. § 49-1006(A) provides that covered tank systems must file evidence of financial responsibility with ADEQ if required by federal rules, which now require airport hydrant fuel distribution systems and field-constructed tanks to comply with financial responsibility. This puts R18-12-210 in conflict with A.R.S. § 49-1006(A), and ADEQ would have to follow the statute. ADEQ does not know which, if any, Arizona airports would meet the definition for a tank system due to the necessity of calculating the percentage of underground versus above ground fixtures under A.R.S. § 49-1001.01(21). If any airport systems or field-constructed tanks are now included, the required financial responsibility would result in increased costs if, for example, they do not already have a general liability policy that would cover corrective action and third party damages.

R18-12-211. Prohibition for Certain UST Systems

2. Objective of the rule: This rule prohibits installation of UST systems that do not comply with certain minimum requirements. The requirements will reduce the probability of these systems experiencing a release due to structural, corrosion, or compatibility failures during their operational life.

3. Effectiveness of the rule in achieving its objective: This rule effectively sets forth the technical requirements that must be met for an UST system that is deferred from provisions of this Article pursuant to R18-12-210(C).

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.11, "Installation requirements for partially excluded UST systems", with A.R.S. § 49-1009(A), and with other state and federal statutes and rules.

5. Status of agency enforcement policy regarding the rule: No incidents have occurred requiring ADEQ to initiate an enforcement action with respect to this rule.

R18-12-220. Performance Standards for New UST Systems

2. Objective of the rule: This rule requires new UST systems to be protected against corrosion and installed with spill and overfill prevention equipment. Compliance with this rule reduces the probability that these systems will experience a release during their operational lives.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies selected performance standards for new UST systems, including acceptable construction materials for tanks and piping, alternate methods for satisfying the corrosion protection requirements,

minimum standards spill and overfill protection, and allowance for alternate technology that is demonstrated to be no less protective of human health and the environment. This rule was adopted in 1996. Additional UST system requirements were enacted by statute in 2008, (see A.R.S. § 49-1009(B), (C), and (D)) and in 40 CFR 280.20 and 280.41.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule is not consistent with A.R.S. § 49-1009, which requires secondary containment and release detection for new tanks, piping, and dispensers, and with a different effective date. The rule is also no longer consistent with 40 CFR 280.20 (secondary containment) and 40 CFR 280.41 (release detection) which were updated in October of 2015.

6. Clarity, conciseness, and understandability of the rules: The rule contains requirements for "new" UST systems which are defined in R18-12-1001 as commencing installation after December, 1988. A.R.S. § 49-1009 added requirements that began in 2009. It would aid understanding and effectiveness if the rule contained the statutory standards that began in 2009, and the new federal requirements that began in 2015.

14. Proposed Course of Action: Amend rule by inserting requirements from A.R.S. § 49-1009 and federal regulations, each with their own effective dates. ADEQ plans to make the corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-221. Upgrading of Existing UST Systems

2. Objectives of the rule: The rule highlights a recent federal December 22, 1998 deadline for existing UST systems to be upgraded or be permanently closed. It provides the upgrade standards which are similar to those of R18-12-220 and are designed to accomplish the same purpose.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies an important compliance date and the standards that existing UST systems must meet with respect to corrosion protection and spill and overfill prevention. It also provides detailed options for meeting those standards.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.21, "Upgrading of existing UST systems". The new federal rule deletes the 1998 deadline to say that all tanks must comply with new or upgraded standards or be permanently closed.

14. Proposed Course of Action: Remove the old 1998 compliance date and continue to state the federal rule's requirement that old, non-upgraded tanks be permanently closed. ADEQ plans to make the corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-222. Notification Requirements

2. Objective of the rule: This rule provides the content of and uses for the "Notification for

Underground Storage Tank" form. The rule also specifies when a revised form must be submitted.

3. Effectiveness of the rule in achieving its objective: This rule has effectively allowed ADEQ to maintain a relatively accurate database on the UST "universe" in Arizona.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This rule is somewhat more stringent than RCRA § 9002 and 40 CFR 280.22 because it requires the following notifications in addition to the minimum one-time federal notification:
A tank replacement or upgrade,
A change in leak detection status;
Temporary closure, permanent closure, or a return to active service following temporary closure;
Certain changes in UST contents;
A change in the status of financial responsibility (some status changes required under 40 CFR 280.110 "Reporting by owner or operator".

The additional notices are necessary to comply with 40 CFR 281.31 "Upgrading existing UST systems," which states "In order to be considered no less stringent than the corresponding federal upgrading requirements, the state must have requirements that ensure existing UST systems will meet the requirements of § 281.30; are upgraded to prevent releases for their operating life due to corrosion, spills or overfills; or are permanently closed with the following exceptions:" In order to meet the requirements of this rule, and 40 CFR 281.22 involving compliance monitoring procedures, the best strategy is to require updates from the facility owner or operator for material changes in facility operation related to Arizona regulations. This allows ADEQ to allocate scarce inspection and compliance resources where most appropriate and make efficient use of traveling personnel. With the additional information contained in the extra notifications, a detailed facility summary can be prepared for inspection personnel prior to every 3 year inspection. The alternative, no notification, would keep the state agency relatively in the dark, until the time the inspector arrives the mandatory 3 year inspection required under the memorandum of agreement with EPA.

Subsection (G), requiring notice to the Department for a change in ownership, is consistent with 40 CFR 280.22(b) "Notification requirements" and 40 CFR 280.34, "Reporting and recordkeeping".

The rule was developed to address the need for effective compliance monitoring and accurate data on the regulated universe and the current status of USTs subject to regulation in Arizona, as authorized under A.R.S. §§ 49-1002 and 49-1014(A). To effectively administer the UST regulatory program, including processing of claims and funding requests against the UST Revolving Fund, and to provide the best customer service, ADEQ requires a current database which contains information from notifications associated with the universe of owners, operators, facilities and systems.

This rule is also inconsistent with A.R.S. § 49-1002(F), which allows an operator to meet notification requirements, in addition to the owner. R18-12-222 requires the owner to meet the

requirements.

ADEQ believes the rule is consistent with other state and federal statutes and rules.

11. Cost benefit determination; least burden and cost: The Department believes that the benefit to the state of requiring an additional notice for tank replacement or upgrade far exceeds the total cost to owners and operators of filling out and sending in the notice and is necessary to comply with A.R.S. § 49-1014(A) and the federal rules discussed above under consistency.

12. Stringency compared to corresponding federal law: As discussed under consistency, the rule may be considered more stringent than corresponding federal law.

R18-12-230. Spill and Overfill Control

2. Objective of the rule: This rule requires owners and operators to prevent releases due to spilling and overfilling and establishes the performance standards for devices and procedures which will prevent releases of regulated substances due to spills and overfills. A spill might occur when the hose from the supply truck or other conveyance is removed from the fill pipe of a tank without proper draining first. Overfill might occur when an attempt is made to fill a tank beyond its capacity.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies the performance standards that must be met to provide adequate protection from releases due to spills and overfills.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The text of the state rule is no longer consistent with the text of 40 CFR 280.30, "Spill and overfill control." The federal rule refers to optional external compliance standards updated as of 2015, while the state rule requires compliance according to R18-12-281(J) where the standards are older, and to a degree, inconsistent. See the discussion for R18-12-281. In addition, there is now a new federal rule requiring periodic inspection and testing of spill and overfill prevention equipment for new systems at installation (40 CFR 280.35) and for existing systems by October 13, 2018. There is no such state rule or statutory text. This may be a gap in state law that will have to be filled to maintain equivalency. This rule is consistent with other state and federal statutes and rules.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-231. Operation and Maintenance of Corrosion Protection

2. Objectives of the rule: This rule requires continuous operation and maintenance of the corrosion protection system for certain UST systems. It also specifies certain inspection and recordkeeping requirements.

3. Effectiveness of the rule in achieving its objective: This rule effectively points to the criteria that are used to determine the adequacy of cathodic protection (CP) systems, the testing frequency for different types of systems, and the qualifications for a person performing a test of a

CP system.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Subsection (B) of the rule requires use of the outdated performance standards in R18-12-281(K), while 40 CFR 280.31, "Operation and maintenance of corrosion protection", lists the current performance standards in the regulation itself. Otherwise, the state rule is consistent with 40 CFR 280.31, "Operation and maintenance of corrosion protection" as well as 40 CFR 280.11, 40 CFR 280.20, 40 CFR 280.21 and other state and federal statutes and rules.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-232. Compatibility

2. Objective of the rule: This rule requires that the regulated substance stored in the UST is compatible with the material of the tank so as to not damage the integrity of the tank system. Reference is made to American Petroleum Institute performance standards.

3. Effectiveness of the rule in achieving its objective: The topic of compatibility is somewhat controversial. The American Petroleum Institute publication in the rule used for reference on ethanol is from 1985. A newer one is available. It is not certain that the rule has effectively prevented the use of incompatible tank materials to store ethanol or biodiesel blends.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.32, "Compatibility," which was recently amended to require additional obligations for owners and operators when switching to certain blends of ethanol and biodiesel.

5. Status of agency enforcement policy regarding the rule: The rule is being enforced. No incidents have occurred requiring ADEQ to initiate an enforcement action with respect to this rule.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-233. Repairs Allowed

2. Objective of the rule: This rule describes repair procedures for components of a UST system, establishes post-repair requirements, and requires maintenance of associated records.

3. Effectiveness of the rule in achieving its objective: This rule identifies the types of repairs that are allowed on UST systems by referring to older versions of national codes of practice. It could be made more effective by adopting the newer codes in the current federal rules. This rule effectively provides for record retention on all repairs.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40

CFR 280.33, "Repairs allowed" because the federal rule contains numerous updates to the national codes of practice.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-234. Reporting and Recordkeeping

2. Objective of the rule: The rule provides a cross-reference to reporting and recordkeeping requirements of the Section and serves essentially as a "one-stop" reference to assist UST owners and operators in locating and meeting the requirements.

3. Effectiveness of the rule in achieving the objective: This rule effectively provides an owner or operator with various reporting and recordkeeping requirements of Article 2.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.34, "Reporting and recordkeeping." In 2015, EPA added additional records that must be maintained by owners and operators, including documentation of compatibility for UST systems, documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping, and documentation of periodic walkthrough inspections.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-240. General Release Detection Requirements for All UST Systems

2. Objective of the rule: This rule establishes a number of ways tank owners and operators can comply with release detection requirements. The rule also established compliance dates and a probability of detection standard for the selected leak detection system.

3. Effectiveness of the rule in achieving the objective: This rule effectively establishes release detection performance standards and time frames for compliance.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is currently consistent with 40 CFR 280.40, "General requirements for all UST systems" and with other state and federal statutes and rules. A new part of 40 CFR 280.40 contains performance standards for release detection that will become effective on October 13, 2018.

6. Clarity, conciseness, and understandability of the rules: Subsection (C) contains deadlines that are long past and is no longer necessary.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-241. Release Detection for Petroleum UST Systems

2. Objective of the rule: This rule establishes release detection requirements for both petroleum tanks and connected piping. Specific requirements are placed on when tank tightness testing. The requirements for leak detection on piping depend on the type of system (pressure or suction) and the design of the system.

3. Effectiveness of the rule in achieving the objective: This rule set forth the technical release detection requirements for petroleum tanks and for the different types of delivery piping associated with those tanks. This rule also clearly set limitations on certain types of release detection methodologies. As of 2009, most of the requirements of this rule were superseded by A.R.S. § 49-1009.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with the current federal regulation 40 CFR 280.41, "Requirements for petroleum UST systems," which was effective October 13, 2015. The state rule was adopted in 1996 and so is consistent with A.R.S. § 49-1009(F), which requires the rule to be "consistent with . . . federal regulations in effect on the date on which the rules are adopted." The state rule is not consistent with A.R.S. § 49-1009(B), which was amended in 2008, in response to federal legislation, to require secondary containment for new petroleum USTs beginning January 1, 2009. R18-12-241 can be updated to be consistent with A.R.S. § 49-1009(B) and (F), and also make the rule consistent with the federal regulation.

14. Proposed course of action: ADEQ plans to propose amending this Section to make it more consistent with state and federal law and submit a rule with the changes to the Council in December of 2017.

R18-12-242. Release Detection for Hazardous Substance UST Systems

2. Objective of the rule: This rule identifies a compliance date and leak detection requirements for one class of existing UST systems as well as the requirements for new systems. Following the compliance date, all hazardous substance UST systems must either be closed or have secondary containment.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the technical release detection requirements for new hazardous substance UST systems, the requirements for secondary containment, and the performance standards and capacity requirements for different types of secondary containment.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is marginally inconsistent with 40 CFR 280.42, "Requirements for hazardous substance UST systems". As of October 13, 2015, the federal regulation requires interstitial monitoring at least every 30 days. No specific monthly or 30 day requirement exists in R18-12-242, but only a reference to R18-12-241, which contains a monthly requirement. EPA has also removed the compliance date from 40 CFR 280.42 that still exists in state rule. The rule is consistent with other state and federal statutes and rules.

14. Proposed Course of Action: ADEQ plans to make technical corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-243. Methods of Release Detection for Tanks

2. Objective of the rule: The rule establishes performance standards for seven specific types of leak detection methods and provides standards for alternate methods that can be approved by the Department.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the means of compliance for specific release detection methods and the performance standards that these methods must meet for tanks installed before January 1, 2009.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.43, "Methods of release detection for tanks" which was updated by EPA as of October 13, 2015. The rule is also inconsistent with A.R.S. § 49-1009 for tanks installed after January 1, 2009.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-244. Methods of Release Detection for Piping

2. Objective of the rule: The rule provides requirements for automatic line leak detectors and periodic pressure tests. It also provides that, if appropriate, some of the methods used for tanks may also be used for piping.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets for the points of compliance for the different release detection methodologies specific to product delivery piping.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.44, "Methods of release detection for piping", which was updated as of October 13, 2015. This state rule is not consistent with A.R.S. § 49-1009 for piping installed after January 1, 2009.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-245. Release Detection Recordkeeping

2. Objective of the rule: This rule sets out the kinds of records and the respective timing during which the records must be maintained.

3. Effectiveness of the rule in achieving the objective: This rule effectively identifies the length of times for retention and types of release detection documentation.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the

Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.45, "Release detection recordkeeping", which was updated as of October 13, 2015. The rule is consistent with other state and federal statutes and rules.

14. Proposed Course of Action: ADEQ plans to make corrections in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-250. Applicability and Scope

2. Objective of the rule: This rule addresses suspected or actual releases that must be managed under R18-12-250 through R18-12-264.01, and lists 2 exceptions for which those rules will not apply.

3. Effectiveness of the Rule in Achieving its Objective: This rule effectively provides that the specified requirements apply to an owner or operator with a release or suspected release discovered on or after the effective date of the rule. Additionally, the rule provides that the reporting requirements do not supersede the release reporting requirements under Superfund Amendment and Reauthorization Act (SARA) Title III.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with federal regulation at 40 CFR 280.60, "General" and with other state and federal statutes and rules.

5. Status of agency enforcement policy regarding the rules: The rule is enforced.

6. Clarity, conciseness, and understandability of the rule: Subsection A's understandability could be improved by removing the second comma. This would make it clearer that the corrective action requirements of R18-12-260 through R18-12-264.01 don't apply to a release subject to the corrective action requirements of RCRA, Subtitle C (hazardous waste).

R18-12-251. Suspected Release

2. Objective of the rule: This rule sets out the initial notification, investigation and written reporting requirements for suspected releases. "Suspected release" is defined in A.R.S. § 49-1001.

3. Effectiveness of the rule in achieving its objective: This rule summarizes the various owner requirements related to a suspected release. To aid effectiveness, ADEQ has a guidance document, "Reporting and Investigating Suspected UST Releases", on its website. The Department also lists the requirements in a letter to the owner when a suspected release is reported.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with federal regulations at 40 CFR 280.50, "Reporting of suspected releases," 40 CFR 280.51, "Investigation due to off-site impacts", and 40 CFR 280.52, "Release investigation and confirmation steps." and with A.R.S. § 49-1004, "Reporting requirements".

6. Clarity, conciseness, and understandability of the rule: The citation in subsection (A)(2) is incorrect and needs to be updated.

R18-12-260. Release Notification and Reporting

2. Objective of the rule: This rule establishes the requirements related to reporting a confirmed release.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies the 24 hour reporting requirement and the information to be reported within 24 hours after making the release determination; the 14 day written report requirement and what information is to be included in the written report; and the requirement that the owner or operator of a UST system that is found to be the source of a release repair, replace, upgrade or close the system.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with federal regulations at 40 CFR §§ 280.50, 280.52, 280.53, 280.61 and 280.62, and with other state and federal statutes and rules.

R18-12-261. Initial Response, Abatement, and Site Characterization

2. Objective of the rule: This rule implements A.R.S. § 49-1005(F)(1) through (F)(4) by identifying the activities to be accomplished within the first 90 days following the discovery or confirmation of a release.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies the initial response and abatement actions designed to minimize further contamination, prevent fire and explosion hazards, and minimize access or exposure to levels of contaminants that may pose an acute health or environmental hazard. This rule also provides for the initial site characterization which involves gathering preliminary information on the UST system, facility, LUST site, and surrounding area, and describes the report required to be developed within the 90 day period following release discovery or confirmation.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.61, "Initial response," but not consistent with 40 CFR 280.62, "Initial abatement measures and site check." R18-12-261 requires a site characterization and site check for every release, while 40 CFR 280.62, allows some state discretion, requiring a site check "[u]nless directed to do otherwise by the implementing agency".

The state rule is consistent with A.R.S. §§ 49-1004 and 49-1005, and other state and federal statutes and rules, except for the requirement in A.R.S. § 49-1005(F) to be no more stringent than federal regulations.

11. Cost benefit determination; least burden and cost: Although the Department continues to believe that the benefits of this rule exceed the costs, due to the above noted inconsistency with the federal rule, the Department is no longer certain that the rule imposes the least burden and

costs on those regulated by the rule. Newer technology has increased a tank owner's ability to detect releases of ever smaller amounts of petroleum such that requiring a full site characterization involving all chemicals of concern for every such release may not always be necessary. The Department is considering whether the exception language in the federal rule ("[u]nless directed to do otherwise by the implementing agency," would allow it to reduce the economic impact on tank owners while still protecting human health and the environment.

12. Stringency compared to corresponding federal law: As discussed under consistency, the rule may be considered more stringent than corresponding federal law.

R18-12-261.01. LUST Site Classification

2. Objective of the rule: This rule establishes a LUST site classification system, which is an integral part of Arizona's Risk-based Corrective Action (RBCA), weighing the relative risk that the release will impact various "receptors." Generally speaking, "receptors" are persons or resources that may be exposed to contamination from LUSTs.

3. Effectiveness of the rule in achieving its objective: This rule effectively provides that LUST site classification be based on known site-specific information available at the time the determination is developed, establishes the factors to be considered in developing the appropriate site classification, and provides the classification system. This rule also provides for a classification form to be submitted with various reports and at various times to the Department.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. ADEQ added this rule to facilitate implementation of a RBCA process, as authorized by A.R.S. § 49-1005(F). Further information on the RBCA process is provided under R18-12-263.01.

R18-12-261.02. Free Product

2. Objective of the rule: This rule establishes the requirements for investigating, reporting, and removing "free product." Generally speaking, "free product" means petroleum or another hazardous liquid substance that has not dissolved in water.

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies the conditions under which owners or operators must search for free product and what to do if it is discovered. This rule also provides for the proper handling of free product.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.64, "Free product removal," 40 CFR 280.62(a)(6), and with other state and federal statutes and rules.

R18-12-262. LUST Site Investigation

2. Objective of the rule: This rule establishes the requirements for conducting and reporting on the full extent of the release at the site, for investigating each potentially impacted medium (i.e. soil, surface water, and groundwater), and provides for Department approval or non-approval of

the report.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes the requirement to investigate the release and surrounding area to determine the full vertical and lateral extent of contamination in each medium. This rule also establishes the contents of the site characterization report. The site characterization report must contain information on the tank, release, facility and surrounding area. The site characterization report is the cornerstone of all subsequent activities. Because the report provides a comprehensive picture of the actual conditions at and surrounding the area of contamination, it is the document the Department uses to verify that subsequent corrective actions, including requests for LUST site closure, are necessary and reasonable.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with 40 CFR 280.65, "Investigations for soil and groundwater cleanup". R18-12-262(C) has an absolute requirement for the owner or operator to "determine, within each contaminated medium, the full extent, location, and distribution of concentrations of each chemical of concern . . ." once a release is confirmed. 40 CFR 280.65 requires the same determination of the "full extent" of the contamination, but only if one of 3 risk factors exists, or if requested by the implementing agency. (The 3 factors are affected groundwater, free product, and contaminated soil that may be in contact with groundwater.) The state rule is similarly not consistent with 40 CFR 280.63 which requires owners and operators to "assemble information about the site and the nature of the release" "[u]nless directed to do otherwise by the implementing agency". The state rule is consistent with A.R.S. §§ 49-1004 and 49-1005, and other state and federal statutes and rules, except for the requirement in A.R.S. § 49-1005(F) to be no more stringent than federal regulations.

6. Clarity, conciseness, and understandability of the rule: The reference in subsection (D) to a report being submitted under A.R.S. § 49-1053 is no longer accurate and should be removed.

11. Cost benefit determination; least burden and cost: Although the Department continues to believe that the benefits of this rule exceed the costs, due to the above noted inconsistency with the federal rule, the Department is no longer certain that the rule imposes the least burden and costs on those regulated by the rule. Newer technology has increased a tank owner's ability to detect releases of ever smaller amounts of petroleum such that requiring determination of the full extent of the contamination for every release may not always be necessary. The Department is considering whether the language in the federal rule requiring such a full extent investigation only if one of 3 risk factors exists, or if requested by the implementing agency, would allow it to reduce the economic impact while still protecting human health and the environment.

12. Stringency compared to corresponding federal law: As discussed under consistency, the rule may be considered more stringent than corresponding federal law.

R18-12-263. Remedial Response

2. Objectives of the rule: The rule describes in detail when remediation is required, and the various types of remediation. It also requires specific information about the remediation efforts

in periodic reports. It sets out the conditions under which corrective action plans can be requested versus when they may be required by the Department, and factors to consider when determining an appropriate remedial response. This rule also provides the requirements for handling derived waste and for submitting periodic site status reports to keep the Department and ultimately the public reasonably current on the progress being made at LUST sites.

3. Effectiveness of the rule in achieving its objectives: The rule language is effective to a limited extent and is supplemented by documents on the Department website. Effectiveness is hindered by repeated reference to chemicals of concern without any indication as to which chemicals they are, either in the rule, or in the definition of "chemicals of concern" in R18-12-1001. In addition, the rule refers to clean up standards for those chemicals of concern by referring to a corrective action standard determined in the next section. ADEQ has posted a table listing petroleum compounds of concern along with the cleanup standards to assist stakeholders. See Tier 1 Cleanup Standards - Petroleum Products (link)

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.66, "Corrective action plan," and with other state and federal statutes and rules.

R18-12-263.01. Risk-Based Corrective Action Standards

2. Objective of the rule: This rule describes how to determine the corrective action standard to be used to remediate the contamination documented to be present at a LUST site.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes how the risk-based corrective action standard (i.e. the appropriate clean-up level) is determined. This rule effectively provides for Tier 1 corrective action standards for chemicals that currently have a numeric standard in an existing rule and for the determination of Tier 1 corrective action standards for chemicals which do not currently have a numeric standard in an existing rule. Additionally, this rule effectively provides for the determination of Tier 2 corrective action standards, which is accomplished by inputting site specific values into the same equations/models that were used for the calculation of the existing Tier 1 standards. For Tier 3 corrective action standards, this rule effectively identifies that any scientific peer-reviewed equation/model may be selected for use, provided that the Department approves both the model and the model input values. Lastly, this rule effectively provides for documenting the corrective action standard selected, the methodology used to determine the standard, and describes when the tier evaluation is to be submitted to the Department.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule is consistent with A.R.S. § 49-1005(F). There are no equivalent provisions in the federal UST statutes and regulations. ADEQ added the documentation and evaluation requirements in this rule to facilitate implementation of a RBCA process, as authorized by A.R.S. § 49-1005(F). The state rule is consistent with the objectives of the federal regulation at 40 CFR 280.66, "Corrective action plan.", and with other state statutes and regulations. 40 CFR 280.66(a) provides that "owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency."

R18-12-263.02. Corrective Action Plan

2. Objective of the rule: This rule sets out the requirements for a corrective action plan (CAP), which is used for planning, implementing and monitoring types of remediation. A CAP also serves as a means of providing notice to the public and to property owners that may potentially be affected by contamination or a remedial alternative or when an alternative water quality standard (i.e. Tier 3 clean-up standard) is an intended corrective action standard.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes that a CAP must be protective of public health and the environment through consideration of the nature of the chemical(s) of concern, the site-specific hydrology and geology, and groundwater uses, and relates these conditions to risk-based factors such as complete pathways and potential receptors. Additionally, this rule effectively describes the required CAP contents, provides for making modification if the CAP fails to meet the requirements for protectiveness, allows for preliminary approval (before public comment) and implementation prior to final approval under certain conditions, and provides an opportunity to revise the CAP as a result of public comments. Lastly, this rule effectively provides for the final approval or denial of a CAP, requires timely implementation of an approved CAP, provides for termination of an approved CAP if it is failing to meet its objective, and sets out the circumstances under which an approved CAP may be revised.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.66, "Corrective action plan," and with other state and federal statutes and rules.

13. Compliance with A.R.S. § 41-1037: The rule was promulgated prior to 2010. If the corrective action plan is viewed as an authorization, it would not be technically feasible to issue one size fits all corrective action plans. Each LUST site is unique.

R18-12-263.03. LUST Case Closure

2. Objective of the rule: This rule establishes the conditions that must be met for the Department to close a LUST site, including submission of a corrective action completion report. This rule also describes situations under which the Department will reopen a closed site.

3. Effectiveness of the rule in achieving its objectives: This rule effectively communicates procedures for verifying that the corrective action standard for each chemical of concern in each contaminated medium is met and effectively describes circumstances related to LUST case closure and reopening.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not have a comparable provision for declaring a corrective action plan complete. However, 40 CFR 280.66 "Corrective action plan" contains provisions for agency approval of the corrective action plan, as well as requirements for the implementing agency to ensure that the owners and operators implement the plan; and "monitor, evaluate and report the results of implementing the plan." The rule is consistent with federal regulations and is consistent with A.R.S. § 49-1005(F)

and (H).

R18-12-263.04. Groundwater LUST Case Closures

2. Objective of the rule: The rule implements ADEQ's authority under A.R.S. § 49-1005(E) to close certain groundwater LUST sites where there is an exceedance of an aquifer water quality standard and specifies procedures and conditions for such a closure, including provisions for public notice.

3. Effectiveness of the Rule in Achieving its Objective: The rule has allowed 191 groundwater LUST case closures in the 7 and 1/2 years since it was implemented. Subsections (C) and (D) provide for public notice and consideration of comments, but subsection (E) only requires that the owner receive a written notice of the decision. The Department is considering whether the rule should require notice of the decision to commenters as well. The Department currently provides and will continue providing written notice to commenters in the meantime.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule implements and is consistent with A.R.S. § 49-1005(E), which allows, under certain circumstances, the Director to "approve a corrective action that may result in water quality exceeding water quality standards after completion of the corrective action," "[n]otwithstanding" the water quality standards in A.R.S Title 49.

Federal UST statutes and regulations do not contain an equivalent provision. However, 40 CFR 280.66 "Corrective action plan" contains provisions for agency approval of the corrective action plan, as well as requirements for the implementing agency to ensure that the owners and operators implement the plan; and "monitor, evaluate and report the results of implementing the plan." Several requirements in the federal rule provide that they are "as determined by the implementing agency." The state rule is consistent with and no more stringent than the federal regulation.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the 2007 EIS for the last amendment of this rule, the Department stated "With groundwater LUST case closures, costs associated with source control or removal may be reimbursed under SAF, if the LUST site is eligible for the SAF." This is no longer true as the SAF has been eliminated. There are, however, other programs that could be used for source control or removal that were put into place when SAF was removed, such as new grant and preapproval programs.

14. Proposed course of action: ADEQ plans to propose adding a requirement to this Section for written notice to commenters. ADEQ plans to make the change in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-264. General Reporting Requirements

2. Objective of the rule: This Section provides uniform requirements for written reports submitted to the Department. The objective is for the Department to be able to more efficiently handle submitted written material, ensure that reports contain valid information on the activities

that are a subject of the report, and provide for Department acceptance of certain reports without review.

3. Effectiveness of the rule in achieving its objective: This rule has been effective. The Department gets thousands of documents submitted every year and these uniform requirements allows filing and processing of those documents to be more efficient, and retrieval of information from those files to take place as quickly as possible. Very few reports, if any, are submitted under the seal of a certified remediation specialist. The Department is not aware of any requests for approval without review.

Effectiveness could be improved by including a more recently created rule in the applicability language of subsection (A), so that the rule applied to "a written submission . . . under R18-12-251 through R18-12-263.04". R18-12-264 was created in 2002, while R18-12-263.04 was created in 2008 and was inadvertently overlooked as an amendment to R18-12-264.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain an equivalent general reporting provision. This state rule is consistent with 40 CFR 280.63(b) "Initial site characterization" which requires that site characterization information be submitted "to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency." The rule is consistent with A.R.S. § 49-1004, "Reporting requirements" and with other state and federal statutes and rules.

14. Proposed course of action: ADEQ plans to propose adding R18-12-263.04 to the applicability language in subsection (A). ADEQ plans to make the change in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-264.01. Public Participation

2. Objective of the rule: This rule states, in general, when public notice must take place and the minimum requirements for public notice, identifying the ways in which notice will be provided, the contents of the notice, and the activities associated with requesting a public meeting and announcing that meeting.. Public notice is required for preliminary CAP approval (263.02(D), special circumstances regarding revisions to an approved CAP (263.02(K), and LUST case closure where the corrective action may result in aquifer water quality exceeding aquifer water quality standards. (263.04(C).

3. Effectiveness of the rule in achieving its objective: The rule is effective.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with A.R.S. § 49-1005 which requires "public notice provisions," with 40 CFR 280.67, "Public participation," and with other state and federal statutes and rules.

R18-12-270. Temporary Closure

2. Objective of the rule: This rule informs the regulated community about applicable

notification provisions, deadlines and other requirements associated with placement of an UST system into temporary closure (as opposed to permanent closure addressed in R18-12-271).

3. Effectiveness of the rule in achieving its objective: This rule effectively identifies the technical standards which must be met while a UST system is in temporary closure, the duration allowed for temporary closure, consequences for exceeding that period, and procedures for requesting an extension to the temporary closure period. Effectiveness could be improved by adding a definition of "temporary closure". The Department often denies an extension of temporary closure due to lack of evidence that bringing the tank back into operation is safe and will force it to permanently close. Yet subsection (G) allows an owner who is denied an extension of temporary closure 180 days to bring the tank back into operation with no conditions.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This rule is slightly more stringent than 40 CFR 280.70 "Temporary closure" because it requires a notification to ADEQ when an UST system goes into temporary closure while the federal rule does not, and because federal regulations allow tanks that meet new or upgraded tank standards to remain in temporary closure indefinitely without any request, (see 40 CFR 280.70(c)) while R18-12-270 requires a timely request by the owner.

ADEQ added these requirements pursuant to A.R.S. § 49-1008 to ensure compliance with the temporary closure requirements and to facilitate early discovery of a release from a temporarily closed system. The Department's temporary closure notice requirement and the requirement that all tanks request an extension to extend temporary closure for more than 12 months are also necessary to comply with 40 CFR 281.36 "Out-of-service UST systems and closure," which states:

> "In order to be considered no less stringent than the corresponding federal requirements for temporarily closed UST systems and permanent closure, the state must have requirements that ensure UST systems conform with the following:
> (a) Removal from service. All new and existing UST systems temporarily closed must: . . . ."
> The regulation then lists 4 requirements that would be difficult to "ensure" without notice of temporary closures and requests for temporary closures over 12 months. These requirements are also necessary in light of A.R.S. § 49-1008, which mandates that temporary closure "be accomplished in a safe and secure manner which prevents releases of regulated substances."

Subsection (D) of the state rule is arguably inconsistent with A.R.S. § 49-1002(F), as amended in 2015, which requires that an owner or operator notify the Department "at least thirty days before bringing a tank into operation". Subsection (D) of this rule requires notice within 30 days after the tank "is brought back into use."

The rule is consistent with RCRA §§ 9003(c)(5) and 9004(a) and other state and federal statutes and rules.

5. Status of agency enforcement policy regarding the rules: The Department enforces the initial notice requirement although it is difficult to know when a violation has occurred because the Department is only required to inspect each tank site every three years under its MOA with EPA. The rule does not directly address the common situation of a tank being abandoned with or without the required notice to the Department and then being in "temporary closure" for much longer than 12 months. With some abandoned tanks, the owner or former owner is sometimes missing. Although a new property owner or prospective buyer may want to bring a newer, relatively safe tank back into service, this rule requires permanent closure.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: At the time this rule was created in 1996, ADEQ stated in the EIS that "Requesting an extension is not a common practice because nearly all owners and operators permanently close their UST systems." ADEQ currently believes that an additional reason extensions are not commonly requested is that the tank and/or the tank site are sometimes abandoned in an unclosed condition. Abandoned tanks significantly increase costs for a number of parties including the Department, financial institutions holding a security interest in the abandoned site, and prospective purchasers. A new grant program authorizes up to $20,000 for removal of a tank for permanent closure.

11. Cost benefit determination; least burden and cost: Closing a tank properly or "permanent closure" refers to the process of removing it from the ground (or filling it with an inert substance) and confirming whether or not there has been a release from the tank system. When this is not done correctly, the property becomes a question mark and a potential liability from the perspective of the property owner, financial institutions holding a security interest in the site, and prospective purchasers. Such a site can become abandoned and a 'brownfield'. In addition, undetected contamination that may exist in the soil or groundwater continues to spread. For these reasons the original drafters of this rule in 1996 required notice and a time frame for temporary closure. The Department continues to believe that this rule has more benefits than costs but is investigating whether it imposes the least burden and cost on regulated entities while protecting human health and the environment.

12. Stringency compared to corresponding federal law: As discussed under consistency, the rule may be considered more stringent than corresponding federal law.

14. Proposed course of action: ADEQ is currently studying changes to this rule that will facilitate return of parcels with abandoned tanks to commercial use while preventing older unsafe tanks from being brought back into operation. ADEQ plans to make any needed changes in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-271. Permanent Closure and Change-in-service

2. Objective of the rule: This rule establishes the requirements for permanently closing or completing a change-in-service for an UST system and allows the Department to track these events for future use. In theory, there will be no future releases from the system and any past release is discovered during removal or site assessment.

3. Effectiveness of the rule in achieving its objective: This rule is somewhat effective in

communicating the requirements for notification and report submittal, and the industry standards that must be followed during permanent closure and change-in-service activities. Department guidance, titled "Permanent Closure Guidance Document" (2015) has been posted on the Department website to improve compliance.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with federal statutes and regulations, especially 40 CFR 280.71, "Permanent closure and changes-in-service" and 40 CFR 280.74 "Closure records". R18-12-271 differs slightly from the federal requirements in that it requires a closure report to be submitted to the Department whereas § 280.74 requires closure records to be maintained on site and if that is not possible, mailed to the implementing agency.

5. Status of agency enforcement policy regarding the rules: Closure and the closure report are described in subsections (C) and (D) of the rule. As noted above under "Effectiveness", closure is not performed properly and closure reports not submitted correctly a significant percentage of the time. When this happens, a "Deficiency Letter" is sent so that the Department can maintain accurate data and records on the site.

6. Clarity, conciseness, and understandability of the rule: R18-12-271(C)(1)(b) contains an outdated citation. The cited sections were recodified to R18-13-311 and R18-13-312 in 2000.

11. Cost benefit determination; least burden and cost: The Department continues to believe that this rule has more benefits than costs and imposes the least burden and cost on regulated entities while protecting human health and the environment. (See discussion following number 11 of the previous rule, R18-12-270.)

12. Stringency compared to corresponding federal law: As discussed under consistency, the rule may be considered more stringent than corresponding federal law.

14. Proposed Course of Action: ADEQ plans to make a technical correction in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-272. Assessing the UST Site at Closure or Change-in-service

2. Objective of the rule: This rule establishes when and how a site assessment must be performed. The provisions of this rule reference the sampling requirements in R18-12-280.

3. Effectiveness of the rule in achieving its objective: This rule is effective. It describes when a site is to be assessed: before closure or change-in-service; and details the types of samples that must be obtained and the location of each sample.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with federal statutes and regulations, especially 40 CFR 280.72, "Assessing the site at closure or change-in-service." However, it provides more detail than the federal rule, as explained in the 1996 final rule (below):

"The provisions for conducting a site assessment at closure (R18-12-272 and R18-12-280) were drafted with detail to assist owners and operators as well as their consultants and contractors in understanding what is required for compliance. The Department considers this additional detail beneficial in that owners and operators know what services to purchase, the UST service providers (consultants and contractors) know what is required by the Department and the Department can review closure information in a more efficient manner and issue closure letters in a more expeditious time frame."

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: At the time this rule was created in 1996, ADEQ estimated the cost of a site assessment was $2,500. ADEQ's estimate today, more than 19 years later, is approximately $10,000, which is for one bore hole and a report.

R18-12-273. Application of Closure Requirements to Previously Closed Systems

2. Objective of the rule: This rule allows ADEQ to apply current permanent closure and site assessment requirements to a UST system closed before the effective date of those requirements, if a release or a suspected release from that system poses a threat to human health or the environment. This rule provides ADEQ with the ability to address past methods of closure which resulted in an UST system being taken out of service, but which did little or nothing to discover releases or to take steps to ensure that there would be no future releases.

3. Effectiveness of the rule in achieving its objective: This rule was effective in identifying or eliminating former UST excavation zones as sources of releases to the environment. The rule applies to closures that took place before December 22, 1988 and has limited usefulness. It remains in the rules to remain consistent with the federal rules.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.73, "Applicability to previously closed UST systems," and with other state and federal statutes and rules.

R18-12-274. Release Reporting and Corrective Action for Closed Systems

2. Objective of the rule: This rule clarifies that if a release is discovered during temporary closure or during the site assessment conducted as part of a permanent closure or change-in-service, the release must be reported and corrective action conducted, as required under A.R.S. §§ 49-1004 and 49-1005.

3. Effectiveness of the rule in achieving its objective: This rule is effective in ensuring that releases which are discovered during the site assessment that accompanies temporary or permanent closure or change-in-service are reported to ADEQ.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is consistent with 40 CFR 280.72(b), "Assessing the site at closure or change-in-service," 40 CFR 280.34(a)(3), "Reporting and recordkeeping", and with other state and federal statutes and rules.

R18-12-280. Sampling Requirements

2. Objectives of the rule: This rule requires that soil, groundwater and surface water sampling related to other UST program requirements use certain ADHS approved test methods and labs licensed by the Dept. of Health Services. The rule also provides specific directions on how appropriate environmental samples are to be taken, as well as the conduct of related activities. Subsections (C), (D) and (E) describe specific methods for sampling soil, groundwater and surface water, respectively.

3. Effectiveness of the rule in achieving its objectives: This rule effectively communicates proper collection, preservation, transportation and analysis requirements for environmental samples taken at an UST site at the time of permanent or temporary closure, corrective action, or any sampling under this Chapter.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain equivalent provisions. There is no federal licensing program for labs. This rule is consistent with 40 CFR 280.63(b) and 40 CFR 280.62(a)(5) which requires that "sample types, sample locations, and measurement methods," be provided "in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency." The rule is also consistent with 40 CFR 281.35(e) which requires the state to ensure that release response and corrective action information be submitted in a "manner that demonstrates its technical adequacy to protect human health and the environment". ADEQ added this rule to provide assistance to owners and operators, as well as their consultants and contractors, in selecting laboratories and test methods and understanding the QA/QC required for sampling and analytical testing.

R18-12-280(A) contains a minor inconsistency with state rules by citing only a part of Arizona Department of Health Services' Environmental Laboratory rules. Currently, the citation should go through R9-14-621 instead of R9-14-617, and could be amended to read "9 A.A.C 14, Article 6".

10. Completion of previous proposed courses of action: In the previous report, ADEQ concluded that the citations to Arizona Department of Health Services Laboratories rules in subsection (A) should include R9-14-618 through R9-14-621. ADEQ has not completed this proposed course of action.

14. Proposed course of action: ADEQ plans to fix the citation in subsection (A) in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-281. UST System Codes of Practice and Performance Standards

2. Objective of the rule: This Section is a consolidation of applicable industry standards referenced throughout Article 2. This rule creates one place where the regulated may obtain a comprehensive list of the industry documents. Additionally, by assembling the information in this Section, the rule text in the originating Sections is not interrupted by document reference numbers, titles, or "incorporation by reference" language.

3. Effectiveness of the rule in achieving its objective: This rule has made Article 2 clearer, more understandable, and easier to read.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This state rule is not consistent with the recently updated standards in 40 CFR 280.20, "Performance standards for new UST systems," and 40 CFR 280.21 "Upgrading of existing UST systems" because the federal rules and the state rule do not list the same standards. Effective October 13, 2015, EPA updated §§ 280.20 and 280.21 to "reflect new codes, changes to code names, and new nationally recognized associations and independent testing laboratories."

5. Status of enforcement of the rule: ADEQ enforces the state rule although some of the referenced standards in the state rule have been updated by issuing organizations. On a case by case basis, the Department allows the use of updated standards instead of the version of the standard in the rule. No incidents have occurred requiring ADEQ to initiate a formal enforcement action with respect to this rule.

14. Proposed course of action: ADEQ plans to update the rule with the newest version of any standards or methods that have been updated by the issuing organization, delete those no longer used, and submit the rulemaking to the Council in December of 2017.

ARTICLE 3. FINANCIAL RESPONSIBILITY

Structure and Purpose of Article 3

A.A.C. Title 18, Chapter 12, Article 3 contains rules made by ADEQ to describe the mechanisms by which UST owners and operators may establish that they are financially responsible for remedying the impacts of releases from their petroleum UST systems. Sections R18-12-300 through R18-12-321 were adopted effective September 21, 1992; Sections R18-12-322 through R18-12-325 were adopted effective July 30, 1996.

The organization of Article 3 by Section is as follows:

R18-12-300. Financial Responsibility; Applicability
R18-12-301. Financial Responsibility; Compliance Dates; Allowable Mechanisms; Evidence
R18-12-302. (Reserved)
R18-12-303. Amount and Scope of Required Financial Responsibility
R18-12-304. (Reserved)
R18-12-305. Financial Test of Self-insurance
R18-12-306. Guarantee
R18-12-307. Insurance and Risk Retention Group Coverage
R18-12-308. Surety Bond
R18-12-309. Letter of Credit
R18-12-310. Certificate of Deposit
Appendix A. Certification and Agreement - Certificate of Deposit

R18-12-311. State Fund or Other State Assurance
R18-12-312. Trust Fund
R18-12-313. Standby Trust Fund
R18-12-314. Local Government Bond Rating Test
R18-12-315. Local Government Financial Test
R18-12-316. Local Government Guarantee
R18-12-317. Local Government Fund
R18-12-318. Substitution of Financial Assurance Mechanisms by Owner and Operator
R18-12-319. Cancellation or Nonrenewal by a Provider of Financial Assurance
R18-12-320. Reporting by Owner and Operator
R18-12-321. (Repealed)
R18-12-322. Drawing on Financial Assurance Mechanisms
R18-12-323. Release from Financial Responsibility Requirements
R18-12-324. Bankruptcy or Other Incapacity of Owner, Operator, or Provider of Financial Assurance
R18-12-325. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 3

1. General and Specific Statutes Authorizing the Rules:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. A.R.S. § 49-1006(B) authorizes ADEQ to adopt rules for financial responsibility.

3. Effectiveness of the rules in achieving the objectives: An Auditor General Report from 2013 found that the overall effectiveness of the UST Financial Responsibility program could be improved by conducting outreach to stakeholders (insurance companies and tank owners) and clarifying financial responsibility requirements for UST inspection and compliance staff. No specific findings were made with respect to the effectiveness of any of the individual rules in this Article.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Except as noted below for R18-12-300, R18-12-303, R18-12-306, and R18-12-310, the Article 3 rules are consistent with, and no more stringent than, federal statutes and regulations, as required by A.R.S. § 49-1006(B). 40 CFR 280, Subpart H, §§ 280.90-280.116, contain the federal regulatory standards that apply to financial responsibility for owners and operators of petroleum USTs.

Other than R18-12-300, the variations from federal regulations in Article 3 are very minor. Arizona rules require facility identification numbers on documents (R18-12-303(F)), and list certificate of deposit as an available mechanism for attaining financial responsibility (R18-12-310). The variations allow for more efficient handling of financial responsibility and add clarity to the federal model. R18-12-306 inadvertently left out the words “of this section” that are present in the federal regulation.

Except for R18-12-300 and 311, the rules of Article 3 are consistent with state statutes and rules.

5. Status of agency enforcement policy regarding the rules: An Auditor General Report from 2013 found that ADEQ was failing to ensure that UST owners and operators meet financial responsibility requirements. Since then, ADEQ has instituted policies and procedures which have dramatically improved compliance. UST inspectors include financial responsibility as an important part of discussions of rule requirements with the regulated public during the course of compliance inspections at UST facilities. The Auditor General's follow up stated that all recommendations were implemented.

ADEQ believes the Article 3 rules are being currently enforced, with 2 exceptions. R18-12-300(D) is not being enforced due to its conflict with A.R.S. § 49-1006. As a result, ADEQ expects the previously deferred classes of airport hydrant systems and field-constructed tanks to comply with the financial responsibility of Article 3 as of October 13, 2015.

ADEQ is also not enforcing R18-12-311, "State Fund or Other State Assurance" because it is inconsistent with A.R.S. § 49-1054(A).

6. Clarity, conciseness, and understandability of the rules: The rules help the regulated community and the public in general understand the need for financial responsibility, as well as to understand the details and applicability of specific financial responsibility mechanisms. Except as noted below with respect to R18-12-306, the rules are clear, concise, and understandable to the regulated community and the public in general.

Some of the Sections in this Article incorporate by reference sections of 1988 federal regulations that have now been updated. These are mentioned in the individual rule analysis below, but the differences have only minor substantive effect, or none at all.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 3 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The economic impact of the rules has not differed significantly from that projected in the economic statement issued in July 1996 and updated during subsequent 5-Year Review Reports. The 1996 EIS noted that Article 3 closely followed federal regulations and allowed the State Assurance Fund to be used as a financial assurance mechanism. Two potential new impacts result from a change in state statute (see discussion of consistency under R18-12-311) and a change in federal regulation (see discussion of consistency under related to R18-12-300(D)).

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: None submitted.

10. Completion of previous proposed courses of action: ADEQ planned to insert "of this section" in R18-12-306 in the next UST rulemaking and submit the rulemaking to the Council in December 2012, moratorium permitting. ADEQ did not complete this course of action because

the agency believed the changes to this section would not meet the moratorium exemption criteria.

11. Cost benefit determination; least burden and cost: Independent of the fact that the requirements in this Article are mandated by federal law, the Department believes the probable benefits of this Article outweigh the probable costs. The majority of costs under this Article are those incurred by owners and operators of tanks for acquisition of financial assurance mechanisms. Owners and operators primarily use insurance, and the premiums are kept low because the financial assurance providers, actuarial experts and specialists at insuring risk, are competing in a sizeable market. Weighed against this cost is the benefit of having an efficient insurance market cover underground storage tank risks as opposed to the State paying for cleanups with public funds that come from the penny per gallon UST tax. The ultimate objective of financial assurance and this Article is to reduce or eliminate the need for the penny per gallon tax.

The Department also believes that the rules in this Article impose the least burden and cost to persons regulated by this Article. The ability to choose a financial assurance mechanism from a number of mechanisms allows the owner/operator to choose the one with the least burden and cost to itself. In addition, the efficiency of the competition in the private market also insures the lowest possible costs.

12. Stringency compared to corresponding federal law: There are some minor differences from corresponding federal law which are related to the Department implementing a UST program in lieu of the federal program. For example, R18-12-303(F) requires facility identification numbers on documents.

13. Compliance with A.R.S. § 41-1037: The Article 3 rules do not require the issuance of a regulatory permit, license or agency authorization. In addition, the rules were promulgated prior to 2010.

14. Proposed course of action: ADEQ plans to update the incorporations by reference throughout this Article, repeal R18-13-311, and insert “of this section” in R18-12-306 in the next UST rulemaking, in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 3

R18-12-300. Financial Responsibility; Applicability

2. Objective of the rule: This rule places responsibility for compliance with the Article on owners and operators of petroleum UST systems which are being used on the effective date of the Section, or anytime thereafter. It also provides for the exclusion of certain systems, in addition to those which are excluded or deferred under A.R.S. § 49-1021.

3. Effectiveness of the rule in achieving the objective: Except as pointed out below under consistency, this rule effectively identifies which owners and operators of petroleum UST systems are subject to the requirements of this Article and which owners and operators are

excluded from all requirements or deferred from certain provisions.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Subsection D of R18-12-300, which incorporates the 1994 version of EPA regulations covering exclusions and deferrals from various requirements, is inconsistent with the latest federal regulation effective October 13, 2015. As a result, subsection D is also be inconsistent with A.R.S. § 49-1006, which directs owners and operators to file evidence of financial responsibility with the department *if required by federal regulations*. (Emphasis added) The result is that previously deferred or excluded tanks (airport hydrant systems, and field-constructed tanks) must comply with financial responsibility requirements as of October 13, 2015. (40 CFR 280.10)

5. Status of agency enforcement policy regarding the rule: R18-12-300(D) is not being enforced due to its conflict with A.R.S. § 49-1006. As a result, ADEQ expects the previously deferred classes of airport hydrant systems and field-constructed tanks to comply with the financial responsibility of Article 3 as of October 13, 2015.

12. Stringency compared to corresponding federal law: This rule is less stringent than the current 40 CFR 280.10. The incorporation by reference of the cited federal regulations needs to be updated to include the regulations effective as of October 13, 2015.

R18-12-301. Financial Responsibility; Compliance Dates; Allowable Mechanisms; Evidence

2. Objectives of the rule: The purpose of this rule is to establish basic financial responsibility requirements for various petroleum UST owners and operators, including allowable mechanisms, and what must be submitted to the Department as evidence of compliance. Owners and operators are also required to maintain evidence of financial responsibility at the UST facility or an acceptable alternative site.

3. Effectiveness of the rule in achieving the objectives: This rule specifies when the financial instrument itself must be submitted and when a certification of compliance is required. The language required for certification of insurance mechanisms is set forth by reference to a federal regulation. ADEQ has found it expedient to supplement the language in the federal regulation by issuing a fact sheet, (Pollution Liability Insurance for Underground Storage Tanks) which takes the extra steps to explain why ACORDs, declarations and binders are not sufficient evidence of compliance through an insurance mechanism.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This rule is consistent with 40 CFR 280.93 "Amount and scope of required financial responsibility." which requires tank owners and operators to "demonstrate financial responsibility". Although ADEQ also uses the "demonstrate financial responsibility" language in the next section (R18-12-303), this rule, by identifying what is evidence of compliance, provides more clarity.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (C) could be updated to October 13, 2015, but it would have no

substantive effect.

R18-12-303. Amount and Scope of Required Financial Responsibility

2. Objective of the rule: The rule stipulates the minimum amounts of financial responsibility owners and operators need to cover corrective actions and third party damages related to releases from their petroleum UST systems. The coverages and amounts required are on both a per-occurrence and annual aggregate basis.

3. Effectiveness of the rule in achieving the objective: This rule effectively communicates the coverage and annual aggregate amounts required for different types of owners and operators.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This rule is consistent with state statutes and rules and is consistent with 40 CFR 280.93 "Amount and scope of required financial responsibility", with the exception of the additional state requirement that UST facilities be identified individually by UST facility identification numbers assigned by ADEQ.

11. Cost benefit determination; least burden and cost: Financial responsibility is a key part of the Department's overall strategy of preventing and cleaning up releases from underground storage tanks. With many tank systems being owned by large and very large owners, it is critical to determine that each system is covered at the correct amount. The Department believes that requiring USTs to be identified individually by UST facility identification numbers assigned by ADEQ is a necessary feature of rules that will minimize the contribution of public dollars for cleanups. This added requirement makes the rule impose the least burden and cost on these facilities necessary to attain the financial responsibility objective.

R18-12-305. Financial Test of Self-insurance

2. Objective of the rule: The purpose of the rule is to establish how owners, operators, or guarantors can use "self-insurance" to comply with financial responsibility. This section clarifies that the chief financial officer of owners, operators, or guarantors is the sole person who can demonstrate that the financial test of self-insurance is met on an annual basis. Options are provided for those who cannot meet the requirements of the financial test.

3. Effectiveness of the rule in achieving the objective: This rule effectively identifies the requirements that must be met if an owner or operator wants to use self-insurance as a means of satisfying financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule is consistent with 40 CFR 280.95 "Financial test of self-insurance", except for a reference to a federal agency. See explanation under clarity of the rules below.

6. Clarity, conciseness, and understandability of the rules: The state rule provides for filing financial statements with the Rural Electrification Administration (REA). The REA was abolished in 1994 and its functions assumed by the Rural Utilities Service. The name of the federal agency was recently changed in the federal regulation, and for clarity, should be changed

in the state rule.

The incorporation by reference language in subsection (C) could be updated to October 13, 2015 for clarity, but it would have no substantive effect.

R18-12-306. Guarantee

2. Objectives of the rule: The purpose of the rule is to provide the requirements for owners and operators who elect to obtain a guarantee to satisfy the financial responsibility requirements. It also addresses who can be a guarantor, the guarantor's responsibility for meeting the financial test, the wording of the guarantee, and the need for a standby trust.

3. Effectiveness of the rule in achieving its objective: This rule effectively sets forth the requirements that must be met in order for an owner or operator to use a guarantee as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Except as noted below in the discussion of clarity, the state rule is consistent with 40 CFR 280.96, "Guarantee," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: Clarity and understandability would be improved by adding the phrase "of this Section" at the end of the first sentence in subsection (A). The phrase is present in 40 CFR 280.96 and appears to have been inadvertently omitted from the state rule between its original promulgation in 1992 and its only amendment in 1996. The incorporation by reference language in subsection (C) could be updated to October 13, 2015, but it would have no substantive effect. Otherwise, the rule is clear, concise and understandable.

10. Proposed course of action: ADEQ plans to insert "of this Section" in R18-12-306 and update the incorporation by reference in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-307. Insurance and Risk Retention Group Coverage

2. Objective of the rule: The purpose of the rule is to establish the requirements for UST owners and operators who choose to obtain liability insurance from a qualified insurer or risk retention group to satisfy the financial responsibility requirements. It also clearly establishes the wording that must be used in all policies.

3. Effectiveness of the rule in achieving the objective: The rule effectively sets forth the requirements that must be met in order for an owner or operator to use insurance as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Except as noted below, the state rule is consistent with 40 CFR 280.97, "Insurance and risk retention group coverage," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have minor substantive effect.

R18-12-308. Surety Bond

2. Objective of the rule: The purpose of the rule is to provide the requirements for owners and operators who elect to obtain a surety bond to satisfy the financial responsibility requirements. It also establishes the wording that must be used in the bond and the need for a standby trust.

3. Effectiveness of the rule in achieving the objective: The rule effectively discusses how a surety bond can be used to satisfy the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.98, "Surety bond," with two exceptions. First, the incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have minor substantive effect. Second, the federal rule requires the issuing surety company to be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury. The state rule has the same requirement but incorporates the June 30, 1995 Circular 570. ADEQ is unaware of any surety company excluded by this incorporation date. Otherwise, the rule is consistent with A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-309. Letter of Credit

2. Objective of the rule: The purpose of the rule is to establish the requirements for owners and operators who elect to obtain an irrevocable standby letter of credit to satisfy the financial responsibility requirements. It also specifies that the letter of credit must be automatically renewable, and it sets forth the wording that must be used.

3. Effectiveness of the rule in achieving the objective: This rule effectively discusses how a letter of credit can be used to satisfy the UST financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Except as noted below, the state rule is consistent with 40 CFR 280.99, "Letter of credit," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have minor substantive effect.

R18-12-310. Certificate of Deposit

2. Objective of the rule: This rule provides the requirements and language for UST owners and operators who choose to obtain a certificate of deposit (CD) to meet part of their UST Financial Responsibility requirement. This mechanism is valid only for the corrective action requirements, not for third-party compensation requirements of financial responsibility. The rule also provides that the CD must have ADEQ listed as a payee, and it sets forth the requirements for financial

institution issuing the CD.

3. Effectiveness of the rule in achieving the objective: This rule effectively discusses how a CD can be used as a partial means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. ADEQ added this alternative mechanism in the interest of finding a method for owners and operators to comply with their financial assurance requirements without having to pay an initial fee. This mechanism was used primarily to provide coverage for the deductible or co-pay level under the State Assurance Fund (SAF). The rule is consistent with A.R.S. § 49-1006 and other state statutes and rules.

R18-12-311. State Fund or Other State Assurance

2. Objective of the rule: The purpose of the rule is to provide for the use of an EPA-approved state fund as a full or partial financial responsibility mechanism. It sets forth the terms and conditions that must be met in order for this mechanism to be valid.

3. Effectiveness of the rule in achieving the objective: This rule effectively established the use of Arizona's SAF as a partial financial responsibility mechanism. A recent amendment to a state statute has negated this rule's effectiveness. ADEQ is not aware of any tank owner or operator that relied on the state assurance fund for financial assurance when the statute changed.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This section is in direct conflict with UST legislation effective July 3, 2015, specifically A.R.S. § 49-1054(A), which provides: "Receipt of financial assistance from the underground storage tank revolving fund does not constitute a financial assurance mechanism and may not be used to demonstrate compliance with financial responsibility requirements or to provide compensation to third parties for bodily injury or property damage." The federal rule, 40 CFR 280.101, "State fund or other state assurance", is not comparable to the state rule.

6. Clarity, conciseness, and understandability of the rules: If ADEQ was going to keep this rule, the incorporation by reference language in subsection (A) could be updated to October 13, 2015. The update would have no substantive effect.

14. Proposed Course of Action: This section should be repealed because it directly contradicts A.R.S. § 49-1054(A). ADEQ plans to make this change in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-312. Trust Fund

2. Objective of the rule: This rule establishes the use of a trust fund as a means of meeting the UST financial responsibility requirements. It identifies who the trustee may be, the required wording of the trust agreement, and the period of time the trustee has in which to release funds to ADEQ following notification from the UST owner or operator.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements for using a trust fund as a financial responsibility mechanism.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Except as noted below, the state rule is consistent with 40 CFR 280.102, "Trust fund," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have no substantive effect.

R18-12-313. Standby Trust Fund

2. Objective of the rule: The purpose of the rule is to set forth the requirements that a standby trust fund must meet when it is acquired in support of certain financial responsibility requirements. The rule identifies who the trustee must be and provides the wording for the standby trust agreement.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements that a standby trust fund must meet.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.103, "Standby trust fund," A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-314. Local Government Bond Rating Test

2. Objective of the rule: This rule provides an alternative financial responsibility mechanism for use by local governments, both general purpose and special purpose. It requires the local government owner or operator to demonstrate that certain amounts of general obligation or revenue bonds are outstanding and that all outstanding bonds carry certain minimum ratings.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements for using a local government bond rating test as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is not consistent with 40 CFR 280.104, "Local government bond rating test," which was amended by EPA effective October 13, 2015. The rule is consistent with A.R.S. § 49-1006, because it is "consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted."

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsections (D) and (E) could be updated to October 13, 2015. The updates would

have minor substantive effect.

R18-12-315. Local Government Financial Test

2. Objective of the rule: This rule provides an alternative mechanism for use by local governments. This mechanism utilizes a financial test developed specifically for government entities which recognizes governmental accounting principles. This is a viable mechanism for smaller governmental entities which cannot pass the bond rating test because the amount of investment rated outstanding bond issues is less than 1 million dollars or because they cannot issue general obligation or revenue bonds.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements for using a local government financial test as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.105, "Local government financial test," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (C) could be updated to October 13, 2015. The update would have minor substantive effect.

R18-12-316. Local Government Guarantee

2. Objective of the rule: This rule provides an additional alternative mechanism for use by local governments to meet the financial responsibility requirements. It requires that the owner or operator secure a guarantee from another local government or from a state. The rule also imposes certain requirements on a local government providing such a guarantee.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements for using a local government guarantee as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.106, "Local government guarantee," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (E) could be updated to October 13, 2015. The update would have minor substantive effect.

R18-12-317. Local Government Fund

2. Objective of the rule: The purpose of the rule is to provide the final type of alternative mechanism for exclusive use by local governments to meet the financial responsibility requirements. The owner or operator must establish a dedicated fund or use an existing fund

balance to demonstrate that a timely response can be made to a release from a regulated UST system.

3. Effectiveness of the rule in achieving the objective: This rule effectively sets forth the requirements for using a local government fund as a means of satisfying the financial responsibility requirements.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.107, "Local government fund", A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have minor substantive effect.

R18-12-318. Substitution of Financial Assurance Mechanisms by Owner and Operator

2. Objective of the rule: This rule allows owners and operators to change their assurance mechanism or combination of mechanisms as long as they maintain compliance at all times with the financial responsibility requirements. The existing mechanism(s) can be canceled only after the owner or operator has obtained the new mechanism(s) and submitted evidence and certification of financial responsibility to ADEQ following the change.

3. Effectiveness of the rule in achieving the objective: This rule effectively provides freedom to owners and operators to change financial responsibility mechanisms as situations change.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.108, "Substitution of financial assurance mechanisms by owner or operator," 40 CFR 280.110(c), "Reporting by owner or operator", A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-319. Cancellation or Nonrenewal by a Provider of Financial Assurance

2. Objective of the rule: This rule establishes notification and cancellation requirements for certain providers of UST financial assurance in order to decrease gaps in coverage. It establishes a time frame for owners or operators to secure new coverage, as well as a list of requirements if they fail to obtain alternative coverage within the specified time frame.

3. Effectiveness of the rule in achieving the objective: This rule helps protect owners and operators from suddenly being out of compliance with financial responsibility requirements as a result of an unexpected cancellation or nonrenewal by a provider of financial assurance.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: This rule is consistent with a statute that took effect July 3, 2015 that requires insurers or other mechanisms to notify ADEQ within 30 days of the termination or nonrenewal of financial assurance used to meet the statutory UST

requirements. R18-12-319(B) requires an owner or operator to find new insurance within 60 days in the event of termination or nonrenewal. As a result of these 2 laws working together, ADEQ should have a record of owners and operators that have had insurance ended and have approximately 30 days to find new insurance. R18-12-320(A)(3) requires that they notify the Department if they do not find alternate assurance.

The state rule is consistent with 40 CFR 280.109, "Cancellation or nonrenewal by a provider of financial assurance," A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-320. Reporting by Owner and Operator

2. Objective of the rule: This rule sets forth the situations under which the owner and operator are required to submit evidence of financial responsibility to ADEQ. It also requires the owner and operator to include certification of compliance on the UST Notification form and gives ADEQ the ability to request evidence of compliance at any time.

3. Effectiveness of the rule in achieving the objective: This rule effectively establishes the reporting requirements imposed on owners and operators with respect to financial responsibility.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is nearly consistent with 40 CFR 280.110, "Reporting by owner or operator," A.R.S. § 49-1006, and with other state and federal statutes and rules. The "and" in the title is consistent with A.R.S. § 49-1016(A).

R18-12-322. Drawing on Financial Assurance Mechanisms

2. Objective of the rule: This rule sets forth the manner in which ADEQ will draw on financial assurance mechanisms. It establishes situations whereby the Director will require the guarantor, surety or institution issuing a letter of credit to place a stipulated amount of funds into a standby trust; conditions under which the Director will draw on certificates of deposit (CD) or a standby trust fund; and a priority scheme for when the amount of corrective action costs and third-party liability claims eligible for payment exceed the balance of the CD or standby trust and the obligation of the provider of financial assurance.

3. Effectiveness of the rule in achieving the objective: This rule effectively establishes both the manner in which ADEQ will draw on financial assurance mechanisms and provides for the payment of corrective action costs necessary to protect human health and the environment before the payment of third-party liability claims in the event their combined costs exceed the amount of financial assurance available.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.112, "Drawing on financial assurance mechanisms," A.R.S. § 49-1006, and with other state and federal statutes and rules.

6. Clarity, conciseness, and understandability of the rules: The incorporation by reference language in subsection (B) could be updated to October 13, 2015. The update would have no substantive effect.

R18-12-323. Release from Financial Responsibility Requirements

2. Objective of the rule: The rule establishes when an owner or operator is no longer required to maintain financial responsibility.

3. Effectiveness of the rule in achieving the objective: The rule effectively notifies owners and operators that financial responsibility must be maintained until the UST system has completed permanent closure or change-in-service, or, if corrective action is required, until corrective action has been completed and the UST system has completed permanent closure or change-in-service.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule is consistent with federal statutes and regulations, including 40 CFR 280.113 "Release from the requirements", A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-324. Bankruptcy or Other Incapacity of Owner, Operator, or Provider of Financial Assurance

2. Objective of the rule: This rule sets forth the actions that an owner, operator, guarantor, or local government owner must take in the event that they are named as debtor in a bankruptcy proceeding. This rule also establishes a time frame for taking the required actions and specifies that the owner or operator must obtain alternate financial assurance within 30 days after receiving a notice of bankruptcy or incapacity of its provider of financial assurance. This rule also discusses the actions that must be taken in the event that a state fund has become incapable of paying for assured corrective action costs or third-party liability compensation, if applicable.

3. Effectiveness of the rule in achieving the objective: This rule effectively communicates the owner's or operator's responsibility in the event that they or their provider of financial assurance undergo bankruptcy and the time frame for executing their responsibilities.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.114, "Bankruptcy or other incapacity of owner or operator or provider of financial assurance," A.R.S. § 49-1006, and with other state and federal statutes and rules.

R18-12-325. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

2. Objective of the rule: This rule requires owners or operators to either replenish the value of financial assurance or acquire another financial assurance mechanism if funds are drawn from a standby trust related to a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and if the amount in the standby trust is reduced below the full amount of coverage required. The time frame for compliance is one year from the date on which the funds were drawn.

3. Effectiveness of the rule in achieving the objective: This rule is effective in ensuring that owners and operators remain compliant with the financial responsibility requirements after a mechanism has been used in response to a release.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The state rule is consistent with 40 CFR 280.115, "Replenishment of guarantees, letters of credit, or surety bonds," A.R.S. § 49-1006, and with other state and federal statutes and rules.

ARTICLE 4. UNDERGROUND STORAGE TANK EXCISE TAX

Structure and Purpose of Article 4

A.A.C. Title 18, Chapter 12, Article 4 contains rules made by ADEQ in 1991 to describe the duties and responsibilities of suppliers and retailers of certain regulated substances to implement a one cent per gallon excise tax. It establishes reporting and filing requirements, and describes tax refund procedures and exemption certificates. R18-12-401 was repealed effective July 30, 1996.

The excise tax (see A.R.S. § 49-1031) is levied on regulated substances placed in an underground storage tank in Arizona that dispenses motor vehicle fuel, aviation fuel, diesel fuel, or other regulated substances, but not jet fuel, and not if the United States or Arizona is the tank owner. The fuel tax is assessed on all fuel sold in the calendar year. The tax is due annually on March 31, but most taxpayers choose to file and make periodic payments to the Arizona Department of Transportation (ADOT) at the same time the Motor Vehicle Fuel Tax is paid. ADOT acts as the collecting agent and is required by the 20th of each month to distribute UST tax monies to ADEQ for deposit in the UST Revolving Fund, net of administrative costs, received in the previous calendar month. Annual collection in FY 2014 was $28.6 million. The last 5 years have remained relatively constant, leveling off from a high of $36.2 million in FY 2006.

The organization of Article 4 by Section is as follows:

R18-12-401. Repealed
R18-12-402. Duties and responsibilities of a supplier; certain regulated substances
R18-12-403. Periodic payments; deductions
R18-12-404. Reporting requirements for suppliers
R18-12-405. Invoice requirements for suppliers
R18-12-406. Reports and returns, net gallons required to be indicated
R18-12-407. Payment of tax; annual return
R18-12-408. Affidavit of tax responsibility
R18-12-409. Refunds
R18-12-410. Exemption certificates

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 4

1. Authorization of the rules by existing statutes:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. A.R.S. § 49-1031(H) authorizes rules for administering this tax.

3. Effectiveness of the rules in achieving their objectives: Based upon information supplied by the Arizona Department of Transportation (ADOT) regarding collection of tax monies from suppliers for ADEQ, ADEQ's operation of the UST tax database, and telephone correspondence with customers regarding tax-related issues, the Department considers that these rules are generally effective in achieving their objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. Except as noted under R18-12-404, R18-12-409, and R18-12-410, the Article 4 rules are consistent with state statutes (A.R.S. §§ 49-1031 through 49-1036) and rules.

5. Status of agency enforcement policy regarding the rules: The rules have been generally well understood and adhered to by the regulated community. Payment of interest for late returns and payments, specified under A.R.S. § 49-1035, is occasionally used. A change in A.R.S. § 49-1023(B)(2), effective July 3, 2015, allows ADEQ to prohibit fuel delivery at a tank where the tax has not been paid.

6. Clarity, conciseness, and understandability of the rules: The rules are clear, concise, and understandable to the regulated community and the public in general, as demonstrated by the lack of written criticism.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 4 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: These rules have been in place since December 1991 and the cost has become a standard part of doing business in Arizona. This rule does not have any direct impact on either private or public employment, and does not impact production or output. This tax is statutorily mandated and does not have a negative impact on state revenues. The rules implement the tax, and by providing partial funding for investigating and remediating releases from underground storage tanks, provide benefits far outweighing the costs.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted.

10. Completion of previous proposed courses of action: ADEQ proposed to fix the statutory reference in R18-12-404 and the overbroad citations in R18-12-409(D) and R18-12-410(C). This was not completed.

11. Cost benefit determination; least burden and cost: There is a direct benefit in retaining these rules. The rules minimize lost revenue and administrative costs by covering all eventualities and merely provide details for obligations spelled out in statutes.

12. Stringency compared to corresponding federal law: There is no corresponding federal law.

13. Compliance with A.R.S. § 41-1037: These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action: ADEQ plans to retain the current rules as long as the tax remains in effect. The UST tax is currently scheduled for repeal on December 31, 2023. ADEQ plans to fix the statutory reference in R18-12-404 and the incorrect citations in R18-12-409(D) and R18-12-410(C) in a rule submitted to GRRC by December 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 4

R18-12-402. Duties and responsibilities of a supplier; certain regulated substances
2. Objective of the rule: This rule clarifies that UST excise tax requirements under Article 4 apply to a supplier of regulated substances only to the extent that the regulated substance is aviation fuel, diesel, or motor fuel.

R18-12-403. Periodic payments; deductions
2. Objective of the rule: This rule sets forth the amount of tax to be collected and paid to ADOT by a supplier, and the monthly date by which the supplier must pay the tax. It also describes deductions that may be made from the payment.

R18-12-404. Reporting requirements for suppliers
2. Objective of the rule: This rule lists the information that must be provided each month to ADEQ on a form prescribed by ADEQ. Additionally, the rule clarifies that a "return form" to be prescribed by ADEQ under a Title 28 statute is the same form.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The Title 28 statute referenced in subsection (B) has been renumbered. The correct citation should be A.R.S. § 28-6003.

R18-12-405. Invoice requirements for suppliers
2. Objective of the rule: This rule requires a supplier to put its ADOT-assigned ID number and the UST excise tax amount on the invoice for each sale.

5. Status of agency enforcement policy regarding the rules: ADEQ is not enforcing the requirement for an ADOT-assigned ID number to be on the invoice.

14. Proposed Course of Action: ADEQ plans to remove the ID number requirement in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-406. Reports and returns, net gallons required to be indicated
2. Objective of the rule: This rule clarifies that all reports and returns submitted pursuant to this Article will denote regulated substances in units of "net gallons," which accounts for expansion and contraction of the fuel with temperature.

R18-12-407. Payment of tax; annual return

2. Objective of the rule: This rule specifies how the tax is paid. It requires an owner or operator of an UST to pay a one cent per gallon tax for the quantity of regulated substances placed in their tanks during a calendar year. It sets a due date, and specifies information to be included on an annual return form filed with the tax payment.

5. Status of agency enforcement policy regarding the rules: ADEQ does not require the tax to be paid "at the time" the return form is filed. The form, known as the "self-reporting form" is forwarded to ADEQ's business unit where it is processed with ADEQ's Revenue, Income, and Collection System. (RICS) A bill is then sent out which takes into account credits and debits from all ADEQ's divisions.

R18-12-408. Affidavit of tax responsibility

2. Objective of the rule: This rule clarifies that the tax will be collected from a UST owner unless the owner and operator file a notarized affidavit with the Department designating the operator as primarily responsible for the tax.

5. Status of agency enforcement policy regarding the rules: ADEQ is not enforcing the requirement that a formal affidavit accompany payment, but is assuming that payments promised or received are authorized.

R18-12-409. Refunds

2. Objective of the rule: This rule provides that a person who pays the tax, but is not liable for the tax, may claim a refund and provides a procedure for assigning the refund. The rule also provides that such a person must fill out a Department form providing specific information, and may appeal the Department's decision.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. Subsection (D) cites R18-1-201 through R18-1-219, but R18-1-209 through R18-1-219 were repealed in 1999. The rule should refer just to Sections still in effect, R18-1-201 through R18-1-207. Otherwise, the rule is consistent with state statutes and rules.

R18-12-410. Exemption certificates

2. Objective of the rule: This rule describes procedures for Department issuance of an exemption certificate and directs suppliers not to charge the UST tax when presented with a valid certificate.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. Subsection (C) cites R18-1-201 through R18-1-219, but R18-1-209 through R18-1-219 were repealed in 1999. The rule should refer just to Sections still in effect R18-1-201 through R18-1-207. Otherwise, the rule is consistent with state statutes and rules.

ARTICLE 5. FEES

Structure and Purpose of Article 5

The A.A.C. Title 18, Chapter 12, Article 5 contains a rule made by ADEQ to reiterate the statutory annual UST fee requirement (A.R.S. § 49-1020) and options and time frames for fee payment. Article 5 was adopted effective December 26, 1991.

Article 5 contains one Section:

R18-12-501. Fees

A. ANALYSIS OF INDIVIDUAL RULE OF ARTICLE 5

1. General and Specific Statutes Authorizing the Rule:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. A.R.S. § 49-1020 authorizes rules to provide for the orderly imposition and collection of the fee.

2. Objective of the rule: The rule implements the statutory requirement in A.R.S. § 49-1020 for owners or operators to pay a $100 per tank per year fee to the Department by providing time frames and an alternate schedule for payment.

3. Effectiveness of the rule in achieving the objective: The rule has been generally effective in providing the necessary information for UST owners or operators to make timely annual payment of appropriate fees. Alternate payment schedules under subsection (C), known as payment plans, are commonly requested and approved for owners or operators of multiple tanks.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain comparable provisions. The rule is consistent with state statutes and rules.

5. Status of agency enforcement policy regarding the rule: The rule has been generally well understood and adhered to by the regulated community, such that enforcement, when needed, has been adequate and in accordance with the Agency's Compliance and Enforcement Handbook.

6. Clarity, conciseness, and understandability of the rule: With the exception of a typographical error in subsection (C)(2), the current rule is clear, concise and understandable. It should probably read "shall be equal to at least 25%."

7. Written criticisms of the rule received within the last five years: No written criticisms of the Article 5 rule have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at

last rule adoption: This rule has been in place since December 1991 and the cost has become a standard part of doing business in Arizona. This rule does not have any direct impact on either private or public employment, and does not impact production or output. This fee is statutorily mandated and does not have a negative impact on state revenues. The rule implements the fee, and by providing a significant portion of the funding necessary to oversee the proper installation, operation, and closure of underground storage tanks, the benefits provided by this rule continue to outweigh the costs.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: None submitted.

10. Completion of previous proposed courses of action: ADEQ proposed to fix the typographical error in subsection (C)(2) during the next ADEQ UST rulemaking and submit the rule to the Council in December 2012. ADEQ did not complete this course of action because the agency believed the changes to this section would not meet the moratorium exemption criteria.

11. Cost benefit determination; least burden and cost: The authorizing statute set the fee at $100 and required the rule to provide for the orderly imposition and collection of the fees . . ." The rule directs payment by March 15th of each year, and although $100 should not be difficult for the majority of tank owners, the rule also reduces the burden by providing for partial payments to be made over time. By providing a significant portion of the funding necessary to oversee the proper installation, operation, and closure of underground storage tanks, the benefits provided by this rule continue to outweigh the costs.

12. Stringency compared to corresponding federal law: There is no corresponding federal law.

13. Compliance with A.R.S. § 41-1037: The rule does not require a permit and was adopted before July 29, 2010.

14. Proposed course of action: ADEQ plans to fix the typographical error in subsection (C)(2) during the next ADEQ UST rulemaking and submit the rule to the Council in December 2017.

ARTICLE 6. UNDERGROUND STORAGE TANK ASSURANCE ACCOUNT

Structure and Purpose of Article 6

The rules in this Article implemented the UST assurance account, also known as the state assurance fund or SAF. The SAF provided partial coverage of investigation and corrective action costs incurred by a UST owner, operator, or volunteer. It also paid for corrective action costs incurred by ADEQ in certain cases where none of these entities acted to conduct appropriate remediation. With some exceptions, SAF paid up to 90 percent of the reasonable and necessary costs associated with performing eligible corrective action activities in response to a release from an underground storage tank. Article 6 provided procedures for these payments. Article 6 was last revised in 2006

Laws 2015, Chapter 247, repealed A.R.S. § 49-1051 through A.R.S. § 49-1055, thus repealing the SAF program and replacing it with a new "preapproval" program. By default, the rules in this Article are no longer consistent with Arizona statutes describing the new program. All UST funds from the SAF were transferred into the Revolving Fund effective July 3, 2015.

In spite of the repeal of the SAF statutes, some of the previously time-barred claims may need the rules in Article 6 for reference. See section 25 of HB 2636: "If reimbursement eligibility for a facility was exhausted through claims submitted on or before June 30, 2010 as a result of payment or eligibility limits in place on that date, that facility is not eligible for any additional reimbursement under this section." (emphasis added)

The Article 6 rules describe two processes for accessing funding under the SAF.
1) Reimbursement applications – used by SAF applicants to recover costs for corrective actions that have been completed and were NOT included in a preapproval application approved by ADEQ. This process has been discontinued under the new law.
2) Preapproval applications - used by SAF applicants to have their proposed work reviewed by ADEQ prior to initiating activities. The preapproval application does not include invoices for incurred costs. After an applicant completes work under the accepted preapproval, they submit a "direct payment request" against the preapproval. The direct payment request is the only applicable mechanism for recovering costs approved in the preapproval. Preapproval is continued with some modifications under the new law.

Because SB 1306 sunsetted the SAF, and set a June 30, 2010 deadline for most types of applications for coverage, ADEQ has not processed any reimbursement or preapproval applications since January 1, 2011. Some of these claims will still be processed under the time-barred claims provisions in Sec. 25 of HB 2636.

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 6

1. Authorization of the rules by existing statutes:
General authorizing statute: A.R.S. § 49-104(B)(4).
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. A.R.S. §§ 49-1051 through 49-1055 contained statutory requirements for the rules in this Article.

3. Effectiveness of the rules in achieving their objective: The rules have been generally effective in providing financial assistance to UST owners, operators, and volunteers for assessing and remediating contamination from leaking USTs.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The Article 6 rules are NOT consistent with state statutes which were substantially amended as of July 3, 2015. The rules are mostly irrelevant and no longer applicable. The new statutes 49-1051 through 49-1057 supersede the rules in this Article.

Federal UST statutes and regulations do not contain comparable provisions.
Statutes and rules used in determining consistency: A.R.S. §§ 49-1051 through 49-1057.

5. Status of agency enforcement policy regarding the rules: These rules have not been used or enforced since January 1, 2011.

6. Clarity, conciseness, and understandability of the rules: When used under the old statutes, these rules were generally clear, concise and understandable. They are generally inapplicable and not clear or understandable under the new statutes.

7. Written criticisms of the rule received within the last five years: ADEQ has received no written criticisms of the rules of Article 6.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The last rule adoption was in 2006. On February 12, 2010, ADEQ issued a notice indicating its determination that the SAF fund balance would not be sufficient to pay all approved amounts for applications and direct payment requests that were in process or anticipated to be submitted. The notice activated a ranking period as of March 31, 2010 for establishing the priority of assurance account payments, and directed potentially affected parties to employ the system of priority ranking points already established in rule. (See R18-12-612) In anticipation of ending the penny per gallon excise tax, the legislature set a June 30, 2010 deadline for most types of applications for coverage. In light of these 2 events, the benefit of the rules in this Article was not as great as estimated at the last rule adoption.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted.

10. Completion of previous proposed courses of action: No action was proposed.

11. Cost benefit determination; least burden and cost: There is no direct benefit in retaining these rules.

12. Stringency compared to corresponding federal law: There is no corresponding federal law.

13. Compliance with A.R.S. § 41-1037. These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action: ADEQ plans to substantially amend the rules in this Article in a regular Chapter-wide rulemaking in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 6

R18-12-601. Eligibility

2. Objective of the rule: The rule's objective was to provide eligibility criteria and procedural mechanisms necessary for the administration of the state assurance fund.

R18-12-602. Applicability
2. Objective of the rule: The rule's objective was to describe how the revised rules of Article 6 apply to applications and direct payment requests submitted to the Department after the effective date of the 2006 revisions to Article 6.

R18-12-603. General Application and Direct Payment Request Requirements
2. Objective of the rule: The rule's objective was to establish the required content and supporting material for applications for reimbursement, preapproval, and direct payment requests from the state assurance fund.

R18-12-604. Reimbursement Application Process
2. Objective of the rule: The rule's objective was to provide the details and specific requirements by which an eligible person or designated representative of an owner or operator may submit a reimbursement application to the Department for coverage of the cost of corrective action activities from the state assurance fund.

R18-12-605. Preapproval Application Process
2. Objective of the rule: The rule's objective was to provide the details and specific requirements by which an eligible person or designated representative of an owner or operator may submit a preapproval application to the Department for coverage of the cost of corrective action activities from the state assurance fund.

R18-12-606. Direct Payment Request Process
2. Objective of the rule: The rule's objective was to provide the details and specific requirements by which an eligible person or designated representative of an owner or operator may submit a direct payment request to the Department for coverage of the cost of corrective action activities from the state assurance fund.

R18-12-607. Schedule of Corrective Action Costs
2. Objective of the rule: The rule's objective was to provide process and content requirements for ADEQ's triennial list of corrective action costs required by former A.R.S. § 49-1054(C). By establishing a basis for comparison, the list (or schedule) of corrective action costs helps assure that the costs covered by an application for reimbursement or preapproval and direct payment requests are reasonable.

R18-12-608. Scope and Standard of Review
2. Objective of the rule: The rule's objective was to define the scope and establish the standards by which ADEQ will review and approve or deny applications for reimbursement or preapproval and direct payment requests.

R18-12-609. Copayments: Applicability, Waivers, and Credits
2. Objective of the rule: The rule's objective was to provide a process by which persons eligible for SAF coverage establish that they have or will meet the statutory copayment requirements in

former A.R.S. 49-1052(I) or may be eligible for certain waivers and credits with respect to the copayment requirements.

R18-12-610. Interim Determinations, Informal Appeals and Requests for Information
2. Objective of the rule: The rule's objective was to provide the details of timing and manner of interim determinations of coverage, informal appeals of ADEQ determinations, and opportunities for ADEQ to request additional information relative to its decision about coverage.

R18-12-611. Final Determinations and Formal Appeals
2. Objective of the rule: The rule's objective was to establish when an ADEQ determination of coverage is final and the process by which that determination may be formally appealed.

R18-12-612. Priority of Assurance Account Payments
2. Objective of the rule: The rule's objective was to allow the Director to determine when approved payments may exceed the state assurance account balance and activate a system for prioritizing assurance account payments based on consideration of financial need of the applicant and the risk of the release to human health and the environment.

R18-12-613. Determining Financial Need Priority Ranking Points
2. Objective of the rule: The rule's objective was to provide a procedure for ADEQ to quantify financial need of an eligible person in the event that ADEQ activates the system for prioritizing assurance account payments.

R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points
2. Objective of the rule: The rule's objective was to provide requirements for documentation of financial need in the event that ADEQ activates the system for prioritizing assurance account payments.

R18-12-615. Risk Priority Ranking Points
2. Objective of the rule: The rule's objective was to provide a procedure for ADEQ to quantify risk to human health and the environment in the event that ADEQ activates the system for prioritizing assurance account payments.

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

Structure and Purpose of Article 7

A.A.C. Title 18, Chapter 12, Article 7 implemented the grant account created by the previous A.R.S. § 49-1071 and contains rules that enabled grants to small UST operations, particularly those in rural areas of the state (See NFRM-June 14, 1996 Arizona Administrative Register, p. 3168). Article 7 contains R18-12-701 through R18-12-714, adopted effective May 23, 1996, and was amended on August 15, 1996 and October 21, 1998. The main purposes of the Grant Account were to assist owners and operators in upgrading their USTs to meet 1998 federal tank standards, closing USTs which will not be upgraded, and conducting appropriate corrective actions, without incurring considerable expense which might force the owners and operators to

close down operation and abandon tanks.

Laws 2015, Chapter 247, repealed A.R.S. § 49-1071, "The grant account" and created a new A.R.S. § 49-1071, "Grants; purposes; priority", repealing the old grant program and replacing it with a new grant program. By default, the rules in this Article are no longer consistent with A.R.S. § 49-1071. The grant account itself, which had been dormant since 2004, was also eliminated effective July 3, 2015.

The organization of Article 7 by Section is as follows:
R18-12-701. Allocation of Grant Account Funds
R18-12-702. Eligible Projects
R18-12-703. Amount of Grant Per Applicant or Facility
R18-12-704. Grant Application Submission Period
R18-12-705. Grant Application Process
R18-12-706. Grant Application Contents
R18-12-707. Work Plan
R18-12-708. Business Plan
R18-12-709. Review of Application
R18-12-710. Feasibility Determination
R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other than Local Governments
R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments
R18-12-713. Determination of Grants to Be Issued
R18-12-714. Grant Issuance: Notification; Payment

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 7

1. Authorization of the rules by existing statutes: General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of rules for the UST program. Former A.R.S. §§ 49-1071 and 49-1072 created and state the purposes of the grant account, respectively. These statutes have been repealed.

3. Effectiveness of the rules in achieving the objective of the rules: The Grant Program and these rules were designed to financially assist small "Mom and Pop" UST owners and operators in upgrading their USTs to meet 1998 federal tank standards; closing USTs which would not be upgraded, or conducting appropriate corrective actions, without incurring considerable expense which may have forced the owners and operators to close down operation and abandon tanks. As such, the rules were very effective in achieving these goals.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The new grant program under the new statute is also a competitive grant program but otherwise is an entirely new program. The Article 7 rules are not consistent with the new state statute.

5. Status of agency enforcement policy regarding the rules: The grant account has been inactive for the past 5 years.

6. Clarity, conciseness, and understandability of the rules: The current rules are clear, concise and understandable, but will not apply to the new grant program.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 7 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The economic impact of the rules has changed due to the grant account being inactive. Previously, the Article 7 rules provided the regulated community, particularly the owners and operators of smaller UST operations, with a mechanism to obtain grant monies to assist them financially with compliance for purposes of conducting UST corrective actions, system upgrades, or closures.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: None submitted.

10. Completion of previous proposed courses of action: ADEQ proposed to retain the rules, noting the legislature could replenish the grant account, and stated that the rules should remain in place until the legislature repeals the enabling statutes.

11. Cost benefit determination; least burden and cost: There is no direct benefit in retaining these rules.

12. Stringency compared to corresponding federal law: There is no corresponding federal law.

13. Compliance with A.R.S. § 41-1037: These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action: ADEQ plans to substantially amend the rules in this Article in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 7

R18-12-701. Allocation of Grant Account Funds

2. Objective of the rule: This rule clarifies how funds in the grant account are to be allocated. It also establishes when the amounts available from the fund are to be determined, how the monies in the fund are to be allocated to administrative costs, and how the amounts available are to be apportioned among local governments and those applicants which are not local governments.

R18-12-702. Eligible Projects

2. Objective of the rule: This rule further clarifies the projects eligible for a grant, as established

in A.R.S. § 49-1072, and the statutory requirements which must be met. The Section also establishes projects and activities which may not be conducted with grant funds.

R18-12-703. Amount of Grant Per Applicant or Facility
2. Objective of the rule: This rule clarifies that the maximum grant amount available to each owner or operator is $100,000, which is also the maximum amount that can be granted at any one UST facility.

R18-12-704. Grant Application Submission Period
2. Objective of the rule: This rule specifies the time periods when applications for grant funds will be received and how the public will be notified of this information.

R18-12-705. Grant Application Process
2. Objective of the rule: This rule describes the requirements for a grant application submitted to ADEQ. It also sets forth the process for receiving and processing an application by the Department.

R18-12-706. Grant Application Contents
2. Objective of the rule: This rule provides information on the form that must be used and the specific information that must be contained in a grant application.

R18-12-707. Work Plan
2. Objective of the rule: This rule sets forth the requirements of a grant work plan for an eligible project.

R18-12-708. Business Plan
2. Objective of the rule: This rule sets forth the requirements of a business plan which is required only when the eligible project involves UST replacement or upgrade.

R18-12-709. Review of Application
2. Objective of the rule: This rule provides for review of grant applications and contains procedures for informing an applicant of any deficiencies. It also contains information on the time frame for the applicant to respond to deficiencies, and it sets forth the procedures for ADEQ for a complete application.

R18-12-710. Feasibility Determination
2. Objective of the rule: This rule establishes the standards used by ADEQ to determine the feasibility of upgrading a UST with corrosion protection (versus replacement of a UST).

R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other than Local Governments
2. Objective of the rule: This rule establishes the methods and standards used to determine the number of priority ranking points for an application from an applicant that is not a local government.

R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are

Local Governments

2. Objective of the rule: This rule establishes the methods and standards used to determine the number of priority ranking points for an application from an applicant that is a local government.

R18-12-713. Determination of Grants to be Issued

2. Objective of the rule: This rule sets forth a point system that ADEQ will use to determine which of the approved applicants will receive a grant award if the cumulative amount requested in approved applications exceeds the total amount available for grants during a submission period. The highest number of points will be first to be awarded grant monies.

R18-12-714. Grant Issuance: Notification; Payment

2. Objective of the rule: This rule establishes that applicants will be notified of the results of their application for a grant, and it also sets forth the requirements for payment of the grant funds to the applicant.

ARTICLE 8. TANK SERVICE PROVIDER CERTIFICATION

Structure and Purpose of Article 8

18 A.A.C. 12, Article 8 describes how tank service providers can obtain certification from ADEQ to provide specific types of tank service for owners and operators. Sections R18-12-801 through R18-12-809 were adopted effective December 6, 1996 and have not been amended since then.

The organization of Article 8 by Section is as follows:

R18-12-801. Applicability; Presentation of Certification
R18-12-802. Transition
R18-12-803. Categories of Certification
R18-12-804. International Fire Code Institute Certification; Additional Certification
R18-12-805. Alternative Certification
R18-12-806. Application; Certification
R18-12-807. Duration; Renewal; Changes
R18-12-808. Discontinuation of Tank Service
R18-12-809. Suspension; Revocation

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 8

1. General and specific statutes authorizing the rules:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program, and A.R.S. § 49-1082 authorizes rules for UST service providers.

3. Effectiveness of the rules in achieving their objective: The rules have been effective in implementing the UST service provider certification program. As of October 13, 2015,

approximately 164 individuals were certified as providers, many under more than one category.

4. Consistency of the rules with state and federal statutes and rules and a Listing of the Statutes or Rules Used in Determining the Consistency: The federal UST statutes and regulations do not contain corresponding provisions, but allow states to establish installer certification to ensure compliance. 42 USCS 6991b(h)(12)(B)(i)(2)(B) provides that each State that receives funding may require an installer to be licensed or certified by the State. This Article is also generally consistent with 40 CFR 280.31, which requires "cathodic protection systems [to] be inspected for proper operation by a qualified cathodic protection tester in accordance with . . . a code of practice developed by a nationally recognized association." and with 40 CFR 280.20(e) which lists installer certification or licensing by the implementing agency as one of the ways owners and operators may ensure compliant installation of UST systems.

The rules are consistent with state statutes and rules including the Department of Weights and Measure's rules for Registered Service Representatives at 20 A.A.C. 2, Article 6, which qualify and register persons to work on the vapor recovery systems at gasoline dispensing facilities. Some of ADEQ's UST service providers are also members of ADWM's Registered Service Representatives.

5. Status of Agency enforcement policy regarding the rules: The rules are enforced. One tank service provider had a license revoked under R18-12-809(A). Since certification must be renewed annually or every 2 years, depending on the category of certification, tank service providers can drop off the list if they let their certification lapse.

6. Clarity, conciseness, and understandability of the rules: Except as noted in R18-12-804, the rules are clear, concise, and understandable to tank service providers, the regulated community and the public in general, as demonstrated by the lack of written criticism. The service provider community is typically very knowledgeable of the rule requirements.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 8 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The economic impact of the rules has not differed significantly from that projected in the original economic statement issued in December 1996 and updated in subsequent five-year-review reports. The Department has been able to assimilate its costs of this program without charging a fee by using existing third-party certifications to demonstrate minimum levels of knowledge and skill. Department costs overseeing providers are also reduced because of delegation agreements with the State Fire Marshal and some urban fire departments who provide inspection services at UST installations and closures.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Chapter.

10. Completion of previous proposed courses of action: The department did not make the

proposed minor revisions to this Article proposed in 2010 because the agency believed the changes to this section would not meet the moratorium exemption criteria.

11. Cost benefit determination; least burden and cost: A primary benefit of the certification program is to the owners and operators of USTs (including governments) because they will be better able to locate qualified tank service providers either by checking for the Department issued certification card or by accessing the Departmental list of certified tank service providers. The Department and the general public also receive benefits through fewer malfunctioning USTs and increased safety. Annual costs for the providers to maintain and renew certification remain low and the Department believes that the benefits of this Article are greater than the costs.

A.R.S. § 49-1082(C) authorizes the Department to define the duration of the certification period which shall be at least one year. The Department believes that its current certification periods of one and two years impose the least burden and cost on service providers necessary to achieve the underlying objectives of safety and protection of human health and the environment.

12. Stringency compared to corresponding federal law: There is no corresponding federal law for certification of tank service providers. Instead the federal statutes and regulations allow it as an option. See part 4 above. Even if this was viewed as more stringent than federal law, A.R.S. § 49-1082 authorizes certification of tank service providers.

13. Compliance with A.R.S. § 41-1037: A.R.S. § 41-1037 does not apply to the rules in this Article since the rules were promulgated before the statute was enacted.

14. Proposed Course of Action: ADEQ plans to retain the current rules except for:
1. Replacing "IFCI" (International Fire Code Institute) with a new term "ICC" in R18-12-804 and R18-12-805. ICC (International Code Council) is the new name of the organization. See also the proposed course of action for R18-12-101, "Definitions;"
2. Repealing R18-12-802.

ADEQ plans to make the changes in this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 8

R18-12-801. Applicability; Presentation of Certification

2. Objective of the rule: This rule places responsibility on service providers to obtain certification from ADEQ prior to providing service or to be supervised by an individual who has received certification from ADEQ. This rule also requires the certified individual to present proof of certification when requested by the Department.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes that a person cannot perform tank service unless they are certified by ADEQ to perform that service or supervised by another person who is certified to perform that service.

R18-12-802. Transition

2. Objective and purpose: This rule provided for a temporary certification for tank service providers who would not have obtained permanent certification by January 31, 1997. It allowed the Department to issue a temporary certification that was valid until the individual obtained permanent certification or March 31, 1997, whichever came first.

3. Effectiveness of the rule in achieving its objective: This rule was effective in giving tank service providers ample time to obtain permanent certification without them having to shut down their business. R18-12-802 "Transition" is no longer necessary since the need for temporary certification has passed.

10. Proposed course of action: ADEQ plans to propose repealing this Section in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

R18-12-803. Categories of Certification

2. Objective of the rule: This rule establishes the categories of tank service that require Departmental certification according to the definition of "tank service" in A.R.S. § 49-1081.

3. Effectiveness of the rule in achieving its objective: This rule effectively notifies tank service providers and the regulated community of five different categories of tank service that require Departmental certification: installation and retrofit, tightness testing, cathodic protection testing, decommissioning, and interior lining. Such specific categories allow specialization.

R18-12-804. International Fire Code Institute Certification; Additional Certification

2. Objective of the rule: This rule establishes that an individual holding a valid International Fire Code Institute (now the International Code Council, ICC) certification for the category of certification being sought qualifies for certification as a tank service provider. Additionally, the individual must hold a manufacturer's certification for the use of a piece of equipment or methodology, if required by the manufacturer.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes IFCI (now ICC) as the testing body for individuals wanting to demonstrate the minimum level of competency needed for obtaining ADEQ certification.

6. Clarity, conciseness, and understandability of the rules: The clarity and understandability of this rule suffers somewhat because the name of the organization has changed.

R18-12-805. Alternative Certification

2. Objective of the rule: This rule provides alternatives to qualifying for certification when IFCI (now ICC) does not have an examination for the category being sought and also allows certain National Association of Corrosion Engineers (NACE) certifications to substitute for an IFCI (now ICC) certification in the category of cathodic protection testing.

3. Effectiveness of the rule in achieving its objective: This rule has effectively allowed ADEQ to certify individuals in the category of interior lining, since IFCI does not currently have a certification for this category. It also sets forth the steps that must be followed in the event that IFCI (now ICC) does develop a certification in this category.

R18-12-806. Application; Certification
2. Objective of the rule: This rule sets forth the application process and establishes time frames that the Department must meet in evaluating and processing applications. It establishes an application form and identifies additional pieces of information that must be submitted by applicants.

3. Effectiveness of the rule in achieving its objective: This rule helps make the application process easy and efficient.

R18-12-807. Duration; Renewal; Changes
2. Objective of the rule: This rule establishes that an individual's certification is valid for the period of time that the IFCI certification is valid or 1 year following issuance of certification, whichever is later. For alternative certifications, the duration is the period of time allowed under the technology manufacturer's certification or 2 years, whichever is shorter, but not less than 1 year. This rule also requires a new application for applicants seeking renewal and a new application when any change to information on file occurs.

3. Effectiveness of the rule in achieving its objective: This rule effectively establishes the duration of certification, the process for renewal, and how to notify the Department of any changes to information contained in the application on file.

R18-12-808. Discontinuation of Tank Service
2. Objective of the rule: This rule gives the Department the ability to stop work while it is being performed in the event that it is being performed without the presence of a certified individual on-site or if it is not being performed in compliance with the applicable technical standard. This rule also requires that the area be safely secured until a certified individual can inspect the work already completed, certify what was done correctly, correct what needs to be corrected and either perform or supervise the remainder of the project.

3. Effectiveness of the rule in achieving its objective: This rule effectively gives the Department an immediate course of action in the event that inappropriate tank service is being provided.

5. Status of Agency enforcement policy regarding the rules: The rule is enforced.

6. Clarity, conciseness, and understandability of the rules: It appears that some words are missing in subsection (A). It could say "is supervising or performing or has supervised or performed . . . ".

R18-12-809. Suspension; Revocation
2. Objective of the rule: This rule establishes the events that can lead to either suspension or revocation of certification and the time frames of such suspension or revocation that the Department can impose.

3. Effectiveness of the rule in achieving its objective: This rule effectively notifies certified tank service providers of the sanctions they face in the event that the Department discovers that they

have violated the provisions of this Article.

ARTICLE 9. REGULATED SUBSTANCE FUND

Structure and Purpose of Article 9

18 A.A.C. 12, Article 9 rules were adopted by ADEQ in 2008 related to a new UST fund and monitored natural attenuation. The rules describe the Regulated Substance Fund (RSF) and the Monitored Natural Attenuation (MNA) Account within the RSF, both created by statute. The rules also provide procedures for implementing a MNA Program.

As of July 3, 2015, the funds are officially removed and the MNA program is now over. This Article should be deleted.

The organization of Article 9 by Section is as follows:
R18-12-901. Regulated Substance Fund
R18-12-902. Monitored Natural Attenuation (MNA) Account
R18-12-903. Monitored Natural Attenuation (MNA) Program

A. INFORMATION THAT IS IDENTICAL FOR THE RULES OF ARTICLE 9

1. General and Specific Statutes Authorizing the Rules:
General authorizing statute: A.R.S. § 49-104(B)(4)
Specific authorizing statutes: A.R.S. § 49-1014(A) authorizes the making of the rules for the UST program. Laws 2004, Ch. 273, § 12 (session law) authorized rules to implement the regulated substance fund established in former A.R.S. § 49-1015.01. Former A.R.S. § 49-1052(N) authorized no further action letters to accompany approval of the MNA Program application.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Federal UST statutes and regulations do not contain directly comparable provisions. This Article is no longer consistent with state statutes.

5. Status of agency enforcement policy regarding the rules: The rules are not being enforced.

6. Clarity, conciseness, and understandability of the rules: The rules are clear, concise, and understandable. No problems have been noted.

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules of Article 9 have been received by ADEQ.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: With respect to UST and property owners, the projected economic impact was described in the economic statement published with the final rule in February, 2008. In that rule, modest benefits were projected for UST and property owners: “specific economic benefits

to the property owner by reducing the uncertainty associated with the contamination at the site, allowing the property to be more easily sold or used as collateral, and allowing it to be developed with reduced concerns of environmental liability. Indirect benefits should accrue to neighboring property owners."

It is unclear whether the modest benefits projected in the original rule were actually realized at the one site that was approved. That site was not monitored due to access being refused to ADEQ. When access was finally gained, the fund for monitoring had been repealed as of July of 2015. The site remains open.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states. None submitted.

10. Completion of previous proposed courses of action: Not applicable.

11. Cost benefit determination; least burden and cost: These rules are no longer necessary or required.

12. Stringency compared to corresponding federal law: There are no corresponding federal requirements.

13. Compliance with A.R.S. § 41-1037: These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action: ADEQ plans to repeal this Article in a Chapter wide rulemaking to be submitted to GRRC in December of 2017.

B. ANALYSIS OF INDIVIDUAL RULES OF ARTICLE 9

R18-12-901. Regulated Substance Fund

2. Objective of the rule: This rule summarizes the purposes of the Regulated Substance Fund created in A.R.S. § 49-1015.01, while recognizing the transfer of funds to occur on July 1, 2011.

3. Effectiveness of the rule in achieving the objective: Funds from the SAF were correctly deposited after July 1, 2011.

R18-12-902. Monitored Natural Attenuation (MNA) Account

2. Objective of the rule: This rule provides that the purpose of an account within the Regulated Substance Fund is to perform corrective actions under R18-12-903.

3. Effectiveness of the rule in achieving its objective: Funds from the SAF deposited in this account on July 1, 2011 were effectively categorized.

R18-12-903. Monitored Natural Attenuation (MNA) Program

2. Objective of the rule: This rule outlines critical elements of the MNA program to be funded

from the MNA account. The elements include which LUST sites are eligible for this new program, the contents of the MNA Program application, the conditions for approving the application, the contents of a no further action letter, the future corrective actions that will be performed by ADEQ, and the conditions under which ADEQ may rescind the approval of a MNA Program application and no further action letter.

3. Effectiveness of the rule in achieving its objective: This rule has effectively communicated the details necessary for submitting an application under this program. As of September 1, 2010, eight applications had been received and one approved. Those applications not approved were denied for substantive technical reasons.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY UNDERGROUND STORAGE TANKS

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-3).

Editor's Note: Several Sections of Chapter 12 were adopted and amended under an exemption from the provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-1014, and §§ 49-1052 (B) and (O). Exemption from A.R.S. Title 41, Chapter 6 means the Department was not required to submit these Sections to the Governor's Regulatory Review Council for review. Because these rules are exempt from the regular rulemaking process, Title 18, Chapter 12 is printed on blue paper.

ARTICLE 1. DEFINITIONS; APPLICABILITY

Article 1, consisting of Sections R18-12-101 through R18-12-103, adopted effective September 21, 1992 (Supp. 92-3).

Section
R18-12-101. Definitions
R18-12-102. Applicability
R18-12-103. Repealed

ARTICLE 2. TECHNICAL REQUIREMENTS

Article 2, consisting of Sections R18-12-210 and R18-12-211, R18-12-220 through R18-12-222, R18-12-230 through R18-12-234, R18-12-240 through R18-12-245, R18-12-270 through R18-12-274, and R18-12-280 and R18-12-281, adopted effective July 30, 1996 (Supp. 96-3).

Section
R18-12-201. Reserved
R18-12-202. Reserved
R18-12-203. Reserved
R18-12-204. Reserved
R18-12-205. Reserved
R18-12-206. Reserved
R18-12-207. Reserved
R18-12-208. Reserved
R18-12-209. Reserved
R18-12-210. Applicability
R18-12-211. Prohibition for Certain UST Systems
R18-12-212. Reserved
R18-12-213. Reserved
R18-12-214. Reserved
R18-12-215. Reserved
R18-12-216. Reserved
R18-12-217. Reserved
R18-12-218. Reserved
R18-12-219. Reserved
R18-12-220. Performance Standards for New UST Systems
R18-12-221. Upgrading of Existing UST Systems
R18-12-222. Notification Requirements
R18-12-223. Reserved
R18-12-224. Reserved
R18-12-225. Reserved
R18-12-226. Reserved
R18-12-227. Reserved
R18-12-228. Reserved
R18-12-229. Reserved
R18-12-230. Spill and Overfill Control
R18-12-231. Operation and Maintenance of Corrosion Protection
R18-12-232. Compatibility
R18-12-233. Repairs Allowed
R18-12-234. Reporting and Recordkeeping
R18-12-235. Reserved
R18-12-236. Reserved
R18-12-237. Reserved
R18-12-238. Reserved
R18-12-239. Reserved
R18-12-240. General Release Detection Requirements for all UST Systems
R18-12-241. Release Detection for Petroleum UST Systems
R18-12-242. Release Detection for Hazardous Substance UST Systems
R18-12-243. Methods of Release Detection for Tanks
R18-12-244. Methods of Release Detection for Piping
R18-12-245. Release Detection Recordkeeping
R18-12-246. Reserved
R18-12-247. Reserved
R18-12-248. Reserved
R18-12-249. Reserved
R18-12-250. Applicability and Scope
R18-12-251. Suspected Release
R18-12-252. Reserved
R18-12-253. Reserved
R18-12-254. Reserved
R18-12-255. Reserved
R18-12-256. Reserved
R18-12-257. Reserved
R18-12-258. Reserved
R18-12-259. Reserved
R18-12-260. Release Notification, and Reporting
R18-12-261. Initial Response, Abatement, and Site Characterization
R18-12-261.01. LUST Site Classification
R18-12-261.02. Free Product
R18-12-262. LUST Site Investigation
R18-12-263. Remedial Response
R18-12-263.01. Risk-based Corrective Action Standards
R18-12-263.02. Corrective Action Plan
R18-12-263.03. LUST Case Closure
R18-12-263.04. Groundwater LUST Case Closures
R18-12-264. General Reporting Requirements
R18-12-264.01. Public Participation
R18-12-265. Reserved
R18-12-266. Reserved
R18-12-267. Reserved
R18-12-268. Reserved
R18-12-269. Reserved
R18-12-270. Temporary Closure
R18-12-271. Permanent Closure and Change-in-service
R18-12-272. Assessing the UST Site at Closure or Change-in-service
R18-12-273. Application of Closure Requirements to Previously Closed Systems
R18-12-274. Release Reporting and Corrective Action for Closed Systems
R18-12-275. Reserved
R18-12-276. Reserved
R18-12-277. Reserved
R18-12-278. Reserved
R18-12-279. Reserved
R18-12-280. Sampling Requirements
R18-12-281. UST System Codes of Practice and Performance Standards

ARTICLE 3. FINANCIAL RESPONSIBILITY

Article 3, consisting of Sections R18-12-322 through R18-12-325, adopted effective July 30, 1996 (Supp. 96-3).

Article 3, consisting of Sections R18-12-301 through R18-12-321, adopted effective September 21, 1992 (Supp. 92-3).

Section
R18-12-300. Financial Responsibility; Applicability
R18-12-301. Financial Responsibility; Compliance Dates; Allowable Mechanisms; Evidence
R18-12-302. Reserved
R18-12-303. Amount and Scope of Required Financial Responsibility
R18-12-304. Reserved
R18-12-305. Financial Test of Self-insurance
R18-12-306. Guarantee
R18-12-307. Insurance and Risk Retention Group Coverage
R18-12-308. Surety Bond
R18-12-309. Letter of Credit
R18-12-310. Certificate of Deposit
Appendix A. Certification and Agreement - Certificate of Deposit
R18-12-311. State Fund or Other State Assurance
R18-12-312. Trust Fund
R18-12-313. Standby Trust Fund
R18-12-314. Local Government Bond Rating Test
R18-12-315. Local Government Financial Test
R18-12-316. Local Government Guarantee
R18-12-317. Local Government Fund
R18-12-318. Substitution of Financial Assurance Mechanisms by Owner and Operator
R18-12-319. Cancellation or Nonrenewal by a Provider of Financial Assurance
R18-12-320. Reporting by Owner and Operator
R18-12-321. Repealed
R18-12-322. Drawing on Financial Assurance Mechanisms
R18-12-323. Release from Financial Responsibility Requirements
R18-12-324. Bankruptcy or Other Incapacity of Owner, Operator, or Provider of Financial Assurance
R18-12-325. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

ARTICLE 4. UNDERGROUND STORAGE TANK EXCISE TAX

Authority: A.R.S. § 49-1031(H) and (I)

Article 4, consisting of Sections R18-12-401 through R18-12-410, adopted as permanent rules effective December 26, 1991.

Article 4, consisting of Sections R18-12-401 through R18-12-410, readopted as temporary rules effective June 20, 1991, pursuant to A.R.S. 49-1031(H) and (I), effective for 180 days. By law, these rules are included in the Arizona Administrative Code.

Article 4, consisting of Sections R18-12-401 through R18-12-410, readopted as temporary rules effective December 28, 1990, pursuant to A.R.S. 49-1031(H) and (I), effective for 180 days. By law, these rules are included in the Arizona Administrative Code.

Article 4, consisting of Sections R18-12-401 through R18-12-410, adopted as temporary rules effective July 3, 1990, pursuant to A.R.S. 49-1031(H) and (I), effective for 180 days. By law, these rules are included in the Arizona Administrative Code.

Section
R18-12-401. Repealed
R18-12-402. Duties and responsibilities of a supplier; certain regulated substances
R18-12-403. Periodic payments; deductions
R18-12-404. Reporting requirements for suppliers
R18-12-405. Invoice requirements for suppliers
R18-12-406. Reports and returns, net gallons required to be indicated
R18-12-407. Payment of tax; annual return
R18-12-408. Affidavit of tax responsibility
R18-12-409. Refunds
R18-12-410. Exemption certificates

ARTICLE 5. FEES

Section
R18-12-501. Fees

ARTICLE 6. UNDERGROUND STORAGE TANK ASSURANCE ACCOUNT

Article 6, consisting of Sections R18-12-605.01 and R18-12-607.01, adopted as exempt rules effective August 15, 1996, pursuant to A.R.S. § 49-1014, and 49-1052(B) and (O) (Supp. 96-3).

Section
R18-12-601. Eligibility
R18-12-602. Applicability
R18-12-603. General Application and Direct Payment Request Requirements
R18-12-604. Reimbursement Application Process
R18-12-605. Preapproval Application Process
R18-12-605.01 Repealed
R18-12-606. Direct Payment Request Process
R18-12-607. Schedule of Corrective Action Costs
R18-12-607.01 Repealed
R18-12-608. Scope and Standard of Review
Appendix A. Repealed
R18-12-609. Copayments: Applicability, Waivers, and Credits
R18-12-610. Interim Determinations, Informal Appeals, and Requests for Information
R18-12-611. Final Determinations and Formal Appeals
R18-12-612. Priority of Assurance Account Payments
R18-12-613. Determining Financial Need Priority Ranking Points
R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points
R18-12-615. Risk Priority Ranking Points

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

Article 7, consisting of Section R18-12-707, amended as an exempt rule effective August 15, 1996, pursuant to A.R.S. § 49-1014, and 49-1052(B) and (O) (Supp. 96-3).

Article 7, consisting of Sections R18-12-701 through R18-12-714, adopted effective May 23, 1996 (Supp. 96-2).

Section
R18-12-701. Allocation of Grant Account Funds
R18-12-702. Eligible Projects
R18-12-703. Amount of Grant Per Applicant or Facility
R18-12-704. Grant Application Submission Period
R18-12-705. Grant Application Process
R18-12-706. Grant Application Contents
R18-12-707. Work Plan
R18-12-708. Business Plan
R18-12-709. Review of Application
R18-12-710. Feasibility Determination
R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other Than Local Governments
R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments
R18-12-713. Determination of Grants to Be Issued
R18-12-714. Grant Issuance: Notification; Payment

ARTICLE 8. TANK SERVICE PROVIDER CERTIFICATION

Article 8, consisting of Sections R18-12-801 through R18-12-809, adopted effective December 6, 1996 (Supp. 96-4).

Section
R18-12-801. Applicability; Presentation of Certification
R18-12-802. Transition
R18-12-803. Categories of Certification
R18-12-804. International Fire Code Institute Certification; Additional Certification
R18-12-805. Alternative Certification
R18-12-806. Application; Certification
R18-12-807. Duration; Renewal; Changes
R18-12-808. Discontinuation of Tank Service
R18-12-809. Suspension; Revocation

ARTICLE 9. REGULATED SUBSTANCE FUND

Article 9, consisting of Sections R18-12-901 through R18-12-903, made by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

Section
R18-12-901. Regulated Substance Fund
R18-12-902. Monitored Natural Attenuation (MNA) Account
R18-12-903. Monitored Natural Attenuation (MNA) Program

ARTICLE 1. DEFINITIONS; APPLICABILITY

R18-12-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-1001 and 49-1001.01, the terms used in this Chapter have the following meanings:

"Accidental release" means, with respect to Article 3 only, any release of petroleum from an UST system that is neither expected nor intended by the UST system owner or operator, that results in a need for one or more of the following:

Corrective action,

Compensation for bodily injury, or

Compensation for property damage.

"Ancillary equipment" means any device used to distribute, dispense, meter, monitor, or control the flow of regulated substances to and from an UST system.

"Annual" means, with respect to R18-12-240 through R18-12-245 only, a calendar period of 12 consecutive months.

"Applicant," for purposes of Article 7 only, means an owner or operator who applies for a grant from the UST grant account.

"Application," for purposes of Article 6 only, means a written claim for reimbursement or preapproval from the assurance account on a form provided by the Department.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Aviation fuel," ~~for the purpose of Article 4 only~~, has the definition at A.R.S. § 28-101.

"Bodily injury" means injury to the body, sickness, or disease sustained by any person, including death resulting from any of these at any time.

"CAP" means corrective action plan.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such a person shall have education and experience in soil receptivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act as defined in A.R.S. § 49-201.

"CFR" means the Code of Federal Regulations, with standard references in this Chapter by Title and Part, so that "40 CFR 280" means Title 40 of the Code of Federal Regulations, Part 280.

"Change-in-service" means changing the use of an UST system from the storage of a regulated substance to the storage of a non-regulated substance.

"Chemical of concern" means any regulated substance detected in contamination from the LUST site that is evaluated for potential impacts to public health and the environment.

"Chief financial officer" means, with respect to local government owners and operators, the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Clean Water Act" has the definition at A.R.S. § 49-201.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another under conditions likely to be encountered in the UST during the operational life of the UST system.

"Conceptual site model" means a description of the complete current and potential exposure pathways, based on existing and reasonably anticipated future use.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors that are attached to a tank system and through which regulated substances flow. For the purpose of determining how much piping is connected to an individual UST system, the piping that joins multiple tanks shall be divided equally between the tanks.

"Consultant" means a person who performs environmental services in an advisory, investigative, or remedial capacity.

"Contamination" means the analytically determined existence of a regulated substance within environmental media outside the confines of an UST system, that originated from the UST system.

"Contractor" means a person who is required to obtain and hold a valid license from the Arizona Registrar of Contractors which permits bidding and performance of removal, excavation, repair, or construction services associated with an UST system.

"Controlling interest" means direct ownership of at least 50 percent of a firm, through voting stock, or otherwise.

"Copayment" means the percentage of Department-approved costs of eligible activities that are not paid by the Department from the assurance account under §§ 49-1052(I) or 49-1054(A).

"Corrective action rules" means, for purposes of Article 6 only, R18-12-250 through R18-12-264.01.

"Corrective action service provider" means a person acting as a licensed contractor or consultant that performs services to fulfill the statutory requirements of A.R.S. § 49-1005 and the corrective action rules.

"Corrective action services" means any service that is provided to fulfill the statutory requirements of A.R.S. § 49-1005 and the rules made under § 49-1005.

"Corrective action standard" means the concentration of the chemical of concern in the medium of concern that is protective of public health and welfare and the environment based on either pre-established non-site-specific assumptions or site-specific data, including any applied environmental use restriction.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. The person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Cost work sheet" means a form provided by the Department that includes all claimed or proposed tasks and increments to those tasks and associated costs in accordance with the schedule of corrective action costs for any of the following:

A phase of corrective action for a specified time period,

A tank or UST closure or tank upgrade, or

The preparation of an application or direct payment request.

"Current assets" means assets which can be converted to cash within one year and are available to finance current operations or to pay current liabilities.

"Current liabilities" means those liabilities which are payable within one year.

"Decommissioning" means, with respect to Article 8 only, activities described in R18-12-271(C)(1) through R18-12-271(C)(4).

"De minimis" means that quantity of regulated substance which is described by one of the following:

When mixed with another regulated substance, is of such low concentration that the toxicity, detectability, or corrective action requirements of the mixture are the same as for the host substance.

When mixed with a non-regulated substance, is of such low concentration that a release of the mixture does not pose a threat to public health or the environment greater than that of the host substance.

"Department" means the Arizona Department of Environmental Quality.

"Derived waste" means any excavated soil, soil cuttings, and other soil waste; fluids from well drilling, aquifer testing, well purging, sampling, and other fluid wastes; or disposable decontamination, sampling, or personal protection equipment generated as a result of release confirmation, LUST site investigation, or other corrective action activities.

"Dielectric material" means a material that does not conduct electrical current and that is used to electrically isolate UST systems or UST system parts from surrounding soils or portions of UST systems from each other.

"Diesel" means, with respect to Article 4 only, a liquid petroleum product that meets the specifications in American Society for Testing and Materials Standard D-975-94, "Standard Specification for Diesel Fuel Oils" amended April 15, 1994 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

"Director" means the Director of the Arizona Department of Environmental Quality.

"Direct payment" means a payment from the assurance account for approved corrective actions associated with a Department-approved preapproval work plan.

"Direct payment request" means a claim for direct payment on a form provided by the Department.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Eligible activities" means those activities described in R18-12-601(B).

"Eligible person" means, with respect to Article 6 only, an owner, operator, volunteer, or a political subdivision taking corrective action under A.R.S. § 49-1052(H).

"Emergency power generator" means a power generator which is used only when the primary source of power is interrupted. The interruption of the primary source of power shall not be due to any action or failure to take any action by the owner or operator of either the emergency generator or of the UST system which stores fuel for the emergency generator.

"Engineering Control" for soil, surface water and groundwater contamination has the definition at R18-7-201.

"Excavation zone" means the volume that contains or contained the tank system and backfill material and is bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Excess lifetime cancer risk level" for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances on or before December 22, 1988, or for which installation has commenced on or before December 22, 1988.

"Exposure" for soil, surface water, and groundwater contamination, has the meaning defined in R18-7-201.

"Exposure assessment" means the qualitative or quantitative determination or estimation of the magnitude, frequency, duration, and route of exposure or potential for exposure of a receptor to chemicals of concern from a release.

"Exposure pathway" for soil, surface water, and groundwater contamination, has the meaning defined in R18-7-201.

"Exposure route" for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

"Facility" means a single parcel of property and any contiguous or adjacent property on which one or more UST systems are located.

"Facility identification number" means the unique number assigned to a facility by the Department either after the initial notification requirements of A.R.S. § 49-1002 are satisfied, or after a refund claim is submitted and approved under R18-12-409.

"Facility location," for the purpose of Article 4 only, means the street address or a description of the location of a storage facility.

"Facility name" means the business or operational name associated with a storage facility.

"Farm tank" means a tank system located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. The term "farm" includes fish hatcheries, rangeland, and nurseries with growing operations.

"Financial reporting year" means the latest consecutive 12-month period, either fiscal or calendar, for which financial statements used to support the financial test of self-insurance under R18-12-305 are prepared, including the following, if applicable:

A 10-K report submitted to the Securities and Exchange Commission.

An annual report of tangible net worth submitted to Dun and Bradstreet.

Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

"Firm" means any for-profit entity, nonprofit or not-for-profit entity, or local government. An individual doing business as a sole proprietor is a firm for purposes of this Chapter.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. The term "flow-through process tank" does not include a tank used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

"Free product" means a mobile regulated substance that is present as a nonaqueous phase liquid (e.g. liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Grant request" means the total amount requested on the application for a grant from the UST grant account, plus any cost to the Department for conducting a feasibility determination under R18-12-710, in conjunction with the application

"Groundwater" means water in an aquifer as defined at A.R.S. § 49-201.

"Hazard Index" for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

"Hazard quotient" for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

"Hazardous substance UST system" means an UST system that contains a ~~hazardous~~ substance ~~as defined~~ in A.R.S. § 49-1001(14)(b) or any mixture of such substance and petroleum, which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, or No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils for heating purposes.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"IFCI" means the International Fire Code Institute.

"Implementing agency" means, with respect to Article 3 only, the Arizona Department of Environmental Quality for UST systems subject to the jurisdiction of the state of Arizona, or the EPA for other jurisdictions or, in the case of a state with a program approved under 42 U.S.C. 6991 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

"Incremental cost" means a supplement to a task, established in the schedule of corrective action costs, that is necessary, based on site-specific conditions, to complete the task.

"Incurred" for purposes of Article 6 only, means a cost of eligible activities owed by an eligible person to a corrective action service provider or a person who prepares applications or direct payment requests, as applicable, as demonstrated in an invoice received by the eligible person.

"Indian country" means, under 18 U.S.C. 1151, all of the following:

All land within the limits of an Indian reservation under the jurisdiction of the United States government which is also located within the borders of this state, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

All dependent Indian communities within the borders of the state whether within the original or subsequently acquired territory of the state.

All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

"Induration" means the consolidation of a rock or rock material by the action of heat, pressure, or the introduction of some cementing material not commonly contained in the original mass. Induration also means the hardening of a soil horizon by chemical action to form hardpan (caliche).

"Installation" means the placement and preparation for placement of any UST system or UST system part into an excavation zone. Installation is considered to have commenced if both of the following exist:

The owner and operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system.

The owner and operator has begun a continuous on-site physical construction or installation program or has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical

construction at the site or installation of the UST system to be completed within a reasonable time.

"Institutional control" for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

"Legal defense cost" means, with respect to Article 3 only, any expense that an owner or operator, or provider of financial assurance incurs in defending against claims or actions brought under any of the following circumstances:

By EPA or a state to require corrective action or to recover the costs of corrective action;

By or on behalf of a 3rd party for bodily injury or property damage caused by an accidental release; or

By any person to enforce the terms of a financial assurance mechanism.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Local government" means a county, city, town, school district, water and aqueduct management district, irrigation district, power district, electrical district, agricultural improvement district, drainage and flood control district, tax levying public improvement district, local government public transportation system, and any political subdivision defined in A.R.S. § 49-1001.

"LUST" means leaking UST.

"LUST case" means all of the documentation related to a specific LUST number, which is maintained on file by the Department.

"LUST number" means the unique number assigned to a release by the Department after the notification requirements of A.R.S. § 49-1004(A) are met.

"LUST site" means the UST facility from which a release has occurred.

"Maintenance" means those actions necessary to ensure the proper working condition of an UST system or equipment used in corrective actions.

"Monitored natural attenuation" means the reliance on natural attenuation processes, within the context of a carefully controlled and monitored site cleanup approach, to achieve site-specific remediation objectives within a time-frame that is reasonable compared to that offered by other more active methods.

"Motor vehicle fuel," for the purpose of Article 4 only, has the definition at A.R.S. § 28-101.

"Natural attenuation" means a reduction in mass or concentration of a chemical of concern in groundwater over time or distance from the release point due to naturally occurring physical, chemical, and biological processes, such as: biodegradation, dispersion, dilution, sorption, and volatilization.

"Nature of the regulated substance" means the chemical and physical properties of the regulated substance stored in the UST, and any changes to the chemical and physical properties upon or after release.

"Nature of the release" means the known or estimated means by which the contents of the UST was dispersed from the UST system into the surrounding media, and the conditions of the UST system and media at the time of release.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

"Noncommercial purposes" means, with respect to motor fuel, not for resale.

"On-site control" means, for the purpose of Article 8 only, being at the location where tank service is being performed while tank service is performed.

"On the premises where stored" means, with respect to A.R.S. § 49-1001(18)(b) only, a single parcel of property or any contiguous or adjacent parcels of property.

"Operational life" means the period beginning when installation of the tank system has begun and ending when the tank system is properly closed under R18-12-271 through R18-12-274.

"Overfill" means a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of a regulated substance to the environment.

"Owner identification number" means the unique number assigned to the owner of an UST by the Department after the initial notification requirements of A.R.S. § 49-1002 are satisfied, or after a refund claim is submitted and approved pursuant to R18-12-409.

"Petroleum marketing facility" means a facility at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firm" means a firm owning a petroleum marketing facility. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an UST system that contains or contained petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. These systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Phase of corrective action" means a major step in corrective action as described in rules made under A.R.S. § 49-1005, and the schedule of corrective action costs.

"Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facility" means new or existing pipe rights-of-way and any associated equipment, gathering lines, facilities, or buildings.

"Point of compliance" means the geographic location at which the concentration of the chemical of concern is to be at or below the risk-based corrective action standard determined to be protective of public health and the environment.

"Point of exposure" for soil, surface water, and groundwater contamination, has the definition at R18-7-201 for "exposure point."

"Property damage" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss

of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an UST through one of the mechanisms listed in R18-12-306 through R18-12-312 or R18-12-316, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.

"RCRA" means the Resource Conservation and Recovery Act in 42 U.S.C. 6924 (u)

"Receptor" means persons, enclosed structures, subsurface utilities, waters of the state, or water supply wells and wellhead protection areas.

"Release confirmation" means free product discovery, or reported laboratory analytical results of samples collected and analyzed in accordance with the sampling requirements of R18-12-280 and A.A.C. Title 9, Chapter 14, Article 6 which indicates a release of a regulated substance from the UST system.

"Release confirmation date" means the date that an owner or operator first confirms the release, or the date that the owner or operator is informed of a release confirmation made by another person.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Remediation" for soil, surface water, and groundwater contamination, has the definition at A.R.S. § 49-151, except that "soil, surface water and groundwater" is substituted for "soil" where it appears in that Section.

"Repair" means to restore a tank or UST system component that has caused or may cause a release of regulated substance from the UST system.

"Report of work" means a written summary of corrective action services performed.

"Reserved and designated funds" means those funds of a nonprofit, not-for profit, or local government entity which, by action of the governing authority of the entity, by the direction of the donor, or by statutory or constitutional limitations, may not be used for conducting UST upgrades, replacements, or removals, or for installing UST leak detection systems, or conducting corrective actions, including payment for expedited review of related documents by the Department, on releases of regulated substances.

"Residential tank" means an UST system located on property used primarily for dwelling purposes.

"Retrofit" means to add to an UST system, equipment or parts that were not originally included or installed as part of the UST system.

"Risk characterization" means the qualitative and quantitative determination of combined risks to receptors from individual chemicals of concern and exposure pathways, and the associated uncertainties.

"Routinely contains product" or "routinely contains regulated substance" means the part of an UST system which is designed to contain regulated substances and includes all internal areas of the tank and all internal areas of the piping, excluding only the vent piping.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499.

"Septic tank" means a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site location map" means a representation by means of signs and symbols on a planar surface, at an established scale, of the streets, wells, and general use of the land for properties within at least one-quarter mile of the facility boundaries, with the direction of orientation indicated.

"Site plan" means a representation by means of signs and symbols on a planar surface, at an established scale, of the physical features (natural, artificial, or both) of the facility and surrounding area necessary to meet the requirements under which the site plan is prepared, with the direction of orientation indicated.

"Site Vicinity Map" means a representation by means of signs and symbols on a planar surface, at an established scale, of the natural and artificial physical features, used in the exposure assessment, that occur within at least 500 feet of the facility boundaries, with the direction of orientation indicated.

"Solid Waste Disposal Act" for the purposes of this Chapter means the "federal act" as defined by A.R.S. § 49-921.

"Source area" means either the location of the release from an UST, the location of free product, the location of the highest soil and groundwater concentration of chemicals of concern, or the location of a soil concentration of chemicals of concern which may continue to impact groundwater or surface water.

"Source of contamination" means ~~with respect to this Chapter~~, the conditions described in A.R.S. § 49-1052(N).

"Spill" means the loss of regulated substance during the transfer of a regulated substance to an UST system.

"Storage facility" means, for the purpose of Article 4 only, the common, identifiable, location at which deliveries of regulated substances are made to an UST, an above ground storage tank, or to a group of underground and above ground storage tanks, and to which the Department has assigned a single facility identification number.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or of domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Submitted" means received by the Department on the earliest of the date of the Department's date-stamp on the application, direct payment request, or component, or the date on the return receipt, if the application, direct payment request, or component is sent to the Department by certified mail.

"Substantial business relationship" means the extent of a business relationship necessary under Arizona law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that

relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under Arizona law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract under R18-12-316 is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"Substituted work item" means a work item that is included in a direct payment request, in place of a preapproved work item, that accomplishes the work objectives of the preapproved work item using a different methodology and meets the requirements of A.R.S. § 49-1054(C)(1).

"Summary of work" means a brief written description, on a form provided by the Department, of the corrective actions and a rationale for the performance of the corrective actions that are the subject of the application or direct payment request, and that allows the Department to evaluate or determine whether the claimed activities are eligible activities.

"Supplier" means, for the purpose of Article 4 only, with respect to collection of the UST excise tax, a person who is described by either A.R.S. § 28-6001(A) or (B). The term "supplier" includes a distributor, as defined in A.R.S. § 28-5601, who is required to be licensed by A.R.S. Title 28, Chapter 16, Article 1.

"Supplier identification number" means, for the purpose of Article 4 only, the unique number assigned to the supplier by the Department of Transportation for the purpose of administering the motor vehicle fuel tax under A.R.S. Title 28, Chapter 16, Article 1.

"Surface impoundment" means a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, but which may be lined with artificial materials, that is not an injection well.

"Surface water" has the definition at R18-11-101.

"Surficial soil" means any soil occurring between the current surface elevation and extending to that depth for which reasonably foreseeable construction activities may excavate and relocate soils to surface elevation, and any stockpiles generated from soils of any depth.

"Suspected release discovery date" means the day an owner or operator first has reason to believe, through direct discovery or being informed by another person, that a suspected release exists.

"Suspected release notification date" means the day the Department informs an owner or operator, as evidenced by the return receipt, that a UST may be the source of a release.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties.

"Task" means an action, including any and all personnel and project management, necessary to satisfy the technical requirements associated with a phase of corrective action, as established in the schedule of corrective action costs.

"Tax" means, for the purpose of Article 4 only, the excise tax on the operation of USTs levied by A.R.S. Title 49, Chapter 6, Article 2.

"Taxpayer" means, for the purpose of Article 4 only, the owner or operator of an UST who pays the tax.

"Tester" means a person who performs tightness tests on UST systems, or on any portion of an UST system including tanks, piping, or leak detection systems.

"Underground area" means an underground room, such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of the tank, situated on or above the surface of the floor.

"Underground storage tank" has the definition at A.R.S. § 49-1001.

"Under review" means an application or direct payment request is submitted and the Department has not made an interim determination under R18-12-610 or, for incorrect applications or direct payment requests under R18-12-601(C) only, the Department has not made a final determination under R18-12-611.

"Unreserved and undesignated funds" means those funds that are not reserved or designated funds and can be transferred at will by the governing authority to other funds.

"Upgrade" means the addition to or retrofit of an UST system or UST system parts, under R18-12-221, to improve the ability to prevent release of a regulated substance.

"UST" means an underground storage tank as defined at A.R.S. § 49-1001.

"UST grant account" or "grant account" means the account designated under A.R.S. § 49-1071.

"UST regulatory program" means the program established by and described in A.R.S. Title 49, Chapter 6 and the rules promulgated under that program.

"UST system" or "tank system" means an UST, connected underground piping, impact valve and connected underground ancillary equipment and containment system, if any.

"Vadose zone" has the definition at A.R.S. § 49-201.

"Volatile regulated substance" means any regulated substance that generally has the following chemical characteristics: a vapor pressure of greater than 0.5 mmHg at 20° C, a Henry's Law Constant of greater than 1×10^{-5} atm m^3/mol, and which has a boiling point of less than 250° - 300° C.

"Volunteer" means a person described under A.R.S. § 49-1052(I).

"Wastewater treatment tank" means a tank system that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Work item" means a line item or group of line items on a direct payment request for claimed costs for a task or increment in accordance with the schedule of corrective action costs under A.R.S. § 49-1054(C).

"Work objectives of the preapproved work plan" means the purpose, as stated in a preapproval application, of the proposed corrective actions to be performed, within a phase of corrective action, on the release or releases specified in the preapproval application preapproved by the Department.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3). Amended effective May 23, 1996 (Supp. 96-2). Amended effective July 30, 1996 (Supp. 96-3). Amended effective December 6, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

R18-12-102. Applicability

A. Owners and operators. As provided in A.R.S. § 49-1016(A), the responsibilities of this Chapter, unless indicated otherwise, are imposed on persons who are the owner or the operator of an UST. If the owner and operator of an UST are separate persons, only one person is required to discharge any specific responsibility. Both persons are liable in the event of noncompliance.

B. Persons in possession or control of property. The requirements of this Chapter are applicable to a person acting under the provisions of A.R.S. § 49-1016(C).

C. No supersedence. Nothing in this Chapter supersedes the requirements of the following:
1. A court of competent jurisdiction,
2. An order of the Director under A.R.S. § 49-1013.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3). Amended effective May 23, 1996 (Supp. 96-2). Amended effective July 30, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-103. Repealed

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3). Amended effective May 23, 1996 (Supp. 96-2). Repealed effective July 30, 1990 (Supp. 96-3).

ARTICLE 2. TECHNICAL REQUIREMENTS

R18-12-210. Applicability

A. The requirements of this Article apply to all owners and operators of an UST system, except as otherwise provided in subsections (B) through (D).

B. The following UST systems are excluded from the requirements of this Article:
1. Any UST system holding hazardous wastes which are listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
3. Equipment or machinery that contains regulated substances solely for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
4. Any UST system with a capacity of 110 gallons or less;
5. Any UST system that contains a de minimis concentration of regulated substances;
6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

C. Only R18-12-101, R18-12-210, R18-12-211, and the provisions of A.R.S. § 49-1005 and the rules promulgated thereunder apply to the following types of UST systems:
1. Wastewater treatment tank systems other than those specified in subsection (B)(2);
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.;
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;
4. Airport hydrant fuel distribution systems;
5. UST systems with field-constructed tanks.

D. R18-12-240 through R18-12-245 do not apply to any UST system that stores fuel solely for use by emergency power generators.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-211. Prohibition for Certain UST Systems

A. A person shall not install an UST system listed in R18-12-210(C) for the purpose of storing regulated substances unless the UST system, whether of single-wall or double-wall construction, meets all of the following requirements:
1. The UST system will prevent releases due to corrosion or structural failure for the operational life of the UST system;
2. The UST system is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance;
3. The UST system is constructed or lined with material that is compatible with the stored substance.

B. Notwithstanding subsection (A), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with the requirements of this subsection for the remaining operational life of the UST system.

C. Compliance with the corrosion protection provisions of this Section shall be determined in accordance with the performance standards set forth in R18-12-281(A).

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-212. Reserved
R18-12-213. Reserved
R18-12-214. Reserved
R18-12-215. Reserved
R18-12-216. Reserved
R18-12-217. Reserved
R18-12-218. Reserved
R18-12-219. Reserved

R18-12-220. Performance Standards for New UST Systems

A. Owners and operators of a new UST system shall meet the requirements described in this Section in order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances.

B. A tank shall be properly designed and constructed, and any portion underground that routinely contains a regulated substance shall be protected from corrosion according to one of the following methods:
1. The tank is constructed of fiberglass-reinforced plastic. Compliance with this subsection shall be determined in accordance with the performance standards set forth in R18-12-281(B);

2. The tank is constructed of steel and is cathodically protected, in accordance with the performance standards of R18-12-281(C), by all of the following:
   a. The tank is coated with a suitable dielectric material;
   b. The field-installed cathodic protection systems are designed by a corrosion expert;
   c. The impressed current systems, if used, are designed to allow determination of current operating status as required in R18-12-231(C);
   d. The cathodic protection systems are operated and maintained in accordance with R18-12-231.
3. The tank is constructed of a steel-fiberglass-reinforced-plastic composite. Compliance with this subsection shall be determined in accordance with the performance standard set forth in R18-12-281(D).
4. The tank is constructed of metal without additional corrosion protection measures, and both of the following conditions are met:
   a. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life;
   b. Owners and operators maintain records that demonstrate compliance with the requirements of subsection (B)(4)(a) for the remaining operational life of the tank.
5. The tank construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements of subsections (B)(1) through (4).

C. The piping that routinely contains regulated substances and is in contact with the ground shall be properly designed, constructed, and protected from corrosion according to one of the following methods:
1. The piping is constructed of fiberglass-reinforced plastic. Compliance with this subsection shall be determined in accordance with the performance standard set forth in R18-12-281(E).
2. The piping is constructed of steel and in meeting the performance standards of R18-12-281(F) is cathodically protected according to all of the following:
   a. The piping is coated with a suitable dielectric material;
   b. Field-installed cathodic protection systems are designed by a corrosion expert;
   c. Impressed current systems, if used, are designed to allow determination of current operating status as required in R18-12-231(C);
   d. Cathodic protection systems are operated and maintained in accordance with R18-12-231.
3. The piping is constructed of metal without additional corrosion protection measures, and all of the following requirements are satisfied:
   a. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life;
   b. The piping meets the performance standards of R18-12-281(G);
   c. Owners and operators maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the piping.
4. The piping construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subsections (C)(1) through (3).

D. Except as provided in subsection (D)(3), owners and operators shall use both of the following spill and overfill prevention equipment systems to prevent spilling and overfilling associated with transfer of a regulated substance to the UST system:
1. Spill prevention equipment that will prevent release of a regulated substance to the environment when the transfer hose is detached from the fill pipe;
2. Overfill prevention equipment that will do one or more of the following:
   a. Automatically shut off flow into the tank when the tank is no more than 95% full;
   b. Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm that can be heard at the point of transfer;
   c. Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm that can be heard at the point of transfer one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to a regulated substance due to overfilling.
3. Owners and operators are not required to use the spill and overfill prevention equipment specified in subsections (D)(1) and (2) if either of the following conditions is met:
   a. Alternative equipment is used that is determined by the Department to be no less protective of human health and the environment than the equipment specified in subsections (D)(1) or (2);
   b. The tank is filled by transfers of no more than 25 gallons at one time.

E. All tanks and piping shall meet both of the following requirements:
1. Be properly installed in accordance with the manufacturer's instructions;
2. Be installed according to the performance standards set forth in R18-12-281(H).

F. Owners shall ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (E):
1. The installer has been certified by the tank and piping manufacturers,
2. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation,
3. The installation has been inspected and approved by the Department,
4. All work listed in the manufacturer's installation checklists has been completed,
5. Owners and operators have complied with another method for ensuring compliance with subsection (E) that is determined by the Department to be no less protective of human health and the environment.

G. Owners shall provide a certification of compliance on the UST Notification Form in accordance with R18-12-222(D) and shall ensure that a certification statement in accordance with the applicable requirements of R18-12-222(E) is signed by the installer on the Notification Form prior to submission to the Department.

H. If an UST system is installed or modified to meet the requirements of this Section, owners shall notify the Department in

accordance with R18-12-222(F)(2) within 30 days of the date that the UST system is brought into operation or modified.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-221. Upgrading of Existing UST Systems

A. Not later than December 22, 1998, each existing UST system shall comply with one of the following requirements:
1. New UST system performance standards under R18-12-220;
2. The upgrading requirements described in subsections (B) through (E);
3. Closure requirements, including applicable requirements for release reporting and corrective action, under R18-12-270 through R18-12-274.

B. A steel tank shall be upgraded to meet one of the following requirements:
1. A tank may be upgraded by internal lining if both of the following conditions are met:
   a. The internal lining is installed in accordance with the requirements of R18-12-233;
   b. Within 10 years after the internal lining is installed, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
2. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of R18-12-220(B)(2)(b) through (d), and the integrity of the tank is ensured by using at least one of the following methods:
   a. The tank is internally inspected and assessed to ensure that it is structurally sound and free of corrosion holes prior to installing the cathodic protection system;
   b. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with R18-12-243(D) through (H);
   c. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of R18-12-243(C). The 1st tightness test shall be conducted prior to installing the cathodic protection system. The 2nd tightness test shall be conducted between three and six months following the 1st operation of the cathodic protection system;
   d. The tank is assessed for corrosion holes by a method that is determined by the Department to prevent releases in a manner that is no less protective of human health and the environment than the methods described in subsections (B)(2)(a) through (c).
3. A tank may be upgraded by both internal lining and cathodic protection if both of the following requirements are met:
   a. The lining is installed in accordance with the requirements of R18-12-233,
   b. The cathodic protection system meets the requirements of R18-12-220(B)(2)(b) through (d).

C. Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with the applicable requirements of R18-12-220(C)(2)(b) through (d).

D. Any upgrading by use of corrosion protection described in this Section shall be accomplished in accordance with the performance standards set forth in R18-12-281(I).

E. To prevent spilling and overfilling associated with the transfer of a regulated substance to the UST system, all existing UST systems shall comply with new UST system spill and overfill prevention equipment requirements specified in R18-12-220(D).

F. Owners shall ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with the requirements of this Section by providing a certification of compliance on the UST Notification Form in accordance with R18-12-222(D):
1. The installer has been certified by the equipment or system manufacturers;
2. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;
3. All work listed in the manufacturer's installation checklists has been completed;
4. The owner has complied with another method for ensuring compliance with the requirements of this Section that is determined by the Department to be no less protective of human health and the environment.

G. Owners and operators shall ensure that a certification statement in accordance with the applicable requirements of R18-12-222(E) is signed by the installer on the Notification Form prior to submission to the Department.

H. If an UST system is upgraded in accordance with this Section, owners and operators shall notify the Department in accordance with R18-12-222(F)(2) within 30 days of the date that the UST system is upgraded.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-222. Notification Requirements

A. An owner of an UST system shall comply with the notification requirements of this Section in accordance with those described in A.R.S. § 49-1002.

B. An owner shall submit the most current and complete information on each UST system at each facility utilizing the Departmental form titled "Notification for Underground Storage Tanks" ("Notification Form"). An owner shall submit a separate Notification Form to the Department for each facility which is owned. Submitted information shall include all of the following for each UST system:
1. Type of notification specifying one of the following:
   a. New facility,
   b. Amendment of previous Notification Form,
   c. Closure.
2. The name and mailing address of the owner of the UST system;
3. Facility street address and the associated county assessor book, map, and parcel;
4. Type of owner, specifying whether government, commercial, or private;
5. Whether the UST system is located within Indian country;
6. Facility type;
7. The name and mailing address of the operator of the UST system;
8. Compliance with financial responsibility requirements in accordance with R18-12-300 through R18-12-325, and the mechanism or mechanisms used to demonstrate compliance;
9. Facility map including tanks and associated piping in addition to major structures;
10. Status of each UST system as one of the following:
    a. Currently in use,
    b. Temporarily out of use,
    c. Permanently out of use.

11. Date of the UST system installation and date the UST system was 1st brought into operation;
12. Estimated total capacity of the tank;
13. Material of tank construction and method of corrosion protection for each UST system;
14. Date of repair, if tank has been repaired;
15. Material of piping construction and method of corrosion protection for each UST system;
16. Date of repair, if piping has been repaired;
17. Type of piping delivery system;
18. Methods of leak detection currently in use for tank and piping;
19. Whether the UST system is connected to an emergency generator;
20. Substance currently or last stored in the UST system in greatest quantity by volume;
21. If the substance currently or last stored in the UST system is a hazardous substance, identification of the CERCLA name or Chemical Abstracts Service number;
22. If the substance currently or last stored in the UST system is a mixture of substances, identification of the constituents of the mixture.

C. In addition to the information required in subsection (B), if an UST system is permanently closed, temporarily closed, or if a change-in-service has occurred, an owner shall provide all of the following:
1. The estimated date the UST system was last used, and the estimated date the UST system was permanently closed;
2. Identification of the UST system as one of the following:
   a. Removed from the ground,
   b. Closed in the ground and filled with inert solid materials and a description of those materials,
   c. Completed change-in-service and a description of current use,
   d. Temporarily closed,
   e. Temporarily closed with a request for extension of temporary closure.
3. Whether an UST site assessment was completed;
4. Whether there was evidence of a leak.

D. An owner shall certify under penalty of law that the owner has personally examined and is familiar with the information submitted in the Notification Form and all attached documents, and that based either on direct knowledge or on inquiry of those individuals immediately responsible for obtaining the information, the owner believes that the submitted information is true, accurate, and complete. For a new or upgraded UST system, this certification shall include compliance with all the following requirements:
1. Installation of tanks and piping under R18-12-220(E);
2. Cathodic protection of steel tanks and piping under R18-12-220(B) and (C), or R18-12-221(B) through (D);
3. Spill and overfill protection under R18-12-220(D) or R18-12-221(E);
4. Release detection under R18-12-240 through R18-12-245;
5. Financial responsibility under R18-12-300 through R18-12-325.

E. An owner of a new or upgraded UST system shall ensure that the installer certifies on the Notification Form that to the best information and belief of the installer the items set forth in subsections (D)(1) through (4) are true.

F. Any request for an extension of temporary closure shall be made in accordance with R18-12-270. In addition, an owner of an UST system shall notify the Department within 30 days after any one of the following occurs:
1. A change in the operator of the UST system;
2. A replacement or upgrade of any portion of the UST system in accordance with R18-12-220 or R18-12-221;
3. A change in leak detection status in accordance with R18-12-240 through R18-12-245;
4. Temporary closure in accordance with R18-12-270;
5. Return to active service following temporary closure in accordance with R18-12-270(D);
6. Permanent closure or change-in-service in accordance with R18-12-271 through R18-12-274;
7. A change in the contents of the UST system among the categories of regulated substances described in subsections (B)(20), (21), or (22);
8. A change in status of financial responsibility in accordance with R18-12-300 through R18-12-325.

G. In the case of a change of ownership of an UST system, one of the following shall occur:
1. When a vendor sells an UST system or a tank for use as an UST after May 8, 1986, the vendor shall inform the purchaser, on a form prescribed by the Department, that the Resource Conservation and Recovery Act (RCRA) requires owners of certain underground storage tanks to notify the Department within 30 days of the existence of the tank.
2. When a person transfers ownership of an UST system, both of the following shall occur:
   a. The transferor shall inform the Department in writing of the transfer of its interest in the UST system including the name and address of the transferor and transferee, name and telephone number of the contact person for the transferee and effective date of the transfer. In addition, the transferor shall advise the transferee of the notification requirements of this Section, utilizing the form referenced in subsection (G)(1);
   b. The transferee shall submit to the Department a completed Notification Form within 30 days of the transfer of interest.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-223. Reserved
R18-12-224. Reserved
R18-12-225. Reserved
R18-12-226. Reserved
R18-12-227. Reserved
R18-12-228. Reserved
R18-12-229. Reserved

R18-12-230. Spill and Overfill Control

A. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. Owners and operators shall ensure, before the transfer is made, that the volume then available in the tank is greater than the volume of regulated substance to be transferred to the tank. Owners and operators also shall ensure that the operation is monitored constantly to prevent overfilling and spilling. Compliance with this subsection shall be determined in accordance with the performance standards set forth in R18-12-281(J).

B. Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with A.R.S. §§ 49-1004 and 49-1005 and the rules promulgated thereunder.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-231. Operation and Maintenance of Corrosion Protec-

tion

A. A corrosion protection system shall be operated and maintained to continuously provide corrosion protection to the metal components of an UST system which are subject to the corrosion protection requirements of R18-12-220 and R18-12-221 and to piping which routinely contains regulated substances and is in contact with the ground.

B. An UST system equipped with cathodic protection systems shall be inspected for proper operation by a cathodic protection tester. Owners and operators shall ensure compliance with both of the following requirements:
1. A cathodic protection system shall be tested within six months of installation and at least every three years thereafter,
2. The criteria that are used to determine that cathodic protection is adequate as required by this Section shall be in accordance with the performance standards set forth in R18-12-281(K).

C. An UST system with an impressed current cathodic protection system, in addition to meeting the requirements of subsections (A) and (B) shall be inspected every 60 days to ensure the equipment is operating in accordance with its design specifications.

D. For an UST system using cathodic protection, records of the operation of the cathodic protection shall be maintained in accordance with R18-12-234 to demonstrate compliance with the performance standards in this Section. These records shall provide the following:
1. The results of testing from the last two inspections required by subsection (B),
2. The results of the last three inspections required by subsection (C).

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-232. Compatibility

Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Compliance with this Section shall be determined in accordance with the performance standards set forth in R18-12-281(L).

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-233. Repairs Allowed

A. Owners and operators of an UST system shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs shall meet the following requirements:
1. Repairs to an UST system shall be properly conducted in accordance with performance standards set forth in R18-12-281(M);
2. Repairs to a fiberglass-reinforced plastic tank shall be made by the manufacturer's authorized representative or in accordance with a performance standard set forth in R18-12-281(N);
3. Any metal pipe sections and fittings that have released a regulated substance as a result of corrosion or other damage shall be replaced. Fiberglass pipe and fittings shall be repaired in accordance with the manufacturer's specifications or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

B. Repaired tanks and piping shall be tightness tested in accordance with the specifications described in R18-12-243(C) and R18-12-244(B) within 30 days following the date of the completion of the repair unless one of the following procedures is employed:
1. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
2. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in R18-12-243(D) through (H);
3. Another test method is used that is determined by the Department to be no less protective of human health and the environment than those otherwise listed in subsections (B)(1) and (2).

C. Within six months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with R18-12-231(B) and (C) to ensure that it is operating properly.

D. Owners and operators of an UST system shall maintain records of each repair for the remaining operational life of the UST system that demonstrate compliance with the requirements of this Section.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-234. Reporting and Recordkeeping

A. Owners shall submit notification for all UST systems in accordance with R18-12-222. Additionally, owners and operators shall submit the following information to the Department:
1. Reports of all releases including suspected releases in accordance with A.R.S. § 49-1004 and the rules promulgated thereunder;
2. Corrective actions planned or taken including initial investigation and abatement measures in accordance with A.R.S. § 49-1005;
3. The information required in accordance with R18-12-271 before starting permanent closure or change-in-service;
4. The site assessment report in accordance with R18-12-271(D).

B. Owners and operators shall maintain all of the following information:
1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used in accordance with R18-12-211(B), R18-12-220(B)(4) and R18-12-220(C)(3);
2. Documentation of operation of corrosion protection equipment in accordance with R18-12-231;
3. Documentation of UST system repairs in accordance with R18-12-233(D);
4. Documentation of compliance with release detection requirements in accordance with R18-12-245.

C. Owners and operators shall keep the records required by subsection (B) either:
1. At the UST site and immediately available for inspection by the Department,
2. At a readily available alternative site and be provided for inspection to the Department upon request.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-235. Reserved
R18-12-236. Reserved
R18-12-237. Reserved
R18-12-238. Reserved
R18-12-239. Reserved

R18-12-240. General Release Detection Requirements for All

UST Systems

A. Owners and operators of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets all of the following requirements:
1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains a regulated substance;
2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition;
3. Meets the performance requirements in R18-12-243 or R18-12-244, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer;
4. Is capable of detecting the leak rate or quantity specified for that method in R18-12-243 or R18-12-244 with a Probability of Detection (PD) of a release of 0.95 and a Probability of False Alarm (PFA) of 0.05 by the date shown in subsections (A)(4)(a) or (b) unless the method was permanently installed prior to that date:
   a. Manual Tank Gauging, in accordance with R18-12-243(B); Tank Tightness Testing, in accordance with R18-12-243(C); Automatic Tank Gauging, in accordance with R18-12-243(D); Line Tightness Testing, in accordance with R18-12-244(B): December 22, 1990;
   b. Automatic Line Leak Detectors, in accordance with R18-12-244(A): September 22, 1991.

B. When a release detection method operated in accordance with the performance standards in R18-12-243 and R18-12-244 indicates a release may have occurred, owners and operators shall inform the Department in accordance with A.R.S. § 49-1004.

C. Owners and operators of an UST system shall comply with the release detection requirements of this Section and R18-12-241 through R18-12-245 by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system installed	When release detection is required (by December 22 of the year indicated) 1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69..		P/RD			
1970-74..		P	RD		
1975-79..		P		RD	
1980-88..		P			RD

New tanks (after December 22, 1988) immediately upon installation.

P = shall begin release detection for all pressurized piping as defined in R18-12-241(B)(1).

RD = shall begin release detection for tanks and suction piping in accordance with R18-12-241(A), (B)(2), and R18-12-242.

D. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this Section and R18-12-241 through R18-12-245 shall complete the closure procedures in R18-12-270 through R18-12-274 by the date on which release detection is required for that UST system under subsection (C).

Historical Note

Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-241. Release Detection for Petroleum UST Systems

A. Owners and operators of petroleum UST systems shall provide release detection for tanks. Tanks shall be monitored for releases at least once every month using one of the methods listed in R18-12-243(D) through (H) except that:
1. An UST system that meets the new or upgraded UST system performance standards of R18-12-220 or R18-12-221, and the monthly inventory control requirements of R18-12-243(A) or the manual tank gauging requirements of R18-12-243(B), may use tank tightness testing conducted in accordance with R18-12-243(C) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded, whichever is later. The initial tank tightness test shall be performed on or before the compliance date for the tank in accordance with R18-12-240(C);
2. An UST system that does not meet the performance standards in R18-12-220 or R18-12-221 may use annual tank tightness testing conducted in accordance with R18-12-243(C) in conjunction with either monthly inventory control conducted in accordance with R18-12-243(A) or the manual tank gauging requirements of R18-12-243(B) until December 22, 1998, when the tank shall be upgraded under R18-12-221 or permanently closed under R18-12-271 through R18-12-274. The initial tank tightness test shall be performed on or before the compliance date for the tank as set forth in R18-12-240(C);
3. A tank with a capacity of 550 gallons or less may use manual tank gauging conducted in accordance with R18-12-243(B) as a sole method for leak detection.

B. Owners and operators of petroleum UST systems shall provide release detection for underground piping. Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:
1. Underground piping that conveys petroleum under pressure shall meet both of the following requirements:
   a. Be equipped with an automatic line leak detector which meets the requirements of R18-12-244(A);
   b. Have an annual line tightness test conducted in accordance with R18-12-244(B) or have monthly monitoring conducted in accordance with R18-12-244(C).
2. Except as otherwise provided in this subsection, underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every three years in accordance with R18-12-244(B), or use a monthly monitoring method conducted in accordance with R18-12-244(C). Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:
   a. The below-grade piping operates at less than atmospheric pressure;
   b. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
   c. Only one check valve is included in each suction line;
   d. The check valve is located directly below and as close as practical to the suction pump and is capable of being inspected;

e. A method is provided that allows compliance with the requirements of subsections (B)(2)(a) through (d) to be readily determined.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-242. Release Detection for Hazardous Substance UST Systems

A. Owners and operators of existing hazardous substance UST systems shall provide release detection that meets the requirements for petroleum UST systems in R18-12-241. By December 22, 1998, each existing hazardous substance UST system shall be upgraded to meet the release detection requirements for new hazardous substance UST systems in subsection (B).

B. Owners and operators of a new hazardous substance UST system shall provide release detection which meets the following requirements:

1. Secondary containment systems shall be designed, constructed, and installed to meet all of the following requirements:
   a. Contain regulated substances released from the UST system until they are detected and removed,
   b. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system,
   c. Be checked for evidence of a release at least monthly.
2. Double-walled tanks shall be designed, constructed, and installed to meet both of the following requirements:
   a. Contain a release from any portion of the inner tank within the outer wall,
   b. Detect the failure of the inner wall.
3. External liners, including vaults, shall be designed, constructed, and installed to meet all of the following requirements:
   a. Contain 100% of the capacity of the largest UST system within its boundary,
   b. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances,
   c. Surround the tank completely so that it is capable of preventing lateral as well as vertical migration of regulated substances.
4. Underground piping shall be equipped with secondary containment that satisfies the requirements of subsection (B)(1) and underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with R18-12-244(A).
5. Methods of release detection other than those described in subsections (B)(1) through (4) may be used if owners and operators meet all of the following requirements:
   a. Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in R18-12-243(B) through (H) can detect a release of petroleum;
   b. Provide information to the Department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site;
   c. Obtain approval from the Department in writing to use the alternate release detection method before the installation and operation of the UST system.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-243. Methods of Release Detection for Tanks

A. If inventory control is used to meet the requirements of R18-12-241, it shall be used in conjunction with tank tightness testing described in subsection (C). Inventory control shall be conducted monthly in accordance with R18-12-281(O) to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

1. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
2. The equipment used is capable of measuring the level of the regulated substance over the full range of the tank's vertical dimension to the nearest 1/8 of an inch;
3. The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
4. Measurements, as well as deliveries of regulated substances, are made through a drop tube that extends to within one foot of the tank bottom;
5. Dispensing of regulated substances is metered and recorded within the standards established by the entity with jurisdiction. If no standards are established, dispensing which meets an accuracy of six cubic inches for every five gallons of regulated substance withdrawn shall be used;
6. The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month;
7. Inventory control shall not be utilized as the sole method of release detection.

B. Manual tank gauging used to meet the requirements of R18-12-241 shall meet all of the following requirements:

1. Tank liquid level measurements are taken on a weekly basis at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the UST system;
2. Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
3. The equipment used is capable of measuring the level of regulated substance over the full range of the tank's vertical dimension to the nearest 1/8 of an inch;
4. A leak is suspected and subject to the requirements of A.R.S. § 49-1004 and the rules promulgated thereunder if the statistical variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (1 test)	Monthly Standard (average of 4 tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

5. Manual tank gauging may be used as the sole method of release detection only for tanks of 550 gallons or less capacity. Manual tank gauging may be used in place of inventory control in subsection (A), for tanks of 551 to 2,000 gallons. This method shall not be used to meet the requirements of R18-12-241 for tanks of greater than 2,000 gallons capacity.

C. If tank tightness testing is used to meet the requirements of R18-12-241, it shall be used in conjunction with the inventory control method described in subsection (A) or the manual tank gauging method described in subsection (B) and shall be capable of detecting a 0.1 gallon per hour leak rate from any por-

tion of the tank that routinely contains regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

D. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control used to meet the requirements of R18-12-241 shall meet both of the following requirements:

1. The automatic regulated substance level monitor test shall be performed at least monthly and be capable of detecting a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains regulated substance,
2. Inventory control shall be conducted in accordance with the requirements of subsection (A).

E. Testing or monitoring for vapors within the soil gas of the excavation zone used to meet the requirements of R18-12-241 shall be conducted at least monthly and shall meet all of the following requirements:

1. The characteristics of the site are assessed to ensure that the leak detection method will comply with the requirements in subsections (E)(2) through (8);
2. The leak detection system is constructed and designed so that the number and positioning of monitoring wells will detect releases into the excavation zone from any portion of the system which routinely contains a regulated substance within 30 days from the date of commencement of a release;
3. The stored regulated substance, or a tracer compound placed in the UST system, will produce a vapor level that is detectable by the monitoring devices in the monitoring wells within 30 days from the date of commencement of a release from the UST system;
4. The materials used as backfill will allow diffusion of vapors from releases into the excavation area such that a release is detected within 30 days from the date of commencement of a release from the UST system;
5. The groundwater, rainfall, soil moisture, or other known interferences will not render the measurement of vapors by the monitoring device inoperable so that a release could go undetected by the monitoring devices in the monitoring wells for more than 30 days from the date of commencement of the release from the UST system;
6. The level of background contamination at the site will not interfere with the method used to detect releases from the tank system;
7. The vapor monitors are designed and operated to detect any significant increase in concentration above a documented background level of the regulated substance stored in the tank system, a component or components of that substance, or a volatile tracer compound placed in the tank system;
8. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

F. Testing or monitoring for liquids on the groundwater used to meet the requirements of R18-12-241 shall be conducted monthly and meet the following requirements:

1. The characteristics of the site are assessed to ensure that the leak detection method will comply with the requirements in subsections (F)(2) through (9);
2. The leak detection system shall be constructed and designed so that the number and positioning of monitoring wells or devices will detect releases into the excavation zone from any portion of the system which routinely contains a regulated substance;
3. The regulated substance stored is immiscible in water and has a specific gravity of less than 1;
4. Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the material between the UST system and the monitoring wells or devices is not less than 0.01 centimeters per second;
5. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
6. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;
7. The continuous monitoring devices or manual methods used can detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells;
8. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
9. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

G. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it which is used to meet the requirements of R18-12-241 shall be conducted at least monthly and shall be designed, constructed and installed to detect a leak from any portion of the UST system that routinely contains a regulated substance, and shall meet one of the following requirements:

1. For double-walled UST systems, the sampling or testing method shall be able to detect a release through the inner wall in any portion of the UST system that routinely contains a regulated substance.
2. For UST systems with a secondary barrier within the excavation zone, characteristics of the site and system components shall be designed and constructed to detect a release between the UST system and the secondary barrier and shall meet all of the following requirements:
   a. The secondary barrier around or beneath the UST system shall be constructed of synthetic materials which are sufficiently thick and impermeable to prevent structural weakening of the secondary barrier as a result of contact with any released regulated substance. The rate of permeability shall not exceed 10^{-6} centimeters per second for the regulated substance stored. In addition, the secondary barrier shall be capable of directing any release to the monitoring point and permit its detection;
   b. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
   c. For cathodically protected UST systems, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;
   d. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;
   e. The characteristics of the UST site are assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;
   f. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

3. For tanks with an internally fitted liner, an automated device shall be able to detect a release between the inner wall of the tank and the liner, and the liner shall be compatible with the substance stored.

H. Any other type of release detection method, or combination of methods, may be used to meet the requirements of R18-12-241 if all of the following requirements are met:
1. The monitoring is conducted at least monthly;
2. The Department determines that the method meets either of the following requirements:
   a. The method can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within 30 days with probability of detection and probability of false alarm in accordance with R18-12-240(A)(4);
   b. Owners and operators can demonstrate that the method is able to detect a release as effectively as any of the methods allowed in subsections (C) through (G). In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, owners and operators shall comply with any conditions imposed by the Department on its use to ensure the protection of human health and the environment.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-244. Methods of Release Detection for Piping

A. An automatic line leak detection method for piping used to meet the requirements of R18-12-241 which alerts the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if it detects leaks of three gallons per hour, at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements;

B. A periodic line tightness test of piping may be used as a method of release detection for piping for the purpose of meeting the requirements of R18-12-241 only if it can detect a 0.1 gallon per hour leak rate, at 1½ times the operating pressure.

C. Any of the applicable tank methods described in R18-12-243(E) through (H) may be used as a method of release detection for piping for the purpose of meeting the requirements of R18-12-241 if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-245. Release Detection Recordkeeping

A. Owners and operators shall maintain records in accordance with R18-12-234 demonstrating compliance with all applicable requirements of R18-12-240 through R18-12-244. The following records shall be maintained for the operational life of the release detection system or five years from the date indicated below, whichever is the shorter time period:
1. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or the installer. The retention period shall start at the date of installation;
2. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site. The retention period shall start at the date of completion of the servicing work.

B. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be maintained for at least five years from the date of installation.

C. Except as otherwise provided in subsection (D), the results of any sampling or testing shall be maintained for at least five years from the date of receipt by owners and operators of the results.

D. The results of tank tightness testing conducted in accordance with R18-12-243(C) shall be retained from the date of receipt by owners and operators of the results until the next test is conducted and the results of that test are received.

E. Results of any monitoring shall be maintained for at least one year from the date of receipt by owners and operators of the monitoring results.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-246. Reserved
R18-12-247. Reserved
R18-12-248. Reserved
R18-12-249. Reserved

R18-12-250. Applicability and Scope

A. Release reporting and corrective action. Except for a release from an UST system excluded by R18-12-210(B), or for the corrective action requirements of R18-12-260 through R18-12-264.01, for a release subject to Subtitle C corrective action requirements in Section 3004(u) of RCRA, as amended, R18-12-250 through R18-12-264.01 apply to a release or suspected release discovered:
1. On or after the effective date of this Section; or
2. Before the effective date of this Section, but only for those sections of R18-12-250 through R18-12-264.01 with required activities not initiated by the effective date of this Section.

B. No supersedence. Nothing in R18-12-250 through R18-12-264.01 supersedes any of the following:
1. Immediate reporting to the National Response Center and to the Division of Emergency Services within the Arizona Department of Emergency and Military Affairs, under CERCLA, and SARA Title III;
2. A CAP submitted to the Department under 40 CFR 280.66 before the effective date of this Section and subsequently approved; and
3. A work plan under the UST Assurance Fund preapproval requirements of Article 6 of this Chapter submitted to the Department before the effective date of this Section and subsequently approved.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-251. Suspected Release

A. 24 hour notification. An owner or operator shall notify the Department, within 24 hours after discovery of a suspected release, except for either:
1. A spill or overfill of 25 gallons or less of petroleum or a hazardous substance that is less than its reportable quantity under CERCLA, contained and cleaned up within 24 hours, or
2. The conditions described in A.R.S. § 49-1001(16)(b) or (c)(i) exist for 24 hours or less.

B. 24 hour notification content. If known, the notification shall identify the:
1. Individual notifying the Department;

2. UST involved and the reason for notifying the Department;
3. Facility involved;
4. Owner and the operator of the UST facility; and
5. Investigation and containment actions taken as of the date of the notification.

C. Requirement to investigate suspected releases. Within 90 calendar days from the suspected release discovery date or the suspected release notification date, whichever is earlier, an owner or operator shall complete the investigation requirements of this subsection and confirm whether the suspected release is a release. The investigation shall include:
1. Tightness tests of the tank and all connected piping meeting the requirements of R18-12-243(C) and R18-12-244(B). Further investigation is required if the results of the tightness test indicate that the system is either not tight or contaminated media is the basis for suspecting a release.
2. If further investigation is required under subsection (1), a site check meeting the requirements of this subsection must be performed. An owner or operator shall measure for the presence of a release where contamination is likely to be present and shall consider the:
   a. Nature of the regulated substance;
   b. Type of initial alarm or cause for suspicion;
   c. Type of backfill;
   d. Depth to groundwater; and
   e. Conditions of the regulated substance and the site in identifying the presence and source of the release.

D. Release Confirmation. If a release is confirmed, the owner or operator shall notify the Department as required by R18-12-260(A), cease further compliance with this Section, and perform corrective actions under R18-12-260 through R18-12-264.01.

E. 14 day report. The owner or operator shall submit a written status report, on a form provided by the Department, within 14 calendar days after the suspected release discovery date or the suspected release notification date, whichever is earlier. If the suspected release is confirmed to be a release within the 14 day period, the 14 day report is satisfied when the report required by R18-12-260(C) is submitted. If known on the date the 14 day report is submitted, an owner or operator shall identify the:
1. UST that is the source of the suspected release;
2. Nature of the suspected release;
3. Regulated substance suspected to be released; and
4. Initial response to the suspected release.

F. 90 day report. If the suspected release is not confirmed to be a release the owner or operator shall submit a written report, on a form provided by the Department, within 90 calendar days after the suspected release discovery date or suspected release notification date, whichever is earlier, showing that the investigation has been completed and a release does not exist. Unless previously submitted, the 90 day report shall identify the:
1. UST suspected to be the source of the release;
2. Nature of the suspected release;
3. Regulated substance suspected to be released;
4. Response to the suspected release;
5. Repair, recalibration, or replacement of a monthly monitoring device described in R18-12-243(D) through (H) or R18-12-244(C), and any repair or replacement of faulty UST system equipment that may have been the cause of the suspected release;
6. Results of any tightness test conducted under subsection (C)(1);
7. Person, if the site check described in subsection (C)(2) was not performed, having direct knowledge of the circumstances of the suspected release who observed contaminated media during the discovery or investigation.
8. Laboratory analytical results on samples collected during the site check described in subsection (C)(2); and
9. Site plan showing the location of the suspected release and site check sample collection locations.

G. Investigation of suspected releases required by the Department. If the Department becomes aware of an on- or off-site impact of a regulated substance, the owner or operator shall be notified and may be required, based on an assessment of site specific information, to perform an investigation under subsection (C). If an investigation is required, the Department shall describe the type of impact and the rationale for its decision that the UST system may be the source of the impact.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-252. Reserved
R18-12-253. Reserved
R18-12-254. Reserved
R18-12-255. Reserved
R18-12-256. Reserved
R18-12-257. Reserved
R18-12-258. Reserved
R18-12-259. Reserved
R18-12-260. Release Notification, and Reporting

A. 24 hour release notification. An owner or operator shall notify the Department within 24 hours after the release confirmation date of the following:
1. A release of a regulated substance;
2. A spill or overfill of petroleum that results in a release exceeding 25 gallons, or causes a sheen on nearby surface water that is reportable to the National Response Center under 40 CFR 110;
3. A spill or overfill of petroleum resulting in a release of 25 gallons or less that is not contained and cleaned up within 24 hours;
4. A spill or overfill of a hazardous substance that equals or exceeds its reportable quantity under CERCLA; and
5. A spill or overfill of a hazardous substance that is less than the reportable quantity under CERCLA, not contained and cleaned up within 24 hours.

B. Release notification information. If known on the date that the 24 hour notification is submitted, an owner or operator shall notify the Department under subsection (A) and shall include the:
1. Individual providing notification;
2. UST involved and the reason for confirming the release;
3. Facility involved;
4. Owner and operator of the facility involved; and
5. Investigations, containment, and corrective actions taken as of the date and time of the notice.

C. 14 day report. An owner or operator shall submit a report, on a form provided by the Department, within 14 calendar days after the release confirmation date. The report shall include:
1. The nature of the release, and the regulated substance and the estimated quantity released;
2. The elapsed time over which the release occurred;
3. A copy of the results of any tightness test, meeting the requirements of R18-12-243(C) or R18-12-244(B), performed to confirm the release;
4. Laboratory analytical results of samples demonstrating the release confirmation; and

5. The initial response and corrective actions taken as of the date of the report and anticipated actions to be taken within the first 90 calendar days after the release confirmation date.

D. UST system modifications. An owner or operator shall repair, upgrade, or close the UST system, that is the source of the release, as required under this Article and the owner shall notify the Department as required by R18-12-222.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-261. Initial Response, Abatement, and Site Characterization

A. 24 hour initial response. An owner or operator shall begin response actions within 24 hours of the release confirmation date to prevent any further release, and identify and mitigate fire, explosion, and vapor hazards.

B. 60 day initial abatement. An owner or operator shall begin the following initial abatement measures as soon as practicable, but not later than 60 calendar days of the release confirmation date:

1. Removal of as much of the regulated substance from the UST system as is necessary to prevent a further release;
2. Visually inspect for and mitigate further migration of any aboveground and exposed below ground release into surrounding soils and surface water;
3. Continue to monitor and mitigate any fire and safety hazards posed by vapors or free product; and
4. Investigate for the possible presence of free product and, if found, initiate the requirements of R18-12-261.02.

C. Initial site characterization required. An owner or operator shall develop, from readily available sources, initial site characterization information on site-specific geology, hydrology, receptors, potential sources of the contamination, artificial pathways for contaminant migration, and occupancies of the facility and surrounding area. Information on any discovered free product shall be gathered and a site check, meeting the requirements of R18-12-251(C)(2), shall be performed, unless conducted as part of the investigation of a suspected release.

D. 90 day report. An owner or operator shall submit an initial site characterization report to the Department, on a Department provided form, within 90 calendar days after the release confirmation date. If known, the report shall include the:

1. Nature of the release, the regulated substance released, and the estimated quantity of the release;
2. The estimated time period when the release occurred;
3. Initial response and abatement actions described in subsections (A) and (B), and any corrective actions taken as of the date of the submission;
4. Estimated or known site-specific lithology, depth to bedrock, and groundwater depth, flow direction, and quality. The date and source of the information shall be included;
5. Location, use, and identification of all wells registered with Arizona Department of Water Resources, and other wells on and within one-quarter mile of the facility;
6. Location and type of receptors, other than wells, on and within one-quarter mile of the facility;
7. Current occupancy and use of the facility and properties immediately adjacent to the facility;
8. Data on known sewer and utility lines, basements, and other artificial subsurface structures on and immediately adjacent to the facility;
9. Copies of any report of any tightness test meeting the requirements under R18-12-243(C) or R18-12-244(B), performed during the investigation of the suspected release;
10. Laboratory analytical results of samples analyzed and received as of the date of the report;
11. Site plan showing the location of the facility property boundaries, release, sample collections for samples with laboratory analytical results submitted with the report, and identified receptors;
12. Current LUST site classification form described in R18-12-261.01(E); and
13. Information on any free product discovered under R18-12-261.02.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-261.01. LUST Site Classification

A. LUST site analysis. An owner or operator shall determine a LUST site classification by analyzing current and future threats to public health and the environment based on site-specific information known at the time of the determination.

B. LUST site classification factors. The owner or operator shall determine any threats to public health and the environment by addressing the following:

1. Presence and levels of vapors;
2. Presence of free product;
3. Extent of contamination;
4. Type and location of receptor;
5. Impacts and reasonably foreseeable impacts to current and future receptors; and
6. Estimated time between the date of the analysis and the impact to receptors.

C. LUST site classification. An owner or operator shall select a classification for the LUST site from one of the following, based on the analysis performed under subsection (B):

1. Classification 1: immediate threats;
2. Classification 2: short term threats from impacts that are reasonably foreseeable at or within two years;
3. Classification 3: long term threats from impacts that are reasonably foreseeable after two years; or
4. Classification 4: contamination exists, but no demonstrable long term threat has been identified, or information indicates the site cannot be otherwise classified under this subsection.

D. LUST site classification form submission. An owner or operator shall submit to the Department the LUST site classification form described in subsection (E) as required by R18-12-260 through R18-12-264.01, and when LUST site conditions indicate the classification has changed, or if contamination has migrated, or is anticipated to migrate, to a property where the owner or operator does not have access.

E. LUST site classification form contents. An owner or operator shall submit the LUST site classification, on a Department provided form, that includes the following information:

1. Date of preparation;
2. LUST number assigned to the release that is the subject of the classification;
3. The status of corrective action activities on the date that the classification form is submitted;
4. The regulated substance and the estimated volume (in gallons) released, the UST identification number from the notification form described in R18-12-222, the component of the UST where the release occurred, and whether the release is a spill or overfill;
5. The factors considered in determining the LUST site classification described in subsection (B);

6. The distance between the identified contamination and each receptor;
7. The estimated time, from the date on the form until impact to a receptor; and
8. The classification of the LUST site.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-261.02. Free Product

A. Free product investigation. An owner or operator shall investigate for free product if site specific information indicates the potential existence for free product, and if discovered, determine its extent.

B. Free product removal. If free product is discovered, the owner or operator shall:
1. Begin removal as soon as practicable;
2. Remove free product in a manner minimizing the spread of contamination using recovery and disposal techniques based on site-specific hydrologic, geologic, and demographic conditions;
3. Comply with local, state, and federal laws or regulations when treating, discharging, or disposing recovery byproducts;
4. Use abatement of free product migration as a minimum objective for the design of the free product removal system; and
5. Handle any flammable product in a safe and competent manner to prevent fire and explosion.

C. Forty-five day free product report. If free product is discovered, the owner or operator shall submit a status report, on a Department provided form, within 45 calendar days of free product discovery and with subsequent reports required by the Department. The status report shall contain the following information known at the time of the report:
1. The estimated quantity, type, extent and thickness of free product observed or measured;
2. A description of free product removal measures taken;
3. A description of any discharge that will take place during the recovery operation and where this discharge will be located; and
4. A description of the type of treatment applied to and the effluent quality expected from any discharge.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-262. LUST Site Investigation

A. Requirement to investigate. An owner or operator shall investigate a release at and from a LUST site to determine the full extent of the release of regulated substances and shall:
1. Determine the full extent of contamination;
2. Identify physical, natural, and artificial features at or surrounding the LUST site that are current or potential pathways for contamination migration;
3. Identify current or potential receptors; and
4. Obtain any additional data necessary to determine site-specific corrective action standards and to justify the selection of remedial alternatives to be used in responses to contaminated soil, surface water, and groundwater.

B. Completion of investigation activities. The owner or operator shall complete the investigation activities described in subsection (A) and submit the report described in subsection (D) within a time established by the Department.

C. Determining the full extent of contamination. The owner or operator shall determine, within each contaminated medium, the full extent, location, and distribution of concentrations of each chemical of concern stored in the UST over its operational life. The full extent of contamination shall be determined upon receipt of laboratory analytical results delineating the vertical and lateral extent of the contamination.

D. LUST site characterization report. An owner or operator shall submit a report of the information developed during the investigation required in subsection (A), in format approved by the Department. The report shall be submitted within the time established in subsection (B). The report submitted under this subsection and an on-site investigation report submitted under A.R.S. § 49-1053 shall contain the following minimum information, except that an on-site investigation report is not required to include the extent of contamination beyond the facility property boundaries:
1. A site history summary;
2. Information on bedrock, if encountered during the investigation;
3. The hydrologic characteristics and uses of groundwater and surface water of the local area;
4. A concise description of factors considered in determining the full extent of contamination;
5. A concise summary of the results of the investigation including a conceptual site model;
6. A site vicinity map, site location map and a site plan;
7. A tabulation of all field screening and laboratory analytical results and water level data acquired during the investigation;
8. Laboratory sample analytical and associated quality assurance and quality control reports and chain-of-custody forms;
9. A tabulation of all wells registered with the Arizona Department of Water Resources, and other wells located within one-quarter mile of the facility property boundary;
10. The lithologic logs for all subsurface investigations; and
11. The as-built construction diagram of each well installed as part of this investigation.

E. Conditions for approval of the site characterization report. The Department shall approve the site characterization report if the Department determines it meets the requirements of this Section and A.R.S. § 49-1005, and contains the information required by subsection (D), or the Department has enough information to make an informed decision to approve the report.

F. Notice of decision. The Department will determine if the conditions in subsection (E) are or are not satisfied and shall either approve or not approve the report and notify an owner or operator in writing. The notification shall include any conditions on which the approval or non-approval is based and an explanation of the process for resolving disagreements under A.R.S. § 49-1091.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-263. Remedial Response

A. Remedial response not required. An owner or operator shall comply with R18-12-263.03 for LUST case closure if a remedial response is not required for any chemical of concern, when contaminant concentrations in each contaminated medium, at the point of compliance, are documented to be at or below the corrective action standard under R18-12-263.01(A)(1).

B. Remedial response required. The owner or operator shall remediate contamination at and from the LUST site as

required by this Section. Remediation activities shall continue until:

1. Contaminant concentration of any chemical of concern, in each contaminated medium, at the point of compliance, is documented to be at or below the corrective action standard determined in R18-12-263.01;
2. The requirements for LUST case closure in R18-12-263.03 are completed and approved by the Department; or
3. The requirements for groundwater LUST case closure in R18-12-263.04 are met and approved by the Department.

C. Remedial responses that may require a CAP. The Department may request the owner or operator, or the owner or operator may voluntarily submit a CAP, meeting the requirements of this Section, any time after submission of the report in R18-12-261(D). If a CAP is requested, it shall be submitted within 120 calendar days of the owner or operator's receipt of the request, or a longer period of time established by the Department. The Department may request a CAP based on the following:

1. Soil or groundwater contamination extends, or has potential to extend, off the facility property and the LUST site is classification 3 in R18-12-261.01(C);
2. Free product extends off the facility property; and
3. Site-specific conditions indicate a potential level of threat to public health and the environment that is equal to or exceeds the threat in subsections (1) and (2). In determining the extent of threat to public health and the environment, the Department shall consider:
   a. The nature of the regulated substance and the location, volume, and distribution of concentrations of chemicals of concern in soil, surface water, and groundwater;
   b. The presence and location of known receptors potentially impacted by the release; and
   c. The presence of complete exposure pathways.

D. Remedial responses that require a CAP. At any time after Department approval of the report described in R18-12-261(D), the Department shall request that the owner or operator submit a CAP meeting the requirements of this Section within 120 calendar days, or a longer period of time established by the Department, if any of the following exist:

1. The LUST site is classification 1 or 2 in R18-12-261.01(C);
2. The owner or operator proposes a corrective action standard for groundwater or surface water under a Tier 2 or Tier 3 evaluation, described in R18-12-263.01;
3. The owner or operator proposes a corrective action standard for soil under a Tier 3 evaluation, and the point of compliance extends beyond a facility property boundary; or
4. The intended response or remediation technology involves discharge of a pollutant either directly to an aquifer or the land surface or the vadose zone. For purposes of this subsection, the term pollutant has the definition at A.R.S. § 49-201.

E. Determination of remediation response. The owner or operator shall choose a remediation technology based on the corrective action requirements of A.R.S. § 49-1005(D) and (E), and the following:

1. Local, state, and federal requirements associated with the technology;
2. Reduction of toxicity, mobility, or volume;
3. Long-term effectiveness and permanence;
4. Short-term effectiveness; and
5. Ability to implement the corrective action standard for each chemical of concern, in each contaminated medium, including considering the results presented in the site characterization report, ease of initiation, operation and maintenance of the technology, and public response to any contamination residual to or resulting from the technology.

F. On-site derived waste. Nothing in this subsection shall supersede more stringent requirements for storage, treatment, or disposal of on-site derived waste imposed by local, state or federal governments. An owner or operator meeting the requirements of this subsection is deemed to have met the exemption provisions in the definition of solid waste at A.R.S. § 49-701.01 for petroleum contaminated soil stored or treated on-site. The owner or operator shall prevent and remedy hazards posed by derived waste resulting from investigation or response activities under this Article and shall.

1. Contain on-site derived waste in a manner preventing the migration of contaminants into subsurface soil, surface water, or groundwater throughout the time the derived waste remains on-site, and shall:
   a. Restrict access to contaminated areas by unauthorized persons; and
   b. Maintain the integrity of any containment system during placement, storage, treatment, or removal of the derived waste;
2. Label on-site derived waste stored or treated in stockpiles, drums, tanks, or other vessels in a manner consistent with A.R.S. Title 49, Chapter 4, Article 9 and the rules made under that Article; and
3. Treat on-site derived waste to the applicable corrective action standard in R18-12-263.01 if the derived waste is to be returned to the on-site subsurface.

G. Periodic site status report. After approval of the site characterization report, the owner or operator shall submit a site status report, on a form provided by the Department, based on site-specific conditions. The report shall be submitted as requested by the Department, or by the time requested in the CAP under R18-12-263.02. The owner or operator shall continue to submit a site status report until the Department approves a LUST case closure report under R18-12-263.03(F)(1). The report shall:

1. Identify each type of remedial corrective action technology being employed;
2. Provide the date each remedial corrective action technology became operational;
3. Provide the results of monitoring and laboratory analysis of collected samples for each contaminated medium received since the last report was submitted to the Department;
4. Provide a site plan that shows the current location of the components of any installed remediation technology including monitoring and sample collection locations for data collected and reported in subsection (G)(3);
5. Estimate the amount of time that must pass until response activities, including remediation and verification monitoring, will demonstrate that the concentration of each chemical of concern is at or below the corrective action standard determined for that chemical of concern in the specific contaminated medium; and
6. Provide the current LUST site classification form described in R18-12-261.01(E).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4605, effective February 2,

2008 (Supp. 07-4).

R18-12-263.01. Risk-based Corrective Action Standards

A. Conducting risk-based tier evaluation and proposing the applicable corrective action standard. The owner or operator shall propose and document, as described in subsection (B), each applicable risk-based corrective action standard, using the procedures of this subsection. The owner or operator shall ensure that each corrective action standard meets the corrective action requirements of A.R.S. § 49-1005(D) and (E), and is consistent with soil remediation standards and restrictions on property use in A.R.S. Title 49, Chapter 1, Article 4 and the rules made under each. In determining the proposed corrective action standard, the owner or operator shall first perform a Tier 1 evaluation. The owner or operator may subsequently perform progressively more site-specific, risk-based tier evaluations (Tier 2 or Tier 3) after considering the comparative differences in input parameters, the cost effectiveness in conducting both the additional evaluation and remediation to the next tier corrective action standard, and the cumulative estimate of risk to public health and the environment.

1. For a Tier 1 evaluation, the owner or operator shall:
   a. Base assumptions on conservative scenarios where all potential receptors are exposed to the maximum concentration of each chemical of concern in each contaminated medium detected in contamination at and from the LUST site;
   b. Assume that all exposure pathways are complete;
   c. Use the assumed point of exposure at the source or the location of the maximum concentration as the point of compliance;
   d. Compare the maximum concentration of each chemical of concern in each contaminated medium at the point of compliance with the applicable Tier 1 corrective action standard in subsections (A)(1)(e) through (A)(1)(j);
   e. For soil, use the applicable corrective action standard in R18-7-203(A)(1) and (2) and (B);
   f. For surface water, use the applicable corrective action standard in R18-11-112 or Appendix A (18 A.A.C. 11, Article 1);
   g. For groundwater, use the applicable corrective action standard in R18-11-406;
   h. For contaminated groundwater that is demonstrated to discharge or potentially discharge to surface water, use the applicable corrective action standard in R18-11-108, R18-11-112, or Appendix A (18 A.A.C. 11, Article 1);
   i. If a receptor is or has the potential to be impacted, for those chemicals of concern in soil or surface water with no numeric standard established in rule or statute, use a corrective action standard consistent with R18-7-206 or R18-11-108, as applicable, using updated, peer-reviewed scientific data applying those equations and methodologies used to formulate the numeric standards established in R18-7-203(A)(2) or Appendix A (18 A.A.C. 11, Article 1), or for leachability and protection of the environment, a concentration determined on the basis of methods approved by the Department; and
   j. If a public or private water supply well is or has the potential to be impacted, for those chemicals of concern in groundwater with no numeric water quality standard established in rule or statute, use a corrective action standard consistent with R18-11-405, using updated, peer-reviewed scientific data applying those equations and methodologies used to formulate the numeric standards established in R18-11-406.
2. For a Tier 2 evaluation the owner or operator shall:
   a. Apply site-specific data to the same equations used to develop the Tier 1 corrective action standard, or, in the case of volatilization from subsurface soil, a Department-approved equation that accounts for the depth of contamination;
   b. For those chemicals of concern with no numeric standard established in statute or rule, use a corrective action standard based on updated, peer-reviewed scientific data, and provided through environmental regulatory agencies and scientific organizations;
   c. Use Department-approved values for equation parameters, if the values are different than those used in Tier 1 or not obtained through site-specific data;
   d. Eliminate exposure pathways that are incomplete due to site-specific conditions, or institutional or engineering controls, from continued evaluation in this tier;
   e. Use as the point of compliance a location between the source and the point of exposure for the nearest known or potential on-site receptor, or the nearest downgradient facility property boundary, whichever is the nearest to the source;
   f. Use representative concentrations of chemicals of concern that are the lesser of the 95% upper confidence level or maximum concentration in the contaminated medium at the point of compliance;
   g. Use as the Tier 2 corrective action standard, a concentration determined under subsections (A)(2)(a) through (A)(2)(c), R18-7-206, R18-11-108, and R18-11-405; and
   h. Compare the representative concentration of each chemical of concern, in each contaminated medium, at the point of compliance with the proposed Tier 2 corrective action standard, to determine if remediation is required.
3. For a Tier 3 evaluation the owner or operator shall:
   a. Apply more site-specific data than required in the development of Tier 2 corrective action standards in alternative and more sophisticated equations appropriate to site-specific conditions. The owner or operator shall use equations and methodology of general consensus within the scientific community that is published in peer-reviewed professional journals, publications of standards, and other literature;
   b. Use the nearest known or potential receptor as the point of exposure;
   c. Use as the point of compliance the point of exposure or some location between the source and the point of exposure, regardless of the facility boundary;
   d. Use representative concentrations that are the actual or modeled concentrations in the medium of concern at the point of compliance;
   e. Use as the Tier 3 corrective action standard a concentration consistent with subsections (A)(3)(a) through (A)(3)(d);
   f. Compare the representative concentration of each chemical of concern in each contaminated medium at the point of compliance with the Tier 3 corrective action standard to determine if remediation is required; and

g. Choose the remedial action upon completion of the Tier 3 evaluation that will result in concentrations of chemicals of concern presenting a hazard index no greater than 1 and a cumulative excess lifetime cancer risk between 1×10^{-6} and 1×10^{-4}.

4. All risk-based corrective action standards proposed under the tier evaluations in subsections (A)(1) through (3) are based on achieving similar levels of protection of public health and the environment. For Tier 2 and Tier 3 evaluations, a cumulative risk assessment is warranted if multiple pathways of exposure are present, or reasonably anticipated, and one or more of the following conditions impacts or may impact current or future receptors:
   a. More than 10 carcinogens are identified;
   b. More than one class A carcinogen is identified;
   c. Any non-carcinogen has a hazard quotient exceeding 1/nth of the hazard index of 1, where n represents the total number of non-carcinogens identified; or
   d. More than 10 non-carcinogens are identified.

B. Documentation of tier evaluation. The owner or operator shall document each tier evaluation performed in response to contaminated soil, surface water and groundwater. The owner or operator shall prepare each evaluation using a Department provided format and complying with this subsection.

1. For a Tier 1 evaluation the owner or operator shall provide the following information:
   a. Each chemical of concern detected in the contamination at and from the LUST site;
   b. Each medium contaminated, identified as soil, surface water, or groundwater;
   c. The maximum concentration of each chemical of concern for each contaminated medium.
   d. The current and future use of the facility and surrounding properties;
   e. Each receptor evaluated;
   f. The Tier 1 corrective action standard for each chemical of concern for each contaminated medium; and
   g. The proposed corrective actions for each chemical of concern that exceeds the Tier 1 corrective action standard.
2. For the Tier 2 evaluation the owner or operator shall provide the following information:
   a. Each chemical of concern evaluated;
   b. Each medium contaminated, identified as surficial soil, subsurface soil, surface water, or groundwater;
   c. The representative concentration of each chemical of concern for each contaminated medium;
   d. A detailed description of the current and future use of the facility and surrounding properties;
   e. The point of exposure;
   f. The point of compliance;
   g. The revised conceptual site model;
   h. Parameters necessary to utilize the leachability equations, if groundwater is or may be impacted by the release, published in federal and state peer-reviewed professional journals, publications of standards, or other literature accepted within the scientific community;
   i. Identification and justification for alternate assumptions or site-specific information used in place of the default assumptions of the Tier 1 evaluation, or used in a Department-approved model under subsection (A)(2) for subsurface volatilization;
   j. Any supporting calculations and reference citations used in the development of Tier 2 corrective action standards;.
   k. A table of the calculated Tier 2 corrective action standards;
   l. A description of any institutional or engineering controls to be implemented; and
   m. Proposed corrective actions for chemical of concerns that exceeds a Tier 2 corrective action standard.
3. For the Tier 3 evaluation the owner or operator shall provide the following information:
   a. Each chemical of concern evaluated;
   b. Each medium contaminated, identified as surficial soil, subsurface soil, surface water, or groundwater;
   c. The representative concentration of each chemical of concern for each contaminated medium;
   d. A detailed description of the current and future use of the facility and surrounding properties, including a demonstration of the current and foreseeable use of groundwater within one-quarter mile of the source;
   e. The point of exposure;
   f. The point of compliance;
   g. A revised conceptual site model;
   h. Identification and justification for alternate assumptions, methodology or site-specific information used in place of the assumptions for the Tier 2 evaluation;
   i. Any supporting calculations and reference citations used in the development of Tier 3 corrective action standards;
   j. Results and validation of modeling for soil leaching, groundwater plume migration, and surface water hydrology;
   k. A table of the calculated Tier 3 corrective action standards;
   l. Risk characterization, and cumulative lifetime excess cancer risk, and hazard index for current and potential receptors for all chemicals of concern in all contaminated media;
   m. A description of any institutional or engineering controls to be implemented; and
   n. Proposed corrective actions for chemical of concern that exceeds a Tier 3 corrective action standard.
4. When a Tier 2 or Tier 3 evaluation relies on the use of an institutional or engineering control in establishing a corrective action standard, the owner or operator shall:
   a. Demonstrate that the institutional or engineering control is legal, and technically and administratively feasible;
   b. Record any institutional or engineering control with the deed for all properties impacted by the release;
   c. Communicate the terms of the institutional or engineering control to current and future lessees of the property, and to those parties with rights of access to the property; and
   d. Ensure that the terms of the institutional or engineering control be maintained throughout any future property transactions until concentrations of chemicals of concern meet a corrective action standard at the point of compliance that does not rely on the use of the institutional or engineering control. For the institutional or engineering control to be implemented, the owner or operator shall prepare an institutional or engineering control that includes the following, as appropriate:
      i. Chemicals of concern;

ii. Representative concentrations of the chemicals of concern;
iii. Any Tier 2 or Tier 3 corrective action standard;
iv. Exposure pathways that are eliminated;
v. Reduction in magnitude or duration of exposures to chemicals of concern;
vi. The cumulative excess lifetime cancer risk and hazard index if determined under subsection (A)(4);
vii. A brief description of the institutional or engineering control;
viii. Any activity or use limitation for the site;
ix. The person responsible for maintaining the institutional or engineering control;
x. Performance standards;
xi. Operation and maintenance plans;
xii. Provisions for removal of the institutional or engineering control if the owner or operator demonstrates that representative concentrations of chemicals of concern comply with an alternative corrective action standard not dependent on the institutional or engineering control; and
xiii. A statement of intent that informs lessees and parties with rights of access of the terms described in subsections (B)(4)(d)(i) through (xii).

C. Submittal of tier evaluation. The owner or operator shall submit to the Department the tier evaluation conducted under subsection (A) and provide, in accordance with subsection (B), the following:
1. Documentation of the Tier 1 evaluation with the site characterization report described in R18-12-262(D), and
2. Documentation of the Tier 2 evaluation as soon as practicable during the course of conducting risk-based responses to contamination, as a stand alone document or in conjunction with one of the following:
   a. The site characterization report described in R18-12-262(D);
   b. The CAP as described in R18-12-263.02(B); or
   c. The corrective action completion report described in R18-12-263.03(D).
3. Documentation of the Tier 3 evaluation shall be submitted to the Department as soon as practicable during the course of conducting risk-based responses to contamination, as a stand alone document or in conjunction with the CAP described in R18-12-263.02(B).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-263.02. Corrective Action Plan

A. An owner or operator shall prepare a CAP that protects public health and the environment. The Department shall apply the following factors to determine if the CAP protects public health and the environment:
1. The physical and chemical characteristics of the chemical of concern, including toxicity, persistence, and potential for migration;
2. The hydrologic and geologic characteristics of the facility and the surrounding area;
3. The proximity, quality, and current and future uses of groundwater and surface water;
4. The potential effects of residual contamination on groundwater and surface water;
5. The risk characterization for current and potential receptors; and
6. Any information gathered in accordance with R18-12-251 through R18-12-263.03.

B. CAP contents. An owner or operator shall prepare a CAP in a format provided by the Department that includes:
1. The extent of contamination known at the time of the CAP submission, including a current LUST site classification form, as described in R18-12-261.01(E);
2. A description of any responses to soil, surface water, or groundwater contamination initiated;
3. A determination of the foreseeable and most beneficial use of surface water or groundwater within one-quarter mile of the outermost boundaries of the contaminated water, if a Tier 2 or Tier 3 evaluation is used for the corrective action standard for either medium. In making this determination the owner or operator shall:
   a. Conduct a survey of property owners and other persons using or having rights to use water within one-quarter mile of the outermost extent of contaminated water; and
   b. Include within the CAP the names and addressed of persons surveyed and the results;
4. A description of goals and expected results;
5. The corrective action standard for each chemical of concern in each affected medium, and the tier evaluation documents;
6. If active remedial methodologies are proposed the owner or operator shall:
   a. Describe any permits required for the operation of each remediation technology and system.
   b. Describe, in narrative form, the conceptual design, operation, and total estimated cost of three remedial alternatives proposed to perform corrective actions on contaminated soil, surface water or groundwater. Also include data and conclusions supporting the selection and design of each technology and system, including criteria for evaluation of effectiveness in meeting stated objectives and an abandonment plan. The information described in this subsection is not required if the remedial technology in the CAP is limited to approval of corrective action standards developed under Tier 2 or Tier 3 evaluation.
   c. Justify the selection of the remedial alternative chosen for the contamination at and from the LUST site. The owner or operator shall consider site-specific conditions and select a remedial alternative that best meets all of the remediation criteria listed in A.R.S. § 49-1005(D).
   d. Provide schedules for the implementation, operation, and demobilization of any remediation technology and periodic reports as described in R18-12-263(G) to the Department.
7. The reasonably foreseeable effects of residual contamination on groundwater and surface water.
8. Additional information necessary to analyze the site-specific conditions and effectiveness of the proposed remedial response, which may include, but is not limited to a feasibility study.

C. Modification of CAP. The owner or operator shall modify the CAP upon written request of the Department to meet the requirements of subsections (A) and (B). The request for modification shall describe any necessary modification and its rationale. The owner or operator shall respond to the request in writing within 45 calendar days of receipt, or a longer time period approved by the Department. If the requested modification is not made within 45 days, the Department shall disap-

prove the CAP, and notify the owner or operator in writing under subsection (H)(2).

D. Preliminary CAP approval. If the requirements of subsections (B) and (C) are met, the Department shall provide written notice to the owner or operator that the CAP is complete, and provide public notice required by R18-12-264.01.

E. Implementation before approval. An owner or operator may, in the interest of minimizing environmental contamination and promoting more effective remediation, begin implementation of the remediation technologies, in the CAP, before the plan is approved by the Department, if the owner or operator:
1. Informs the Department in writing before implementation;
2. Complies with any conditions imposed by the Department consistent with the provisions of subsection (A), including halting any activity or mitigating adverse consequences from implementation; and
3. Obtains all necessary permits and approvals for the remediation activities.

F. Modification due to public comment. An owner or operator shall modify the CAP upon written request of the Department that modification is required because of public comment received. The request shall describe any necessary modification and its rationale. The owner or operator shall respond to the modification request within 45 calendar days after receipt. If the requested modification is not made in writing within 45 days, the Department may disapprove the CAP and notify the owner or operator in writing described in subsection (H)(2).

G. Conditions for CAP approval. The Department shall approve a CAP only if the following conditions are met:
1. The CAP contains all elements required in subsections (B), (C), and (F), or the Department makes a determination that it has enough information to make an informed decision to approve the CAP; and
2. The CAP demonstrates that the corrective actions described are necessary, reasonable, cost-effective, technically feasible and meet the requirements of A.R.S. § 49-1005.

H. Notice of CAP approval. The Department shall notify the owner or operator in writing that it is approving or disapproving the CAP as follows:
1. If the conditions in subsections (G)(1) and (G)(2) are satisfied, the Department shall approve the CAP and notify the owner or operator. If the approved CAP includes a corrective action standard for water that is based on a Tier 2 or Tier 3 evaluation, the Department shall send a copy of the notice to the Arizona Department of Water Resources, the applicable county, and municipality where the CAP will be implemented, and water service providers and persons having water rights that may be impacted by the release. The notice shall also be sent to any persons submitting written or oral comments on the proposed CAP. The notice shall include any conditions upon which the approval is based and an explanation of the process for resolving disagreements over the determination under A.R.S. § 49-1091.
2. If the conditions of subsections (G)(1) or (2) are not satisfied, the Department shall disapprove the CAP and notify the owner or operator in writing of the disapproval. The Department shall send the notice to any persons submitting written or oral comments on the proposed CAP. The notice shall include an explanation of the rationale for the disapproval and an explanation of the process for resolving disagreements under A.R.S. § 49-1091.

I. CAP implementation. If the CAP is approved, the owner or operator shall begin implementation in accordance with the approved schedule.

J. CAP termination. The Department may terminate an implemented CAP, and may require a new CAP if the corrective action standards of the approved CAP are not being achieved. The Department shall provide notice to the owner or operator and the public under R18-12-264.01 if termination of the CAP is being considered.

K. Revisions to an approved CAP. The Department may approve revisions to an approved CAP without additional public notice unless the revision involves alternative remediation methodologies, or may adversely affect public health or the environment.

L. New CAP. The Department shall require a new CAP under R18-12-263(C) or (D) if a revision involves an alternative remediation methodology or may adversely affect public health or the environment.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-263.03. LUST Case Closure

A. LUST case closure request. An owner or operator requesting LUST case closure by the Department shall do so in writing, and submit a corrective action completion report that meets the requirements of this Section. The owner or operator shall submit the request for LUST case closure only after the site investigation requirements in R18-12-261 and R18-12-262, and any remedial response required by R18-12-263 are satisfied.

B. Verification that corrective action standard is met. The owner or operator shall verify that the corrective action standard for each chemical of concern in each contaminated medium is met, and provide documentation of the verification described in subsection (D).

C. Method of water quality verification. If LUST site investigations indicate that water quality was threatened or impacted, the owner or operator shall use an appropriate method of water quality verification. The owner or operator shall provide documentation that contaminant concentrations are at or below the corrective action standard for each chemical of concern in the contaminated groundwater and surface water. In selecting a method of water quality verification, the owner or operator shall consider:
1. Site-specific hydrologic conditions;
2. The full extent of water contamination, as documented in the site characterization report required by R18-12-262; and
3. The existence and location of known receptors that are or may be impacted by the release.

D. Contents of corrective action completion report. The owner or operator shall include the following information in the corrective action completion report, except that identical information previously submitted to the Department is not required to be resubmitted if the name, date, and applicable page(s) of any previous report containing the information required by this subsection is provided:
1. A description of the vertical and lateral extent of contamination;
2. A statement of the corrective action standard for each chemical of concern in each contaminated medium and the evaluation described in R18-12-263.01(B) for each tier evaluated;
3. A list of remediation technologies used to reach the corrective action standard;

4. Documentation verifying that the corrective action standard for each chemical of concern, in each medium of concern, has been met. Verification is not required if an initial investigation regarding soil, surface water, or groundwater described in R18-12-262 demonstrates the corrective action standard for each chemical of concern in each medium of concern has been met;
5. All sample collection locations shall be shown for both the site investigation described in R18-12-262 and the LUST case closure verification described in this Section;
6. Verification that Arizona Department of Water Resources permitted monitor wells, recovery wells, or vapor extraction wells that are abandoned before submission of the LUST case closure request, have been abandoned as required under A.A.C. R12-15-816 and that recovery wells or vapor extraction wells without Arizona Department of Water Resources permits have been abandoned in a manner that ensures that the well will not provide a pathway for contaminant migration;
7. Documentation showing compliance with the requirements for the storage, treatment, or disposal of any derived waste in R18-12-263(F);
8. Documentation showing any institutional or engineering controls that have been implemented, and any legal mechanisms that have been put in place to ensure that the institutional or engineering controls will be maintained;
9. The current LUST site classification form in R18-12-261.01(E); and
10. Any additional information the owner or operator determines is necessary to verify that the LUST case is eligible for closure under this Section.

E. Conditions for approval of LUST case closure. The Department shall inform the owner or operator that a corrective action completion report is approved if it meets the requirements of this Section and A.R.S. § 49-1005, and contains all of the information in subsection (D), or the Department determines that it has enough information to make an informed decision to approve the report and close the LUST case file.

F. Notice of LUST case closure decision. The Department shall provide written notice to the owner or operator that the corrective action completion report either does or does not comply with the requirements of this Section, and that case closure is approved or denied. LUST case closure occurs as follows:
1. If the Department determines that the conditions in subsection (E) are satisfied, the Department shall approve the report, close the LUST case, and notify the owner or operator. The notification shall include any conditions upon which the approval is based and explain the process for resolving disagreements provided by A.R.S. § 49-1091; or
2. If the Department determines that the conditions in subsection (E) are not satisfied, the Department shall disapprove the report and notify the owner or operator. The notification shall include any conditions upon which the disapproval is based and explain the process for resolving disagreements under A.R.S. § 49-1091.

G. Change in foreseeable or most beneficial use of water. If the Department is notified of a change in the foreseeable or most beneficial use of water, documented under a Tier 2 or Tier 3 evaluation, the Department shall reopen the LUST case file and require the owner or operator to perform additional corrective actions as necessary to meet the requirements of R18-12-261 through R18-12-264.01.

H. Subsequent discovery of contamination. If evidence of previously undocumented contamination is discovered at or emanating from the LUST site, the Department may reopen the LUST case file based on an assessment of site specific information and require an owner or operator to perform additional corrective actions necessary to comply with the requirements of R18-12-261 through R18-12-264.01.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-263.04. Groundwater LUST Case Closures

A. Applicability. Pursuant to A.R.S. § 49-1005(E), the Director may approve a corrective action that may result in aquifer water quality exceeding aquifer water quality standards established under A.R.S. § 49-223 after completion of the corrective action, if, in addition to complying with the other corrective action requirements in this Article, the corrective action:
1. Includes a Tier 2 or Tier 3 evaluation performed in accordance with R18-12-263.01(A)(2) or (3), and (4); or
2. Complies with the process described in subsections (B) through (F).

B. Site-specific requirements. The Director may approve LUST case closure where there is an exceedance of an aquifer water quality standard without requiring the placement of institutional controls on the deeds of all properties affected by the groundwater contamination related to the UST release, after consideration of the following:
1. Characterization of the groundwater plume,
2. Removal or control of the source of contamination,
3. Groundwater plume stability,
4. Natural attenuation,
5. Threatened or impacted drinking water wells,
6. Other exposure pathways,
7. Requirements of A.R.S. § 49-1005(D) and (E), and
8. Other information that is pertinent to the LUST case closure approval.

C. Public notice. If, after consideration of the criteria specified in subsection (B), the Department determines that the LUST site is eligible for LUST case closure, the Department shall provide public notice in accordance with R18-12-264.01.

D. Conditions for approval of LUST case closure. After consideration of comments obtained through the public notice process, the Department shall evaluate whether the LUST case meets the requirements of this Section and A.R.S. § 49-1005; and determine if the LUST case closure can be approved.

E. Notice of LUST case closure decision. The Department shall provide written notice to the owner or operator whether the LUST case closure is approved.

F. Future corrective actions. Subsequent to LUST case closure, if the Department becomes aware of site-specific conditions that warrant additional corrective actions, the LUST case file may be re-opened. Future corrective actions shall be performed as follows:
1. If a no further action letter in accordance with R18-12-903(D) has not been issued for the release or has been rescinded in accordance with R18-12-903(G), the UST owner or operator shall perform additional corrective actions necessary to comply with the requirements of R18-12-261 through R18-12-264.01; or
2. If a no further action letter issued by the Department in accordance with R18-12-903(D) is in effect, the additional corrective actions shall be performed by the Department in accordance with A.R.S. §§ 49-1015.01 and 49-1017.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

R18-12-264. General Reporting Requirements

A. Standard first page. An owner or operator making a written submission to the Department under R18-12-251 through R18-12-263.03 shall prepare a cover page, on a Department provided form, that contains the following:

1. The name, address, and daytime telephone number of the person responsible for submitting the document, identified as owner, operator, a political subdivision under A.R.S. § 49-1052(H), a person under A.R.S. § 49-1052(I), or other person notifying the Department of a release or suspected release or conducting corrective actions under A.R.S. § 49-1016(C)(2) or (4), and any identifying number assigned to the person by the Department;
2. Identification of the type of document or request being submitted;
3. The LUST number assigned by the Department to the release that is the subject of the document. If no LUST number is assigned, the date the release or suspected release was reported to the Department;
4. The name and address of the facility, and the facility identification number;
5. The name, address, daytime telephone number, and any identification number assigned by the Department of the owner and operator and the owner of the property that contains LUST; and
6. A certification statement signed by the owner or operator or the person conducting the corrective actions under A.R.S. § 49-1016(C) that reads: "I hereby certify, under penalty of law, that this submittal and all attachments are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

B. Professional registration requirements. Both the professional submitting a written report to the Department under R18-12-260 through R18-12-263.03 and the report shall meet the requirements of the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.

C. Certified remediation specialist. If the contaminated medium is limited to soil and involves only a Tier 1 or Tier 2 evaluation, an owner or operator may request that the Department accept, without review for completeness or deficiencies, a site characterization report described in R18-12-262(D) or corrective action completion report described in R18-12-263.03(D), signed by a certified remediation specialist meeting the requirements of (B). The Department may audit up to 25% of the documents submitted annually under this subsection. The Department shall select documents to be audited at random, unless the Department receives a written request to review a specific document. The Department shall review the audited document to determine whether it complies with R18-12-262 or R18-12-263.03. The Department shall approve the document based solely on the seal and signature of the certified remediation specialist, if the following certification is signed and notarized by both the certified remediation specialist and the owner or operator. The language of the certification shall be as follows:

> "I hereby certify that I have reviewed the attached report on the underground storage tank (UST) release(s) reported to the Arizona Department of Environmental Quality and have determined that all requirements of A.R.S. § 49-1005 and the rules made under that Section have been met. I request approval of this report as submitted. I agree to indemnify and hold harmless the state of Arizona, the Department of Environmental Quality, and their officers, directors, agents or employees from and against all claims, damages, losses, attorneys' fees, and expenses, arising out of Departmental acceptance of this report based solely on my signature and seal as a certified remediation specialist, including, but not limited to, bodily injury, sickness, disease or injury to or destruction of tangible property, including any loss of use therefrom caused in whole or in part by any negligent act or omission of mine as a certified remediation specialist, any subcontractor, anyone directly or indirectly employed by me or any subcontractor, or anyone for whose acts I or any subcontractor may be liable, regardless of whether or not caused in part by a party indemnified by this certification."

D. Department approval and liability waiver. The owner or operator shall be notified by the Department that the acceptance of a document complying with subsection (C) is based solely on the notarized statement of the certified remediation specialist, without Department review, and that no liability, associated with the acceptance, accrues to the state.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-264.01. Public Participation

A. Public notice. If public notice is required by A.R.S. § 49-1005, or rules made under that Section, the Department shall provide a minimum of 30 calendar days notice to the public regarding a public comment period. The Department shall use one or more methods of public notice designed to reach those members of the public directly affected by the release and the planned corrective actions, which may include, but is not limited to the following: publication in a newspaper of general circulation, posting at the facility, mailing a notice to applicable persons, or posting on the Department's internet site. At a minimum, the notice shall be sent to the following applicable persons:

1. The UST owner and operator;
2. Owners of property and other parties directly affected or potentially directly affected by contamination from the release, corrective actions, or LUST case closure;
3. The Arizona Department of Water Resources;
4. The applicable county and municipality; and
5. Water service providers and persons having water rights that may be impacted by the release.

B. Public notice contents. The Department shall provide notice to the public that includes all of the following:

1. Identifies the name of the document that is available for public comment;
2. Identifies the facility where the release occurred and the site of the proposed corrective actions, or LUST case closure in accordance with R18-12-263.04.
3. If the document is a CAP, identifies the date the CAP was submitted to the Department, and name of the person who submitted the CAP;
4. Provides a specific explanation if a corrective action standard for water is based on a Tier 2 or Tier 3 evaluation;
5. Identifies the location where a copy of the document can be viewed by the public;
6. Explains that any comments on the document shall be sent to the Underground Storage Tank Program of the Department within the time-frame specified in the notice; and

7. Describes the public meeting provisions of subsection (C).

C. Public meeting. The Department may hold a public meeting to receive comments on a document undergoing public review. If the Department holds a public meeting, the Department shall schedule the meeting and notify the public, in accordance with subsection (A), of the meeting time and location.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

R18-12-265. Reserved
R18-12-266. Reserved
R18-12-267. Reserved
R18-12-268. Reserved
R18-12-269. Reserved

R18-12-270. Temporary Closure

A. Owners shall notify the Department in accordance with R18-12-222(F)(4) within 30 days of the date that an UST system is temporarily closed.

B. Owners and operators of a temporarily closed UST system shall continue operation and maintenance of corrosion protection in accordance with R18-12-231, and release detection in accordance with R18-12-240 through R18-12-245. Discovery of a release or suspected release shall be subject to the provisions of R18-12-274. Release detection is not required if the temporarily closed UST system is emptied of all regulated substances and accumulated residues. The UST system is empty when all contents have been removed from the system so that no more than 2.5 centimeters (1 inch) of residue or 0.3% by weight of the total capacity of the UST system remain in the system. Spill and overfill requirements in accordance with R18-12-220(D), R18-12-221(E) and R18-12-230 do not have to be met during temporary closure.

C. Owners and operators of any UST system which is temporarily closed for three months or more shall also comply with both of the following requirements before the end of the third month following the date on which the UST system began temporary closure:

1. Vent lines left open and functioning;
2. All other lines, pumps, manways, and ancillary equipment capped and secured in accordance with R18-12-281(P)(1).

D. To bring an UST system back into use, owners shall notify the Department in accordance with R18-12-222(F)(5) within 30 days after the date that the UST system is brought back into use.

E. Any temporarily closed UST system that cannot be brought back into service within 12 months from the date it went into temporary closure, shall comply with one of the following before the expiration of the 12-month period:

1. Permanently close the system in accordance with R18-12-271 through R18-12-274,
2. Obtain an extension of temporary closure from the Department in accordance with subsection (G). To be effective, such an extension shall be granted in writing by the Department prior to expiration of the initial 12-month period of temporary closure.

F. A request for an extension shall be made by the owner using the Notification Form as described in R18-12-222(C)(3). The request shall include the results of a site assessment conducted in accordance with R18-12-272. A site assessment is not required if the UST system meets the new system standards of R18-12-220 or the upgrade standards of R18-12-221 provided both of the following are met:

1. The system has had corrosion protection installed in accordance with R18-12-220(B) and (C) or R18-12-221(B) and (C) which has been maintained in accordance with R18-12-231,
2. The system has had an external leak detection system installed in accordance with R18-12-243(E) or R18-12-243(F) which has been maintained in accordance with R18-12-240.

G. Owners requesting an extension of temporary closure shall submit the request in accordance with subsection (F) no later than 30 days prior to the expiration of the 12-month period of temporary closure. The Department shall inform the owner, in writing by certified mail, if the extension request is granted or denied. The UST shall be considered to be in extended temporary closure until the Department's determination is made and the owner is informed in writing. An extension of temporary closure which is granted by the Department shall include the duration and the terms and conditions of the extension. Terms and conditions shall be based upon the Department's assessment of what is reasonably necessary to protect human health and the environment. When the request for extension is denied, the UST system shall complete permanent closure in accordance with R18-12-271 through R18-12-274 or return to active service within 180 days of the date on which the Department informed the owner of the denial of the extension request, as evidenced by the return receipt. In the event of a denial of a request for an extension, the UST shall be considered to be in extended temporary closure until the 180 day period following notice of the denial has elapsed.

Historical Note

Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-271. Permanent Closure and Change-in-service

A. At least 30 days before beginning permanent closure or a change-in-service under subsection (C), owners and operators shall inform the Department in writing of their intent to permanently close or make a change-in-service of an UST. If closure or change-in-service is not completed within six months from the date the Department is informed, the information is deemed to be expired. Owners and operators shall provide the Department with all of the following information:

1. UST system owner name, address, and telephone number;
2. Facility name or company site identifier;
3. Facility street address;
4. Description of each UST system to be closed, including date of installation, total capacity, and construction material;
5. The estimated date of permanent closure or change-in-service.

B. The Department shall waive the 30-day notice described in subsection (A) if the permanent closure is in response to a corrective action conducted under A.R.S. § 49-1005 which was reported under A.R.S. § 49-1004. In addition, the Department may determine another reasonable time period for the notice of intent to permanently close or make a change-in-service to the UST system if any of the following exist:

1. An emergency that threatens human health or the environment,
2. The Department agrees to a request made by an entity operating under an Intergovernmental Agreement with the Department delegating closure inspection authority.

C. To permanently close or make a change-in-service to an UST system, owners and operators shall comply with R18-12-281(P) and shall perform all of the following steps:
1. Develop documented evidence that the contents of the system are a regulated substance. Unless system contents can be documented through delivery receipts or knowledge of process, a waste determination in accordance with R18-8-261(A) shall be performed. If contents are not a regulated substance, they may be subject to hazardous, solid or special waste regulations as follows:
   a. If the contents of an UST system are determined to meet the definition of a hazardous waste based upon a waste determination, the contents may be subject to the requirements of A.R.S. §§ 49-901 et seq. and the rules promulgated thereunder;
   b. If the contents of an UST system are not a regulated substance and not a hazardous waste, the contents may be subject to the requirements of R18-8-511 and R18-8-512.
2. Drain and flush back into the tank regulated substances from piping and any other ancillary equipment that routinely contains regulated substances. All piping, dispensers, and other ancillary equipment to be closed shall be capped or removed;
3. Empty to the standard set forth in R18-12-270(B) and clean the UST by removing all liquids and accumulated residues. The liquids and accumulated residues which meet the definition of hazardous waste pursuant to A.R.S. § 49-921(5) may be subject to regulation under A.R.S. §§ 49-901 et seq. If the liquids and accumulated residues are not hazardous waste, they may be subject to regulation pursuant to A.R.S. §§ 49-701 et seq;
4. Remove from the ground or fill completely with inert solid materials all tanks permanently taken out-of-operation unless the UST system component is making a change-in-service;
5. Perform the site assessment at closure or change-in-service in accordance with R18-12-272. The site assessment shall be performed after informing the Department but prior to completion of the permanent closure or change-in-service. If the tank is removed, samples shall be taken at the time of removal.

D. Owners and operators who permanently close or make a change-in-service of an UST system shall prepare a closure report in a format provided by the Department. The closure report shall be submitted to the Department within 30 days of the completion of closure or change-in-service. The report shall be maintained by the Department for at least three years from the date of receipt as evidenced by the post mark or the date stamped on the document by the Department. The report shall demonstrate compliance with the requirements of this Section and R18-12-272. In addition, the report shall include all of the following:
1. The name of the facility owner and operator, facility name and address, facility identification number, and a certification statement signed by the UST owner or operator or the authorized agent of the owner or operator that reads: "I hereby certify, under penalty of law, that this submittal and all attachments were prepared under my direction and supervision, and that the information submitted is true, accurate, and complete to the best of my knowledge."
2. Information concerning the required soil sampling, conducted in accordance with R18-12-272, which shall include the rationale for selecting sample types, sample locations, and measurement methods and, for each sample, all of the following: sample location identification number; sample depth; sampling date; date of laboratory analysis; lithology of sample; field soil vapor readings, if obtained; analytical methods used; laboratory results; numerical detection limits; and all sampling quality assurance and quality control results;
3. Information concerning the required water sampling, conducted in accordance with R18-12-280, which shall include, for each sample, all of the following: sample location identification number; sampling date; date of laboratory analysis; laboratory results; analytical methods used; numerical detection limits; and all sampling quality assurance and quality control results;
4. Copies of all original laboratory reports and chain-of-custody forms, and any supporting laboratory documents which discuss any analytical quality assurance and quality control anomalies experienced by the laboratory. The laboratory reports shall include, for each sample, all of the following: analytical methods; sample collection date; extraction date; sample analysis date; laboratory detection limits; and all analytical quality assurance and quality control analyses conducted by the laboratory for or during the analyses of the subject samples;
5. A brief, site-specific narrative description of the sampling quality assurance and quality control program followed in the field in accordance with R18-12-280(B). Any sampling quality assurance and quality control anomalies shall be discussed in detail. The report shall include a determination as to the validity of the data from a scientific standpoint;
6. A scaled map showing the locations of the tank, piping, and dispensers and the locations of all samples obtained in accordance with R18-12-272.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-272. Assessing the UST Site at Closure or Change-in-service

A. Before permanent closure or a change-in-service is completed, owners and operators shall measure for the presence of a release at the UST site by taking samples for laboratory analysis. Samples shall be obtained in the areas where contamination would most likely occur, or where stained soils, odors, vapors, free product, or other evidence indicates that a release may have occurred. Measurement for presence of a release shall be performed according to all of the following:
1. Owners and operators shall document the environmental condition of the UST site and the presence or absence of any contamination resulting from the operation of the UST system at the site through analyses performed on samples of native soil, and of water encountered during the UST closure assessment;
2. Specific locations for the required sampling at the UST system site shall be determined by the presence of stained soils, odors, vapors, free product, or other evidence indicating that a release may have occurred. In selecting sample types, sample locations, and measurement methods, owners and operators shall also consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors which may identify the presence of a release. At a minimum, each site shall be sampled in accordance with the following:
   a. If water is not present in the excavation at the time an UST is removed or if the UST is filled with a solid inert material as described in R18-12-

271(C)(4), a minimum of two distinct soil samples shall be taken from native soils beneath each tank that has a capacity to hold more than 550 gallons. The samples shall be taken from beneath each end of each tank. In cases where the fill pipe or pump is located above the center of the tank, an additional sample shall be taken from beneath the center of the tank. If the capacity of the tank is 550 gallons or less, then one sample shall be taken from native soils beneath the center of the tank;

b. If water is present above the floor of the excavation at the time an UST is removed, distinct samples of native soils shall be taken from the walls of the excavation at the soil-water interface at both ends of the tank;

c. If native soil cannot be collected in accordance with R18-12-280 due to large clast size or induration, or if the excavation zone is constructed in bedrock one of the following shall be performed:

i. Samples of the UST excavation backfill material shall be collected from beneath the UST system in accordance with locations described in subsection (A)(2)(a).

ii. If the UST excavation backfill material cannot be sampled, the Department shall be contacted for further instruction.

d. If water is encountered during activities required under this Section, a sample of the water shall be collected for analysis. If a sheen or free product is observed on the water or in the sample, the sampling requirements of subsection (A)(2) do not have to be met, however, further reporting and investigation shall be conducted in accordance with R18-12-274;

e. If piping is permanently closed in accordance with R18-12-271(C)(2) distinct samples of native soil shall be collected every 20 linear feet along the piping trench. In addition, distinct samples of native soil shall be collected under elbows, joints, fittings, dispensers and areas of corrosion;

f. Stockpiled excavated soil shall be sampled in accordance with A.R.S. Title 49, Chapter 4, Article 9, and the rules promulgated thereunder.

3. All required sampling shall be performed in accordance with R18-12-280.

B. The requirements of this Section are satisfied if owners and operators document all of the following:

1. The UST system is monitored by one of the external release detection methods described in R18-12-243(E) or (F),
2. The release detection system has been operated in accordance with the requirements of R18-12-240,
3. The release detection system indicates no releases have occurred.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-273. Application of Closure Requirements to Previously Closed Systems

When directed to do so by the Department, owners and operators of an UST system which was permanently closed before December 22, 1988, shall assess the excavation zone and close the UST system in accordance with R18-12-271, R18-12-272, and R18-12-274 if known, suspected, or potential releases from the UST system, in the judgment of the Department, may pose a current or potential threat to human health or the environment.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-274. Release Reporting and Corrective Action for Closed Systems

If a release or suspected release is discovered during temporary closure under R18-12-270 or in the performance of the procedures described in R18-12-272(A), owners and operators shall report the release and perform corrective action as required under A.R.S. §§ 49-1004 and 49-1005 and the rules promulgated thereunder.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-275. Reserved
R18-12-276. Reserved
R18-12-277. Reserved
R18-12-278. Reserved
R18-12-279. Reserved
R18-12-280. Sampling Requirements

A. Required analytical procedures. For all sampling under this Chapter, an owner or operator shall:

1. Analyze samples for the chemicals of concern associated with regulated substances stored in the UST during its operational life by analytical test methods that are approved for analysis of each chemical of concern under A.A.C. R9-14-601 through R9-14-617. Before collecting samples, the Department may approve, a different procedure after considering whether the analytical data will be representative of the concentrations and compositions of volatile regulated substances existing in the contaminated medium;
2. Perform sample analyses using a laboratory licensed for the selected analytical method by the Arizona Department of Health Services under A.A.C. R9-14-601 through A.A.C. R9-14-617; and
3. Analyze samples within the specified time period required for the analytical test method under A.A.C. R9-14-601 through A.A.C. R9-14-617.

B. Quality assurance and quality control (QA/QC). For all required sampling under this Chapter, an owner or operator shall:

1. Decontaminate sampling equipment as provided in R18-12-281(Q);
2. Handle and transport samples using a methodology that will result in analytical data that is representative of the concentrations and compositions of the chemicals of concern that may exist in the contaminated medium;
3. Follow chain-of-custody procedures under R18-12-281(S), for all required sampling, including the condition and temperature of the samples received by the laboratory on the chain-of-custody record; and
4. Follow generally accepted industry standards. For the purpose of subsection (B), "generally accepted industry standards" means those QA/QC procedures that are described in publications of national organizations concerned with corrective actions or that otherwise appear in peer-reviewed literature.

C. Soil sampling. An owner or operator shall perform all soil sampling required under this Chapter using a methodology that will result in analytical data that is representative of the concentrations and compositions of the chemicals of concern that may exist in the contaminated soil. The owner or operator shall use a sampling method that is based on consideration of all of the following criteria:

1. The specific chemicals of concern potentially involved,
2. Site-specific lithologic conditions,
3. Depth of sample collection, and

4. Generally accepted industry standards. For the purpose of subsection (C), "generally accepted industry standards" means those soil sampling activities that are described in publications of national organizations concerned with corrective actions or that otherwise appear in peer-reviewed literature.

D. Groundwater sampling. An owner or operator shall perform all required groundwater sampling under this Chapter using a methodology that will result in analytical data that is representative of the concentrations and compositions of the chemicals of concern that may exist in the groundwater. The owner or operator shall use a sampling method that is based on consideration of all of the following criteria:
1. The specific chemicals of concern potentially involved,
2. Site-specific hydrologic conditions,
3. Site-specific monitor well construction details,
4. Depth of sample collection, and
5. Generally accepted industry standards. For the purpose of subsection (D), "generally accepted industry standards" means those groundwater sampling activities that are described in publications of national organizations concerned with corrective actions or that otherwise appear in peer-reviewed literature.

E. Surface water sampling. An owner or operator shall perform all required surface water sampling under this Chapter using a methodology that will result in analytical data that is representative of the concentrations and compositions of the chemicals of concern that may exist in the surface water. The owner or operator shall use a sampling method that is based on consideration of all of the following:
1. The specific chemicals of concern involved or potentially involved,
2. Site-specific hydrologic conditions, and
3. Generally accepted industry standards. For the purpose of subsection (E), "generally accepted industry standards" means those surface water sampling activities that are described in publications of national organizations concerned with corrective actions or that otherwise appear in peer-reviewed literature.

Historical Note

Adopted effective July 30, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 3894, effective August 20, 2002 (Supp. 02-3).

R18-12-281. UST System Codes of Practice and Performance Standards

A. Compliance with R18-12-211(B) shall be determined by utilization of The National Association of Corrosion Engineers Standard RP0285-85, "Standard Recommended Practice Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" amended as of 1985 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

B. Compliance with R18-12-220(B)(1) shall be determined by utilization of one of the following:
1. Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" July 1983, and amended May 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products" February 1983 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. American Society for Testing and Materials Standard D 4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" amended July 25, 1986 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

C. Compliance with R18-12-220(B)(2) shall be determined by utilization of one of the following:
1. Steel Tank Institute, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" amended as of November 1, 1989 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks" amended November 7, 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. Underwriters Laboratories of Canada CAN/ULC-S603.1-92, "Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids" amended as of September 1992 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State and Underwriters Laboratories of Canada CAN4-S631-M84, "Standard for Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems" amended as of October 1992 (and no future amendments or editions), which are incorporated by reference and are on file with the Department and the Office of the Secretary of State;
4. National Association of Corrosion Engineers Standard RP0285-85, "Standard Recommended Practice Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" amended as of August 3, 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

D. Compliance with R18-12-220(B)(3) shall be determined by utilization of one of the following:
1. Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Underground Storage Tanks" (November 7, 1990);
2. Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" amended as of March 6, 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

E. Compliance with R18-12-220(C)(1) shall be determined by utilization of all of the following:
1. Underwriters Laboratories Subject 971, "Standard for NonMetallic Underground Piping for Flammable Liquids" March 17, 1992 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible Liquids and LP

Gas" amended as of May 29, 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;

3. Underwriters Laboratories of Canada Subject C-107C-M1984, "Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids" June 1984 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.
4. Underwriters Laboratories of Canada Standard CAN/ULC-S633-M90, "Standard for Flexible Underground Hose Connectors for Flammable and Combustible Liquids" amended as of June 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

F. Compliance with R18-12-220(C)(2) shall be determined by utilization of all of the following:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" amended as of August 17, 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems" amended as of November 1987, Supplement March 6, 1989 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" amended as of December 1987, Supplement March 6, 1989 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
4. National Association of Corrosion Engineers Standard RP0169-92, "Standard Recommended Practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems" 1983, amended as of 1992 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

G. Compliance with R18-12-220(C)(3)(b) shall be determined by utilization of both of the following:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" (August 17, 1990);
2. National Association of Corrosion Engineers Standard RP0169-92, "Control of External Corrosion on Submerged Metallic Piping Systems" (1992).

H. Compliance with R18-12-220(E)(2) shall be determined by utilization of one of the following:

1. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems" November 1987, Supplement March 6, 1989;
2. Petroleum Equipment Institute Publication PEI/RP100-90, "Recommended Practices for Installation of Underground Liquid Storage Systems" amended as of 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. American National Standards Institute Standard B31.3, "Chemical Plant and Petroleum Refinery Piping" amended as of 1993 with Addenda (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State, and American National Standards Institute Standard B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" 1992 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

I. Compliance with R18-12-221(D) shall be determined by utilization of all of the following:

1. American Petroleum Institute Publication 1631, "Interior Lining of Underground Storage Tanks" amended as of April 1992, October 1995 addendum (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10-year Life Extension of Existing Steel Underground Storage Tanks By Lining Without the Addition of Cathodic Protection" amended as of September 1988 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. National Association of Corrosion Engineers Standard RP0285-85, "Standard Recommended Practice Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" (1985).
4. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping System" (December 1987, Supplement March 6, 1989).

J. Compliance with R18-12-230(A) shall be determined by utilization of one of the following:

1. National Fire Protection Association Publication 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" amended as of 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. American Petroleum Institute Publication 1621, "Bulk Liquid Stock Control At Retail Outlets" December 1987, Supplement March 6, 1989 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State, and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" (August 17, 1990).

K. Compliance with R18-12-231(B)(2) shall be determined by utilization of National Association of Corrosion Engineers Standard RP0285-85, "Standard Recommended Practice Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" (1985).

L. Compliance with R18-12-232 shall be determined by utilization of both of the following:

1. American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations" April 1985 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations" August 1986 (and no future amendments or editions), which is

incorporated by reference and on file with the Department and the Office of the Secretary of State.

M. Compliance with R18-12-233(A)(1) shall be determined by utilization of all of the following:
1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" (August 17, 1990);
2. American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines" amended as of April 1983 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. American Petroleum Institute Publication 1631, "Interior Lining of Underground Storage Tanks" (December 1987);
4. National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10-year Life Extension of Existing Underground Storage Tanks By Lining Without the Addition of Cathodic Protection" (September 1988).

N. Compliance with R18-12-233(A)(2) shall be determined by utilization of Fiberglass Petroleum Tank & Piping Institute T-90-01 "Remanufacturing of Fiberglass Reinforced Plastic (RFP) Underground Storage Tanks" July 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

O. Compliance with R18-12-243(A) shall be determined by utilization of American Petroleum Institute Publication 1621, "Bulk Liquid Stock Control At Retail Outlets" (December 1987, Supplement March 6, 1989).

P. Compliance with R18-12-271(C) shall be determined by utilization of all of the following:
1. American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks" amended as of December 1987, Supplement March 6, 1989 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. American Petroleum Institute Publication 2015, "Safe Entry and Cleaning Petroleum Storage Tanks" amended as of January 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
3. American Petroleum Institute Publication 1631, "Interior Lining of Underground Storage Tanks" (April 1992).
4. The National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard Working in Confined Spaces" amended as of December 1979 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

Q. Compliance with R18-12-280(B)(1) shall be determined by utilization of American Society for Testing and Materials Standard D 5088-90, "Practice for Decontamination of Field Equipment Used at Nonradioactive Waste Sites" revised as of June 29, 1990 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

R. Compliance with R18-12-280(B)(2) and (C) shall be determined by utilization of both of the following:
1. American Society for Testing and Materials Standard D 4547-91: "Standard Practice for Sampling Waste and Soils for Volatile Organics" revised as of August 15, 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State;
2. American Society for Testing and Materials Standard D 4700-91, "Standard Guide for Soil Sampling from the Vadose Zone" revised as of July 15, 1991 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

S. Compliance with R18-12-280(B)(3) shall be determined by utilization of American Society for Testing and Materials Standard D 4840-88, "Standard Practice for Sampling Chain of Custody Procedures" approved June 1988 and published in October 1988, re-approved as of 1993 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

ARTICLE 3. FINANCIAL RESPONSIBILITY

R18-12-300. Financial Responsibility; Applicability

A. R18-12-301 through R18-12-325 apply to all owners and operators of petroleum UST systems, except as otherwise provided in this Section.

B. Owners and operators of a petroleum UST system are subject to the requirements of R18-12-301 through R18-12-325 if the petroleum UST system is being used on the effective date of this Section, or anytime thereafter.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Article.

D. R18-12-303 through R18-12-325 do not apply to owners and operators of any UST system excluded or deferred under 40 CFR 280.10(b) or 40 CFR 280.10(c) as described in A.R.S. § 49-1021. 40 CFR 280.10(b) and 40 CFR 280.10(c), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department of Environmental Quality and the Office of the Secretary of State.

E. If owners and operators of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in R18-12-301.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-301. Financial Responsibility; Compliance Dates; Allowable Mechanisms; Evidence

A. Owners and operators shall submit to the Department evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Article for an underground storage tank as follows:
1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration: within 180 days after the effective date of this Section;
2. All petroleum marketing firms owning 100-999 USTs: within 180 days after the effective date of this Section;

3. All petroleum marketing firms owning a total of 13-99 USTs which are located at more than one facility: within 180 days after the effective date of this Section;
4. All petroleum UST owners not described in subsections (A)(1) through (3), excluding all local government entities: by December 31, 1993;
5. All local government entities: one year from the date of final federal promulgation of additional mechanisms for use by local government entities to comply with financial responsibility requirements for underground storage tanks containing petroleum.

B. Owners and operators shall use the financial assurance mechanisms in this Article to comply with financial responsibility requirements as follows:
1. Owners and operators, including local government owners and operators, may use any one or combination of the financial assurance mechanisms listed in R18-12-305 through R18-12-312 to demonstrate financial responsibility under this Article for one or more underground storage tanks;
2. Local government owners and operators may also use any one or combination of the financial assurance mechanisms listed in R18-12-314 through R18-12-317 to demonstrate financial responsibility under this Article for one or more underground storage tanks.

C. Owners and operators shall submit evidence of compliance with the requirements of this Article. Owners and operators shall submit to, and maintain with, the Department a copy of any one or combination of the assurance mechanisms specified in R18-12-305 through R18-12-312, and R18-12-314 through R18-12-317 currently in effect along with a copy of the standby trust agreement, if required. Owners and operators using an assurance mechanism specified in R18-12-305 through R18-12-312 and R18-12-314 through R18-12-317 shall submit to, and maintain with, the Department an updated copy of a certification of financial responsibility worded as provided in 40 CFR 280.111(b)(11)(i), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. 40 CFR 280.111(b)(11)(i), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State. In addition, local government owners and operators shall comply with one or more of the following:
1. Local government owners and operators using the local government bond rating test under R18-12-314 shall submit a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's;
2. Local government owners and operators using the local government guarantee under R18-12-316, if the guarantor's demonstration of financial responsibility relies on the bond rating test under R18-12-314 shall submit a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's;
3. Local government owners and operators using a local government fund under R18-12-317 shall submit the following documents:
   a. A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;
   b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under R18-12-317(A)(3) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund;
   c. If the fund is established under R18-12-317(A)(3) using incremental funding backed by bonding authority, owners and operators shall also submit documentation of the required bonding authority, including either the results of a voter referendum under R18-12-317(A)(3)(a), or attestation by the state attorney general as specified under R18-12-317(A)(3)(b).
4. Local government owners and operators using the local government guarantee supported by the local government fund shall submit a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

D. Owners and operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Article for an underground storage tank until released from the requirements of this Article under R18-12-323. Owners and operators shall maintain such evidence at the underground storage tank site or a readily available alternative site. Records maintained off-site shall be provided for inspection to the Department upon request.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-302. Reserved

R18-12-303. Amount and Scope of Required Financial Responsibility

A. Owners and operators of petroleum USTs shall demonstrate financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per-occurrence amounts:
1. For owners and operators of petroleum USTs that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: $1 million;
2. For owners and operators of petroleum USTs not described in subsection (A)(1): $500,000.

B. Owners and operators of petroleum USTs shall demonstrate financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST in at least the following annual aggregate amounts:
1. For owners and operators of 1 to 100 petroleum USTs: $l million,
2. For owners and operators of 101 or more petroleum USTs: $2 million.

C. For the purposes of subsections (B) and (G) only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

D. Except as provided in subsection (E), if owners and operators use separate mechanisms or combinations of separate mechanisms to demonstrate financial responsibility for taking corrective action, compensating 3rd parties for bodily injury and property damage caused by sudden accidental releases, or compensating 3rd parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subsections (A) and (B).

E. If owners and operators use separate mechanisms or combinations of separate mechanisms to demonstrate financial responsibility for different petroleum USTs, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

F. If owners and operators utilize one mechanism, separate mechanisms, or combinations of separate mechanisms to demonstrate financial responsibility for petroleum USTs in more than one state or territory, with more than one implementing agency, the identification of systems covered by each mechanism shall include the implementing agency for each facility or group of facilities. All facilities subject to the requirements of this rule shall also be identified by the UST facility identification number assigned by the Department.

G. Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed. If the number of petroleum underground storage tanks for which assurance shall be provided exceeds 100, owners and operators shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, owners and operators shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the 1st-occurring effective date anniversary of any one of the mechanisms combined, other than a financial test or guarantee, to provide assurance.

H. The amounts of assurance required under this Section exclude legal defense costs.

I. The per-occurrence and annual aggregate coverage amounts required by this Section do not limit the liability of owners and operators.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-304. Reserved

R18-12-305. Financial Test of Self-insurance

A. Owners, operators, or guarantors may satisfy the requirements of R18-12-303 by passing a financial test as specified in this Section. To pass the financial test of self-insurance, owners, operators, or guarantors shall meet the criteria of either subsection (B) or (C) based on year-end financial statements for the latest completed fiscal year.

B. In order to pass a financial test of self-insurance under this subsection, owners operators, or guarantors shall meet all of the following requirements:

1. Have a tangible net worth of at least 10 times all of the following:
   a. The total of the applicable aggregate amount required by R18-12-303, based on the number of underground storage tanks for which a financial test of self-insurance is used to demonstrate financial responsibility;
   b. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test of self-insurance is used to demonstrate financial responsibility under R18-8-264;
   c. The sum of current plugging and abandonment cost estimates for which a financial test of self-insurance is used to demonstrate financial responsibility under 40 CFR 144.63. 40 CFR 144.63, amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
2. Have a tangible net worth of at least $10 million,
3. Have a letter signed by the chief financial officer worded as specified in subsection (D),
4. Do either one of the following:
   a. File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration.
   b. Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.
5. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

C. In order to pass a financial test of self-insurance under this subsection, owners, operators, or guarantors shall meet all of the following requirements:

1. Owners, operators, or guarantors shall meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amount specified in either R18-12-303(B)(1) or (2) for the "amount of liability coverage" each time specified in that Section. 40 CFR 264.147(f)(1), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State;
2. The fiscal year-end financial statements of owners, operators, or guarantors shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination;
3. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification;
4. Owners, operators, or guarantors shall have a letter signed by the chief financial officer, worded as specified in subsection (D);
5. If the financial statements of owners, operators, or guarantors are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, owners, operators, or guarantors shall obtain a special report by an independent certified public accountant stating all of the following:
   a. The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of owners, operators, or guarantors, with the amounts in such financial statements.
   b. In connection with the comparison under subsection (C)(5)(a), no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

D. To demonstrate that it meets the financial test under subsection (B) or (C), the chief financial officer of owners, operators, or guarantors, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as provided in 40 CFR 280.95(d), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. 40 CFR 280.95(d), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is

on file with the Department and the Office of the Secretary of State.

E. If owners and operators, using a financial test of self-insurance for financial responsibility find that they no longer meet the requirements of the financial test based on the year-end financial statements, owners and operators shall obtain alternative coverage within 150 days of the end of the financial reporting year for which financial statements have been prepared.

F. The Director may require reports of financial condition at any time from owners, operators, or guarantors. If the Director finds, on the basis of such reports or other information, that owners, operators, or guarantors, no longer meet the financial test requirements, owners and operators shall obtain alternate coverage within 30 days after notification of such a finding.

G. If owners and operators fail to obtain alternate assurance within 150 days of finding that they no longer meet the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director that they no longer meet the requirements of the financial test, owners and operators shall notify the Director of such failure within 10 days.

H. Owners and operators may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this Section, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-306. Guarantee

A. Owners and operators may satisfy the requirements of R18-12-303 by obtaining a guarantee that conforms to the requirements. The guarantor shall be either one of the following:
1. A firm that meets any one of the following descriptions:
   a. Possesses a controlling interest in the owner or operator,
   b. Possesses a controlling interest in a firm described under subsection (A)(1)(a),
   c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator.
2. A firm engaged in a substantial business relationship with the owner or operator and who issues the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of R18-12-305 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in R18-12-305(D) and shall deliver the letter to owners and operators. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to owners or operators. If the Director notifies the guarantor that the guarantor no longer meets the requirements of the financial test of R18-12-305(B) or (C) and (D), the guarantor shall notify owners and operators within 10 days of receiving such notification from the Director. In both cases, the guarantee terminates no less than 120 days after the date the owner and operator receives the notification, as evidenced by the return receipt. Owners and operators shall obtain alternate coverage as specified in R18-12-318.

C. The guarantee shall be worded as provided in 40 CFR 280.96(c), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. 40 CFR 280.96(c), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

D. Owners and operators who use a guarantee to satisfy the requirements of R18-12-303 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director under R18-12-322. This standby trust fund shall meet the requirements specified in R18-12-313.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-307. Insurance and Risk Retention Group Coverage

A. Owners and operators may satisfy the requirements of R18-12-303 by obtaining liability insurance that conforms to the requirements from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

B. Each insurance policy shall be amended by an endorsement worded as specified in 40 CFR 280.97(b)(1) or evidenced by a certificate of insurance worded as specified in 40 CFR 280.97(b)(2), except that instructions in brackets shall be replaced with the relevant information and the brackets deleted. 40 CFR 280.97(b)(1) and (2) amended as of July 1, 1994 (and no future amendments or editions), are incorporated by reference and on file with the Department and the Office of the Secretary of State. Termination under 40 CFR 280.97(b)(1) and (2) as referenced in this Section means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

C. Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-308. Surety Bond

A. Owners and operators may satisfy the requirements of R18-12-303 by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the June 30, 1995, Circular 570 of the U.S. Department of the Treasury. Circular 570 of the U.S. Department of the Treasury, amended as of June 30, 1995, (and no future amendments or editions), is incorporated by reference and on file with the Department and the Office of the Secretary of State.

B. The surety bond shall be worded as provided in 40 CFR 280.98(b), except that instructions in brackets shall be replaced with the relevant information and the brackets deleted. 40 CFR 280.98(b) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

C. Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liabil-

ity is limited to the per-occurrence and annual aggregate penal sums.

D. Owners and operators who use a surety bond to satisfy the requirements of R18-12-303 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with instructions from the Director under R18-12-322. This standby trust fund shall meet the requirements specified in R18-12-313.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-309. Letter of Credit

A. Owners and operators may satisfy the requirements of R18-12-303 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section. The issuing institution shall be an entity that has the authority to issue letters of credit in this state and whose letter of credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as provided in 40 CFR 280.99(b), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. 40 CFR 280.99(b) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

C. Owners and operators who use a letter of credit to satisfy the requirements of R18-12-303 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under R18-12-322. This standby trust fund shall meet the requirements specified in R18-12-313.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days shall begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-310. Certificate of Deposit

A. Owners and operators may satisfy the corrective action requirements, but not the 3rd-party compensation requirements, of R18-12-303 by obtaining an irrevocable certificate of deposit and preparing a Certification and Agreement that conforms to the requirements of this Section. The issuing institution shall meet all of the following:

1. Has the authority to issue certificates of deposit in Arizona,
2. Certificate of deposit operations are regulated and examined by a federal or state agency,
3. Is a member of the Federal Deposit Insurance Corporation.

B. The certificate of deposit may be used for the full required amount of corrective action coverage. Alternatively, it may be used for part of the required amount of corrective action coverage when used in combination with other mechanisms allowed under this Article which provide the remaining amount of coverage. In all cases, the full required amount of 3rd-party compensation coverage shall be met with another mechanism or mechanisms allowed under this Article.

C. Owners and operators who use a certificate of deposit to meet the corrective action requirements of R18-12-303 shall comply with all of the following:

1. The certificate of deposit document and the records of the issuing institution shall designate the Department as the sole payee. The original certificate of deposit, a blank signature card, and the certification and agreement executed in accordance with subsection (D) shall be submitted to the Department. The Department shall return the signature card to the issuing institution with the current Director's signature and the signature of an alternative person designated by the Director affixed;
2. If the issuing institution is unwilling or unable to prepare a certificate of deposit made payable only to the Department, the owner or operator and the issuing institution shall prepare and execute an assignment in the presence of a notary public with a copy provided to the issuing institution which allows only the Department access to the certificate of deposit;
3. The owner or operator's Social Security or Tax Identification number shall appear on the certificate of deposit;
4. All interest accrued on the certificate of deposit shall be applied back to the certificate of deposit;
5. Upon verification by the Department that the requirements of this Article are met using another mechanism or combination of mechanisms, the owner or operator may submit a written request to the Director for release of the certificate of deposit. Within 30 days of receipt of the request from the owner or operator under this subsection, the Director shall release to the owner or operator the certificate of deposit and the certification and agreement.

D. The owner or operator shall prepare, execute, and submit to the Department and the issuing institution a Certification and Agreement which shall be worded as shown in Appendix A except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E. The certificate of deposit shall be irrevocable with an automatically renewable term, the length of which may be specified by owners and operators. The initial term and the automatic renewal term shall be stated on the certificate of deposit.

F. The Department may present for payment any certificate of deposit to the issuing institution and receive cash if either of the following occur:

1. The owner or operator reports a release in accordance with A.R.S. § 49-1004 from an underground storage tank covered by the certificate of deposit and makes a written request to the Director for payment of corrective action expenses required under A.R.S. § 49-1005. If a request for payment is made the owner or operator shall submit an invoice for corrective action services which have been performed as required under A.R.S. § 49-1005;
2. The conditions of R18-12-322(B)(1) exist.

G. The Department shall pay, from funds received from cashing the certificate of deposit, corrective action expenses if they are determined to be reasonable. Corrective action expenses shall be considered reasonable if they meet the criteria for reasonableness of cost under R18-12-605.

H. The Director shall, within 30 days of the date on which the certificate of deposit is cashed, return to the owner or operator any funds received from cashing the certificate of deposit which are in excess of the amount of financial responsibility being demonstrated by the certificate of deposit. The Director shall place funds received from the certificate of deposit which

have not been used to meet the expenses payable under subsection (G) in an UST Assurance Fund until such time as they are needed. If upon completion of all corrective action, as evidenced by a corrective action closure letter issued by the Department, the costs incurred are less than the amount received from cashing of the certificate of deposit, any excess funds remaining after final payment shall be refunded to the owner or operator within 30 days of receipt by the Department of a written request for refund.

Historical Note

Adopted effective July 30, 1996 (Supp. 96-3). Amended effective July 30, 1996 (Supp. 96-3).

Appendix A. Certification and Agreement - Certificate of Deposit

CERTIFICATION AND AGREEMENT

CERTIFICATE OF DEPOSIT

_____

[Name of owner or operator]

_____

[Address of owner or operator]

a _____

[Insert "corporation," "partnership," "association," or "proprietorship"]

Hereby certifies that it has elected to use a Certificate of Deposit in accordance with R18-12-310 to cover all or part of its financial responsibility requirement for taking corrective action under Arizona Revised Statutes Title 49, Chapter 6, § 49-1006 as follows:

Section 1. This coverage is provided under Certificate of Deposit [Certificate of Deposit number] payable to the Department of Environmental Quality issued by [Name and address of issuing institution], [insert "Incorporated in the state of _____" or "a national bank"] for the period from [/ /19], through [/ /19] and is automatically renewable for a term of [Insert number of months] months in the amount of $_____. Both the Certificate of Deposit and the issuing institution meet the requirements of R18-12-310.

Section 2. The original of the Certificate of Deposit has been delivered to the Department of Environmental Quality, hereinafter known as the Department, to be held by the Department, along with this agreement, as proof of [Insert owner or operator]'s financial responsibility for taking corrective action caused by [Insert either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks(s) identified in Section 3 of this agreement. The amounts of financial assurance coverage provided by this Certificate of Deposit are:

[insert the dollar amount of "each occurrence" and "annual aggregate" provided by the Certificate of Deposit; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location].

Section 3. The following underground storage tanks are covered by the Certificate of Deposit:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to A.R.S. § 49-1002, and the name and address of the facility.]

Section 4. [Insert owner or operator] is held firmly unto the state of Arizona in the amount of those sums for those periods of time as set forth herein, until this Certification and Agreement is amended or renewed or released in accordance with R18-12-310. The Certificate of Deposit or any funds resulting from cashing of the Certificate of Deposit shall be maintained or disbursed only in accordance with the provisions of AAC R18-12-310.

Section 5. This Agreement shall remain in force during the term of the Certificate of Deposit and during any period of time prior to full expenditure or release of funds received from cashing of the Certificate of Deposit. [Insert owner or operator] shall notify the Department in writing immediately of any event which may impair this agreement. If the Department receives such notice, or otherwise has reason to believe that this agreement has been materially impaired, the Department may unilaterally amend the terms and conditions of this agreement to rectify any such impairment.

Section 6. The institution issuing the Certificate of Deposit is not a party to this agreement. Its obligations are set forth in its Certificate of Deposit. Nothing in this agreement diminishes or qualifies the issuing institution's obligations under its Certificate of Deposit.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

Signed and dated this _____day of _____, 19__

Date: _____

[Typed name of owner or operator]

BY:_____

Title: _____

Appendix A. Certification and Agreement - Certificate of Deposit *Continued*

NOTARIZATION OF SIGNER'S ACKNOWLEDGEMENT

STATE _____)

_____) SS.

COUNTY OF_____)

The foregoing instrument was acknowledged before me this

_____day of _____, 19__, by _____

as _____of _____

_____

NOTARY PUBLIC

My Commission Expires:

_____

APPROVED:

STATE OF ARIZONA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date:_____ By:_____

_____Director, ADEQ

Historical Note:
Appendix A adopted effective July 30, 1996 (Supp. 96-3).

R18-12-311. State Fund or Other State Assurance

A. Owners and operators may satisfy the requirements of R18-12-303 by obtaining coverage under an approved state fund which conforms to the requirements of this Section. The state fund shall be approved by a U.S. EPA Regional Administrator as a full or partial mechanism which may be used to meet the requirements of 40 CFR 280.93. 40 CFR 280.93 amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and on file with the Department and the Office of the Secretary of State. The state fund may be used to meet the requirements of this Article only as follows:

1. For facilities within this state which are eligible for coverage;
2. For the amounts and types of coverage approved by the U.S. EPA Regional Administrator;
3. Until such approval is withdrawn by the EPA Administrator and owners and operators are notified, in accordance with R18-12-319(A)(2), that the fund may no longer be used for compliance with financial responsibility requirements.

B. Owners and operators shall submit to the Department, in accordance with R18-12-301(C), a copy of the form prescribed by the Department, completed by owners and operators which sets forth the nature of the state's assumption of responsibility. The form shall include, or have attached to it, the following information:

1. The owner or operator's name and address,
2. The facility's name and address,
3. The amount of funds for corrective action resulting from sudden accidental releases or non-sudden accidental releases or accidental releases which are assured by the state,
4. If only certain tanks at a facility are assured by the state, those tanks which are assured by the state shall be identified by the tank identification number.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-312. Trust Fund

A. Owners and operators may satisfy the requirements of R18-12-303 by establishing a trust fund that conforms to the requirements of this Section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The wording of the trust agreement shall be identical to the wording specified in 40 CFR 280.103(b)(1), and shall be accompanied by a formal certification of acknowledgment as specified in 40 CFR 280.103(b)(2). 40 CFR 280.103(b)(1) and (2), amended as of July 1, 1994 (and no future amendments or editions), are incorporated by reference and are on file with the Department and the Office of the Secretary of State.

C. The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director for release of the excess.

E. If other financial assurance as specified in the Sections R18-12-305 through R18-12-311 and R18-12-314 through R18-12-317 is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (D) or (E) the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-313. Standby Trust Fund

A. Owners and operators using any one of the mechanisms authorized by R18-12-306, R18-12-308, and R18-12-309 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The standby trust agreement shall be worded as provided in 40 CFR 280.103(b) (1) and 40 CFR 280.103(b)(2), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. The Director shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or 3rd-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. Owners and operators may establish one standby trust fund as the depository mechanism for all funds assured in compliance with this Article.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).

R18-12-314. Local Government Bond Rating Test

A. General purpose local government owners and operators or a local government serving as a guarantor that has the legal authority to issue general obligation bonds may satisfy the requirements of R18-12-303 by having a currently outstanding issue or issues of general obligation bonds of $1 million or more, excluding refunded, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. If a local government has multiple outstanding issues, or if a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

B. Local government owners and operators or a local government serving as a guarantor that is not a general purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of R18-12-303 by having a currently outstanding issue or issues of revenue bonds of $1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. If bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

C. Local government owners and operators, or a guarantor, or both, shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

D. To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator, or the guarantor, or both, shall sign a letter worded exactly as provided in 40 CFR 280.104(d), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. 40 CFR 280.104(d), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

E. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner and operator, or the guarantor, or both, shall sign a letter worded exactly as provided in 40 CFR 280.104(e), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. 40 CFR 280.104(e), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and on file with the Department and the Office of the Secretary of State.

F. The Director may require reports of financial condition at any time from local government owners and operators, or the local government guarantor, or both. If the Director finds, on the basis of such reports or other information, that the local government owner or operator, or the guarantor, or both, no longer meets the local government bond rating test requirements of this Section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

G. If local government owners and operators using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-315. Local Government Financial Test

A. Local government owners and operators may satisfy the requirements of R18-12-303 by passing the financial test specified in this Section. To be eligible to use the financial test, local government owners and operators shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, owners and operators shall meet the criteria of subsections (B)(2) and (3) based on year-end financial statements for the latest completed fiscal year.

B. To pass the local government financial test, owners and operators shall meet all of the following:

1. Local government owners and operators shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:
   a. Total revenues: consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales such as property or publications, intergovernmental revenues whether or not restricted, and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special reve-

nues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all interfund transfers between funds under the direct control of the local government using the financial test, liquidation of investments, and issuance of debt;

b. Total expenditures: consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all interfund transfers between funds under the direct control of the local government using the financial test;

c. Local revenues: consists of total revenues, as defined in subsection (B)(1)(a), minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources;

d. Debt service: consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments;

e. Total funds: consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes, and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

2. The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

3. Local government owners and operators shall have a letter signed by the chief financial officer worded as specified in subsection (C).

C. To demonstrate that it meets the financial test under subsection (B), the chief financial officer of the local government owner or operator shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as provided in 40 CFR 280.105(c), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. 40 CFR 280.105(c) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

D. If local government owners and operators using the test to provide financial assurance find that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

E. The Director may require reports of financial condition at any time from local government owners and operators. If the Director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (B) and (C), the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

F. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Director that it no longer meets the requirements of the financial test, the owner or operator shall notify the Director of such failure within 10 days.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-316. Local Government Guarantee

A. Local government owners and operators may satisfy the requirements of R18-12-303 by obtaining a guarantee that conforms to the requirements of this Section. The guarantor shall be either the state in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall meet the requirements of one of the following:

1. Demonstrate that it meets the bond rating test requirements of R18-12-314 and deliver a copy of the chief financial officer's letter as contained in R18-12-314(D) or R18-12-314(E) to the local government owner or operator;

2. Demonstrate that it meets the financial test requirements of R18-12-315 and deliver a copy of the chief financial officer's letter as contained in R18-12-315(C) to the local government owner or operator;

3. Demonstrate that it meets the local government fund requirements of R18-12-317(A)(1), R18-12-317(A)(2) or R18-12-317(A)(3) and deliver a copy of the chief financial officer's letter as contained in R18-12-317(B) to the local government owner or operator.

B. If the local government guarantor is unable to demonstrate financial assurance under R18-12-314, R18-12-315, R18-12-317(A)(1), R18-12-317(A)(2) or R18-12-317(A)(3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in R18-12-318.

C. The guarantee agreement shall be worded as specified in subsection (D) or (E), depending on which of the following alternative guarantee arrangements is selected:

1. If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as

directed by the Director, the guarantee shall be worded as specified in subsection (D);

2. If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Director for taking corrective action or compensating 3rd parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (E).

D. If the guarantor is a state, the "local government guarantee with standby trust made by a state" shall be worded exactly as provided in 40 CFR 280.106(d), except that instructions in brackets are to be replaced with relevant information and the brackets deleted. 40 CFR 280.106(d) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State. If the guarantor is a local government, the "local government guarantee with standby trust made by a local government" shall be worded exactly as provided in 40 CFR 280.106(d), except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

E. If the guarantor is a state, the "local government guarantee without standby trust made by a state" shall be worded exactly as provided in 40 CFR 280.106(e), except that instructions in brackets are to be replaced with relevant information and the brackets deleted. 40 CFR 280.106(e) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and on file with the Department and the Office of the Secretary of State. If the guarantor is a local government, the "local government guarantee without standby trust made by a local government" shall be worded exactly as provided in 40 CFR 280.106(e), except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-317. Local Government Fund

A. Local government owners and operators may satisfy the requirements of R18-12-303 by establishing a dedicated fund account that conforms to the requirements of this Section. Except as specified in subsection (A)(2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund shall be considered eligible if it meets one of the following requirements:

1. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under R18-12-303, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage;
2. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under R18-12-303, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under R18-12-303, the amount of financial responsibility demonstrated by the fund may not exceed 1/5 the amount in the fund;
3. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is referred to as the "pay-in-period." The amount of each payment shall be determined by the following formula:

$$\frac{TF - CF}{Y}$$

where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and one of the following is met:

a. The local government owner or operator has available bonding authority, approved through voter referendum, if such approval is necessary prior to the issuance of bonds, for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks;
b. The local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

B. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator, or guarantor, or both, shall sign a letter worded exactly as provided in 40 CFR 280.107(d), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. 40 CFR 280.107(d) amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

Historical Note

Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-318. Substitution of Financial Assurance Mechanisms by Owner and Operator

A. Owners and operators may substitute any alternate financial assurance mechanisms as specified in R18-12-305 through R18-12-312 and R18-12-314 through R18-12-317, if at all times owners and operators maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of R18-12-303.

B. After obtaining alternate financial assurance as specified in R18-12-305 through R18-12-312 and R18-12-314 through R18-12-317, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

C. Upon replacement of any financial assurance mechanism, the owner or operator shall forward evidence of financial responsibility and certification of financial responsibility to the Department as required in R18-12-301(C).

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-319. Cancellation or Nonrenewal by a Provider of Financial Assurance

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator in accordance with one of the following:
1. Termination of a local government guarantee, guarantee, surety bond, or letter of credit shall not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt;
2. Termination of insurance or risk retention group coverage, or state-funded assurance, except for non-payment of premium or misrepresentation by the insured, shall not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured shall not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in R18-12-324, owners and operators shall obtain alternate coverage as specified in this Article within 60 days after receipt of the notice of termination. If owners and operators fails to obtain alternate coverage within 60 days after receipt of the notice of termination, owners and operators shall notify the Director of such failure and submit all of the following:
1. The name and address of the provider of financial assurance,
2. The effective date of termination,
3. The evidence of the financial assurance mechanism subject to the termination submitted in accordance with R18-12-301.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).

R18-12-320. Reporting by Owner and Operator

A. Owners and operators shall submit documented evidence of financial responsibility as described under R18-12-301(C) to the Director according to any of the following:
1. Within 30 days after owners and operators identify a release from an underground storage tank required to be reported under A.R.S. § 49-1004 and the rules promulgated thereunder.
2. If owners and operators fail to obtain alternate coverage as required by R18-12-319(B), within 30 days after the owner or operator receives notice of any one of the following:
   a. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
   b. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
   c. Failure of a guarantor to meet the requirements of the financial test;
   d. Other incapacity of a provider of financial assurance.
3. As required by R18-12-305(G) and R18-12-319(B).

B. Owners and operators shall include in the initial or updated Notification Form a certification of compliance with the financial responsibility requirements of this Article.

C. The Director may, at any time, require owners and operators to submit evidence of financial assurance or other information relevant to compliance with R18-12-301 through R18-12-325.

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Amended effective July 30, 1996 (Supp. 96-3).

R18-12-321. Repealed

Historical Note
Adopted effective September 21, 1992 (Supp. 92-3).
Repealed effective July 30, 1996 (Supp. 96-3).

R18-12-322. Drawing on Financial Assurance Mechanisms

A. Except as provided in subsection (D), the Director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if either of the following circumstances exist:
1. Occurrence of both of the following circumstances:
   a. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism;
   b. The Director determines or has reason to believe that a release from an underground storage tank covered by the financial assurance mechanism has occurred and so notifies the owner or operator, or owners and operators notify the Director pursuant to A.R.S. § 49-1004 and the rules promulgated thereunder of a release from an underground storage tank covered by the financial assurance mechanism.
2. The conditions of subsections (B)(1), (2), or (3) are satisfied.

B. The Director may draw on a certificate of deposit or standby trust fund when any of the following occurs:
1. The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and owners and operators, after appropriate notice and opportunity to comply, have not conducted corrective action as required under A.R.S. § 49-1005 and the rules promulgated thereunder;
2. The Director receives a certification from the owner or operator and the 3rd-party liability claimant and from attorneys representing the owner or operator and the 3rd-party liability claimant that a 3rd-party liability claim should be paid. The certification shall be worded as provided in 40 CFR 280.112(b)(2)(i), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. 40 CFR 280.112(b)(2)(i), amended as of July 1, 1994 (and no future amendments or editions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State;
3. The Director receives a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this Article and the Director determines that the owner or operator has not satisfied the judgment.

C. If the Director determines that the amount of corrective action costs and 3rd-party liability claims eligible for payment under subsection (B) may exceed the balance of the certificate of deposit or standby trust fund and the obligation of the provider of financial assurance, the 1st priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay 3rd-party liability

claims in the order in which the Director receives certifications under subsection (B)(2) and valid court orders under subsection (B)(3).

D. A governmental entity acting as guarantor under R18-12-316(E), the local government guarantee without standby trust, shall make payments as directed by the Director under the circumstances described in subsections (A), (B), and (C).

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-323. Release from Financial Responsibility Requirements

Owners and operators are no longer required to maintain financial responsibility under this Article for an underground storage tank after the tank has completed permanent closure or change-in-service in accordance with the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder or, if corrective action is required, after corrective action has been completed and the tank has completed permanent closure or change-in-service under A.R.S § 49-1008 and the rules promulgated thereunder.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-324. Bankruptcy or Other Incapacity of Owner, Operator, or Provider of Financial Assurance

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, owners and operators shall notify the Director by certified mail of such commencement and submit the appropriate forms listed in R18-12-301 documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in R18-12-306.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the Director by certified mail of such commencement and submit the appropriate forms listed in R18-12-301 documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in R18-12-316.

E. Owners and operators who obtain financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or certificate of deposit. Owners and operators shall obtain alternate financial assurance as specified in this Article within 30 days after receiving notice of such an event. If owners and operators do not obtain alternate coverage within 30 days after such notification, owners and operators shall notify the Director.

F. Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action costs or 3rd-party liability compensation, owners and operators shall obtain alternate financial assurance.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

R18-12-325. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

A. If a standby trust is funded upon the instruction of the Director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and if the amount in the standby trust is reduced below the full amount of coverage required, owners and operators shall by the anniversary date of the financial mechanism from which the funds were drawn do either of the following:
1. Replenish the value of financial assurance to equal the full amount of coverage required;
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this Section, the full amount of coverage required is the amount of coverage to be provided under R18-12-303. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

Historical Note
Adopted effective July 30, 1996 (Supp. 96-3).

ARTICLE 4. UNDERGROUND STORAGE TANK EXCISE TAX

R18-12-401. Repealed

Historical Note
Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted with changes effective December 26, 1991 (Supp. 91-4). Repealed effective July 30, 1996 (Supp. 96-3).

R18-12-402. Duties and responsibilities of a supplier; certain regulated substances

The duties and responsibilities of a supplier with respect to a regulated substance that is refined, manufactured, produced, compounded, or blended in this state, or imported into this state by the supplier, as described by this Article are imposed only to the extent that the regulated substance is also aviation fuel, diesel, or motor vehicle fuel.

Historical Note
Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted with changes effective December 26, 1991 (Supp. 91-4).

R18-12-403. Periodic payments; deductions

A. On or before the 25th day of each month, a supplier shall pay to the Director of the Department of Transportation an amount

equal to one cent for each gallon of regulated substance which is refined, manufactured, produced, compounded, or blended in this state or imported into this state by the supplier during the preceding month.

B. A supplier may deduct from the payments required to be made under subsection (A) either or both of the following amounts:

1. An amount equal to the product of one cent multiplied by the number of gallons of regulated substance sold or delivered to a person to whom an exemption certificate has been issued pursuant to R18-12-410(C) or to whom an exemption certificate number has been assigned pursuant to R18-12-410(D) during the month for which the supplier is making a payment.
2. An amount equal to the sum of the amounts of refunds approved by the Department under R18-12-409 and submitted to the Department of Transportation during the month for which the supplier is making a payment.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted effective December 26, 1991 (Supp. 91-4).

R18-12-404. Reporting requirements for suppliers

A. On or before the 25th day of each month, a supplier shall submit a monthly summary report on forms prescribed by the Department pursuant to subsection (B) indicating all gallons acquired and sold by that supplier during the preceding month. A supplier shall submit a monthly summary report even if the supplier is not making a payment as described in R18-12-403. The monthly report shall be accompanied by schedules prescribed for the purpose of obtaining detailed information about the gallons acquired and sold by that supplier. The forms and schedules shall be prescribed by the Department and may include forms and schedules prescribed by the Department of Transportation for the administration of the motor vehicle fuel tax. A written or computerized report setting forth all information required on the prescribed forms and schedules will be accepted in lieu of a report on the prescribed form. The report and schedules shall contain the following information:

1. The number of gallons in the supplier's inventory at the beginning of the reporting period.
2. The number of gallons brought into Arizona during the report period for which the supplier is reporting and for which the supplier is paying tax, including date shipped, the name of the person from whom the regulated substance was acquired, the shipping point, manifest or pipeline shipment number, Arizona destination, and type of regulated substance.
3. The number of gallons blended or compounded in Arizona during the report period that the supplier is reporting and on which the supplier is paying tax, including date blended or compounded, and the types of constituent substances being blended or compounded.
4. The number of gallons which are tax due.
5. The number of gallons acquired tax paid during the report period including date shipped, shipping point, name and account number of supplier, invoice number, Arizona destination, and type of regulated substance.
6. The total number of gallons that are tax due and tax paid.
7. The number of gallons sold tax paid to suppliers during the report period, including date shipped, shipping point, name and account number of supplier, invoice number, Arizona destination, and type of regulated substance.
8. The number of gallons sold as tax exempt sales during the report period, including date sold, name of person claiming exempt sale, delivery address of regulated substance sold, exemption certificate number utilized for sale, invoice number, and type of regulated substance.
9. The number of gallons sold to underground storage tank owners during the report period, including total gallons for each type of regulated substance sold.
10. The number of gallons sold exported to destinations outside of Arizona during the report period including date sold, Arizona shipping point, name of purchaser outside of Arizona, invoice number, out-of-state destination and type of regulated substance.
11. The number of gallons of regulated substance sold or exported.
12. The ending book inventory indicating the gallon difference between the number of gallons received tax due and tax paid and the number of gallons sold or exported.
13. The ending physical inventory indicating the number of gallons in the person's inventory at the end of the report period including location of Arizona storage.
14. The gallon difference between ending book inventory and ending physical inventory.

B. The monthly report described in subsection (A) is considered to be the return form required by A.R.S. § 28-1599.45(D).

C. On or before March 31 of any year, each supplier shall submit to the Department of Transportation an annual report indicating the name and owner identification number of each underground storage tank owner or operator to whom the supplier made a sale during the preceding calendar year and the total number of gallons sold annually to that owner or operator by type of regulated substance. The Department of Transportation, for good cause, may extend the time for making the annual report required by this subsection.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted with changes effective December 26, 1991 (Supp. 91-4).

R18-12-405. Invoice requirements for suppliers

A supplier shall provide the following information on the invoice for each sale of a regulated substance:

1. The supplier identification number assigned to that supplier by the Department of Transportation.
2. Except as otherwise provided in R18-12-410(E), the underground storage tank excise tax associated with that sale, stated as a separate item.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted effective December

26, 1991 (Supp. 91-4).

R18-12-406. Reports and returns, net gallons required to be indicated

All reports and returns submitted pursuant to this Article shall indicate net gallons in any instance where the number of gallons of regulated substances are required to be reported.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted effective December 26, 1991 (Supp. 91-4).

R18-12-407. Payment of tax; annual return

A. A taxpayer shall pay the tax as measured by the quantity of regulated substances placed in an underground storage tank owned or operated by the taxpayer in any calendar year. The tax shall be paid at the rate of one cent for each gallon of regulated substance.

B. The tax is due and payable annually on or before March 31 for the preceding calendar year. The tax is delinquent if it is not postmarked on or before that date or if it is not received by the Department on or before March 31 for taxpayers electing to file in person.

C. At the time that the tax is paid, the taxpayer shall prepare and file with the tax an annual return on a form prescribed by the Director. The taxpayer shall provide all of the following information:

1. The owner identification number of the owner of the tank.
2. The taxpayer's name and address, including street number and name, post office box, city, state, county, and zip code.
3. The time period covered by the return.
4. The total number of storage facilities reported on by the return.
5. The types of regulated substances placed in underground storage tanks during the calendar year covered by the return.
6. The total number of gallons of regulated substances, by type and by facility identification number, placed in underground storage tanks during the calendar year covered by the return.
7. The supplier identification number of each supplier from whom the taxpayer received regulated substances which were placed in underground storage tanks.
8. The tax due, by type of regulated substance.
9. The tax paid, by type of regulated substance.
10. Any credits or refunds claimed, by type of regulated substance and by exemption certificate number.
11. The total tax due.

D. The taxpayer shall sign a sworn statement or otherwise certify, under penalty of perjury, that the information contained in the return is true, complete, and correct according to the best belief and knowledge of the taxpayer filing the report.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently with changes adopted effective December 26, 1991 (Supp. 91-4).

R18-12-408. Affidavit of tax responsibility

The tax shall be collected from the owner of an underground storage tank unless the owner and the operator of the underground storage tank file a notarized affidavit with the Department designating the operator as primarily responsible for the tax.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently adopted effective December 26, 1991 (Supp. 91-4).

R18-12-409. Refunds

A. Any person who pays the tax but is not liable for the tax under A.R.S. Title 49, Chapter 6 may claim a refund of the tax paid.

B. A claim for a refund shall be submitted on forms prescribed by the Director. A person claiming a refund shall provide the following information:

1. The name, address and telephone number of the person claiming the refund.
2. The facility name.
3. The facility location.
4. The supplier identification number.
5. The type of regulated substances.
6. The number of gallons of regulated substances.
7. The date of the transaction for which the refund is claimed or the time period covered if the claim involves more than one transaction.
8. The reason justifying the payment of a refund.
9. The amount of tax paid and supporting documentation for the amount of refund claimed, including an invoice showing the tax paid as required by R18-12-405.

C. The person claiming the refund shall sign a sworn statement or otherwise certify, under penalty of perjury, that the information contained in the return is true, complete and correct.

D. If the Department determines that a person claiming a refund is entitled to the refund, the Department shall issue a refund payment or a letter of credit. A person who has been denied a refund by the Department may request a hearing on the denial within 30 days after receiving notice of the denial. The hearing shall be conducted pursuant to R18-1-201 through R18-1-219.

E. Any person eligible to claim a refund of the tax may assign the claim to the person from whom the regulated substance was purchased. The assignee of the claim may claim the refund if the assignor of the claim certifies in writing to the assignee on forms prescribed by the Director that the assignor relinquishes all interest in the refund and will not also claim a refund from the Director. A copy of an invoice corresponding to the sale for which an assignment of a refund is sought shall accompany any assignment.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. §

49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently with changes adopted effective December 26, 1991 (Supp. 91-4).

R18-12-410. Exemption certificates

A. Except as otherwise provided in subsection (D), any person who has claimed and has been awarded a refund of tax paid may apply for and be issued an exemption certificate as provided in this Section.

B. An application for an exemption certificate shall be submitted on a form prescribed by the Director. A person applying for an exemption certificate shall provide the following information:
1. The name, address, and telephone number of the person applying for the exemption certificate.
2. The facility name and the facility location of the storage facility for which the exemption certificate is sought.
3. The reason justifying the issuance of an exemption certificate.

C. If the Department determines that the person applying for an exemption certificate is not liable for paying the tax, the Department shall issue the exemption certificate. A person who has been denied an exemption certificate may request a hearing on the denial within 30 days after receiving notice of the denial. The hearing shall be conducted pursuant to R18-1-201 through R18-1-219.

D. The following exemption certificate numbers are established to characterize the following circumstances:
1. Deliveries to storage facilities in Indian country: 00-0100001.
2. Deliveries to state-owned storage facilities: 00-0200002.
3. Deliveries to federally owned storage facilities: 00-0300003.

E. A supplier shall not include the tax in the amounts charged by the supplier for deliveries of regulated substances if the person to whom the regulated substances are delivered presents a valid exemption certificate.

Historical Note

Temporary rule adopted effective July 3, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-3). Temporary rule readopted effective December 28, 1990, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 90-4). Temporary rule readopted effective June 28, 1991, pursuant to A.R.S. § 49-1031(H) and (I), effective for 180 days (Supp. 91-2). Temporary rule permanently with changes adopted effective December 26, 1991 (Supp. 91-4).

ARTICLE 5. FEES

R18-12-501. Fees

A. Each owner and operator of an underground storage tank who is required by A.R.S. § 49-1020 to pay annually to the Department a fee of $100.00 for each tank shall make the required payment on or before March 15 of each year.

B. For any check or other instrument used to pay the annual fees described in this Section that is returned to the Department as dishonored by the drawer's financial institution, the owner and operator of the tank shall pay a charge of $25.00.

C. An owner and operator of an underground storage tank may request in writing that the Department approve an alternate schedule for paying the fee required by A.R.S. § 49-1020. The Department will approve an alternate schedule if the following conditions are met:
1. The owner and the operator request and receive approval of the schedule from the Department before March 15 of the year for which the schedule is requested.
2. Each partial payment made under the schedule will equal to at last 25% of the total payment due on March 15.
3. The first partial payment is made on March 15 of the year for which the schedule is requested.
4. The total amount due is paid by September 15 of the year for which the schedule is requested.

Historical Note

Adopted effective December 26, 1991 (Supp. 91-4).

ARTICLE 6. UNDERGROUND STORAGE TANK ASSURANCE ACCOUNT

R18-12-601. Eligibility

A. Coverage. The Department shall provide coverage in accordance with the statutory maximum amounts described at A.R.S. §§ 49-1052(I) and 49-1054(A). The extent of coverage available to an eligible person is 90 percent of the reasonable and necessary costs of eligible corrective actions, except:
1. The extent of coverage for owners and operators is 50 percent of the reasonable and necessary costs of eligible corrective actions for releases reported after June 30, 2000 from USTs that were not permanently or temporarily closed or upgraded in accordance with R18-12-221.
2. The extent of coverage for a volunteer who the Department has determined to be eligible for a copayment waiver in accordance with R18-12-609(C) is 100 percent of the reasonable and necessary costs of eligible corrective actions.
3. The extent of coverage for an owner or operator taking corrective action above the owner's or operator's liability allocated under A.R.S. § 49-1019(D), is 100 percent of the reasonable and necessary costs of the performed eligible corrective actions that exceed that allocated liability.

B. Eligible Activities. The activities eligible for coverage are those described in A.R.S. § 49-1052(A) for releases reported to the Department before July 1, 2006. The eligible activities shall meet the requirements of R18-12-608, and comply with applicable requirements of A.R.S. Title 49, Chapter 6 and rules made thereunder.

C. Incorrect Applications or Direct Payment Requests. The Department shall not provide coverage for incorrect applications or direct payment requests. The Department shall deny incorrect applications or direct payment requests under R18-12-611. The Department shall not make an interim determination or decision related to an incorrect application or direct payment request. An application or direct payment request is incorrect if any of the following conditions exist:
1. The coverage limits at A.R.S. § 49-1054(A) are exhausted.
2. The application or direct payment request includes a resubmittal under R18-12-608(E).
3. The owner or operator, after notice and opportunity from the Department to become current, remains delinquent on applicable annual tank fees in accordance with A.R.S. § 49-1020 or excise tax returns in accordance with A.R.S. Title 49, Chapter 6, Article 2 and rules made thereunder.
4. The person seeking assurance account coverage is convicted of fraud related to the performance of eligible activities or an assurance account application or direct payment request.
5. The person seeking assurance account coverage is not an eligible person.
6. The coverage requested in the application or direct payment request is not related to an eligible release under A.R.S. Title 49, Chapter 6.
7. The owner or operator is the subject of an enforcement proceeding under A.R.S. § 49-1013, unless the owner or

operator is otherwise eligible under A.R.S. § 49-1052(F)(3).

8. The application is a reimbursement application for corrective actions in a work plan preapproved by the Department.
9. The direct payment request does not pertain to a preapproval application approved by the Department, or is a direct payment request that pertains to that part of a preapproval work plan that is terminated under R18-12-605(G).
10. The application or direct payment request for eligible activities associated with a release, except for appeal costs, is submitted more than one year after the eligible person receives a closure letter for that release, in accordance with A.R.S. § 49-1052(M).
11. The application is a reimbursement application by a volunteer for costs incurred in excess of $100,000 at a single facility, unless the reimbursement application is submitted in accordance with R18-12-604(A)(2).
12. On and after December 31, 2005, the application or direct payment request is for an amount less than $5,000 under A.R.S. § 49-1052(Q).
13. The application is a preapproval application that pertains to a site that is the subject of a consent order or compliance order issued under the authority of A.R.S. § 49-1013.

D. General Deadlines. An application for preapproval of corrective actions shall be submitted no later than 5:00 p.m. on June 30, 2009. An application for preapproval shall not be accepted after 5:00 p.m. on June 30, 2009. Any reimbursement application or direct payment request shall be submitted no later than 5:00 p.m. on June 30, 2010. A reimbursement application or direct payment request to the assurance account shall not be submitted to or accepted by the Department after 5:00 p.m. June 30, 2010.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Amended effective December 6, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-602. Applicability

A. Effective Date. This Article applies to applications and direct payment requests submitted after the effective date of these rules. Notwithstanding this effective date, the Department shall evaluate the costs associated with a direct payment request under R18-12-606 related to a preapproval work plan approved before the effective date of these rules in accordance with the Department's preapproval, and the Department may terminate an approved preapproval application and the associated work plan under R18-12-605(G).

B. Exception. These rules do not supersede any provisions governing applications or direct payment requests in an order of the Director or a court of competent jurisdiction.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-603. General Application and Direct Payment Request Requirements

A. Department Form. An eligible person or the designated representative of an owner or operator shall submit a reimbursement and preapproval application and direct payment request on a form provided by the Department.

B. Application and Direct Payment Request Contents. An application or direct payment request shall include the following:

1. Information on the eligible person, as follows:
   a. Name and any contact person with a description of the relationship of the contact person to the eligible person, and address, daytime telephone number, fax number, if any, and e-mail address, if any, for both the eligible person and the contact person;
   b. Status as an owner of an UST system that is a subject of the application, an operator of an UST system that is a subject of the application, a political subdivision described at A.R.S. § 49-1052(H), or a volunteer; and
   c. The Department-assigned identification number of the eligible person;
2. For a designated representative of an owner or operator, a copy of the written assignment to the designated representative of any rights, title, and interest the owner or operator may have in the proceeds of a reimbursement from the assurance account;
3. Information on the facility that is the subject of the application or direct payment request, as follows:
   a. The facility name; address; daytime telephone number; fax number, if any; and e-mail address, if any;
   b. The Department-assigned facility identification number; and
   c. The Department-assigned LUST file number for each release that is the subject of the application or direct payment request;
4. Identification of the phase or phases of corrective action that are the subject of the application or direct payment request;
5. Information on the corrective action service provider performing eligible activities that are the subject of the application or direct payment request, as follows:
   a. Name and contact person, address, daytime telephone number, fax number, and e-mail address of the corrective action service provider and the contact person;
   b. Identification of the corrective action service provider as a licensed contractor or consultant;
   c. As applicable, the seal number assigned to the registrant by the Board of Technical Registration; and
   d. As applicable, the license number issued by the Registrar of Contractors;
6. For owners and operators, all of the following on a separate form provided by the Department:
   a. For claims that when combined with all other approved costs associated with a release exceed $500,000 for a release, documentation demonstrating that any insurance or alternative financial assurance mechanism required for coverage under A.R.S. § 49-1052(F)(5) has been utilized to the maximum extent possible. Failure to provide documentation that meets the requirements of this subsection shall result in denial of the portion of the application or direct payment request that exceeds $500,000 for a release;
   b. A statement of the amount of any benefits received from any insurance coverage or alternative financial assurance mechanism relating to the costs of the corrective action that is a subject of the application or direct payment request and any claims against insurance or alternative financial assurance mechanism relating to corrective action costs associated with the

UST that is the source of any release that is the subject of the application or direct payment request;

7. A statement that, in the event ranking is required under R18-12-612, either the eligible person waives financial need priority points or the eligible person requests direct written notice of ranking under R18-12-612(A);
8. A signed and notarized statement of the eligible person, with the eligible person's original signature, certifying that:
   a. The eligible person has paid or has agreed to pay the copayment;
   b. For a reimbursement application or direct payment request, the eligible person has incurred the claimed costs and is seeking payment for work actually performed;
   c. For the eligible person who is an owner or operator, the eligible person's consultant, representative, or agent has not and will not receive payment from insurance or any alternative financial assurance mechanism for the claimed costs of the corrective actions;
   d. Naptha-type jet fuel or kerosene-type jet fuel were not placed in the UST system that is the subject of the application;
   e. A substance described under A.R.S. § 49-1001(14)(b) was not placed in the UST system on or after July 1, 1997, unless the owner or operator paid the excise tax before July 1, 1997, elected to continue to pay the excise tax, and is not delinquent in paying the excise tax;
   f. The eligible person has not been convicted of fraud relating to performance of eligible activities or any claim to the assurance account; and
   g. The application or direct payment request and its contents are true, accurate, and complete to the eligible person's best information and belief;
9. A signed and notarized statement, with original signature of the eligible person or the designated representative of the owner or operator identifying by name, address, daytime telephone number, fax number, and federal employer identification (tax) number or social security number of the person that is to appear on the payment warrant. A completed Internal Revenue Service form W-9 for the person that is to appear on the payment warrant shall be included with the reimbursement application or direct payment request, unless the applicable Internal Revenue Service form W-9 has been on file with the Department for less than one year. If the eligible person is the person identified to appear on the payment warrant, the reimbursement application or direct payment request shall include proof, consisting of copies of cancelled checks or financial institution statements, that the eligible person paid the costs. If neither copies of cancelled checks nor financial institution statements are available, a sworn statement, by individual invoice, from the corrective action service provider.
10. A signed and notarized statement of the corrective action service provider supervising, managing, or performing the eligible activities that are the subject of the application or direct payment request, with the original signature of the corrective action service provider, certifying that:
    a. The corrective action service provider supervised, managed, or performed the corrective actions, or in a preapproval application, prepared the work plan, in accordance with R18-12-605;
    b. For consultants, the corrective actions were performed in accordance with the requirements of the Arizona Board of Technical Registration, as applicable;
    c. For licensed contractors, the eligible activities were performed in accordance with the requirements of the Registrar of Contractors;
    d. The corrective action service provider or the individual registrant have not been convicted of fraud relating to performance of any eligible activities or any claim to the assurance account; and
    e. The invoices submitted with the reimbursement application or direct payment request include only costs for actual work performed;
11. Other documentation as necessary to demonstrate that any claimed costs are eligible; and
12. If applicable, a statement notifying the Department of any agreement demonstrating the eligible person has agreed to pay the copayment, and a copy of the agreement, if a copy is requested by the Department pursuant to R18-12-609(A).

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-604. Reimbursement Application Process

A. Scope of Reimbursement Application. A reimbursement application shall include only a request for reimbursement of incurred costs for one or more of the following:

1. Non-preapproved corrective action costs for the following activities:
   a. Sampling, analysis, and the report associated with confirmation of a release under R18-12-260(C) that requires corrective action;
   b. Sampling, analysis, and the report associated with UST closure under R18-12-271(D) that confirms a release that requires corrective action;
   c. Initial response, abatement, and site characterization performed according to the requirements and conditions at R18-12-261;
   d. Free product investigation and removal according to the requirements and conditions at R18-12-261.02;
   e. LUST site investigation performed according to the requirements and conditions at R18-12-262;
   f. Risk assessment performed according to the requirements and conditions at R18-12-263.01;
   g. Remedial response performed according to the requirements and conditions at R18-12-263;
   h. LUST case closure performed according to the requirements and conditions at R18-12-263.03; or
   i. Permanent closure of a tank or UST if the requirements at A.R.S. §§ 49-1052(A)(3), 49-1052(A)(4), or 49-1052(A)(6), as applicable, and R18-12-271 through R18-12-274 are satisfied;
2. Corrective action costs described in subsections (1)(a) through (1)(d) and deemed preapproved under R18-12-605(I);
3. The Department credit, toward the copayment amount, the costs of professional services to prepare the reimbursement application; or
4. For an owner or operator, the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the reimbursement application, according to A.R.S. §§ 49-1054(D) and 40 CFR 280.21.

B. Reimbursement Application Requirements. An eligible person or a designated representative of an owner or operator shall submit a reimbursement application on a form provided by the Department and comply with the general application requirements of R18-12-603. The original and one copy of the application shall be submitted. A reimbursement application shall also contain the following:
1. Information on the completed eligible activities that are the subject of the application, as follows:
   a. A summary of work;
   b. Reference, by title, date, and location within the document, to any written report or other written information included with the application or already on file with the Department, related to the corrective actions that are the subject of the application;
   c. Copies of unaltered invoices documenting total incurred costs for each of the eligible activities that was performed, including an invoice checklist overview prepared in a format provided by the Department;
   d. Subcontractor costs documented as required in subsection (c); and
   e. A completed cost work sheet;
2. If the application requests that the Department credit, toward the copayment amount, the costs of professional services directly related to preparation of the reimbursement application, an invoice of the incurred costs for professional services directly related to preparation of the application;
3. If the application requests that the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the application, all of the following, unless previously submitted:
   a. A demonstration that the upgrade or replacement costs were incurred at the time of the corrective actions to the release that is a subject of the application;
   b. Proof that the Department was notified of the upgrade or replacement in accordance with R18-12-222(F)(2);
   c. Proof that the eligible person paid the upgrade or replacement costs, consisting of the invoices of the costs, copies of the cancelled checks, or financial institution statements; and
   d. A statement by the eligible person that the upgrade or replacement costs for which credit is being requested were not already paid from the UST grant account or by another entity and are not the subject of an approved UST grant application.
4. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.

C. Conditions for Approving Reimbursement. The Department shall approve reimbursement if all of the following conditions are satisfied:
1. The application contains all of the required application components as described in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the reimbursement. Failure to submit the statements as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
2. The eligible activities and associated costs that are the subject of the application are described in subsection (A)(1) and were actually performed and incurred, respectively, and are in accordance with R18-12-608 and A.R.S. §§ 49-1052(A) and (D) and A.R.S. § 49-1054; and
3. The eligible person is eligible to receive the requested assurance account coverage under A.R.S. §§ 49-1052 and 49-1054.

D. Reports. Notwithstanding this Section, the Department shall pay in accordance with R18-12-608 an application for the costs of a report only if one or more of the following are met:
1. The report is required by R18-12-260 through 264.01;
2. The report is prepared at the written request or written instruction of the Department;
3. The report is required by other regulatory programs;
4. The report, if approval is required under R18-12-260 through R18-12-263.03, as applicable, is approved by the Department; or
5. The UST closure report required under R18-12-271 is eligible under A.R.S. § 49-1052(A)(2).

E. Notice of Reimbursement Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the reimbursement application in accordance with R18-12-601(C), R18-12-610, or R18-12-611, as applicable.

F. Severability. The Department may approve reimbursement of a part of the costs that are the subject of the reimbursement application, provided the conditions at subsections (A), (B), (C) and (D) are satisfied for that part, and deny the remaining costs in the application.

G. Reimbursement. The Department shall reimburse approved costs less any copayment amount determined under R18-12-609 using assurance account monies and, if necessary, in the order of priority determined according to R18-12-612.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-605. Preapproval Application Process

A. Scope of Preapproval Application. A preapproval application shall include only a request for preapproval for one or more of the following:
1. Free product investigation and removal according to the requirements and conditions at R18-12-261.02;
2. LUST site investigation according to the requirements and conditions at R18-12-262;
3. Risk assessment according to the requirements and conditions at R18-12-263.01;
4. Remedial response according to the requirements and conditions at R18-12-263; or
5. LUST case closure according to the requirements and conditions at R18-12-263.03.

B. Preapproval Application Requirements. An eligible person or the designated representative of an owner or operator shall submit a preapproval application on a form provided by the Department and comply with the general application requirements of R18-12-603 and the work plan requirements of subsection (C). The original and one copy of the application, each including the work plan, shall be submitted.

C. Work Plan Requirements. The eligible person or the designated representative of an owner or operator shall submit a preapproval work plan with the application prepared in a format provided by the Department. If required, the work plan shall be sealed by a registrant who holds a valid registration from the Arizona Board of Technical Registration at the time the work plan is sealed. The work plan shall contain all of the following information, as applicable to the planned corrective actions:

1. The work objectives of the proposed work plan and brief description of proposed work, including contingencies, and references to relevant rules in Article 2 and relevant written Department guidance;
2. Identification of the phase or phases of corrective action;
3. A brief history of the facility and LUST site;
4. Depth to groundwater to the extent known, including the date and source of depth information, and the location of surface water and other receptors within 1/4 mile of the site;
5. A brief lithologic and geologic description of the site;
6. A detailed site plan that includes pertinent information. Pertinent information includes but is not necessarily limited to:
   a. The location of former and existing UST systems and dispensers;
   b. The location of any former and existing soil excavation or stock-piled soil;
   c. Existing and proposed soil boring and contingency soil boring locations;
   d. Existing and proposed monitor well and contingency monitor well locations;
   e. The location of any buildings or other structures;
   f. The location of any underground piping and utilities and other subsurface installations, to the extent known;
   g. The location of existing and proposed remediation systems or components; and
   h. The location of streets and other rights-of-way;
7. A site location map;
8. A site vicinity map;
9. A rationale for proposed and contingency soil borings, proposed and contingency monitor wells, and existing and proposed remediation systems;
10. If necessary, a proposed plan to obtain access to property if the eligible person does not own or have access to property where proposed soil borings, monitor wells, or other investigative or remedial activities are or may be required;
11. A detailed time schedule to implement the corrective actions and complete the proposed and any contingency work objectives;
12. A cost estimate for the proposed corrective actions, including contingencies, according to tasks and incremental costs described in the schedule of corrective action costs established under R18-12-607; and
13. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.

D. Conditions for Approving Preapproval Application. The Department shall approve an application for preapproval if all of the following conditions are satisfied:
1. The preapproval application contains all of the required application components identified in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the preapproval application. Failure to submit the statements as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
2. The activities that are the subject of the application are described in subsection (A), the activities are in accordance with R18-12-608, and the activities meet the requirements of A.R.S. § 49-1052(A) and (D) and A.R.S. § 49-1054;
3. The costs meet the requirements of R18-12-608 and A.R.S. § 49-1054(C); and
4. The eligible person or designated representative of an owner or operator is eligible to receive all or part of the approved assurance account coverage under A.R.S. §§ 49-1052 and 49-1054.

E. Notice of Preapproval Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the preapproval application in accordance with R18-12-601(C), R18-12-610, and R18-12-611, as applicable.

F. Severability. The Department may but is not required to approve a part of a preapproval application for corrective actions and corresponding costs that are the subject of the preapproval application, provided the applicable conditions in this Section are satisfied for that part, and deny the remaining corrective actions and associated costs in the application.

G. Work Plan Termination. Upon notice to the eligible person, the Department may terminate a Department-approved preapproval application and associated work plan. The Department may terminate under this subsection a preapproved work plan approved by the Department before the effective date of this rule. The Department shall notify the eligible person of the termination action in accordance with R18-12-610. The Department may terminate a preapproved work plan based on consideration of one or more of the following conditions:
1. The eligible person at the time of the approval of the preapproval application is no longer an eligible person;
2. The work objectives of the preapproved work plan have been accomplished or the release has been closed by the Department under R18-12-263.03 for more than one year;
3. The eligible person has made no request for coverage related to corrective actions in the preapproved work plan within two years of the Department's final determination, approving the preapproved work plan, or within two years of the submission of the last direct payment request against the preapproved work plan;
4. Information available to the Department indicates site conditions have changed to the extent that the provisions for payment of non-preapproved work at A.R.S. §§ 49-1054(C)(1) and (C)(2) cannot be applied to meet the work objectives of the preapproved work plan;
5. Information available to the Department indicates that site conditions have changed to the extent that the work preapproved in the work plan is no longer reasonable, necessary, cost-effective, or technically feasible;
6. The total approved amount on all direct payment requests equal or exceed the preapproved amount. The termination is effective upon approval of the first direct payment request that includes approved costs that when added to all other approved costs on all other direct payment requests equals or exceeds the preapproved amount; or
7. The corrective actions in the preapproved work plan will no longer provide protection to human health and the environment.

H. Direct Payment Request. Upon the Department's written approval of a preapproved work plan and completion of some or all of the preapproved corrective actions, the eligible person or the designated representative of an owner or operator may submit a direct payment request in accordance with R18-12-606. A direct payment request is the only method available to an eligible person or a designated representative of an owner or operator for coverage of preapproved corrective actions. The Department shall not approve a reimbursement application for preapproved corrective actions.

I. Volunteer Deemed Preapproved. A volunteer that confirms a new release that requires corrective action or discovers free product after corrective action costs at a single facility exceeds $100,000 shall be deemed to be preapproved under this subsection. The volunteer is deemed preapproved for the eligible activities, but not the costs, described at A.R.S. § 49-1052(A)(1) and (A)(2), for initial response, abatement, and site characterization performed according to the requirements and conditions at R18-12-261, or for free product investigation and removal according to the requirements and conditions at R18-12-261.02, if all of the following, as applicable, are met:

1. The sampling, analysis, and reporting of the new release are limited to that described in R18-12-604(A)(2);
2. The initial response, abatement, and site characterization of the new release are performed in accordance with the requirements and conditions of R18-12-261 and the period of time during which the activities are deemed preapproved is limited to the first 90 days after the date the new release is discovered;
3. The free product investigation and removal activities are performed in accordance with the requirements and conditions of R18-12-261.02 and the period of time during which the activities are deemed preapproved is limited to the first 90 days after discovery of the free product; and
4. Before the expiration of the time periods described in subsections (2) and (3), the volunteer shall, as applicable, either submit a LUST case closure report in accordance with R18-12-263.03 or, if further corrective action is required, a preapproval application that meets the applicable requirements of subsections (A) and (B).

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-605.01. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to A.R.S. § 49-1014, and §§ 49-1052 (B) and (O), effective August 15, 1996 (Supp. 96-3). Section repealed by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-606. Direct Payment Request Process

A. Scope of Direct Payment Request. A direct payment request shall include only a request for direct payment of incurred costs for one or more of the following:

1. Preapproved corrective action costs incurred performing corrective actions preapproved by the Department in a preapproval application;
2. Non-preapproved corrective action costs that meet the requirements of subsection (D);
3. The Department credit, toward the copayment amount, the costs of professional services to prepare the preapproval application and the direct payment request; or
4. For an owner or operator, the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system, that is a subject of the direct payment request, according to A.R.S. § 49-1054(D) and 40 CFR 280.21.

B. Direct Payment Request Requirements. An eligible person or a designated representative of an owner or operator shall submit a direct payment request on a form provided by the Department and comply with the general application requirements of R18-12-603. The original and one copy of the direct payment request shall be submitted. The direct payment request shall also include the following:

1. The application number assigned by the Department to the preapproval application against which the direct payment request is made;
2. Information on the completed corrective actions that are the subject of the direct payment request, as follows:
   a. A summary of work;
   b. Reference, by title, date, and location within the document, to any written report or other written information included with the direct payment request or already on file with the Department and related to the corrective actions that are the subject of the direct payment request;
   c. If the direct payment request includes payment of non-preapproved corrective action costs, the information required at subsection (D), as applicable;
   d. Copies of unaltered invoices documenting total incurred costs for each of the eligible activities that was performed, including an invoice checklist overview prepared in a format provided by the Department;
   e. Subcontractor incurred costs documented as required in subsection (d); and
   f. A completed cost work sheet;
3. Any request that the Department credit, toward the copayment amount, the costs of professional services directly related to preparation of the preapproval application and the direct payment request. A request for credit for preapproval application preparation shall only be included in the eligible person's first direct payment request against the preapproval application and shall include the invoices for costs of professional services directly related to preparation of the application. The request shall also include an invoice of the incurred costs for professional services directly related to preparation of the direct payment request, if applicable;
4. If the direct payment request includes a request that the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the direct payment request, the information as described in R18-12-604(B)(3);
5. A statement by the eligible person that meets the requirements of R18-12-603(B)(8) and a statement by the corrective action service provider that meets the requirements of R18-12-603(B)(10);
6. Information related to issuance of the payment warrant that meets the requirements of R18-12-603(B)(9); and
7. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.

C. Conditions for Approving Direct Payment. The Department shall approve a direct payment request if all of the following conditions are satisfied:

1. The direct payment request contains all of the required components as described in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the direct payment request. Failure to make the certifications as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
2. The corrective actions and associated costs that are a subject of the direct payment request are described in subsection (A) and were actually performed and incurred, respectively, as provided in the preapproved work plan or,

if not preapproved, meet the requirements of subsections (A), (B), and (D);
3. The eligible person is eligible to receive the requested assurance account coverage under A.R.S. §§ 49-1052 and 49-1054; and
4. The invoices submitted are consistent with subsection (C)(2). The Department shall not approve for payment invoices that exceed the cost estimate under R18-12-605(C)(12) or, for direct payment requests against preapproval applications approved before the effective date of this rule, the detailed cost estimate approved by the Department.

D. Non-preapproved Corrective Actions and Associated Costs. A direct payment request may include non-preapproved costs of corrective actions that meet the requirements of A.R.S. § 49-1054(C)(1) and (C)(2), as applicable. If the direct payment request includes non-preapproved corrective actions and costs, the direct payment request shall include the following, as applicable, on a form provided by the Department:
1. For each substituted work item subject to the requirements of A.R.S. § 49-1054(C)(1), the preapproved and substituted work item, the line number and the amount of the preapproved work item from the approved preapproval application, the amount of the substituted work item, and the unit rate and number of units for the substituted work item from the schedule of corrective action costs;
2. For each non-preapproved, non-substituted work item subject to the requirements of A.R.S. § 49-1054(C)(2), the work item, the amount of the work item, and the unit rate and number of units for the work item from the schedule of corrective action costs; and
3. A waiver with the original signature of the eligible person, waiving any current or future claim for the cost of the preapproved work item subject to subsections (D)(1) and (D)(2), as applicable.

E. Reports. Notwithstanding this Section, the Department shall pay, in accordance with R18-12-608, a direct payment request for the costs of a report if one or more of the following apply:
1. The report is required by R18-12-260 through 264.01;
2. The report is submitted at the written request or written instruction of the Department;
3. The report is required by other regulatory programs; or
4. The report, if approval is required under R18-12-260 through R18-12-263.03, as applicable, is approved by the Department.

F. Notice of Direct Payment Request Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the direct payment request in accordance with R18-12-601(C), R18-12-610, and R18-12-611, as applicable.

G. Severability. The Department shall approve direct payment for a part of the corrective action costs that are a subject of the direct payment request, provided the conditions at subsections (A) through (D) are satisfied for that part, and deny the remaining costs in the direct payment request.

H. Direct Payment. Using assurance account monies, the Department shall make direct payment of approved costs, less any copayment amount determined under R18-12-609 and, if necessary, make payment in the order of priority determined according to R18-12-612.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-607. Schedule of Corrective Action Costs

A. Establishment of Cost Schedule. The Department shall establish a schedule of costs in accordance with A.R.S. § 49-1054(C). When establishing the costs in the cost schedule, the Department shall base its determination of fairness and reasonableness on cost and price information received by the Department, including invoices submitted by corrective action service providers under contract with the Department pursuant to A.R.S. § 49-1017. The Department may consider the costs of eligible activities in other states.

B. Contents. The schedule of corrective action costs shall include phases of corrective action, task-based and incremental corrective action costs, and costs for eligible activities invoiced on a time and materials basis that the Department considers fair and reasonable and established under subsection (A). The schedule of corrective action costs shall contain descriptions of each phase of corrective action, and descriptions and allowable costs for each task, increment, and eligible activity included in the schedule.

C. Time and Materials—Reasonableness of Cost. If an eligible activity is identified in the schedule of corrective actions as being payable only on a time and materials basis, the Department shall evaluate the reasonableness of the claimed costs under subsection (A), based on the following required information which is obtained from the eligible person:
1. Hourly labor rate, time, and cost for each labor classification utilized in the eligible activity;
2. Equipment rate, time, and cost for each equipment classification utilized in the eligible activity;
3. Itemized material costs expended in the eligible activity;
4 Subcontractor services itemized and documented as in subsections (C)(1) through (3); and
5. All amounts identified in subsections (C)(1) through (4) with cross-references to a summary of work or any written report already on file with the Department.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Amended effective September 14, 1995 (Supp. 95-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-607.01. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to A.R.S. § 49-1014, and §§ 49-1052 (B) and (O), effective August 15, 1996 (Supp. 96-3). Section repealed by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-608. Scope and Standard of Review

A. Scope of Review. The Department shall base its determination to approve or deny, in whole or part, an application or direct payment request on the information provided in the application or direct payment request and the supporting documentation submitted in accordance with this Article. The Department also may review other available information related to the application or direct payment request.

B. A.R.S. § 49-1052(D). In accordance with A.R.S. § 49-1052(D), the Department shall evaluate whether an eligible activity is reasonable and necessary and has met, or when completed will meet, the applicable requirements of A.R.S. §§ 49-1004 or 49-1005 as follows:
1. For a reimbursement application under R18-12-604, the eligible person shall demonstrate that the completed eligible activities were performed in accordance with the law in effect at the time the relevant technical decision was

made, and the facts available to the eligible person when the technical decision was made.

2. For a preapproval application under R18-12-605, the eligible person shall demonstrate that the planned eligible activities and corresponding costs are in accordance with the law in effect at the time the preapproval application is submitted, and the facts available to the eligible person when the preapproval application is submitted.
3. For a direct payment request under R18-12-606, the eligible person shall demonstrate all of the following, as applicable:
   a. The corrective action was actually performed as set forth in the preapproved work plan;
   b. For a work item that is actually performed and requested by the eligible person to be substituted for a preapproved work item, the substituted work item accomplishes the same objective as the preapproved work item using a different methodology, the cost of the substituted work item does not exceed the applicable cost in the schedule of corrective action costs governed by R18-12-607 or the approved cost of the preapproved work item for which the substitution is made;
   c. For a non-preapproved, non-substituted work item that is actually performed, the work item meets the requirements of subsection (C), is within the work objectives of the preapproved work plan, and the cost of the work item does not exceed the cost of the work item in the schedule of corrective action costs in accordance with A.R.S. § 49-1054(C); and
   d. The eligible person has waived any current or future claim to preapproved costs as described in R18-12-606(D)(3).

C. Standard of Review. The Department shall approve an application or direct payment request if the Department determines the eligible person has demonstrated that the eligible person, the corrective action service provider, the UST that is the source of the release, the release and all eligible activities and associated costs that are a subject of the application or direct payment request meet the requirements of A.R.S. Title 49, Chapter 6, and this Chapter, and the following standard of review:

1. A corrective action is reasonable and necessary if the standard of subsection (B) is met and if all of the following are true:
   a. For soil remediation, the corrective action employed is the most cost effective alternative to remediate soil under the risk based corrective action rules at R18-12-263 through R18-12-263.02 to health based levels that allow either restricted or unrestricted use of the property that is the subject of the corrective actions;
   b. For groundwater or surface water remediation, the corrective action employed is the most cost effective alternative to remediate groundwater or surface water under the risk-based corrective action rules at R18-12-263 through R18-12-263.02;
   c. The corrective action is an eligible activity associated with a phase of corrective action and the phase or phases of corrective action that are the subject of the application or direct payment request are identified by the eligible person;
   d. The phase or phases of corrective action, task, and any incremental cost is included in the schedule of corrective action costs;
   e. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs;
   f. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed;
   g. The eligible activities were actually performed in accordance with the applicable description in the schedule of corrective action costs;
   h. To the extent practicable, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work. The Department shall not approve incremental costs associated with a task if the task and other incremental costs associated with the task have been submitted in a separate reimbursement application or direct payment request, unless it includes a reference to the previously submitted summary of work that documents the rationale required by this subsection. The separate reimbursement application or direct payment request under this subsection is subject to all applicable standards of this Section;
   i. The corrective action is technically feasible; and
   j. For reimbursement applications and direct payment requests, the costs claimed were actually incurred.
2. A permanent closure is reasonable and necessary if all of the following are true:
   a. The permanent closure meets the requirements of A.R.S. § 49-1008 and this Chapter;
   b. The permanent closure is eligible for coverage under A.R.S. § 49-1052(A);
   c. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs;
   d. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed; and
   e. The costs claimed were actually incurred.
3. A cost is reasonable if it does not exceed a corresponding cost or costs in the schedule of corrective action costs. For costs that are not in the schedule of corrective action costs, a cost is reasonable as determined by the Department using the standards described in R18-12-607(C).

D. Supplements and Corrections. An application or direct payment request under review may be supplemented and corrected by the eligible person, but only as requested by the Department or as necessary to support the costs claimed in the application or direct payment request. No costs may be added to the amount originally claimed in the application or direct payment request. No supplement, correction, modification, or alteration of a work plan for preapproval may be made after the Department's approval of the preapproval application.

E. Resubmittal. The Department shall deny any application or direct payment request if any component of the application or direct payment request is being resubmitted after the eligible person has exhausted the administrative remedies as described under R18-12-610 and R18-12-611, as applicable, or has failed to timely file a notice of disagreement or appeal, as applicable, for the application or direct payment request or component.

F. Limits on Payment of Costs. In addition to any determination by the Department under this Article that costs are not eligible for coverage or credit, and notwithstanding any other provision of this Article, the following costs are not eligible for coverage or credit, as applicable, from the assurance account:

1. Costs associated with a document identified on the following list unless the document identified is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed, provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration:
   a. The LUST site classification form under R18-12-261.01;
   b. The LUST site characterization report under R18-12-262(D);
   c. A corrective action plan under R18-12-263(D) and R18-12-263.02;
   d. A corrective action completion report under R18-12-263.03(D);
   e. Periodic site status reporting under R18-12-263(G);
2. Costs for eligible activities if the corrective action service provider who is a contractor did not hold a valid license from the Arizona Registrar of Contractors and, if required, a valid certification under Article 8 at the time of performance of the eligible activity;
3. Under A.R.S. § 49-1052(A)(1), costs for collecting, analyzing, and reporting samples pursuant solely to a site check or to investigate a suspected release, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirms a release requiring corrective action and the report required under R18-12-260(C) shall be eligible for assurance account coverage;
4. Under A.R.S. § 49-1052(A)(2), costs for collecting, analyzing, and reporting samples associated solely with an UST system permanent closure, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirm a release and the report required under R18-12-271(D) shall be eligible for assurance account coverage;
5. Subject to subsection (G), costs for other than the most cost effective risk based corrective action in accordance with A.R.S. § 49-1005 and this Chapter;
6. Unless the tier evaluation meets the requirements of R18-12-263.01(A), costs for performing a risk-based tier II or tier III risk assessment;
7. Costs for installing engineering controls, unless the installation of the engineering controls meets the requirements of A.R.S. § 49-1052(D), A.R.S. § 49-1005 and this Chapter, as necessary to achieve risk-based corrective action standards in accordance with R18-12-263.01;
8. Costs for maintaining engineering controls;
9. Costs for preparing a preapproval application or work plan that was not submitted to the Department, approved by the Department, and implemented by the eligible person;
10. Costs for remodeling, renovating, replacing, or reconstructing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning, or similar item at the facility;
11. Costs for demolishing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning, or similar item at the facility unless the demolition is reasonable and necessary and meets the requirements under A.R.S. § 49-1052(D) to complete the corrective action;
12. Costs for resurfacing with new materials of a kind and quality exceeding those in place before corrective action. Any eligible resurfacing shall be limited to the same area of surfacing required to be removed or destroyed during the corrective action;
13. Attorney fees, consultant fees, and costs for appeals that do not meet the requirements under A.R.S. § 49-1091.01, unless fees and costs are awarded under A.R.S. § 41-1007;
14. Costs for activities that are not eligible for coverage under A.R.S. § 49-1052(A) or that do not contribute to corrective action to the release that is the subject of the application or direct payment request;
15. Costs related to documentation in an application or direct payment request if the Department has reason to believe the documentation has been altered or falsified;
16. Costs for professional services to prepare the application or direct payment request if the application or direct payment request is incomplete, incorrect, or if zero claimed costs are approved;
17. Costs for repair, restoration, or replacement of property due to damage, theft, pilferage, vandalism, or malicious mischief; and
18. Except for interest payable under A.R.S. § 49-1052(K), costs for loss of time or market.

G. Not Feasible to Control Cleanup Technology. The Department shall approve coverage under this Article, subject to the provisions of A.R.S. §§ 49-1052 and 49-1054 and this Article, for corrective action costs incurred for reducing the concentration of a chemical of concern to a level below the applicable corrective action standard, if the eligible person demonstrates that the eligible person was unable to control the technology to prevent reduction in concentration of chemicals of concern to the level below the applicable corrective action standard.

Historical Note

Emergency rule adopted effective September 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency expired. Emergency rule adopted again effective January 13, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Adopted permanently with changes effective April 15, 1993 (Supp. 93-2). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

Appendix A. Repealed

Historical Note

Emergency rule adopted effective September 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency expired. Emergency rule adopted again effective January 13, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Adopted permanently with changes effective April 15, 1993 (Supp. 93-2). Appendix A repealed by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006

(Supp. 06-2).

R18-12-609. Copayments: Applicability, Waivers, and Credits

A. General. An eligible person shall certify to the Department that the eligible person has met or will meet the copayment requirements of A.R.S. §§ 49-1052(I) and 49-1054(A) by providing written certification on a form provided by the Department. An eligible person may make such certification if the eligible person has entered a written agreement with a corrective action service provider to pay the copayment. At the request of the Department, the eligible person shall provide a copy of the agreement. The Department shall keep any agreement received under this subsection confidential to the extent allowed by law. The Department shall withhold the applicable amount of copayment determined under this Section from payment to the eligible person or designated representative of the owner or operator. The copayment on a reimbursement application is defined by the percentage of the approved amount on the reimbursement application, less any allowable credits under this Section. The copayment on a direct payment request is defined by the percentage of the approved amount on the direct payment request, less any allowable credits under this Section, and not the percentage of the total amount approved in the preapproval application. There is no copayment on a preapproval application.

B. Owners and Operators. Owners and operators are responsible for a 10 percent or 50 percent copayment, as applicable, as described in subsection (A) and R18-12-601(A)(1) or not responsible for a copayment as described in R18-12-601(A)(3).

C. Volunteers. A volunteer is responsible for a 10 percent copayment as described in subsection (A) unless the 10 percent copayment is waived by the Department. The Department may waive the 10 percent copayment obligation for a volunteer upon a demonstration by the volunteer that the 10 percent of approved costs in an application or direct payment request to be withheld under subsection (A) exceeds the assessed valuation of the real property that is the subject of the corrective actions in the application or direct payment request and that the real property is owned or under the principal control of the volunteer. The volunteer shall demonstrate eligibility for the copayment waiver only upon presentation to the Department of a copy of the unaltered official record of the county, indicating the tax assessed full cash value of the property.

D. Application Preparation Credit. Subject to R18-12-608(F)(16), the Department shall credit to the copayment amount the professional fees for preparation of an application or direct payment request in accordance with the schedule of corrective action costs. The total credit under this Section shall not exceed the copayment obligation for the reimbursement application or direct payment request and any excess fee amount shall not be credited on any other reimbursement application or direct payment request. For a direct payment request, the Department shall apply the credit to the copayment amount in accordance with R18-12-606(B)(3).

E. UST Upgrade Credit. For a reimbursement application or direct payment request, the Department may credit, to the copayment amount of an owner or operator, the costs of upgrading or replacing the UST that is a source of a release that is a subject of the reimbursement application or direct payment request. The Department shall ensure that UST upgrade or replacement costs credited to the copayment are:

1. Incurred by an owner or operator of the UST. Political subdivisions and volunteers are not eligible for a UST upgrade credit.
2. Incurred at the time of corrective action on the release from the UST that is the subject of the reimbursement application or direct payment request.
3. Incurred for compliance with 40 CFR § 280.21 regarding corrosion protection and spill and overfill prevention or 40 CFR § 280.20 regarding replacement, provided the upgrade or replacement and associated costs meet the applicable requirements of R18-12-608.
4. Subject to the following limitations:
   a. Total credit under this subsection shall not exceed 10 percent of the coverage provided the owner or operator under A.R.S. § 49-1054(A) for the release.
   b. Total credit under this Section shall not exceed the copayment obligation for the reimbursement application or direct payment request.
5. Credited to more than one reimbursement application or direct payment request.

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-610. Interim Determinations, Informal Appeals, and Requests for Information

A. Interim Determinations. Except for incorrect applications or direct payment requests under R18-12-601(C), the Department shall issue a written interim determination on an application or direct payment request in accordance with A.R.S. § 49-1091. The Department shall include in the interim determination information related to filing a notice of disagreement. The 90-day time period under A.R.S. § 49-1091(I) may be suspended in accordance with A.R.S. § 49-1052(B).

B. Notice of Disagreement. In response to the written interim determination on an application or direct payment request, or the Department's failure to issue a written determination within 90 days, an owner, operator, or volunteer may submit a notice of disagreement. The notice of disagreement shall:

1. Be in writing and include the original signature of the owner, operator, or volunteer;
2. Be submitted within 30 days of receipt of the interim determination by the owner, operator, or volunteer;
3. Identify and describe the specific portions of the written interim determination with which the owner, operator, or volunteer disagrees; and
4. If the owner, operator, or volunteer elects, include a request for an informal appeal meeting with the Department.

C. Informal Appeal Meeting. If requested, the Department shall schedule an informal appeal meeting regarding a notice of disagreement within 30 days of receiving the request. An informal appeal meeting shall be held at the Department at a date and time as mutually agreed among the Department and the owner, operator, or volunteer. The owner, operator, or volunteer shall attend, by person or telephone, the informal appeal meeting, unless the owner, operator, or volunteer designates, in writing, a person to represent the owner, operator, or volunteer at the informal appeal meeting. The owner, operator, or volunteer shall notify the Department if the owner, operator, or volunteer intends to bring an attorney to the informal appeal meeting.

D. Additional Information. The Department may request additional information from an owner, operator, or volunteer who files a notice of disagreement if the information is necessary for the Department to make a final determination on an application or direct payment request. The requested information shall be submitted within 15 days of the request by the Depart-

ment or the information may not be considered in the Department's final determination. The owner, operator, or volunteer may request an additional 60 days to submit the requested information, but only if the request for additional time is made before the day the requested information is originally due to the Department. Before the final determination under R18-12-611, the owner, operator or volunteer may submit additional information to assist the Department in making a final determination. The period of time allowed the Department to make a final determination shall, if necessary, be extended to allow the Department at least 15 days to review the additional information.

E. Payment Warrant. If assurance account monies are available, the Department shall issue with the interim determination, or within 15 days of the date of the written interim determination, a payment warrant of approved costs, less any applicable copayment amount to the eligible person or the designated representative to whom the owner or operator has assigned payment under R18-12-603(B)(9).

Historical Note

Adopted effective September 21, 1992 (Supp. 92-3). Section repealed; New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-611. Final Determinations and Formal Appeals

A. Final Determinations. The Department shall issue a written final determination to an eligible person regarding an application or direct payment request as required under A.R.S. § 49-1091(E) or under R18-12-601(C). The Department shall ensure that this written final determination complies with A.R.S. Title 41, Chapter 6, Article 10.

B. Notice of Appeal or Request for Hearing. An eligible person may appeal a written final determination. To appeal the written final determination, the eligible person shall submit a notice of appeal or request for hearing with an original signature, in accordance with A.R.S. § 41-1092.03 and A.A.C. R2-19-108. The Department shall forward to the Office of Administrative Hearings notices of appeal and requests for hearing submitted in accordance with A.R.S. § 41-1092.03. The Department shall forward to the Office of Administrative Hearings any notice of appeal or request for hearing submitted by the eligible person or an Arizona-licensed attorney representing the eligible person.

C. Interim Determination Becomes Final. In the absence of a written final determination issued in accordance with subsection (A), the written interim determination becomes the final determination, as provided in A.R.S. § 49-1091(E). A notice of appeal or request for hearing relating to a written interim determination that becomes final under this Section shall be submitted in accordance with subsection (B). The notice of appeal or request for hearing is timely submitted if it is submitted within 30 days of the date on which the written final determination was due in accordance with subsection (A).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-612. Priority of Assurance Account Payments

A. Notice of Ranking. The Director shall determine whether it is necessary for the Department to rank applications and direct payment requests if the assurance account balance may not be sufficient to pay all approved amounts for applications and direct payment requests that are in process or anticipated to be submitted. Upon such a determination, the Department shall establish a ranking period under subsection (B). The Department shall give general notice of the ranking period and direct written notice to each eligible person or designated representative of an owner or operator with an application or direct payment request under review that has not waived financial need priority points. The general notice shall be issued within 15 days of the Director's establishment of a ranking period under this subsection. The individual direct written notice shall be issued no less than 45 days before the first ranking period following the Director's establishment of a ranking period under this subsection. The direct written notice shall include for each application or direct payment request under review, the following:

1. Eligible person name;
2. Department-assigned number for the application or direct payment request;
3. Facility name, address, and Department-assigned facility identification number;
4. Department-assigned LUST and release number;
5. A statement that assignment of priority ranking points and ranking may be necessary because the Director has determined that monies in the assurance account may not be immediately available to pay approved amounts on the reimbursement application or direct payment request;
6. For those eligible person's that have requested a financial need evaluation on the application or direct payment request under review, a statement that to receive financial need priority ranking points the eligible person shall submit the information required under R18-12-614 no less than 15 days before the ranking period; and
7. Estimated date for the first ranking period under subsection (B).

B. Ranking Periods. If the Director determines under subsection (A) that it is necessary for the Department to rank applications or direct payment requests, the Department shall establish a ranking period during which the Department assigns priority ranking points and makes payments in accordance with subsections (C), (D), and (E). The ranking period shall begin on the date the Director determines assurance account monies will be insufficient to pay, upon approval, all approved costs on reimbursement applications and direct payment requests in process and terminates when the Department is able to pay, upon approval, all approved costs on reimbursement applications and direct payment requests in process. The Department shall hold a ranking period when accumulated available monies in the assurance account, or a portion of the assurance account, are not sufficient to pay all approved amounts for applications and direct payment requests that are in process. The assignment of priority ranking points and the ranking process shall be in accordance with the requirements of subsections (C) through (F).

C. Scoring. During a ranking period, the Department shall assign priority ranking points to score affected applications and direct payment requests as follows:

1. The Department shall assign the sum of the following scores to each application or direct payment request under review:
   a. A maximum of 50 points for financial need of the eligible person, determined according to R18-12-613;
   b. A maximum of 45 points for risk the contamination poses to human health and the environment, determined according to R18-12-615; plus
   c. Five points if a delay in assurance account coverage would adversely affect a corrective action in process. Delay priority ranking points shall be awarded if the eligible person is conducting corrective action on all releases that are the subject of the application

or direct payment request that meets the requirements of A.R.S. § 49-1005 and Article 2, and accrues any priority ranking points for financial need in accordance with R18-12-613.

2. If the direct payment request includes costs approved under R18-12-608(B)(3)(c) that, when combined with all approved costs on all direct payment requests submitted against the approved preapproval application, exceed the total preapproved amount for that application, the Department shall assign to the direct payment request a score that is equal to the score assigned to the preapproval application, excluding deferral points accrued according to subsection (3).
3. The Department shall add an additional two points to an application or direct payment request score each time the Department defers the application or direct payment request according to subsection (F).

D. Ranking. During the ranking period, the Department shall rank affected applications and direct payment requests consecutively from the highest to the lowest total numerical score pursuant to subsection (C) or, for applications and direct payment requests of equal score, the Department shall assign the higher priority to the application or direct payment request submitted earlier.

E. Payment of Monies During Ranking Period. The Department shall pay available assurance account monies to each scored application and direct payment request in consecutive descending numerical order of priority in accordance with subsection (D), until all ranked applications and direct payment requests have been paid, or until remaining available assurance account monies are insufficient to make payment equal to the approved amount of the next consecutively ranked application or direct payment request.

F. Deferred Applications and Direct Payment Requests. The Department shall defer ranked applications and direct payment requests for which assurance account monies have not been paid in accordance with subsection (E).

G. Exceptions. Notwithstanding this Section, the Department shall pay for eligible activities performed in compliance with A.R.S. § 49-1053 in accordance with A.R.S. § 49-1053(J). Notwithstanding this Section, the Department shall pay eligible attorney fees, consultant fees and costs as provided in A.R.S. § 49-1091.01 in accordance with A.R.S. § 49-1054(F).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-613. Determining Financial Need Priority Ranking Points

A. Waivers. If an eligible person expressly waives financial need priority ranking points or if the eligible person does not submit the balance sheet and form that meets the requirements of R18-12-614 within 15 calendar days before a ranking period, the Department shall assign 0 financial need priority ranking points.

B. Non-profits. If an eligible person is a nonprofit or not-for-profit entity organized under A.R.S. Title 10, the total tangible net worth, current assets, and current liabilities used to determine the number of priority ranking points under subsection (C) may be reduced by any reserved and designated fund balances. All reserved and designated fund balances to be deducted shall appear on the balance sheet and form submitted in accordance with R18-12-614.

C. Scoring For Eligible Persons That Are Not Local Governments. If an eligible person is an individual or a firm other than a local government, then the Department shall assign financial need priority ranking points on a scale of 0 to 50 points, as follows:

1. A maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the amount requested in the application divided by the eligible person's tangible net worth, as follows:

Tangible net worth is negative:	25 points
Ratio = 20% or more:	25 points
Ratio = 16% up to but not including 20%:	20 points
Ratio = 12% up to but not including 16%:	15 points
Ratio = 8% up to but not including 12%:	10 points
Ratio = 4% up to but not including 8%:	5 points
Ratio = less than 4%:	0 points; and

2. A maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the eligible person's current assets divided by the eligible person's current liabilities, as follows:

Ratio = less than 100%:	25 points
Ratio = 100% up to but not including 125%:	20 points
Ratio = 125% up to but not including 150%:	15 points
Ratio = 150% up to but not including 175%:	10 points
Ratio = 175% up to but not including 200%:	5 points
Ratio = 200% or more:	0 points

D. Scoring For Eligible Persons That Are Local Governments. If an eligible person is a local government, then the Department shall assign financial need priority ranking points on a scale of 0 to 50 points, as follows:

1. The Department shall assign a maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the amount requested in the application divided by the eligible person's total year-end unreserved and undesignated fund balance. The local government's total year-end unreserved and undesignated fund balance shall appear on the balance sheet and form required under R18-12-614. If the total year-end unreserved and undesignated fund balance is negative, 25 points shall be assigned. If the eligible person's total year-end unreserved and undesignated fund balance is positive, the resulting percentage shall be applied to the table of ratios in subsection (C)(1) to determine the priority ranking points assigned.
2. The Department shall assign a maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the eligible person's current assets divided by the eligible person's current liabilities. Current assets and current liabilities may be reduced by reserved and designated fund balance. Priority ranking points shall be allocated in accordance with subsection (C)(2).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points

A. Request For Financial Need Evaluation. An eligible person may request scoring and priority ranking on the basis of financial need. If the eligible person requests priority ranking points for financial need, the eligible person shall submit a balance sheet that meets the requirements of subsection (B). The bal-

ance sheet shall be attached to a form provided by the Department. The form shall include all of the following:

1. Identification of the name, address, and contact person of the eligible person requesting the financial need evaluation;
2. Department-assigned LUST, application, and direct payment request numbers for all of the eligible person's applications and direct payment requests that are under review;
3. Total current assets of the eligible person;
4. Total current liabilities of the eligible person;
5. Tangible net worth of the eligible person;
6. If the eligible person is a non profit or not-for-profit entity recognized in accordance with A.R.S. Title 10, or a local government, total year end reserved and designated fund balance and unreserved and undesignated fund balance; and
7. A notarized statement with the original signature of the eligible person certifying that the information included in and attached to the form is true and correct to the eligible person's best knowledge and belief.

B. Balance Sheet. The eligible person shall attach to the form described in subsection (A), a balance sheet of the eligible person that meets the requirements of this subsection. The balance sheet, including all prepared notes and schedules to the balance sheet, shall be prepared using the accrual method of accounting and meet all of the following requirements:

1. The balance sheet shall be dated no earlier than 18 months before the date of the ranking period under R18-12-612(B);
2. The balance sheet shall indicate current assets, total assets, current liabilities, total liabilities, total intangible assets, current year-end net worth and, if the eligible person is a non profit or not-for-profit entity recognized in accordance with A.R.S. Title 10, or a local government, total year-end reserved and designated fund balances and unreserved and undesignated fund balances;
3. For owners and operators, the balance sheet shall include the owner's or operator's corrective action liabilities at all of the owner's or operator's underground storage tank sites subject to regulation by the Department. Corrective action costs incurred and approved for payment from the assurance account, but not paid as of the date of preparation of the balance sheet shall not be included in the owner's or operator's current liabilities; and
4. The balance sheet shall be prepared by an independent public accountant that is not affiliated with the eligible person, unless the eligible person is a local government submitting the latest Comprehensive Annual Financial Report.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

R18-12-615. Risk Priority Ranking Points

A. Scoring Risk. The Department shall assign priority ranking points for risk to human health and the environment, ranging from 10 to 45 points, based on the LUST classification provided by the eligible person under R18-12-261.01. If the LUST site classification form has not been received by the Department, the Department shall assign 0 risk priority ranking points. The Department shall assign no more than 45 priority ranking points under this Section.

B. Priority Ranking Point Scale. The Department shall assign risk priority ranking points ranging from 10 to 45 points according to the LUST Site Classification form in the LUST site characterization report approved by the Department, or if the LUST site characterization report has not been approved, upon the LUST Site Classification form on file when the Director determines under R18-12-612(A) that it is necessary for the Department to rank applications, as follows:

1. Classification 1, under R18-12-261.01(C)(1): 45 points
2. Classification 2, under R18-12-261.01(C)(2): 30 points
3. Classification 3, under R18-12-261.01(C)(3): 20 points
4. Classification 4, under R18-12-261.01(C)(4): 10 points

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1611, effective June 4, 2006 (Supp. 06-2).

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

R18-12-701. Allocation of Grant Account Funds

The Department shall determine the total amount of funds in the grant account on the last day of the application submission period. Subject to the provisions of A.R.S. § 49-1015(A), the Department shall allocate the total amount of available funds as follows:

1. Up to and including 5.0% of the total amount of available funds shall be allocated for the expenses incurred by the Department in administering the fund.
2. Of the total amount available after the allocation for administrative expenses, an amount for use by applicants classified as local governments shall be reserved based on the number of active facilities, developed from the UST database, in accordance with the following formula:

   Percentage amount reserved for local governments = number of local government facilities ÷ the total number of facilities, excluding state and federal facilities.
3. Funds remaining, after subtracting the amounts determined under subsections (A)(1) and (2) from the total amount in the grant account, shall be reserved for applicants classified as other than local governments.

Historical Note

Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-702. Eligible Projects

A. An owner or operator of a UST may apply to the Department, during an application submission period, for a grant for the purpose of funding any of the following eligible projects:

1. Installing a leak detection system that meets the requirements of A.R.S. § 49-1003 and the rules promulgated thereunder.
2. Upgrading a UST system by the addition of spill prevention, overfill prevention, or corrosion protection that meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder.
3. Replacing a non-complying UST with a UST of equal or smaller volume that meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder. The eligible project may include the cost of removing of the existing UST system. Removal of an existing UST system shall meet the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
4. Paying the portion of necessary and reasonable corrective action expenses not covered by the assurance account as prescribed in A.R.S. § 49-1054. The corrective action shall meet the requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.

5. Removing a UST from the ground if the UST will not be replaced and the removal meets the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
6. Paying for expedited review of the applicant's workplan, site characterization reports, corrective action plans, monitoring reports, and other information as prescribed in A.R.S. § 49-1052.

B. An eligible project shall be limited to the work specified in the application, which shall be approved by the Department pursuant to R18-12-709. An eligible project shall not include any of the following:
1. Adding to or altering of all or part of any building or appurtenant structure at the facility.
2. Demolishing a building or appurtenant structure at the facility unless the demolition is necessary to complete the eligible project. If demolishing a building or appurtenant structure is necessary to complete the eligible project, grant funds shall not be used to reconstruct or replace all or part of the building or appurtenant structure demolished.
3. Resurfacing with new materials of a kind and quality exceeding those in place before beginning the project. Resurfacing shall be limited to the minimum area of surfacing required to be removed or destroyed during the project. Resurfacing shall not include the cost of replacing islands unless necessary for the continued operation of the facility as demonstrated in the business plan required under R18-12-708.
4. Replacing or refurbishing dispensers, canopies, awnings, or similar items that are not part of the actions necessary to comply with the statutory requirements for the project set forth in subsection (A).

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-703. Amount of Grant Per Applicant or Facility

A. Under this Article, the Department shall grant to any owner or operator a maximum of $100,000. If the owner and the operator are the same person, a maximum of $100,000 shall be granted to that person.

B. Under this Article, the Department shall grant a maximum of $100,000 for eligible projects to be completed at any one facility.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-704. Grant Application Submission Period

A. The Department shall establish the beginning and ending dates of each grant application submission period. The Department shall publish the dates of each submission period in the public notices section of the *Arizona Republic* newspaper and in the *Underground Storage Tank News*, a quarterly newsletter published by the Department and available at the Department upon request.

B. The Department shall consider an application to be received on the date the application is postmarked or, if hand delivered, on the date stamped on the application by the Department. The Department shall not consider an application received after the ending date of the submission period.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

18-12-705. Grant Application Process

A. In accordance with the provisions of R18-12-706(A), an owner or operator shall submit to the Department during a grant application submission period described in R18-12-704 all of the information described in R18-12-706, except that the surety bond, general liability insurance, mechanic's lien, and contract, if required under R18-12-706(D)(2), may be submitted separately from the work plan. If the owner or operator elects to submit separately the proof of surety bond, general liability insurance, mechanic's lien, or contract, then the owner or operator shall submit that information to the Department not later than 60 days after receiving the Department's notice of grant issue approval under R18-12-714(A), measured from the date of the certified mail return receipt, otherwise the grant issue shall be forfeited in accordance with R18-12-714(D). The Department shall not issue a warrant for the payment of the grant if the Department has not received all information required under this Article.

B. After the close of the submission period, the Department shall review grant applications in the order received and allocate priority ranking points to each application in accordance with R18-12-711 or R18-12-712. If no priority points are allocated under R18-12-711(B)(3)(a) or R18-12-712(B)(1), the Department shall inform the applicant in writing that the application has been rejected.

C. If an application is not rejected, the Department shall review the application and determine whether there are deficiencies in the information submitted. The Department shall inform the applicant in writing of any deficiencies and of the resubmission provisions under R18-12-709(B).

D. If a grant application involves either upgrading a UST system with corrosion protection under R18-12-702(A)(2) or replacing a UST system under R18-12-702(A)(3), the Department shall determine the feasibility of upgrading the system in accordance with the requirements of R18-12-710.

E. Following the end of the resubmission period, the Department shall determine which applicants are to receive grant funds in accordance with R18-12-713 and make payments in accordance with R18-12-714.

F. The Department shall accept for consideration grant applications and grant application resubmissions that are submitted before or after commencement or completion of the work that is the subject of the grant application or application resubmission.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2). Amended effective October 21, 1998 (Supp. 98-4).

R18-12-706. Grant Application Contents

A. An owner or operator seeking a grant to fund an eligible project as described in R18-12-702 shall submit to the Department an application on a form provided by the Department. The application may contain information on more than one project at the facility if all requirements under this Article are met for each project. If the same information is required for more than one project on the same application, the information shall be included only once and a reference made on the application to that information.

B. The application shall contain all of the following information:
1. The name, daytime telephone number, and mailing address of the applicant;
2. The federal employer identification (tax) number or social security number of the applicant;
3. A description of the applicant's status as either an owner or operator and classification as either a local government or other than local government;
4. The total number of UST facilities owned or operated by the applicant;

5. The UST owner identification number assigned by the Department to the person who owns the facility where the eligible project was or will be conducted;
6. The name and daytime telephone number of a person the Department may contact if there are questions regarding the application or its attachments.

C. The application shall contain all of the following information regarding the facility and UST on which the eligible project was or will be conducted:
1. The facility name, site address, and the associated County Assessor book, map, and parcel number;
2. The UST facility identification number assigned by the Department;
3. The date of installation of the UST;
4. The regulated substance stored in the UST over the past 12 months;
5. The Leaking Underground Storage Tank number assigned by the Department to any releases at the facility;
6. A statement as to whether the facility is involved in marketing regulated substances from UST systems;
7. The distance, in miles, from the facility to the nearest alternative source of the same regulated substance as stored in the UST system;
8. If the eligible project is described under R18-12-702(A)(1) through (3), a business plan prepared in accordance with R18-12-708.

D. An application, except an application for a corrective action grant as described in R18-12-702(A)(4) or an application for expedited review as described in R18-12-702(A)(6), shall contain the information required by subsections (D)(1), (2), (3), (4), (5) and (8) for the eligible project. An application for a corrective action grant as described in R18-12-702(A)(4) shall contain the information required by subsections (D)(1), (2), (3), (5), (6) and (8). An application for an expedited review as described in R18-12-702(A)(6) shall contain the information required by subsections (D)(1), (3), (5) and (7).
1. A statement of the kind of eligible project as listed in R18-12-702(A).
2. A work plan which meets the requirements of R18-12-707. The work plan shall be the basis for cost bids submitted with the application.
3. The total amount of grant funds requested. If the amount requested is based on three cost bids that are required under (D)(4), then the amount requested shall be the lowest of the cost bids.
4. Three written, detailed, firm, fixed cost bids for completing the eligible project. All three cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project and shall include for each itemized cost a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item or portion of the work plan that describes that cost.
5. The total amount of costs incurred for professional services directly related to the preparation of the grant application.
6. If the eligible project is a corrective action as described in R18-12-702(A)(4), then the grant applicant shall also include a copy of the direct payment or reimbursement determinations for that corrective action issued by the Department in accordance with R18-12-609, otherwise the applicant shall include a statement that the information identified at R18-12-601 through R18-12-607.01 was submitted to the Department as required for the Department to make the SAF preapproval, direct payment, or reimbursement determinations.
7. If the eligible project is an expedited review as described in R18-12-702(A)(6), the application shall identify the documents the applicant is requesting be reviewed on an expedited basis. A schedule of costs for an expedited review of documents shall be used to determine the grant amount. The schedule of costs shall include each type of document and the corresponding cost for the expedited review of that document.
8. The name and address of each service provider, including subcontractors, that performed, or will perform, services required to conduct the eligible project, and all of the following information for each service provider:
   a. Identification as a consultant, contractor, engineer, subcontractor, tester, or other professional classification and whether a license from the Board of Technical Registrations is required for the profession;
   b. Contractor license number issued by the Registrar of Contractors;
   c. License number issued by the Board of Technical Registrations;
   d. The name and daytime telephone number of the project contact person.

E. An applicant applying on behalf of an individual, or a firm classified as other than local government, shall submit to the Department the information described in subsections (E)(1) through (3) and, if applicable, (E)(4).
1. For all applicants, the balance sheet from the most recent completed fiscal year for the firm, and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:
   a. Total assets and total liabilities,
   b. Total intangible assets,
   c. Total current assets and total current liabilities, and
   d. Current year-end net worth.
2. For individuals and sole proprietorships, the applicant's personal financial statement that meets all of the requirements of subsection (E)(1).
3. For partnerships, limited liability companies and S corporations, the personal financial statement that meets the requirements of subsection (E)(1) for each owner of 20% or more of the firm.
4. For applicants who wish to be eligible for priority ranking points under R18-12-711(G), a copy of the most current federal and state annual income tax returns that show all of the following:
   a. Total revenues and total expenses, and
   b. Total revenues from operation of UST facilities.

F. If the applicant firm is a wholly owned subsidiary, the applicant shall provide to the Department a copy of all documents required under subsection (E) for the parent firm. The Department shall determine financial need based upon the financial statements of the parent firm.

G. If an application is made on behalf of a nonprofit or not-for-profit entity organized under the provisions of A.R.S. Title 10, the applicant shall submit to the Department a copy of the letter from the Corporation Commission granting nonprofit or not-for-profit status and the most recent year-end balance sheet and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:

1. The information described under subsections (E)(1)(a) through (d);
2. Current year-end and the prior year-end reserved and designated fund balances;
3. Current year-end and the prior year-end unreserved and undesignated fund balance;
4. If the applicant wishes to be eligible for priority ranking points under R18-12-711(G), a copy of the most recent year-end statement of revenues and expenses prepared simultaneously with the balance sheet that shows all of the information required under subsections (E)(4)(a) and (b).

H. If application is made on behalf of a local government, the applicant shall submit to the Department a copy of the balance sheet for the most recent completed fiscal year and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:
1. Current year-end and the prior year-end reserved and designated fund balances,
2. Current year-end and the prior year-end unreserved and undesignated fund balance, and
3. Total current assets and total current liabilities.

I. The applicant shall sign, have notarized, and attach to the application a certification statement that, to the applicant's best information and belief, all information provided on the application and attachments to the application is true and complete.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2). Amended effective October 21, 1998 (Supp. 98-4).

R18-12-707. Work Plan

A. A work plan for a grant for an eligible project under R18-12-702(A)(1) through (3) shall contain all of the following:
1. A site plan, drawn to scale, that includes a diagram of the facility showing the location of each UST involved in the project, the access routes to each UST involved, obstructions to access to each UST including natural or artificial barriers, canopies, buildings, and other structures.
2. A plan or report of the specific material or equipment installation or removal activities.
3. A timetable for the incremental steps and completion of the project tasks not yet commenced or completed.
4. The specifications and certifications provided by the manufacturer or a 3rd party for all equipment the installation of which is the subject of the grant application, including 3rd-party certification of performance standards for probability of detection and probability of false alarm for leak detection equipment in accordance with A.R.S. § 49-1003.
5. If the eligible project includes the installation of a cathodic protection system under R18-12-702(A)(2) or R18-12-702(A)(3), the engineering plan for the installation of the system prepared by a corrosion expert and supporting documents that demonstrate the effectiveness of the system under the site-specific conditions.
6. The original or duplicate of an American Institute of Architects surety bond form A311 with a penal sum in the amount of the contract, which names the Department and the applicant as dual obligees and the contractor as principal for each service provider on the eligible project, and which provides that a lawsuit under the bond may be filed within two years from the date on which final payment under the contract falls due. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended on June 30, 1995, and no future editions, incorporated by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.
7. A copy of the comprehensive general liability insurance policy or a certificate of insurance for the general liability insurance policy providing coverage for each contractor who will provide services during the eligible project. The comprehensive general liability insurance policy shall have a minimum limit of liability of $1,000,000, include coverage for pollution liability, and name the Department as a named insured for any liabilities incurred in relation to the eligible project.
8. A copy of any mechanics' lien placed on the facility or the equipment at or to be installed at the facility in conjunction with the eligible project.
9. A copy of each contract signed by the owner or operator concerning the eligible project.

B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under subsections (A)(7) through (9), except that the contractor comprehensive general liability insurance policy is not required to include coverage for pollution liability.

C. A work plan for a grant for an eligible project under R18-12-702(A)(5) shall comply with the requirements of subsections (A)(1) through (4), and (A)(6) through (9) and contain provisions for compliance with the standards of the American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks," amended December 1987, Supplement March 1989, Washington, D.C., and no future editions, incorporated by reference and on file with the Department and the Secretary of State.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to A.R.S. § 49-1014, and §§ 49-1052 (B) and (O), effective August 15, 1996 (Supp. 96-3). Amended effective October 21, 1998 (Supp. 98-4).

R18-12-708. Business Plan

A. An application for an eligible project under R18-12-702(A)(1) through (3) shall contain a business plan that demonstrates the potential for continued operation, for at least three years after issuance of the grant, of the facility at which the UST is located. The business plan shall contain all of the following:
1. A description of the current operations of the applicant which contains all of the following:
   a. The designation of the applicant as an individual, sole proprietorship, general partnership, limited partnership, C-corporation, S-corporation, joint venture, nonprofit or not-for-profit entity, local government, or another specified form of legal organization;
   b. The nature of the operation and its history during its life or the last three years, whichever is the shorter period;
   c. A discussion of the market in which the applicant operates, including the kinds of products and services provided, the geographic area served, and a general description of the size, growth, density, and distribution of the population served; and
   d. The number of employees and the number of hours worked per week by each.

2. A written statement of the job history and work experience of each owner or officer of the applicant and of each manager of the facility; and
3. A description of projected operations of the facility that includes all of the following:
   a. A description of planned changes to the operation of the facility. If no changes are planned, a statement of the reason for requesting a grant and how receipt of the grant will assist in continued operation of the facility; and
   b. An estimate of expected revenue and expenses by year for the three-year period following issuance of a grant. The estimate shall contain the major assumptions for:
      i. Revenue by source by year; and
      ii. Expenses, including annual debt service and contingent liabilities, by year.

B. The Department shall review the business plan in accordance with generally accepted accounting principles, to determine whether the business is a viable entity capable of continuing in business for three years following the grant issue. All of the following shall be considered:
1. Existence of a significant contingent liability,
2. History of profits or losses from operations,
3. Extent of owner equity,
4. Market potential,
5. Stability of key management personnel, and
6. Legality of operations.

C. The applicant shall have the financial statements required under this Section prepared in accordance with generally accepted accounting principles. A financial analysis by a certified public accountant shall not result in a qualification.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-709. Review of Application

A. The Department shall review a grant application to determine whether the application contains all of the information required by this Article.

B. If the Department determines the application is not complete or otherwise fails to meet the requirements of this Article, the Department shall send to the applicant, by certified mail, a written statement of deficiencies. The Department may include in the mailing, any part of the application found to be deficient. The applicant shall have 30 days from the date of receipt, as evidenced by the date on the return receipt, to correct all deficiencies and resubmit the application or information to the Department. The Department shall consider the date the application is postmarked or hand delivered to be the date of resubmission to the Department. The Department shall not consider an application that remains deficient at the end of the resubmission period.

C. If the Department determines that an application contains information required by this Article, the Department shall approve the application and place it in priority order in accordance with the provisions of R18-12-713.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-710. Feasibility Determination

A. For eligible projects listed in R18-12-702(A)(2) and (3) that involve corrosion protection, the Department shall determine the feasibility of upgrading or replacing the UST. The Department shall base its feasibility determination on a report of internal inspection of the existing UST conducted by an Arizona licensed contractor. The inspection report shall include a certification by the contractor that the inspection was conducted in accordance with the American Petroleum Institute publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks," (January, 1991) and the American Petroleum Institute publication 1631, "Interior Lining of Underground Storage Tanks," 2nd edition (December, 1987), and no later amendments or editions, both of which are incorporated by reference and on file with the Department and the Office of the Secretary of State.

B. The Department shall ensure that the amount of grant monies approved for an eligible project is consistent with the results of the feasibility determination. If the feasibility determination concludes that a UST can be upgraded with corrosion protection, but the application requests grant funds for replacing the UST, the Department shall not approve an amount in excess of the estimated cost of upgrading the UST. If a UST cannot be upgraded with corrosion protection, and the application requests grant funds to upgrade the UST, the Department may approve the amount of the estimated cost of replacing the UST.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2). Amended effective October 21, 1998 (Supp. 98-4).

R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other Than Local Governments

A. The Department shall allocate priority ranking points to a grant application for an owner or operator who is not a local government in accordance with this Section. The maximum number of priority ranking points is 105.

B. Subject to the provisions of subsections (B)(1) and (2) and in accordance with subsections (B)(3)(a) and (b), the Department shall allocate a maximum of 50 priority ranking points for financial need.
1. If the applicant is a Chapter S corporation, the balance sheets from the most current completed fiscal year for the corporation and for each person who owns 20% or more of the corporation shall be combined to determine the total tangible net worth, current assets, and current liabilities to be used in subsections (B)(3)(a) and (b).
2. If the applicant is a nonprofit or not-for-profit entity organized under A.R.S. Title 10, the total tangible net worth, current assets, and current liabilities used to determine the number of priority ranking points under subsections (B)(3)(a) and (b) may be reduced by any reserved and designated fund balances. All reserved and designated fund balances to be deducted shall appear on the balance sheet submitted in accordance with R18-12-706(G).
3. Priority ranking points shall be allocated as follows:
   a. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by tangible net worth. The tangible net worth shall be determined from the information submitted as required under R18-12-706(E) through (G) and the provisions of subsections (B)(1) and (2). If the applicant has a negative tangible net worth, 25 priority ranking points shall be allocated. If the indicated tangible net worth is positive, priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to but not including 20%	20 Points
12% up to but not including 16%	15 Points
8% up to but not including 12%	10 Points
4% up to but not including 8%	5 Points
Less than 4%	0 Points

b. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the information submitted as required under R18-12-706(E) through (G) and subsections (B)(1) and (2). Priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
Less than 100%	25 Points
100% up to but not including 125%	20 Points
125% up to but not including 150%	15 Points
150% up to but not including 175%	10 Points
175% up to but not including 200%	5 Points
200% or more	0 Points

C. A maximum of 10 priority ranking points shall be allocated based on the date of installation of the tank as follows:

DATE OF INSTALLATION	POINTS
1. After December 22, 1988	0 Points
2. May 7, 1985 through December 22, 1988	3 Points
3. Before May 7, 1985	10 Points

D. If the program is described under subsection R18-12-702(A)(4) or (6), a maximum of 25 priority ranking points shall be allocated based on the threat to human health and the environment by the presence of an active leaking underground storage tank (LUST) site at the facility that is the subject of the eligible project as follows:

1. Active LUST site at the facility that has impacted groundwater	25 Points
2. Active LUST site at the facility that has not impacted groundwater	15 Points
3. No active LUST site at the facility	0 Points

E. A maximum of five priority ranking points shall be allocated based on the extent of the geographic area served depending on whether or not the facility markets regulated substances as follows:

1. Marketing facility5 Points
2. Other than Marketing facility0 Points

F. A maximum of 10 priority ranking points shall be allocated based on the distance to the nearest alternative source of regulated substance to the community as follows:

DISTANCE	POINTS
1. Less than 5 miles	0 Points
2. 5 miles up to 10 miles	5 Points
3. 10 miles or more	10 Points

G. An additional five priority ranking points shall be allocated to an applicant who, based on information in the application, meets all of the following:

1. Has annual total revenue of less than $1 million,
2. Derives at least 50% of annual total revenue from the operation of UST facilities, and
3. Owns or operates no more than two UST facilities.

Historical Note

Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

A. The Department shall allocate priority ranking points to a grant application of an owner or operator that is a local government in accordance with this Section. The maximum number of priority ranking points is 100, consisting of the points allocated in accordance with subsections (B) and (C).

B. The Department shall allocate a maximum of 50 priority points for financial need as follows:

1. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by total unreserved and undesignated fund balance. If the total unreserved or undesignated fund balance is negative, 25 priority ranking points shall be allocated. If the total unreserved or undesignated fund balance is positive, priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to but not including 20%	20 Points
12% up to but not including 16%	15 Points
8% up to but not including 12%	10 Points
4% up to but not including 8%	5 Points
Less than 4%	0 Points

2. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the balance sheet submitted in accordance with R18-12-706(H). Priority ranking points shall be allocated in accordance with R18-12-711(B)(3)(b).

C. Additional priority ranking points shall be allocated in accordance with R18-12-711(C) through (F).

Historical Note

Adopted effective May 23, 1996 (Supp. 96-2). Amended effective October 21, 1998 (Supp. 98-4).

R18-12-713. Determination of Grants to Be Issued

A. The Department shall determine the following within 90 days after close of the submission period:

1. The total amount of the request for each application which is approved under R18-12-709, and any feasibility determination expenditure incurred by the Department in complying with the requirements of R18-12-710. Subject to the provisions of R18-12-703, the total of the amount approved and the feasibility determination expense shall be the amount of the grant issue;
2. The total number of priority ranking points allocated to each applicant under R18-12-711 or R18-12-712;
3. The amount of funds available for each classification of applicant in accordance with R18-12-701(2) and (3); and
4. The date on which each complete application was received or, if the application was not complete, the date on which the information requested in the deficiency statement which completed the application was received.

B. The Department shall rank each application within each applicant classification in numerical order by priority ranking points with the greatest number of priority ranking points being the highest rank.

C. From the total amount of funds available for each applicant classification, the Department shall subtract, in descending order of total priority ranking points allocated to each applicant, the amount approved for each eligible project until all available funds are committed. Applications that have funds committed shall be approved for issuance. Applications that do not have funds committed shall be denied for issuance.

D. If two or more applicants have the same number of priority ranking points and available grant funds are insufficient to make issues to all of these applicants, the applications shall be ranked by date received. The application with the earliest received date stamped on the application shall have 1st commitment for grant issue. The application with the next earliest date received shall have next commitment, and so forth until all available grant funds are committed. If an application was received incomplete and the deficiencies were corrected later, the application shall be deemed received on the date the material completing the application was received.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2).

R18-12-714. Grant Issuance; Notification; Payment

A. Not later than 90 days after the end of the submission period or, if applicable, the resubmission period, the Department shall notify each applicant in writing of the denial or approval of a grant issuance. The determination of denial or approval shall be made in accordance with R18-12-713. A notice of grant approval shall contain all of the following:
1. A statement of the original amount of the applicant's grant request,
2. An explanation of all reductions or adjustments that reduce or change the original grant request amount and the reason for each change,
3. A statement of the amount of the grant issue, and
4. The provisions of subsections (B) through (D).

B. The Department shall not make any grant payment to the applicant or a person providing services or equipment to the applicant until the Department receives all of the following:
1. Proof of surety bond, general liability insurance, mechanic's lien and contract if required under R18-12-707. The grant applicant may submit these documents to the Department before or after commencement or completion of the work that is the subject of the grant application but shall submit these documents not later than 60 days after receiving the notice of grant issue approval, measured from the date of the certified mail return receipt.
2. Invoices for work performed or equipment installed in conjunction with the eligible project. If the work performed is an eligible project under R18-12-702(A)(1), (2), (3), or (5), then each invoice shall reference the work performed or the equipment installed to the specific item or task in the work plan. If the work performed is an eligible project under R18-12-702(A)(4), then the applicant shall submit a copy of the direct payment or reimbursement determinations received pursuant to R18-12-609(A) in addition to the invoices for that work.
3. For work performed that is not an eligible project under R18-12-702(A)(4), a written statement, signed by the applicant and the person acting as general contractor on the eligible project, which certifies that all work, equipment, or materials itemized on each invoice have been performed, used, or installed in accordance with this Chapter. The statement shall contain, for each invoice itemized, the invoice number and the total amount of the invoice. The signatures appearing on the certification shall be notarized.
4. An agreement signed by the applicant and the person serving as general contractor on the approved eligible project, which designates the name to be shown as payee on all warrants issued in payment for work and equipment on the approved project.

C. The Department shall not make total payments that exceed the grant amount approved by the Department in accordance with this Article, or that exceed the amount actually incurred to complete the eligible project, whichever is less. The Department shall not make payments to cover the cost of work that is not an eligible project under R18-12-702 unless the cost is for professional services directly related to the preparation of the grant application that are approved by the Department.

D. If all of the requirements of subsection (B) are met, and subject to the provisions of subsection (C), the Department shall issue a warrant for the amount of the submitted invoice or invoices. If an applicant is notified of a grant issuance but fails to meet the requirements of subsection (B)(1) not later than 60 days after receiving the notice of grant issue measured from the date of the certified mail return receipt, then the Department shall inform the applicant in writing that the grant issue has been forfeited by the applicant. The Department shall return a forfeited grant issue to the grant fund.

Historical Note
Adopted effective May 23, 1996 (Supp. 96-2). Amended effective October 21, 1998 (Supp. 98-4).

ARTICLE 8. TANK SERVICE PROVIDER CERTIFICATION

R18-12-801. Applicability

A. Beginning from and after December 31, 1996, a person shall not perform tank service on an underground storage tank system unless the person is certified under this Article by the Department or is supervised by a person certified under this Article by the Department in accordance with R18-12-802 or R18-12-806. The certification requirements of this Article shall not apply to the site assessment or sampling requirements of this Chapter.

B. A person who performs or supervises tank service shall present to the Department proof of certification when requested by the Department.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-802. Transition

A. If a tank service provider does not obtain certification pursuant to R18-12-806 by January 31, 1997, the tank service provider who is subject to the requirements of this Article shall request, before January 31, 1997 temporary certification in writing from the Department. The request for temporary certification shall be submitted to the Department on the application form described under R18-12-806, except only the information described under R18-12-806(B)(1), (B)(2), (B)(4), and (B)(5), shall be included. The Department shall issue a temporary certification card for the tank service category requested within 15 days following receipt of an administratively complete application.

B. A temporary certification granted pursuant to subsection (A) of this Section expires March 31, 1997.

C. When a tank service provider receives certification pursuant to R18-12-806, temporary certification is void.

D. Temporary certification granted pursuant to subsection (A) cannot be used to satisfy the requirements under R18-12-601.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-803. Categories of Certification

The Department may certify a person who performs or supervises tank service in any one or more of the following categories:
1. Installation and retrofit of an UST,
2. Tightness testing of an UST,
3. Cathodic protection testing of an UST,
4. Decommissioning of an UST,
5. Interior lining of an UST.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-804. International Fire Code Institute Certification; Manufacturer Certification

A person qualifies for certification by the Department as a tank service provider if the following conditions are met:
1. The person holds certification from IFCI for the category of certification being sought.

2. If required by the manufacturer, the person holds a manufacturer's certification for the use of a piece of equipment or methodology in addition to holding the IFCI certification for the category of certification being sought.
3. The person submits evidence of qualification under this Section for the category of certification being sought in accordance with R18-12-806(B)(3).

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-805. Alternative Certification

A. A person qualifies for certification by the Department as a tank service provider under this Section if the requirements of R18-12-804(1) cannot be met because an IFCI certification is not available for the category of certification being sought and all of the following conditions exist:
1. The manufacturer of the technology has a process for certification of tank service providers and the person seeking qualification under this Section has received the manufacturer's certification.
2. The manufacturer's certification is based on training or examination that evaluates competency specific to the category of tank service;
3. The certification training or examination emphasizes the applicable codes of practice found in A.R.S. Title 49, Chapter 6 and the rules promulgated thereunder;
4. The tank service technology is protective of human health and the environment;
5. The person submits evidence of qualification under this subsection for the category of certification being sought in accordance with R18-12-806 (B)(3).

B. A person qualifies for certification by the Department for the category of cathodic protection tester without holding an IFCI certification if all the following conditions exist:
1. The person holds certification by the National Association of Corrosion Engineers as a "corrosion specialist," "cathodic protection specialist," "senior corrosion technologist," or a "corrosion technologist."
2. The person submits evidence of qualification under this subsection in accordance with R18-12-806(B)(3).

C. If certification is developed by IFCI for a category that has been previously certified under subsection (A) of this Section, the IFCI certification shall be required. The Department shall notify, in writing, all tank service providers certified for that category of the existence of the replacement IFCI certification. A certified tank service provider will have 90 days from the date of receipt of notice from the Department to obtain the IFCI certification under R18-12-804. Alternative certification under this Section is void 91 days after the tank service provider is notified that the IFCI certification is required for certification under this Article.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-806. Application; Certification

A. Except as provided in R18-12-802, a person who seeks to supervise or perform any category of tank service under R18-12-803 beginning from and after December 31, 1996, shall obtain and submit a completed application form to the Department on the form prescribed by the Department. A person who seeks certification for more than one category shall submit a separate application form for each category.

B. A completed application form shall include all the following information:
1. Name, address (mail and physical), telephone number (home and business), aliases, and employer;
2. Name of the category of tank service for which certification is sought;
3. Proof of qualification as described in R18-12-804 or R18-12-805 for the category of tank service for which certification is being sought;
4. Two 1 inch by 1 inch color portraits, of the applicant;
5. A certification statement that the information submitted pursuant to this subsection is true, accurate, and complete.

C. The Department shall either grant or deny certification within an overall time-frame of 30 days after receipt of an application as evidenced by the date stamped on the application by the Department upon receipt. Within 15 days of receipt of the application, the Department shall issue, by certified mail or personal service, a notice of deficiency if the application is not administratively complete. If the deficiency is not cured within 30 days of the applicant's receipt of a notice of deficiency, as evidenced by the return receipt or documentation of service, the application is denied and re-application is required for certification. If the application is administratively complete, the Department shall have the remaining number of the total of 30 days for substantive review of the application to either issue a certification card or deny the application. If an application is denied, a hearing may be requested pursuant to A.R.S. Title 41, Chapter 6, Article 10. If the Department issues a written notice of deficiencies within the administrative completeness time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information from the applicant. The date the Department receives the missing information is determined by the date received stamp on the missing information.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-807. Duration; Renewal; Changes

A. Certification under this Article shall be issued for two years unless the qualifying certification under R18-12-804 or R18-12-805 is valid for a period of time less than two years. Certification expires either at the expiration of the qualifying certification under R18-12-804 or one year following issuance of certification under R18-12-806, whichever is later. Certification under R18-12-805 requirements shall be for the period allowed under the technology manufacturer's certification or two years, whichever is shorter, but in no event for a period of time less than one year.

B. A person seeking renewal of certification shall submit to the Department an application form, in accordance with the provisions of R18-12-806.

C. The tank service provider shall notify the Department of any change to the information reported in the application form on file with the Department, by submitting a new application form within 30 days after the change.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-808. Discontinuation of Tank Service

A. If the Department discovers that a supervisor or provider of tank service is or has supervised or performed tank service in Arizona without the Department certification required under this Article, or the tank service supervised or performed by a certified person is not in compliance with A.R.S. Title 49, Chapter 6, and the rules promulgated thereunder, the Department shall immediately notify the person performing tank service to stop work and make the area safe by securing the tank area to prevent bodily injury and unauthorized access.

B. If the Department stops work pursuant to subsection (A), before work can continue, a certified tank service provider shall determine if the work already completed complies with the standards set forth in A.R.S. Title 49, Chapter 6, and the rules promulgated thereunder and certify the work which meets those standards.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

R18-12-809. Suspension; Revocation of Certification

A. If the Department discovers that a tank service provider has falsified documents to obtain certification under this Article, the Department shall notify the tank service provider in writing, by certified mail or personal service, that certification is revoked effective 30 days after receipt of the notice, as evidenced by the return receipt or documentation of service, unless a hearing is requested pursuant to A.R.S. Title 41, Chapter 6, Article 10. The revocation under this subsection shall be for two years. The Department shall not accept an application from an individual whose certification has been revoked under this subsection for the revoked category of certification until the end of the revocation period.

B. If the Department discovers that a tank service provider has not performed tank service in compliance with A.R.S. Title 49, Chapter 6 and the rules promulgated thereunder, the Department shall notify the tank service provider in writing, by certified mail or personal service, that certification is suspended for 30 days, effective 30 days after receipt of the notice, as evidenced by the return receipt or documentation of service, unless a hearing is requested pursuant to A.R.S. Title 41, Chapter 6, Article 10.

C. If the Department discovers that a tank service provider has not performed tank service in compliance with A.R.S. Title 49, Chapter 6 and the rules promulgated thereunder, after the individual has had certification suspended pursuant to subsection (B), the Department shall notify the tank service provider in writing, by certified mail or personal service, that certification is suspended for 90 days, effective 30 days after receipt of the notice as evidenced by the return receipt or documentation of service, unless a hearing is requested pursuant to A.R.S. Title 41, Chapter 6, Article 10. The tank service provider shall surrender the certification card to the Department within 15 days following the effective date of the suspension. Failure to surrender the certification card shall result in revocation of certification for the remainder of the certification period. The tank service provider may request the certification card be returned after the 90-day suspension.

D. If the Department discovers that a tank service provider has not performed tank service in compliance with A.R.S. Title 49, Chapter 6 and the rules promulgated thereunder, after the individual has had certification suspended pursuant to subsection (C), the Department shall notify the tank service provider in writing, by certified mail or personal service, that certification is revoked for two years, effective 30 days after receipt of the notice as evidenced by the return receipt or documentation of service, unless a hearing is requested pursuant to A.R.S. Title 41, Chapter 6, Article 10. The tank service provider shall surrender the certification card to the Department within 15 days following the effective date of the revocation. The Department shall not accept an application from an individual whose certification has been revoked under this subsection for the revoked category of certification until the end of the revocation period.

E. The Department shall publish, on a quarterly basis, a list of all tank service providers who have received suspension or revocation pursuant to this Section during that quarter or whose revocation or suspension remains in effect for any portion of that quarter.

Historical Note
Adopted effective December 6, 1996 (Supp. 96-4).

ARTICLE 9. REGULATED SUBSTANCE FUND

R18-12-901. Regulated Substance Fund

Monies in the regulated substance fund created under A.R.S. § 49-1015.01 and deposited in the fund on and after July 1, 2011, except those in the monitored natural attenuation account, may be used by the Director to perform corrective actions in accordance with A.R.S. §§ 49-1017 and 49-1018.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

R18-12-902. Monitored Natural Attenuation (MNA) Account

Monies in the monitored natural attenuation account created under A.R.S. § 49-1015.01(D) and deposited in the account on or after July 1, 2011, may be used by the Director to perform corrective actions in accordance with R18-12-903.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

R18-12-903. Monitored Natural Attenuation (MNA) Program

A. MNA Program eligibility. An UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) may request that the Department perform groundwater corrective actions in accordance with A.R.S. § 49-1015.01(D) beginning July 1, 2011, if the following conditions occur:

1. The UST release or releases of a regulated substance were reported to the Department before July 1, 2006; and are eligible for the assurance fund in accordance with A.R.S. § 49-1052;
2. Removal or control of the source of contamination is complete, to the extent practicable;
3. The soil contamination associated with the release is at or below the applicable corrective action standards in accordance with R18-12-263.01;
4. Natural attenuation is occurring;
5. A groundwater corrective action plan conforming to R18-12-263.02, has been submitted and approved by the Department before July 1, 2010, in which monitored natural attenuation is all or a portion of the selected remedy; and
6. A MNA Program application in accordance with subsection (B) has been submitted and approved by the Department before July 1, 2010.

B. Contents of an MNA Program application. The MNA Program application shall be on or attached to a form provided by the Department and include:

1. Information on the applicant;
2. Information on each applicable release;
3. Environmental media currently impacted by each applicable release;
4. A site vicinity map, site location map and a site plan;
5. The as built construction diagrams of existing monitoring wells;
6. A tabulation of soil and groundwater analytical results and water level data;
7. Documentation that removal or control of the source of contamination has been completed to the extent practicable;
8. Documentation that natural attenuation is occurring; and

9. Other information that is pertinent to the MNA Program application approval.

C. Conditions for approval of a MNA Program application. After receipt of a MNA Program application submitted in accordance with subsections (A) and (B), the Department shall review and approve, deny, or request modifications to the application. The Director may deny a MNA Program application if approval would present an imminent and substantial danger to public health, welfare, or the environment. The Department may request additional information before acting on the application. The Department shall approve the application if the applicant has demonstrated to the Department's satisfaction that the information submitted under subsections (A) and (B) is true, accurate, and complete. Approval of an application under this Section means that a no further action letter as described in subsection (E) will be sent to the applicant and the Department will perform future corrective action in accordance with subsection (F).

D. Notice of approval of a MNA Program application. The Department shall provide written notice to the applicant that the MNA Program application has been approved by issuing a no further action letter in accordance with subsection (E).

E. Contents of no further action letter. The no further action letter shall notify the applicant of the following:

1. The Department is not requiring the applicant to perform additional corrective actions for soil or groundwater for the property at which the referenced UST release occurred;
2. The soil contamination associated with the release is at or below the applicable corrective action standards in R18-12-263.01;
3. The groundwater contamination associated with the release is greater than the applicable corrective action standards in R18-12-263.01;
4. The additional corrective actions will be performed by the Department as specified in subsection (F);
5. The Department shall not approve closure of the LUST case file under R18-12-263.03(E) until the applicable groundwater corrective action standards in R18-12-263.01, or the conditions of R18-12-263.04, are met for the groundwater contamination;
6. The conditions of subsection (G) that may result in rescinding the MNA Program application and no further action letter; and
7. The Department is requiring:
   a. A property access agreement from the UST owner or operator if they own the property, or from the person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I), which allows the Department to access the property to perform the necessary corrective actions specified in subsection (F);
   b. A transfer of ownership of monitor wells selected by the Department to be used to perform the corrective actions specified in subsection (F), from the UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) to the Department;
   c. The proper abandonment of monitor wells not selected by the Department for future monitoring; and
   d. The decommissioning of any remedial equipment not selected by the Department.

F. Additional corrective actions. The following corrective actions shall be performed by the Department in accordance with A.R.S. §§ 49-1005, 49-1015.01, and 49-1017:

1. Activities related to monitoring the natural attenuation of the groundwater contamination related to the UST release;
2. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if information, which was previously not known to the Department, is received by the Department and indicates that soil or groundwater contamination on the property at which the referenced UST release occurred does not meet the applicable corrective action standard under R18-12-263.01; and
3. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if site conditions change rendering monitored natural attenuation not adequate to meet the applicable corrective action standard under R18-12-263.01.

G. Rescinding an approved MNA Program application and no further action letter. The Department may rescind the approval of the MNA Program application and no further action letter under subsection (C) and require the UST owner or operator to perform corrective actions pursuant to A.R.S. § 49-1005 and the rules made thereunder, if one of the following occurs:

1. Information submitted pursuant to subsections (A), (B), or (C) was inaccurate, false, or misleading, or
2. Upon written request by the applicant.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4605, effective February 2, 2008 (Supp. 07-4).

General and Specific Statutes Authorizing the UST Rules

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.

49-1001.01. Definition of owner; rules

A. In this chapter, "owner" of an underground storage tank means a person who either:
1. Holds a legal, equitable, or possessory interest of any kind in an underground storage tank.
2. Held at the time of a release, or immediately before an underground storage tank was last operated, a legal, equitable or possessory interest of any kind in the underground storage tank.
B. A person who acquires ownership or control of property where an underground storage tank is located is not the owner of the underground storage tank if either of the following applies:
1. The person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets the requirements of ASTM standard E-1527-93 or E-1528-93, or other generally accepted commercial practices or standards for due diligence performed prior to the adoption of this standard.
2. The person has not placed regulated substances in the underground storage tank and has not dispensed regulated substances from the underground storage tank. For the purposes of this paragraph, dispensing does not mean emptying the underground storage tank for purpose of closure.
C. A person who holds indicia of ownership primarily to protect a security interest in either the petroleum underground storage tank or in the property on which the petroleum underground storage tank is or was located but who does not participate in the management of the underground storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this chapter.
D. A person who holds indicia of ownership as prescribed by subsection C of this section and who acquires ownership or control of a petroleum underground storage tank through foreclosure of the property where a petroleum underground storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release if the person does all of the following:
1. Complies with the notification requirements prescribed by section 49-1002.
2. Complies with the reporting requirements prescribed by section 49-1004, subsections A and C to the extent that the information is known to the person at the time of the report.
3. Temporarily or permanently closes the petroleum underground storage tank as prescribed by section 49-1008.
4. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.
E. A fiduciary is not an owner or operator for purposes of this chapter, except if the appointment of the fiduciary is for the purpose of avoiding liability under this chapter. This subsection does not preclude claims against assets held in an estate, a trust or any other fiduciary capacity that contains an underground storage tank in which regulated substances are placed or dispensed. Those claims may be asserted against a fiduciary in its representative capacity without regard to whether the

fiduciary is personally liable, and the liability of the fiduciary is limited to the value of the estate, trust or other property that is held in a fiduciary capacity. A fiduciary may not be a fiduciary and grantor of the same fiduciary estate.
F. The director may adopt rules to implement subsection E of this section.

49-1003. Detection of releases; record keeping requirements
A. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain a release detection system that complies with the requirements of 40 Code of Federal Regulations sections 280.40 through 280.44.
B. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain systematic and complete records of release detection information that complies with the requirements of 40 Code of Federal Regulations section 280.45.
C. The director shall adopt rules establishing release detection requirements and release detection record keeping requirements. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

49-1004. Reporting requirements
A. The operator and owner of an underground storage tank shall notify the department of each release or suspected release from the tank as soon as practicable but no later than twenty-four hours after the release or suspected release is detected.
B. The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four hours after the release is detected.
C. Notice by the operator and owner required by this section may be made orally or in writing but shall be followed within fourteen days by a written report to the department that a release or suspected release has been detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information required by rules that are consistent with federal regulations in effect on the date on which the rules are adopted.
D. The director shall prescribe by rule the reporting, investigation and confirmation actions to be taken in the event of a release or suspected release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this section shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. Until rules adopted pursuant to this subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 Code of Federal Regulations sections 280.50 through 280.53.

49-1005. Corrective action

A. When a release is discovered the owner and operator of an underground storage tank shall take immediate action to stop the release and to identify and mitigate any fire, explosion or vapor hazard.
B. The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank, except to the extent that this responsibility is limited by section 49-1016, subsection F or section 49-1019, subsection D. A person may take corrective action pursuant to section 49-1016, subsection C.
C. Nothing in this section shall prevent the director from taking or requiring corrective action pursuant to any other provision of law.
D. Corrective actions shall:
1. Assure the protection of public health and welfare and the environment.
2. To the extent practicable, provide for the control, management or cleanup of regulated substances so as to allow the maximum beneficial use of the water and soil of this state.
3. Be reasonable, necessary, cost-effective and technically feasible.
E. Notwithstanding chapter 2, article 2 of this title, the director may approve a corrective action that may result in water quality exceeding water quality standards after completion of the corrective action, if the director finds that the corrective action meets the requirements of this section. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224. The director shall adopt rules to implement this section. These rules shall include public notice provisions, criteria for the selection of corrective actions, including the level and extent of cleanup and the comparison of corrective action alternatives that may include plume remediation alternatives, monitoring, source control, controlled migration, physical containment and natural attenuation.
F. The director shall prescribe by rule the corrective actions to be taken in the event of a release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. The director shall adopt rules to permit a risk based corrective action alternative that incorporates the use of certified remediation specialists. Corrective actions shall include requirements regarding:
1. Initial response measures.
2. Initial abatement measures.
3. A site check.
4. Initial site characterization.
5. Removal of free product.
6. Investigations for soil, surface water and groundwater cleanups.
7. Responses to contaminated soil, surface water and groundwater.
G. Corrective actions may include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring.
H. Until rules adopted pursuant to subsection F of this section are in effect, corrective actions shall be accomplished in a manner consistent with and no more stringent than 40 Code of Federal Regulations sections 280.60 through 280.67.

49-1006. Statement of financial responsibility

A. If required by regulations adopted pursuant to 42 United States Code section 6991b(d) to establish evidence of financial responsibility, an owner and operator shall file with the department a statement of financial responsibility containing evidence that the owner and operator are financially capable of taking the actions required by this chapter.
B. Evidence of financial responsibility required by this section shall be established in a manner prescribed by the director by rule. The rules adopted pursuant to this section shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

49-1008. Closure
The temporary closure, permanent closure and change in service of an underground storage tank shall be accomplished in a safe and secure manner which prevents releases of regulated substances. The director shall prescribe by rule standards for these activities. Any rules adopted pursuant to this section shall be consistent with the federal regulations in effect on the date on which the rules are adopted. Until the rules adopted pursuant to this section are in effect, a temporary closure, permanent closure or change in service shall be accomplished in a manner consistent with 40 Code of Federal Regulations parts 280.70 through 280.74.

49-1009. Tank performance standards
A. A person shall not install an underground storage tank unless the underground storage tank meets all of the following requirements:
1. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank.
2. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release of a regulated substance.
3. The material used in the construction or lining of the tank is compatible with the substance to be stored.
B. Beginning January 1, 2009, a person shall not install an underground storage tank unless the underground storage tank meets the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.
C. Beginning January 1, 2009, a person shall not install a new piping component that is twenty-five per cent or more of the total linear footage of all connected piping of the underground storage tank unless all connected piping of the underground storage tank that conveys a regulated substance under pressure is brought into compliance with the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.
D. Beginning January 1, 2009, an owner or operator who installs or replaces a motor fuel dispenser that connects to an underground storage tank shall install under-dispenser containment. The under-dispenser containment shall meet the

release detection requirements of 40 Code of Federal Regulations section 280.42, subsection B, paragraph 1.
E. The owner and operator of an underground storage tank shall use an underground storage tank, a new piping component, under-dispenser containment and any secondary containment material that is made of or lined with materials that are compatible with the regulated substance stored in or dispensed from the underground storage tank.
F. The director may adopt rules specifying design, construction, installation, performance and compatibility standards for underground storage tanks. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted.
G. The director may require an owner and operator of an underground storage tank to perform or cause to be performed a tank test to determine compliance with the standards established pursuant to this section.

49-1014. Rules; policies; guidelines
A. The director shall adopt rules pursuant to title 41, chapter 6 necessary to provide procedures for the administration of this chapter and to cause the program for the regulation of underground storage tanks established by this chapter to be approved by the administrator of the environmental protection agency pursuant to 42 United States Code section 6991c.
B. The director may establish policies and guidelines for the administration of this chapter, subject to the following:
1. If a substantive policy statement as defined in section 41-1001 or a guideline is issued by the director, the director shall provide written notice to persons regulated by this chapter before the effective date of a policy or guideline that affects the substantive rights of owners and operators or other parties regulated under the underground storage tank program. The written notice shall set forth the effective date of the policy or guideline. The policy or guideline shall not be retroactive or applied retroactively except as specifically authorized by law or by the agreement of the department and the person who is regulated by this chapter.
2. The department shall not base a determination of compliance with the requirements of this chapter in whole or in part on a policy or guideline that is not specifically authorized by statute or rule.

49-1020. Fees
Each owner and operator of an underground storage tank that is subject to regulation under this chapter shall pay annually to the department a fee of one hundred dollars for each tank. An owner or operator who sold or relinquished legal, equitable or possessory interest in the property on or before January 1, 1990 shall not be responsible to pay the fee prescribed by this section. The director, with the approval of the attorney general, may abate fee balances if the administration costs exceed the amount of the fees due. The fees collected under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the underground storage tank revolving fund established by section 49-1015. The director shall adopt rules to provide for the orderly imposition and collection of the fees imposed by this section.

49-1021. Applicability

Until rules adopted pursuant to this chapter are in effect, this chapter shall apply only to the extent described by 40 Code of Federal Regulations section 280.10 and the energy policy act. Rules adopted pursuant to this chapter shall apply only to underground storage tanks not excluded or deferred by the federal regulations in effect on the date on which the rules are adopted.

49-1031. Imposition of tax

(Rpld. 1/1/24)

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance.

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the director that all regulated substances that are motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and that are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state or agencies of the United States or this state or to any of the following substances placed in underground storage tanks:

1. Naphtha-type jet fuel or kerosene-type jet fuel.

2. Regulated substances as defined in section 49-1001, paragraph 16, subdivision (b), unless such regulated substances were placed in an underground storage tank prior to July 1, 1997, and the owner or operator of the underground storage tank has paid prior to July 1, 1997 all taxes imposed by this article applicable to such regulated substances. If the owner or operator has paid those taxes, the owner or operator may elect to continue to pay the tax imposed by this article regarding such regulated substances.

D. The owner and operator of an underground storage tank regulated under this chapter are jointly and severally liable for the tax, but the owner and operator may agree between themselves and file a notarized affidavit with the director designating either the owner or operator as primarily responsible for the tax under this article.

E. Any person who purchases motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101, or diesel as defined in section 28-6001, subsection B for which the tax imposed by this section has been paid and which fuel has been placed in a tank which is not subject to the underground storage tank tax imposed by this section and from which no further bulk distribution of the fuel will be made, may claim a refund of the tax levied. Refunds shall be submitted on forms

prescribed by the director and shall be supported by substantiation for the amount of the tax paid.
F. Any person eligible to claim a refund of the tax imposed by this section, including an assignee of a refund claim, may assign such claim to the person from whom the fuel was purchased, and the assignee of the claim may claim the refund allowed under subsection E of this section provided that the assignor of the claim certifies in writing to the assignee, on forms prescribed by the director, that the assignor relinquishes all interest in the refund and shall not also claim a refund from the director.
G. If a refund claim is assigned to a person who is required to make payments under title 28, chapter 16, article 6, the refund shall be taken into account in the manner provided in section 28-6005.
H. The director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification provided for in sections 28-6003 and 28-6004. The temporary and permanent rules shall prescribe the forms for and manner in which refunds may be claimed and refund claims assigned pursuant to subsection F of this section, shall specify the circumstances in which fuel may be excluded from the quantity of fuel used to measure the tax pursuant to title 28, chapter 16, article 6, and shall prescribe the forms for and manner which the certification provided in title 28, chapter 16, article 6 shall be made.
I. Title 41, chapter 6 shall not apply to the temporary rules adopted pursuant to this section. The temporary rules shall be filed with the secretary of state and shall be effective for a period of one hundred eighty days after the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days after the date the renewed temporary rules are filed with the secretary of state.
J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

49-1082. Certification of underground storage tank service providers; rules; suspension or revocation of certification
A. Beginning from and after December 31, 1996, a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this section and the rules adopted pursuant to this section, or is supervised by a person certified in accordance with this section and the rules adopted pursuant to this section.
B. The department shall not certify a person as a tank service provider until that person completes the requirements of this section and the rules adopted pursuant to this section. In accordance with subsection D, the supervisor is responsible for all persons performing work under the direction of the supervisor and any violations of this section or rules adopted pursuant to this section are attributable to the supervisor.
C. By January 1, 1997, the department shall adopt rules for the establishment and maintenance of an underground storage tank service provider certification program. The certification program shall include the submittal and verification of information that the director determines is necessary to ensure that the tank service provider

possesses and maintains the essential knowledge, skills and work history to perform the service effectively and in a manner that protects human health and the environment. The department may establish separate certification methods for each area of tank service as it is defined, and may define the duration of the certification period, which shall be at least one year.

D. The department, on reasonable evidence, may suspend or revoke the certification of any person who fails to maintain the standards established pursuant to this section or who exhibits incompetence, negligence or fraud in performing the certified activity or in other work relating to the certified activity. A person whose certification is revoked or suspended pursuant to this subsection may appeal the decision pursuant to title 41, chapter 6, article 10.

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS (F-16-0202)

Title 20, Chapter 4, Article 12, Rules of Practice and Procedure before the Superintendent; Article 13, Loan Originators; Article 14, Investigations; Article 15, Collection Agencies; Article 16, Acquiring Control of Financial Institutions; Article 17, Arizona Interstate Bank and Savings and Loan Association Act

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

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-6**

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

FROM: Chris Kleminich, Staff Attorney

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS (F-16-0202)**
Title 20, Chapter 4, Article 12, Rules of Practice and Procedure before the Superintendent; Article 13, Loan Originators; Article 14, Investigations; Article 15, Collection Agencies; Article 16, Acquiring Control of Financial Institutions; Article 17, Arizona Interstate Bank and Savings and Loan Association Act

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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 Financial Institutions (Department) is to "promote the public welfare by protecting the financial assets of the citizens of this state through the administration of this state's statutes that relate to financial institutions and enterprises." Laws 2014, Ch. 247, § 10. This five-year-review report covers 42 rules in A.A.C. Title 20, Chapter 4, Articles 12 through 17.

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

Article 12 contains nine rules, related to rules of practice and procedure before the Superintendent, addressing scope; definitions; filing and service; commencement of proceedings and notices of hearing; answers to notices of hearing; stays; intervention; rehearing; and consent agreements.

Article 13 contains five rules, related to loan originators, addressing scope; course of study to qualify for licensure; financial responsibility; fees; and practice and procedure.

Article 14 contains three rules, related to investigations, addressing definitions; subpoenas; and fingerprints and background information.

Article 15 contains twenty rules, related to collection agencies, addressing definitions; applications; reports; records; trust accounts; articles of incorporation, bylaws, and organizing

documents; representations of a collection agency's identity; representations of the law; representations as to fees, costs, and legal proceedings; representations as to rights waived or remedies available; prohibition of harassment; contacts with debtors and others; cessation of communication with a debtor; disclosure of information to a debtor; aiding and abetting; advertising; agreements with clients; licensee names and control; representations of collection agency employees' identity or position; and duty of investigation.

Article 16 contains two rules, related to acquiring control of financial institutions, addressing definitions and applications for approval to acquire control of a financial institution.

Article 17 contains three rules, related to the Arizona Interstate Bank and Savings and Loan Association Act, addressing definitions; notice to the Superintendent of intent to acquire control of an in-state financial institution and surrender of an acquired financial institution's charter; and public notice.

Year that Each Rule was Last Amended or Newly Made

- November 13, 2000: Sections 1502, 1504, 1505
- September 12, 2001: Article 12
- December 6, 2003: Article 14
- January 3, 2004: Article 16
- July 2, 2005: Article 17
- June 4, 2006: Sections 1501, 1503, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1518, 1519, 1520, 1521
- April 22, 2011: Article 13

Proposed Action

The Department plans to submit amendments to the Council for sections 1202, 1204, 1208, 1219, 1303, 1401, 1501-1505, 1512, 1601, 1602, 1701, and 1704 by December 31, 2016.

Summary of Reasons for the Proposed Action

As discussed in detail below, the Department has identified a number of issues with the aforementioned 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. **<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. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective in achieving their objectives, with the following exceptions:

- Section 1219: The rule refers to a rehearing solely in contested cases, and should be amended to reflect that rehearing is also permitted for appealable agency actions.
- Section 1503: Subsection (B) is duplicative of A.R.S. § 32-1055(D)(4), and should be removed.

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 received no written criticisms of the rules during the last five years.

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

Yes. As general statutory authority, the Department cites to A.R.S. § 6-123(2), under which the Superintendent of the Department may "adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title [Title 6, Banks and Financial Institutions] and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises."

As specific statutory authority, the Department cites to a number of statutes, most notably A.R.S. § 6-123(1), under which the Superintendent may "[e]xercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises."

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, with the following exceptions:

- Section 1202: The statutory references in the definitions of "contested case" and "license" are no longer correct. A technical correction should be made to the definition of "appealable agency action". The definition of "Department" should not include "State" in the Department's name.
- Section 1219: As noted above, the rule is inconsistent with the Uniform Administrative Hearing Procedures, A.R.S. § 41-1092, et seq.
- Section 1303: The rule refers to A.R.S. §§ 6-991.03(B)(4) and (B)(6), and should be changed to refer to A.R.S. §§ 6-991.03(B)(6) and (B)(8).
- Section 1501: The statutory reference in the definition of "collection agency" is incorrect.
- Section 1502: Subsection (A)(2) requires that applicants pay a nonrefundable investigation fee and original license fee, under A.R.S. § 6-126. The stated fees, however,

are not referenced in A.R.S. § 6-126. With regard to applications, the Department only requires an application fee and a license renewal fee as permitted by A.R.S. § 6-126. The Department does not charge an "investigation fee" as suggested by the rule, nor does the statute permit charging such a fee. In addition, subsection (C) is inconsistent with A.R.S. § 32-1025(A).

- Section 1503: The rule is inconsistent with A.R.S. § 32-1023(C).

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 are not in conflict with statute, 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, with the following exceptions:

- Section 1202: The rule contains incorrect statutory references in the definitions of "contested case", "license", and "appealable agency action".
- Section 1204: Subsection (A) should read "or shall file them by any method…" instead of "shall serve them by any method." Subsection (A) should also be amended to include an option for electronic delivery.
- Section 1208: It is unclear as to why "Notice of Hearing" is included in the heading of the rule, instead of "Request for Hearing", as the rule contains a list of appealable agency actions and contested cases that give an aggrieved party the right to request a hearing.
- Section 1401: The definition of "licensee" should be made clearer.
- Section 1504: In subsection (A), a statutory reference to advanced written notice for a computer recordkeeping system is outdated.
- Section 1505: Subsection (C), should be amended by adding, after the word "client", "except as required, and with specificity, to adhere or uphold provisions of said contract". Subsection (D) has an incorrect citation to A.R.S. § 44-317, as the current reference is A.R.S. § 44-307.
- Section 1512: Subsection (B) and Subsection (C) should be amended to improve general clarity. In addition, the term "reasonable hours" should be defined.
- Section 1704: "Superintendent of Banks" is inconsistent with the current agency name.

8. <u>Stringency of the Rules:</u>

a. <u>Are the rules more stringent than corresponding federal law?</u>

Yes. The following rules are more stringent than corresponding federal law:

- Section 1602: Subsection (B)(4) imposes a more stringent requirement for persons who make an initial application for control over a financial institution. The rule requires audited financial statements from applicants. Under the Federal Deposit Insurance Act (FDIA), the requirement for financial statements is for them to be prepared in accordance

with generally accepted accounting principles. The requirement for audited statements may cause additional cost for each applicant.

- Section 1704: The rule is more stringent than the FDIA and Federal Reserve Regulation Y, as the rule requires a duplicate copy of each public notice from an applicant, which is no longer required by federal law.

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

No. The Department indicates that there is not statutory authority to exceed the requirements of federal law.

9. <u>For rules adopted after July 29, 2010:</u>

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

No. Article 13 was adopted on April 22, 2011. The Department notes that the rules do not require issuance of a loan originator license, and provide support for the statutory requirement.

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 indicates that it proposed changes to fourteen rules in the 2011 five-year-review report, but did not complete the proposed action 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 submit amendments to the Council for sections 1202, 1204, 1208, 1219, 1303, 1401, 1501-1505, 1512, 1601, 1602, 1701, and 1704 by December 31, 2016.

<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
M E M O R A N D U M

MEETING DATE: March 1, 2016 **AGENDA ITEM: D-6**

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

FROM: GRRC Economist

DATE: February 12, 2016

SUBJECT: **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS (F-16-0202)**
Title 20, Chapter 4, Article 12, Rules of Practice and Procedure before the Superintendent; Article 13, Loan Originators; Article 14, Investigations; Article 15, Collection Agencies; Article 16, Acquiring Control of Financial Institutions; Article 17, Arizona Interstate Bank and Savings and Loan Association Act

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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 statements (EISs) from the most recent rulemaking were available for all of the Chapter 4 rules contained in the five-year-review report, with the exception of rules contained in Article 12. This five-year-rule review report covers 42 sections in A.A.C. Title 20, Chapter 4.

Article 12 rules relate to practice and procedure before the Superintendent, Article 13 rules relate to Loan Originators, Article 14 rules relate to investigations carried out by the Department of Financial Institutions (hereafter referred to as the Department), Article 15 rules relate to collection agencies, Article 16 rules relate to acquiring control of financial institutions, and Article 17 rules relate to the Arizona interstate Bank and Savings and Loan Association Act.

Since the last rule review, there have been 106 requests for hearings as a result of 655 actions initiated by the Department. Of the requests for hearings, 92% were settled favorably during the informal settlement process, and therefore, did not go before the Office of Administrative Hearings. The Office of Administrative Hearings ruled on 8 actions taken by the Department.

The number of licensees has changed since the previous five-year-review report submitted in FY 2011. The changes are noted in Table 1.

Table 1. ***Number of Licensees***

Licensee Type	FY 2011	FY 2016
Collection Agencies	486	713
Advanced Fee Loan Brokers	na	18
Banks	29	12
Commercial Mortgage Bankers	5	19
Consumer Lenders	20	51
Credit Unions	31	20
Debt Management Companies	14	34
Escrow Agents	74	109
Financial Holding Companies	0	0
Money Transmitters	48	93
Mortgage Bankers	379	362
Mortgage Brokers	922	351
Motor Vehicle Dealers	652	818
Premium Finance Companies	33	35
Sales Finance Companies	402	615
Commercial Mortgage Brokers	na	57
Loan Originators	na	9541
Trust Companies	4	6

With the exception of a few rules discussed in the five-year-review report, the Department believes the rules in Article 12, 13, 14, 15, 16 and 17 are generally effective in achieving their stated objectives. The Department does express interest in proposing several rule amendments that would further align rules with the statute. The Department intends to submit a Chapter 4 rulemaking package by December 2016.

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

The Department states that the benefit of the rules in Articles 12, 13, 14, 15, 16 and 17 outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

The EIS submitted in FY 2011 indicated that there would be an estimated administrative cost of $2,500 for each rule implemented. This cost is no longer applicable.

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

No analysis was submitted to the Department 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, the staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Lauren W. Kingry
Superintendent of Financial Institutions

Douglas A. Ducey
Governor

November 25, 2015

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

Reference: Five-Year Rule Review Report for A.A.C. Title 20, Chapter 4, Articles 12 through 17

Mr. Parke:

Enclosed is a paper copy of the Five-Year Rule review report due from this agency by November 30, 2015. One copy will also be delivered electronically. The timing of this delivery will place this report on the Council's agenda for February 2016.

The Department certifies that it is in compliance with A.R.S. §41-1091.

All rules scheduled for review have been reviewed because the Council did not reschedule a review under A.R.S. §41-1056(H).

If you or your staff have any questions, or will require any further revision to the report before it is considered for approval, you can contact Legislative Liaison Stephen Briggs at 602-771-2778 or feel free to call me at 602-771-2772.

Sincerely,

Lauren W. Kingry
Superintendent

LWK:sb

Enc: One paper copy and one electronic copy of required documents

cc: Chris Kleminich, Staff Attorney, christopher.kleminich@azdoa.gov

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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Five-Year-Review Report

20 A.A.C. 4, Articles 12,13,14,15,16,17

November 30, 2015

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INTRODUCTION

The Arizona Department of Financial Institutions (Department) is responsible for execution of the laws of this state relating to financial institutions and enterprises pursuant to A.R.S. §6-110.

The Department is statutorily charged with the licensing, supervision and regulation of state-chartered financial institutions and enterprises with responsibility that is twofold: Ensuring the safety and soundness of the financial services industry in Arizona, as well as compliance with state and applicable federal laws. The Department also investigates complaints that are filed by consumers against licensed entities and directs appropriate remedial action if the violations are substantiated.

This five year rule review report covers 42 sections in A.A.C. Title 20, Chapter 4, Article 12 (nine rules relating to the rules of practice and procedure before the Superintendent), Article 13 (five rules under review for the first time relating to Loan Originators), Article 14 (three rules relating to investigations carried out by the Department), Article 15 (twenty rules relating to collection agencies), Article 16 (two rules relating to acquiring control of a financial institutions), and Article 17 (three rules relating to the Arizona interstate Bank and Savings and Loan Association Act).

INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES
For convenience, the numbering in this report mirrors R1-6-301(A).

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed, it is not included in the analysis of each individual rule. *Pursuant to A.A.C. R1-6-301(B)*

3. Effectiveness in Achieving Objectives: With the exception of the rules discussed in the individual rule review, the remaining rules in Article 12, 13, 14, 15, 16 and 17 are generally effective in achieving their stated objectives. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department Governing statutes. Also, the Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose.

4. Consistency with Statutes and Other Rules Made by the Agency: With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 12, 13, 14, 15, 16 and 17 are consistent with statute and other rules made by the agency. The Department consulted with its field examiners and division managers who did not find any inconsistencies with the rules subject to this report except the rules discussed in the individual rule review.

5. Enforcement: With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 12, 13, 14, 15, 16 and 17 are enforced through the established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been so substantive problems with enforcing the rules as written.

6. Clarity, Conciseness, and Understandability of the Rule: With the exception of the rules discussed in the individual rule review, the remaining rules are clear, concise, and understandable as reported by the field examiners and division managers.

7. Criticisms Received within the Last Five Years: The Department has not received any written criticisms of any of the rules in Articles 12, 13, 14, 15, 16 and 17 within the past five years as reported from the examiners and division managers.

8. Estimated Economic, Small Business and Consumer Impact:

Article 12. Rules of Practice and Procedure Before the Superintendent
The Department is unable to locate the Economic, Small Business and Consumer Impact Statement that was submitted with the last amendment to the Rules contained in Article 12. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated industry and/or the public. Since the last rule review, there have been 106 requests for hearings as a result of 655 actions initiated by the Department. 92% of the requests for hearings were settled favorably during the informal settlement process and therefore did not go before the Office of Administrative Hearings. The Office of Administrative Hearings ruled on 8 actions taken by the Department.

Article 13. Loan Originators

The adopted rules are intended to satisfy statutory requirements outlined in the loan originator statutes. The rules specify the following: who the rules are intended for; what is required in the course of study for pre-licensure and continuing education; how to demonstrate financial responsibility; the fees for application, licensure, and maintenance of the license; and the practice and procedure for challenging information that the Superintendent enters into the Nationwide Mortgage Licensing System and Registry. The statutes explicitly state that the Superintendent shall establish the details in these noted areas, and that is what these rules are intended to do. Without these rules, the Department will not be able to collect fees related to loan originator licensing, nor will there be clear guidelines for the course of study by which applicants and licensees must abide.

Article 14. Investigations

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 14. The EIS indicated that there would be an estimated cost of $2,500 to the department in administrative costs, and that cost is no longer applicable.

The numbers of licensees indicated in the EIS have also changed. There are now 12 banks (down from 29), 713 collection Agencies (up from 486), 19 commercial mortgage bankers (up from 5), 51 Consumer Lenders (up from 20), 20 credit unions (down from 31), 34 debt management companies (up from 14), 109 escrow agents (up from 74), 0 Financial Institution Holding Companies, 93 money transmitters (up from 48), 362 mortgage bankers (down from 379), 351 mortgage brokers (down from 922), 818 motor vehicle dealers (up from 652), 35 premium finance companies (up from 33), 615 sales finance companies (up from 402), and 6 trust companies (up from 4). It should be noted that deferred presentment companies (payday lenders) are no longer a license type in Arizona, so that number has gone to zero. Furthermore, since the EIS was written, statute has added 3 license types; advance fee loan brokers (18), commercial mortgage brokers (57) and loan originators (9,541).

Article 15. Collection Agencies

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 15. The EIS indicated that there would be an estimated administrative cost of $2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, the number of collection agencies has increased from 486 to 713; however this minimal increase is not believed to have an adverse economic impact on the Department.

Article 16. Acquiring Control of Financial Institutions

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 16. The EIS indicated that there would be an estimated administrative cost of $2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, bank licensees have gone down from 29 to 12, consumer lenders have gone up from 20 to 51, credit unions have gone down from 151 to 20, savings and loan companies have remained the same at 0, trust companies have gone up from 4 to 6, and trust divisions have remained the same at 0.

Article 17. Arizona Interstate Bank and Savings and Loan Association Act

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 17. The EIS indicated that there would be an estimated administrative cost of $2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, bank licensees have gone down from 29 to 12, financial institutions holding companies remain at 0, and savings and loan associations still remain at 0.

9. Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States:

There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on the state's business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

10. Completed Previous Five Year Rule Review: Articles 12, 14, 15, 16, and 17 was the subject of a normal five-year rule review in 2011 and approved by GRRC. The Department proposed changes to 14 rules in the previous report. The Department identified the following issues:

R20-4-1202: Update the statutory reference in the definition of "license" and to remove state in the definition of Department.

R20-4-1204: Amend for clarification by changing the word "serve" to "file" in Subsection A.

R20-4-1208: Remove reference to Notice of Hearing

R20-4-1209: Amend Subsection (C) so that it is not redundant.

R20-4-1219: Amend to reference rehearing in contested cases and in appealable agency actions. Also, remove Subsection (H) as it is a contradiction with statute.

R20-4-1401: Amend to clarify that licensees are only financial institutions or enterprises licensed with the Department of Financial Institutions.

R20-4-1405: Clarify rule as it relates to whom the Department has the authority to fingerprint.

R20-4-1501: Amend the statutory reference in the definition of "collection agency".

R20-4-1502: Amend to clarify duplications, and incorrect references.

R20-4-1503: Amend by removing Subsection (B).

R20-4-1504: Amend to clarify the confusion of "timely manner".

R20-4-1505: Correct an ARS citation from A.R.S. §44-307 to A.R.S. §44-317.

R20-4-1512: Amend Subsection B and remove Subsection C.

R20-4-1704: Amend rule to be consistent with the agency's new name.

The Department planned to submit a rulemaking to the Council by December 2011 when the moratorium expired but the moratorium was continued and is now set to expire December 31, 2015.

11. Probable Benefits of the Rule: The benefit of the rules in Articles 12, 13, 14, 15, 16 and 17 outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

12. Stringency Compared with Corresponding Federal Law. With the exception of the rules discussed in the individual rule review, no rule in this report was considered to be more stringent than federal rules or statutes unless there is statutory authority to exceed the requirements for that federal law. This was determined by analyzing Title 6, Arizona Revised Statutes, and an analysis of applicable federal laws including by the field examiners and division managers.

13. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. §41-1037. No rule in Articles 12, 14, 15, 16 and 17 was adopted after July 29, 2010, therefore no analysis for compliance is required. Article 13 was adopted on April 22, 2011 and while the individual rules do not require issuance of an individual license, they are in support of statutes that require issuance of an individual loan originator license and fall under the exemption of A.R.S. §41-1037(A) 1-4 in compliance with A.R.S. §§ 6-126, 6-991, 6-991.01, 6-991.02, 6-991.03, and 6-991.04 and 6-991.05.

14. Proposed Course of Action: The Department will propose to Council for approval to amend and/or repeal the rules that are discussed in the individual rules review within one year after the moratorium expires as it is currently slated to do on December 31, 2015.

ANALYSIS OF INDIVIDUAL RULES

Article 12. Rules of Practice and Procedure Before the Superintendent

R20-4-1201 Scope of Article

1. Authorization of the Rules by Existing Statutes. The Department's general authority derives from Arizona Revised Statutes (hereinafter, "A.R.S.") § 6-123(2), which provides general authority to the Superintendent (who is the chief officer of the Department) to make rules. More specifically, A.R.S. § 6-138 authorizes the conduct of the hearings contemplated by these rules. Finally, A.R.S. § 6-123 (2) directs the making of rules ". . . necessary or appropriate to . . . enforce . . . the purposes of . . ." Title 6, A.R.S. That title creates and authorizes the activities of the Department in regulating the State's financial institutions, enterprises.

2. Objective. The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Arizona Administrative Code (hereinafter, the "Code") so that the public and the regulated community will better comprehend it.

R20-4-1202- Definitions

1. Authorization of the Rules by Existing Statutes. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. The Superintendent's specific authority for this rule is under A.R.S. §6-138, which provides authority to conduct hearings.

2. Objective. The objective of the rule is to provide definitions for terms used in Article 12 of the Code.

4. Consistency with Statutes and Other Rules Made by the Agency. The statute has been updated since this rule was established and therefore the statutory reference in the definition of "Contested case" is no longer correct. The actual reference should be A.R.S. §41-1001(5). Also, the statutory reference to the definition of "License" is no longer correct. The actual reference should be A.R.S. § 41-1001(12). The Department proposes to insert parentheses between the numbers 2 and 3 of the statutory reference in the definition of "appealable agency action." Furthermore, for the purpose of consistency; the definition of "Department" should not include "State" in the department's name.

6. Clarity, Conciseness, and Understandability of the Rule. The rule is clear and concise, except for the incorrect statutory reference in the definition of "Contested case", "License", and "Appealable agency action".

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report indicated the intention to make the same change as is being proposed in this report

by December 2011. It is unclear as to why this change was not made with the last five years; however it is probably due to the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes to amend R20-4-1202 to update the statutory reference in the definition of "Contested case" and "License". The Department also proposes to remove "state" in the definition of "Department," and to insert parentheses between the numbers 2 and 3 of the statutory reference in the definition of "appealable agency action." The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it is currently slated to do on December 31, 2015.

R20-4-1204 Filing; Service

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. In addition, A.R.S. § 6-123(1) specifically requires the Superintendent to exercise ". . . all powers necessary . . ." in enforcing and administering these rules.

2. **Objective.** The objective of the rule is to provide procedures for filing and serving documents pertinent to contested cases and appealable agency actions.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, except that in Subsection (A) it should read, "or shall *file* them by any method…," not "shall *serve* them by any method." This rule would also be clearer if Subsection (A) included electronic delivery. The Office of Administrative Hearings moved to paperless filings and in 2012 our attorneys researched and found that electronic e-mail service is acceptable as OAH further explained R2-19-108 by issuing a Substantive Policy Statement clarifying that "Express Mail" mentioned in Subsection (A) includes e-mail delivery. The Department has since been using electronic delivery and would like the rule to state it to avoid unnecessary research in the future.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes to amend R20-4-1204 Subsection (A) to read, "or shall *file* them by any method…," not "shall *serve* them by any method." The Department would also like to propose adding electronic mail as an option of delivery. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1208 Commencement of Proceedings; Notice of Hearing

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make

rules. Specifically, this rule lists exact actions that the Department might take that allows a person to appeal that action and receive a fair hearing in relation to A.R.S. §41-1092.03 (B).

2. **Objective.** The objective of the rule is to identify appealable agency actions or contested cases appropriate for obtaining a hearing for any party who may be adversely affected or whose legal rights, duties, or privileges are determined by an appealable agency action or contested case issued by the Department.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, although it is unclear as to why "Notice of Hearing" is included in the heading of the rule, instead of "Request for Hearing" since the content of the rule is a list of appealable agency actions and contested cases that gives an aggrieved party the right to *request a hearing*.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make a change to remove "Notice of Hearing" from the heading by December of 2011. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes to amend the heading of this Section to change the heading reference of the rule from "Commencement of Proceeding: Notice of Hearing" to "Commencement of Proceedings; Request for Hearing". The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1209 Answer to Notice of Hearing

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1), 6-123(2), and 6-123(3) provide specific authority for the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to specify those eligible to respond to a notice of hearing, the time limits for filing a response, the required content of any response, the effect of a default, and the effect of a failure to state a defense.

10. **Completion of the Previous Five-Year-Rule Report Process.** The course of action indicated in the previous Five Year Rule Review proposed to amend Subsection (C) so that it is not redundant in using the words "to qualify an assertion" The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department reported in the last rule review that it would amend this section to eliminate redundancy, but in re-review, the Department found that this rule is not redundant and no action is necessary to change or alter this rule.

R20-4-1210 Stays

1. Authorization of the Rules by Existing Statutes. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements A.R.S. § 6-137(D).

2. Objective. The objective of the rule is to specify the circumstances under which an aggrieved person may request a stay of an order from the Superintendent until the matter can be heard and decided in a hearing.

R20-4-1211 Intervention

1. Authorization of the Rules by Existing Statutes. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.

2. Objective. The objective of the rule is to specify those persons entitled to intervene in a proceeding before the Superintendent.

R20-4-1219 Rehearing

1. Authorization of the Rules by Existing Statutes. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-138 provides specific authority for the Superintendent to conduct hearings, and this Section implements that authority.

2. Objective. The objective of the rule is to specify the procedures and grounds for obtaining a rehearing of a matter decided by the Superintendent.

3. Effectiveness in Achieving Objectives. The rule is not efficient or effective because the rule refers to a rehearing solely in contested cases. The statute also permits a rehearing in appealable agency actions.

4. Consistency with Statutes and Other Rules Made by the Agency. This Section is inconsistent with the Uniform Administrative Hearing Procedures A.R.S. § 41-1092, et seq., because the Rule refers to rehearing solely in contested cases, while the Statute also permits rehearing in appealable agency actions. Subsection (H) is also inconsistent with the Arizona Administrative Procedure Act because the rule allows the Department to deny any opportunity for administrative review based on certain circumstances, while A.R.S. § 41-1092.09 gives the explicit authority to a party to file a motion for a rehearing.

6. Clarity, Conciseness, and Understandability of the Rule. The rule is clear and concise, except that it applies to contested cases and appealable agency actions as demonstrated above.

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to make a change to amend this section to reference rehearing both in contested cases and in appealable agency actions. The Department also planned to remove Subsection (H) as it is in direct contradiction with statute. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. Proposed Course of Action. Although the Department is currently following the statute and not the rule, the Department proposes to amend this section to reference rehearing both in contested cases and in appealable agency actions. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1220 Consent Agreements

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-138 provides specific authority for the Superintendent to conduct hearings, and this Section implements that authority.

2. Objective. The objective of the rule is to specify the circumstances that permit the resolution of a proceeding by consent agreement.

Article 13. Loan Originators

R20-4-1301 Scope of Article

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-126, 6-991.03, 6-991.04.

2. Objective. The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Code so the public and the regulated community has a clear understanding of who is licensed and the required conduct of licensee.

10. Completion of the Previous Five Year Rule report Process. This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, and this is the first rule review.

12. Stringency Compared with Corresponding Federal Law. The S.A.F.E. Act, a Federal Law, also affects the licensing of loan originators. The rule is not more stringent than Federal law.

R20-4-1302 Course of Study to Qualify for Licensure

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-991.03, 6-991.04.

2. Objective. The object of this rule is to provide clarity to the loan originator as to what courses will be acceptable to the Superintendent. The rule is to further clarify the number of hours of education required to be taken.

10. Completion of the Previous Five Year Rule report Process. This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, this is the first rule review.

R20-4-1303 Financial Responsibility

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-991.03.

2. Objective. The objective of the rule is to detail the ways a licensee can demonstrate they are financially responsible.

4. Consistency with Statutes and Other Rules Made by the Agency. This rule is not consistent with the statute. The rule refers to A.R.S. Section 6-991.03(B)(4) and (B)(6). Since the rule was made, there have been changes to the statutes. The referenced statutes in the rule now refer to A.R.S. Section 6-991(B)(6) and (B)(8) respectively. The Agency is enforcing the rule as it was intended.

10. Completion of the Previous Five Year Rule report Process. This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, this is the first rule review.

14. Proposed Course of Action. The only changes that should be made to this rule is to amend the reference to A.R.S. Section 6-991.03(B)(4) and (B)(6) to 6-991.03(B)(6) and (B)(8) respectively. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1304 Fees

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-126, 6-991.03, 6-991.04, 6-991.07.

2. **Objective.** The objective of the rule is to specify the program fee amounts set by the Superintendent pursuant to A.R.S. §§ 6-126, 6-991.03, 6-991.04, 6-991.07. It provides clear guidelines on the fees required to be paid to the Agency for applying for and maintaining this license

8. **Estimated Economic, Small Business and Consumer Impact.**
The Department will realize no immediate economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the Financial Services Fund, established by A.R.S. § 6-991.21. Under that provision, at a point in the future, the Department will realize the benefit of those funds when sums are appropriated by the legislature for use in supervising and regulating loan originators. That future, contingent benefit arises not under these rules but as a result of possible legislative appropriations. The Department expects to realize an indirect economic benefit from these rules because they will facilitate communication with licensees and applicants about how to satisfy the demands of the new licensing program.

10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011. This is the first rule review.

R20-4-1305 Practice and Procedure

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-991.03, 6-991.04.

2. **Objective.** The object of this rule is to provide the process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011. This is the first rule review.

12. **Stringency Compared with Corresponding Federal Law.** The S.A.F.E. Act requires that loan originator supervisory authority has a process in place for challenging information contained in the nationwide mortgage licensing system. The rule is not more stringent than Federal law.

Article 14. Investigations

R20-4-1401 Definitions

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent to conduct investigations, as permitted by A.R.S. § 6-124.

2. **Objective.** The objective of the rule is to specify the meaning of terms used in this Article of the Code.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise with the exception of the definition of "licensee". Currently it states that a licensee is a financial institution or enterprise; however, not every financial institution or enterprise is a licensee. There should be clarification that the definition only pertains to financial institutions or enterprises licensed by the Department of Financial Institutions.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes that this rule be amended to clarify that licensees are only financial institutions or enterprises licensed with the Department of Financial Institutions. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1403 Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated at A.R.S. §§ 12-2212 and 6-124.

2. **Objective.** The objective of the rule is to specify the method of service of a subpoena issued by the Superintendent, and the circumstances in which the Superintendent may issue or amend a subpoena.

R20-4-1405 Fingerprints; Background Information

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent to obtain fingerprints, as permitted by A.R.S. §§ and 6-123(4) and 6-123.01.

2. **Objective.** The objective of this rule is to provide guidance as to whom the Agency may conduct an examination or investigation on. It also provides clarity regarding the ability to obtain a criminal record on such persons.

Article 15. Collection Agencies

R20-4-1501 Definitions

1. Authorization: The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.

2. Objective: The objective of the rule is to define the terms used in this Article.

4. Consistency. The statutory reference in the definition of "collection agency" is incorrect. It currently says A.R.S. § 32-1001(A)(2) and it should simply read A.R.S. § 32-1001(2).

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. Course of Action. The Department proposes to amend the statutory reference in the definition of "collection agency" as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1502 Applications

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1021.

2. Objective. The objective of the rule is to specify the details of the application process for collection agencies for new, renewal and provisional licenses, and to list the documents applicants must submit in support of an application.

4. Consistency with Statutes and Other Rules Made by the Agency. There are some questions with regard to the effectiveness of a few provisions in this Rule. In Subsection (A) (2), the Rule requires that applicants pay a nonrefundable investigation fee and original license fee under A.R.S. § 6-126; however the stated fees are not referenced in A.R.S. § 6-126. With regard to applications, the Department only requires an application fee and a license renewal fee as permitted by A.R.S. § 6-126. The Department does not charge an "investigation fee" as suggested by the rule, nor does the statute permit charging that fee.
With regard to "C" of this rule, it is not consistent with A.R.S. Section 32-1025(A). The rule states an applicant for renewal **shall** include a financial statement. The statute provides the applicant for renewal an opportunity to request an extension in which to submit the financial statement.
Subsection (F) is confusing because it refers to the request for a provisional license as an "Application for a Provisional License," yet the statute does not refer it to it as an application,

nor is it treated as an application by the Department. Provided that the individual shows proof to the department that they fall within the provisions of A.R.S. § 32-1027, the Superintendent is required to issue a provisional license. The verbiage should be amended to clarify that it is a "request" for a provisional license, versus an "application."

6. Clarity, Conciseness, and Understandability of the Rule. This rule is not clear and concise as there are inconsistencies (as noted above) relating to the statutory language.

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. Proposed Course of Action. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1503 Reports

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. §§ 32-1023 and 32-1055.

2. Objective. The objective of the rule is to specify the reporting duties of Collection Agencies under this article.

3. Effectiveness in Achieving Objectives. The Department feels that Subsection (B) is ineffective in achieving it objective since it is duplicative of A.R.S. § 32-1055(D)(4) and should be amended to remove it.

4. Consistency with Statutes and Other Rules Made by the Agency. There is inconsistency with the statute and section "A" of this rule. Section "A" states that a collection agency shall notify the Superintendent in writing within ten days of a change in the Active Manager. It further states that with that notice, the collection agency shall provide a Statement of Personal History for the new Active Manager. The statute, A.R.S. 32-1023(C) provides the collection agency 90 days from the termination of the Active Manager to replace and notify the superintendent with a new qualified person.

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. Proposed Course of Action. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1504 Records

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.

2. Objective. The objective of the rule is to require maintenance of records that allow the Department to examine the Collection Agencies and determine if their business is conducted in compliance with applicable law and regulations.

6. Clarity, Conciseness, and Understandability of the Rule. Subsection (A) of the rule requires a licensee to give advanced notice to the Superintendent if the licensee wants to use a computer recordkeeping system. The statutory reference to advanced written notice for a computer recordkeeping system is outdated.

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to clarify the discrepancy between a "timely manner" and "three working days" for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making. The Department no longer feels this rule change is necessary.

11. Probable Benefits Outweigh Probable costs/Rules Impose Least Burden on Persons. Other than the burden of providing the Department written notice of the use of a computer recordkeeping system, this rule imposes the least burden and costs to the entity as it is provides clarification to the collection industry.

14. Proposed Course of Action. The Department proposes to clarify and update this rule to eliminate the requirement to give an advanced written notice to the Department prior to using a computer recordkeeping system. Subsection (A) should read, "The Department shall require a licensee to keep and maintain at all times correct and complete books, accounts, and records." The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1505 Trust Account

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.

2. Objective. The objective of the rule is to require that Collection Agencies keep funds collected for creditor clients segregated from the Collection Agencies' money and, thereby, to protect the interests of both creditor clients and debtors.

6. Clarity, Conciseness, and Understandability of the Rule. The rule is clear and concise with the exception of two items. In subsection (C), in the first sentence after the word "client", should be amended by adding, "except as required, and with specificity, to adhere or uphold provisions of said contract". This amendment would provide clarity to the "Licensee." Also, subsection (D) has an incorrect citation to A.R.S. § 44-317, the current reference is A.R.S. § 44-307.

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to clarify the incorrect statutory reference in subsection (D). The Department did not take action because of the Governor's Moratorium on Rule Making.

14. Proposed Course of Action. The Department proposes to clarify the incorrect statutory reference. The Department will also propose to add to Subsection (C), "except as required, and with specificity, to adhere or uphold provisions of said contract" after the word "client" to provide clarity to the Licensee." The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1506 Articles of Incorporation; Bylaws; Organizing Documents

1. Authorization.
The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1021.

2. Objective.
The objective of the rule is to specify what documentation is required and how long the licensee has to provide it to the Department after amending articles of incorporation or bylaws.

R20-4-1507 Representations of Collection Agency's Identity

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. Objective. The objective of the rule is to specifically limit the content of representations a Collection Agency may make about its identity in its contacts with debtors.

R20-4-1508 Representations of the Law

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about the state of the law in its contacts with debtors.

R20-4-1509 Representations as to Fees, Costs and Legal Proceedings; Disinterested Counsel Required

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about collection of attorney's fees, collection costs, or the imminence of legal proceedings in its contacts with debtors.

R20-4-1510 Representations as to as to Rights Waived or Remedies Available

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about the debtor's rights and remedies in its contacts with debtors.

R20-4-1511 Prohibition of Harassment

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of persuasive communications a Collection Agency may employ in its contacts with debtors.

R20-4-1512 Contacts with Debtors and Others

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of, and the parties to, telephonic communications a Collection Agency may employ in its efforts to collect a debt.

6. **Clarity, Conciseness, and Understandability of the Rule.** There is some question about the reason for separating Subsection (B) and Subsection (C). It seems like it would make more sense to indicate in subsection (B) that "a collection agency shall not threaten to contact or contact a third party…" and then remove Subsection (C). Also, there is no definition for "reasonable hours" provided in this Rule. It would help clarify the rule by defining "reasonable hours" as "after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location" to align the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p).

10. **Completion of the Previous Five-Year-Rule Report Process.**
The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making. The Department will propose to Council for approval to amend the rule after the moratorium expires as it currently slated to do on December 31, 2015.

12. **Stringency Compared with Corresponding Federal Law.** Federal law does apply to this rule as the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p) defines when a consumer may be called. The federal law provides that "a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location." Subsection (A) of this rule does not specifically define when a consumer may be called and so it is less stringent than and not consistent with federal law.

14. **Proposed Course of Action.** The Department proposes to amend the Rule to clarify the two issues raised above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1513 Cessation of Communication with the Debtor

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to cut off contacts by a Collection Agency with a debtor who is represented by a lawyer. This section also specifies the duties of a Collection

Agency notified in writing by a debtor that the debtor either refuses to pay a debt or that the debtor no longer wants to communicate with the Collection Agency.

R20-4-1514 Disclosure of Information to Debtor

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to require disclosure by a Collection Agency of specified factual information to debtors from whom it attempts to collect debts.

R20-4-1515 Aiding and Abetting

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.

2. **Objective.** The objective of the rule is to prohibit a Collection Agency's use of an unlicensed party using prohibited practices to collect debts in violation of these rules and statutory law.

R20-4-1516 Advertising

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to prohibit a Collection Agency's use of certain specified deceptive advertising practices.

R-20-4-1518 Agreements with Clients

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to state the requirement of a written agreement or acknowledgement between a Collection Agency and a creditor client. The Section also specifies the minimum contents of the agreement or acknowledgement.

R20-4-1519 Licensee Names and Control

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to describe the criteria used by the Department to decide the propriety of a Collection Agency's proposed name.

R20-4-1520 Representations of Collection Agency Employees' Identity or Position

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specify the means by which a Collection Agency can protect the identity and personal safety of its employees, and ensure the truthfulness of communications with debtors, while preserving the Department's ability to discipline Collection Agencies and employees of Collection Agencies.

R20-4-1521 Duty of Investigation

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. §§ 32-1051 and 32-1055.

2. **Objective.** The objective of the rule is to specify the defensive claims of a debtor that a Collection Agency has an affirmative duty to investigate.

Article 16. Acquiring Control of Financial Institutions

R20-4-1601 Definitions

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-145(A) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to provide definitions for the terms used in Article 16, and in the application package.

12. **Stringency Compared with Corresponding Federal Law.** An inconsistency is noted in the A.R.S. definition of "Control". The A.R.S. 6-141(2) is more stringent in defining control as 15 percent as compared with the federal banking regulations under the Federal Deposit Insurance Act [Codified 12 U.S.C. 1817(j)] 1817(j)(8)(B) and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25 percent.

14. **Proposed Course of Action.** The Department proposes to amend the statutory reference in the definition of "control" to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act, as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1602 Application for Approval to Acquire Control of Financial Institution

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. This Section implements A.R.S. § 6-145(A), which provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to provide the form of application required by A.R.S. § 6-145(A), and to prescribe the form and the information, data or records which may be required in the application package.

12. **Stringency Compared with Corresponding Federal Law.** The rule imposes a more stringent requirement for persons who make an initial application for control over a financial institutions in section (B)(4), in that the rule requires audited financial statements from applicants and under the Federal Deposit Insurance Act, the requirement for financial statements is that the financial statements are prepared in accordance with generally accepted accounting principles. The requirement for audited statements may cause additional cost for each the applicant; however, the Federal Deposit Insurance Act is more stringent with regard to the number of years of financial statements that are required (i.e., "for each of the five fiscal years preceding the date of notice…and interim statement[s]…, as of a date not more than ninety days prior to the date of the filing…") *12 U.S.C. 1817(j) (6) (B)*. The Department knows of no statutory authority that would allow this rule to be more stringent than Federal Law.

14. **Proposed Course of Action.** The Department proposes to adjust the requirements for financial statement information so that it is no more stringent than the Federal Deposit Insurance Act by changing the requirement of "audited financial statements" to correspond with the federal law requiring financial statements are prepared in accordance with generally accepted accounting principles.
The Department will propose to Council for approval to amend the rule after the moratorium expires as it currently slated to do on December 31, 2015.

Article 17. Arizona Interstate Bank and Savings and Loan Association Act

R20-4-1701 Definitions

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.

12. Stringency Compared with Corresponding Federal Law. A.R.S. § 6-141(2) is more stringent in defining control as 15 percent as compared with the federal banking regulations under the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25 percent. The Department knows of no statutory authority that would allow this rule to be more stringent than Federal Law.

14. Proposed Course of Action. The Department proposes to amend the statutory reference in the definition of "control" to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act, as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

R20-4-1702 Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter.

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.

2. Objective. The objective of the rule is to provide clarity for the process of notification, timing and documents that are required to be submitted to the Department for the acquisition of an Arizona financial institution and also the requirements for surrender of an acquired financial institution's charter.

R20-4-1704 Public Notice

1. Authorization. The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.

2. Objective. The objective of the rule is to indicate what is to be provided to the Superintendent with regard to public notice in order to keep the Superintendent advised.

6. Clarity, Conciseness, and Understandability of the Rule. This rule was drafted prior to the agency's name change. "Superintendent of Banks" is inconsistent with the current statutory name, "Department of Financial Institutions."

10. Completion of the Previous Five-Year-Rule Report Process. The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

11. Probable Benefits Outweigh Probable costs/Rules Impose Least Burden on Persons. Subsection (A) requires the applicant to transmit to the Superintendent two copies of each notice and the publisher's affidavit of publication. This imposes a greater burden on the applicant then what is needed by the Department. The Rule has been determined to impose a greater burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. Stringency Compared with Corresponding Federal Law. The rule is more stringent than the Federal Deposit Insurance Act and Federal Reserve Regulation Y, because the Rule requires a duplicate copy which is no longer required.

14. Proposed Course of Action. The Department proposes to amend the rule to be consistent with the agency's new name and also to reduce the delivery of notice of publication to one from two. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

Arizona Administrative Code

Title 20, Ch. 4

Department of Financial Institutions

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

(Authority: A.R.S. § 6-101 et seq.)

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

Section

R20-4-1201. Scope of Article
R20-4-1202. Definitions
R20-4-1203. Repealed
R20-4-1204. Filing; Service
R20-4-1205. Repealed
R20-4-1206. Repealed
R20-4-1207. Repealed
R20-4-1208. Commencement of Proceedings; Notice of Hearing
R20-4-1209. Answer to Notice of Hearing
R20-4-1210. Stays
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R20-4-1212. Repealed
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R20-4-1214. Repealed
R20-4-1215. Repealed
R20-4-1216. Repealed
R20-4-1217. Repealed
R20-4-1218. Repealed
R20-4-1219. Rehearing
R20-4-1220. Consent Agreements

ARTICLE 13. LOAN ORIGINATORS

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired April 21, 2011; new Article consisting of Sections R20-4-1301 through R20-4-1305, made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).Article 13, consisting of Sections R20-4-1301 through R20-4- 1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4). Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section

R20-4-1301. Scope of Article
R20-4-1302. Course of Study to Qualify for Licensure
R20-4-1303. Financial Responsibility
R20-4-1304. Fees
R20-4-1305. Practice and Procedure

ARTICLE 14. INVESTIGATIONS

Section

R20-4-1401. Definitions
R20-4-1402. Repealed
R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power
R20-4-1404. Repealed
R20-4-1405. Fingerprints; Background Information
R20-4-1406. Repealed
R20-4-1407. Renumbered
R20-4-1408. Repealed
R20-4-1409. Renumbered
R20-4-1410. Repealed

ARTICLE 15. COLLECTION AGENCIES

Section

R20-4-1501. Definitions
R20-4-1502. Applications

R20-4-1503. Reports
R20-4-1504. Records
R20-4-1505. Trust Account
R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents
R20-4-1507. Representations of Collection Agency's Identity
R20-4-1508. Representations of the Law
R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required
R20-4-1510. Representations as to Rights Waived or Remedies
Available
R20-4-1511. Prohibition of Harassment
R20-4-1512. Contacts with Debtors and Others
R20-4-1513. Cessation of Communication with the Debtor
R20-4-1514. Disclosure of Information to Debtor
R20-4-1515. Aiding and Abetting
R20-4-1516. Advertising
R20-4-1517. Repealed
R20-4-1518. Agreements with Clients
R20-4-1519. Licensee Names and Control
R20-4-1520. Representations of Collection Agency Employees'Identity or Position
R20-4-1521. Duty of Investigation
R20-4-1522. Reserved
R20-4-1523. Reserved
R20-4-1524. Reserved
R20-4-1525. Reserved
R20-4-1526. Reserved
R20-4-1527. Reserved
R20-4-1528. Reserved
R20-4-1529. Reserved
R20-4-1530. Repealed

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS
Section
R20-4-1601. Definitions
R20-4-1602. Application for Approval to Acquire Control of Financial Institution
R20-4-1603. Repealed
R20-4-1604. Repealed

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT
Section
R20-4-1701. Definitions
R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter
R20-4-1703. Repealed
R20-4-1704. Public Notice
R20-4-1705. Repealed
R20-4-1706. Repealed

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

R20-4-1201. Scope of Article
This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings' procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in state statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings' rules. This Article does not apply to rulemaking or to investigative proceedings before the Superintendent.
Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1202. Definitions
In this Article, unless the context otherwise requires: "Administrative law judge" has the meaning stated at A.R.S. § 41-1092(1).

"Appealable agency action" has the meaning stated at A.R.S. § 41-1092 3).
"Contested case" has the meaning stated at A.R.S. § 41-1001(4).
"Department" means the Arizona State Department of Financial Institutions.
"License" has the meaning stated at A.R.S. § 41-1001(10).
"Party" means: The Department; The Superintendent; Each person either named or admitted as a party, and Each person properly seeking, and entitled, to be a party.
"Superintendent" has the meaning stated in A.R.S. § 6-101(16).

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1203. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

A. A person shall either personally deliver all papers permitted or required to be filed with the Superintendent or shall mail them by first class, certified, or express mail, or send them by facsimile transmission (602-381-1225), to the Superintendent at 2910 N. 44th Street, Suite 310, Phoenix, AZ 85018-7270, or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the Superintendent's address stated in this subsection.
B. A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party's attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresented party by service on the actual party.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4).

R20-4-1205. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Commencement of Proceedings; Notice of Hearing
A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law.
1. A letter or order granting or denying a license;
2. A license issued with restrictions or conditions;
3. A cease and desist order;
4. An order to remedy unsafe or unsound conditions;
5. An order to remedy an impairment of capital;
6. An order taking possession and control of a financial institution or enterprise;
7. An order assessing a fine;
8. Any other order or matter reviewable in a hearing either under the authority of these rules, a statute or an administrative rule enforced by the Superintendent, or by the order's express terms.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1209. Answer to Notice of Hearing
A. The Superintendent may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of hearing. Any party to the proceeding may file an answer without being directed to do so.
B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Superintendent may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.
C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions in the notice of hearing. An answering party that does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an assertion shall state that inability in its answer. That statement shall have the effect of a denial. A party admits each assertion that it does not deny. An answering party that intends to deny only a part or a qualification of an assertion, or to qualify an assertion, shall expressly admit as much of that assertion as is true and shall deny the remainder.
D. A party that fails to file an answer required by this Section within the time allowed is in default. The Superintendent may resolve the proceeding against a defaulting party. In doing so, the Superintendent may regard any assertions in the notice of hearing as admitted by the defaulting party.
E. An answering party waives all defenses not raised in its answer.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1210. Stays
A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Superintendent stay an action or any part of an order that will become effective before the Department can hold a hearing. The Superintendent may, in the Superintendent's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:
1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Superintendent grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1211. Intervention
A person may only intervene in a proceeding if the person timely applies and:
1. A statute confers a right to intervene, or
2. The person's claim or defense shares a question of law or
fact in common with the main proceeding.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective

R20-4-1212. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Rehearing

A. Except as provided in subsection (H), any party in a contested case who is aggrieved by a decision rendered in that case may file with the Superintendent, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for rehearing.

B. A party requesting rehearing under this Section may amend a motion for rehearing at any time before the Superintendent rules on the motion. Any other party, or the Attorney General, may file a response to the motion for rehearing within 15 days after service of the motion for rehearing, or the amended motion for rehearing. The Superintendent may require a written brief of the issues raised in the motion and may allow oral argument.

C. The Superintendent may grant a motion for rehearing for any of the following causes: 1. Irregularity in the proceedings before the Superintendent, in any order, or any abuse of discretion that deprives the moving party of a fair hearing; 2. Misconduct of the Superintendent, the Superintendent employees, the administrative law judge, or the prevailing party; 3. Accident or surprise that could not have been prevented by ordinary care; 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing; 5. Excessive or insufficient penalties; 6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing; 7. The decision is not justified by the evidence or is contrary to law.

D. The Superintendent may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (C). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.

E. The Superintendent, within the time for filing a motion for rehearing, may without a motion order a rehearing or review of a decision for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.

F. After giving the parties notice and an opportunity to be heard on the matter, the Superintendent may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.

G. When a motion for rehearing is based on an affidavit, the moving party shall serve the affidavit with the motion. An opposing party or the Attorney General may serve opposing affidavits within 10 days after service of the motion for rehearing.

H. The Superintendent may issue a final decision, subject only to judicial review, and without an opportunity for rehearing or administrative review if the Superintendent includes in the decision:

1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and 2. An express finding that a rehearing or review is: a. Impossible, b. Unnecessary, or c. Contrary to the public interest.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1220. Consent Agreements

A. The Department will enter into a consent agreement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the Superintendent or the jurisdiction of the tribunal that will enter the judgment or order.

B. A refusal to admit allegations is a denial. However, a defendant or respondent may consent to a judgment or order reciting that it does not admit or deny the allegations except those required by subsection (A). A consent agreement shall contain those additional provisions required by the Superintendent in a given matter, and may include: 1. Waiving any right to seek judicial review challenging the judgment's or order's validity, 2. Waiving findings of fact and conclusions of law, 3. Stating that the agreement is signed only to settle the matter and not as an admission that the defendant or respondent has violated the law.

C. The Superintendent has sole discretion to decide whether to resolve a matter by consent agreement. Nothing in this Section gives the Superintendent a duty to approve a consent agreement in any matter.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

EMERGENCY RULEMAKING
ARTICLE 13. LOAN ORIGINATORS

EMERGENCY RULEMAKING

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp.10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days expiring April 21, 2011 (Supp. 10-4).

EMERGENCY RULEMAKING

R20-4-1302. Course of Study to Qualify for Licensure

A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, 122 Stat. 2810, 12 U.S.C. 5101 through 5116).

B. An applicant for a loan originator license shall satisfactorily complete a course of study by:

1. Attending at least 20 hours of instruction; and
2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, 122 Stat. 2810, 12 U.S.C. 5101 through 5116).

C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: Four hours;
5. The remaining eight hours should be comprised of instruction in the obligations between principal and agent, the statutory and regulatory laws governing loan originators, arithmetical computations common to mortgage lending, principles of real estate lending, the purpose and effect of mortgages, deeds of trust, and security agreements, the terms and conditions of conforming and non-conforming residential mortgages, real estate appraisal and the principles of appraisal independence.

D. A continuing education course of study shall include eight hours of instruction each year in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;

4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days expiring April 21, 2011 (Supp. 10-4).

EMERGENCY RULEMAKING

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either: 1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of $100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or 2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp.10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days expiring April 21, 2011 (Supp. 10-4).

EMERGENCY RULEMAKING

R20-4-1304. Fees

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): $350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): $150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. § 6-126(C)(13): $150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): $50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): $50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): The amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): $25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16A.A.R. 839, effective April 27, 2010 for 180 days (Supp.10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days expiring April 21, 2011 (Supp. 10-4).

EMERGENCY RULEMAKING

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days expiring April 21, 2011 (Supp. 10-4)

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

R20-4-1302. Course of Study to Qualify for Licensure

A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101

through 5116).
B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
5. The remaining eight hours should be comprised of instruction in:
a. The obligations between principal and agent;
b. The statutory and regulatory laws governing loan originators;
c. Arithmetical computations common to mortgage lending;
d. Principles of real estate lending;
e. The purpose and effect of mortgages, deeds of trust, and security agreements;
f. The terms and conditions of conforming and nonconforming residential mortgages;
g. Real estate appraisal; and
h. The principles of appraisal independence.
D. A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:
1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of $100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

R20-4-1304. Fees

Loan Originator program fees:
1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): $350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): $150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): $150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): $50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): $50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): $25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

R20-4-1305. Practice and Procedure
Loan originators shall follow the practice outlined in 20 A.A.C. 4,Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions
In this Article, unless the context otherwise requires:
1. "Examination" means reviewing an applicant's or licensee's operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. "Investigation" means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Superintendent for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. "Licensee" means a financial institution or enterprise.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4- 4-1401 (Supp. 95-1). Amended by final rulemaking at 9A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1402. Repealed

Historical Note

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power
The Superintendent may serve a subpoena either by personal delivery or by first class, certified, or express mail, or by facsimile transmission.
A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Superintendent. The Superintendent may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section.Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Superintendent may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403 renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1404. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Fingerprints; Background Information
A. In connection with an examination or investigation, the Superintendent may investigate the following persons' background:
1. An applicant or a licensee, or a person whom the Superintendent reasonably believes may be violating any statute or rule administered by the Superintendent; and
2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).
B. In connection with an examination or investigation, the Superintendent may require a person described in A.R.S. § 6-

123.01(A) or (E) to submit a statement of personal history and fingerprints to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1406. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991 (Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1)

R20-4-1409. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES

R20-4-1501. Definitions

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(A)(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Superintendent" has the meaning in A.R.S. § 6-101.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1502. Applications

A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Superintendent, together with the following documents and payment:
1. The bond required by A.R.S. § 32-1021;
2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
3. A current financial statement in the form required by the Department;
4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and 5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.

B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.

C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Superintendent before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.

D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Superintendent within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
1. A bond that satisfies the requirements of A.R.S. § 32-1022;
2. A current financial statement as required by the Department;
3. A detailed description of the facts justifying the issuance of a provisional license; and
4. Evidence that the licensee notified the Superintendent as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.

E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
1. A licensee's personal representative, or the personal representative's
appointee, shall complete and file an application
if the licensee, a natural person, has died;
2. The surviving partners shall complete and file an application
if the licensee, a partnership, has dissolved;
3. A licensee shall complete and file an application if an
active manager's employment was terminated.

F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."

G. The Superintendent may require additional information the Superintendent considers necessary in connection with any application under this rule.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1503. Reports

A. A collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than ten days after the change. With the notice, the collection agency shall provide the Superintendent with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.

B. A collection agency shall notify the Superintendent in writing of any change in its place of business not more than 10 days after the change.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1).Amended by final rulemaking at 12 A.A.R. 1331,effective June 4, 2006 (Supp. 06-2).

R20-4-1504. Records

A. A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written

notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
B. All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:
1. Records or books of account listing all clients' accounts in numerical order, or in alphabetical order according to the clients' names. If a collection agency keeps books of accounting in numerical order, the collection agency shall alphabetically cross-index each client name with the corresponding account's number. Each account shall reflect its true condition at each calendar month's end, and shall include:
a. The client's name and address;
b. Each debtor's name worked for collection in that month;
c. The amount, description, and date of each debit and each credit to the account; and
d. The balance due to, or owing from, the client.
2. A record and history of each debt for collection that clearly shows:
a. The debtor's name;
b. The debt's principal amount;
c. The interest charged or collected;
d. The amount, and a description of any other charges;
e. The amount, and date, of each payment received or collected; and
f. The current balance due on the debt.
3. An original of each written contract, between the licensee and a client, including any contract amendments.
4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Superintendent.
5. The licensee's trust account reconciliation, prepared at least once a month.
6. Books, records, and files maintained so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.
C. A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.
D. A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the records.
E. A licensee shall retain the records required by this Section for the following periods:
1. A licensee shall retain all records described in subsections (B)(1), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), and (B)(8) for at least six years following their creation.
2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1505. Trust Account
A. A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account with an Arizona bank or savings and loan association. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a depository in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:
1. Paid over to a client, or
2. Otherwise paid as provided in this Section.
B. A licensee shall pay funds from the trust account either:
1. By prenumbered printed checks, or
2. By electronic payment.
C. A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.
D. A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-317, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.

E. A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.
F. A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
2. Expressly authorized in its contract with a client, or
3. Authorized in writing by the Superintendent.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

A. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
B. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
C. A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20- 4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1507. Representations of Collection Agency's Identity

In all communications with debtors, either orally or in writing, all the following rules apply:
1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency.
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1508. Representations of the Law

A collection agency shall not:
1. Misrepresent the state of the law to a debtor,
2. Send a debtor written material that simulates legal process, or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

A. A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.
B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days

R20-4-1510. Representations as to Rights Waived or Remedies Available
A. A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.
B. A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process.
C. A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1511. Prohibition of Harassment
A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.
B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.
C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.
D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.
E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1512. Contacts with Debtors and Others
A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. Acollection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
B. A collection agency shall not contact a third party, including a debtor's friend, relative, neighbor, or employer and:
1. Inform the third party of the debt;
2. Ask the third party to pressure the debtor into paying the debt, or;
3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1513. Cessation of Communication with the Debtor
A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or;
2. Wants the collection agency to stop all further communication with the debtor.
C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
1. The collection agency has stopped trying to collect the debt, or
2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1514. Disclosure of Information to Debtor
A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to inform the debtor of:
1. The name of the creditor;
2. The time and place of the creation of the debt;
3. The merchandise, services, or other value provided in exchange for the debt; and
4. The date when the account was turned over to the collection agency by the creditor.
B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1515. Aiding and Abetting
A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:
1. This Article, or
2. A.R.S. Title 32, Chapter 9

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1516. Advertising
A collection agency shall not use any form of communication to state or imply that it is:
1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1517. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1517 recodified from R4-4-1517 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients
A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:
1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1519. Licensee Names and Control
A. The Department shall not issue a license with a name that is:
1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
2. Descriptive of any business activity that the applicant does not actually conduct;

3. The same as, or similar to, the name of any existing collection agency, or;
The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the other collection agency.
C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position
A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:
1. Misrepresent the person's true position with the collection agency,
2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or
3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee, or
4. Claim to be, or imply that the person is, any other third party.
B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
1. The true name of each debt collector that uses a fictitious name,
2. Each fictitious name used by the debt collector, together with the dates when the name is used, and
3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1).Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1521. Duty of Investigation
A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:
1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).
R20-4-1522. Reserved
R20-4-1523. Reserved
R20-4-1524. Reserved
R20-4-1525. Reserved
R20-4-1526. Reserved
R20-4-1527. Reserved
R20-4-1528. Reserved
R20-4-1529. Reserved
R20-4-1530. Repealed
Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS
R20-4-1601. Definitions
In this Article, unless the context otherwise requires:
"Acquiring party" means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.
"Acquisition of control" has the meaning stated in A.R.S. § 6-141.

"Bank" has the meaning stated in A.R.S. § 6-101.
"Control" has the meaning stated in A.R.S. § 6-141.
"Controlling person" has the meaning stated in A.R.S. § 6-141.
"Person" has the meaning stated in A.R.S. § 6-141.
"Savings and loan association" means a person required topossess a permit issued by the Superintendent under A.R.S. Title 6, Chapter 3.
"Superintendent" has the meaning stated in A.R.S. § 6-101.
"Target company" means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.
"Trust company" has the meaning stated in A.R.S. § 6-851.
"Voting security" has the meaning stated in A.R.S. § 6-141.
Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution
A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Superintendent copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.
B. As used in this subsection, "executive officer" includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter1, Article 4 shall supply all information the Superintendent requires under this subsection. The Superintendent may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:
1. A copy of the signed purchase agreement,
2. The applicant's audited financial statement,
3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party,
4. Each executive officer's and each director's audited financial statement,
5. A fingerprint card for each executive officer and each director, and
6. A copy of each executive officer's and each director's driver's license.
Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1603. Repealed
Historical Note
Adopted as an emergency effective September 6, 1978,pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed
Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

R20-4-1701. Definitions
In this Article, unless the context otherwise requires: "Acquire" has the meaning stated at A.R.S. § 6-321(1). "Applicant" means an out-of-state financial institution that intends to acquire control of an in-state financial institution.
"Control" has the meaning stated at A.R.S. § 6-321(2).
"In-state financial institution" has the meaning stated at A.R.S. § 6-321(5).
"Out-of-state financial institution" has the meaning stated at A.R.S. § 6-321(6).
Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter

A. An applicant shall give written notice of an acquisition to the Superintendent in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Superintendent not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Superintendent may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

B. An acquired in-state financial institution shall surrender, by delivery to the Superintendent, all permits and certificates issued by the Superintendent within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1703. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

A. An applicant shall transmit to the Superintendent of Banks two copies of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

B. An applicant shall provide the Superintendent of Banks copies of any protests known to have been received by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1705. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2)

Department of Financial Institutions' Five Year Review Report
General & Specific Authorizing Statutes

General Authorizing Statutes

6-123. Superintendent; powers
In addition to the other powers, express or implied, the superintendent may:
1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
(a) A banking permit.
(b) Permission to organize a savings and loan association or credit union.
(c) Any license.
(d) Any certificate.
(e) Authority to engage in interstate banking and branching in this state.
The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

Specific Authorizing Statutes

6-123.01. Fingerprint requirements; fees
A. Before receiving and holding a license, permit, certificate or permission to organize a bank, savings and loan association or credit union, the superintendent may require an applicant, licensee, active manager or responsible individual or an organizer, director or officer of any corporate applicant or licensee to submit a full set of fingerprints and fees to the department. The department of financial institutions shall submit the fingerprints and fees to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, for the purpose of obtaining a state and federal criminal records check

pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
B. The fees that the department collects under subsection A of this section shall be credited pursuant to section 35-148.
C. The applicant is responsible for providing the department with readable fingerprints. The applicant shall pay any costs that are attributable to refingerprinting due to the unreadability of any fingerprints and any fees that are required for the resubmission of fingerprints.
D. The department may issue a temporary license or certificate or grant temporary permission to organize to an original applicant before the department receives the results of a criminal records check if there is not evidence or reasonable suspicion that the applicant has a criminal history background that would be cause for denial of a license, certificate or permission to organize. The department may terminate the temporary license or certificate or permission to organize if a fingerprint card is returned as unreadable and the applicant fails to submit new fingerprints within ten days after being notified by the department that the original card was unreadable or if the results of the criminal records check reveal grounds for the denial of the license or certificate or permission to organize. The temporary license or certificate or permission to organize shall not be effective longer than one hundred eighty days.
E. The superintendent may require a current licensee, organizer, director, active manager, responsible individual or officer of any corporate licensee to submit a full set of fingerprints to the department. The department of financial institutions shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
F. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

6-124. Investigations; compelling testimony and the production of documents; self-incrimination
A. The superintendent may conduct examinations and investigations within or outside this state to determine whether any person has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to persons subject to the jurisdiction of the superintendent or any order of the superintendent or to aid in the enforcement of this title or to aid in adopting rules.
B. The superintendent and any examiner or administrative law judge, in the performance of the superintendent's, examiner's or administrative law judge's duties, may take evidence, examine on oath any person and compel the attendance of witnesses and the production of documents, books and papers. Upon refusal to appear or produce, the superintendent may apply to the superior court in Maricopa county to compel appearance or production.

C. All financial institutions and enterprises shall, upon request of the superintendent, make their books and records available for inspection and examination by the superintendent or the superintendent's examiners.

6-126. Application fees for financial institutions and enterprises

A. The following nonrefundable fees are payable to the department with the filing of the following applications:

1. To apply for a banking permit, five thousand dollars.
2. To apply for an amendment to a banking or savings and loan association permit, one thousand dollars.
3. To establish each banking branch office, seven hundred fifty dollars.
4. To move a banking office to other than an established office of a bank, one thousand dollars.
5. To apply for a savings and loan association permit, five thousand dollars.
6. To establish each savings and loan association branch office, one thousand five hundred dollars.
7. To move an office of a savings and loan association to other than an established office, one thousand dollars.
8. To organize and establish a credit union, one hundred dollars.
9. To establish each credit union branch or to move a credit union office to other than an established office of a credit union, two hundred fifty dollars.
10. To organize and establish any other financial institutions for which an application or investigation fee is not otherwise provided by law, two thousand five hundred dollars.
11. To acquire control of a financial institution, other than a consumer lender, five thousand dollars.
12. To apply for a trust company license, five thousand dollars.
13. To apply for a commercial mortgage banker, mortgage banker, escrow agent or
14. To apply for a mortgage broker, commercial mortgage broker, sales finance company or debt management company license, eight hundred dollars.
15. To apply for a collection agency license, one thousand five hundred dollars.
16. To apply for a deferred presentment company license, one thousand dollars.
17. To apply for a motor vehicle dealer license, three hundred dollars.
18. To apply for a branch office of an escrow agent, consumer lender, commercial mortgage banker, mortgage banker, trust company, money transmitter, collection agency or deferred presentment company, five hundred dollars.
19. To apply for a branch office of a mortgage broker, commercial mortgage broker, debt management company or sales finance company, two hundred fifty dollars.
20. To apply for approval of the articles of incorporation of a business development corporation, five hundred dollars.
21. To apply for approval for the merger or consolidation of two or more financial institutions, five thousand dollars per institution.

22. To apply for approval to convert from a national bank or federal savings and loan charter to a state chartered institution, five thousand dollars.
23. To apply for approval to convert from a federal credit union to a state chartered credit union, one thousand dollars.
24. To apply for approval to merge or consolidate two or more credit unions, five hundred dollars per credit union.
25. To move an established office of an enterprise to other than an established office, fifty dollars.
26. To issue a duplicate or replace a lost enterprise's license, one hundred dollars.
27. To change a responsible person on a mortgage broker's, commercial mortgage broker's, commercial mortgage banker's or a mortgage banker's license, two hundred fifty dollars.
28. To change an active manager on a collection agency license or a manager of a money transmitter branch office license, two hundred fifty dollars.
29. To change the licensee name on a financial institution or enterprise license, not more than two hundred fifty dollars.
30. To apply for a money transmitter license, one thousand five hundred dollars plus twenty-five dollars for each branch office and authorized delegate to a maximum of four thousand five hundred dollars.
31. To acquire control of any money transmitter or controlling person pursuant to chapter 12 of this title, two thousand five hundred dollars.
32. To receive the following publications:
(a) Quarterly bank and savings and loan statement of condition, not more than ten dollars per copy.
(b) Monthly summary of actions report, not more than five dollars per copy.
(c) A list of licensees, a monthly pending actions report and all other in-house prepared reports or listings made available to the public, not more than one dollar per page.
33. To apply for a loan originator license, an amount to be determined by the superintendent.
34. To apply for a loan originator license transfer, an amount to be determined by the superintendent.
35. To apply for a conversion from a mortgage banker license to a mortgage broker license, an amount to be determined by the superintendent.
B. On issuance of a license or permit for a financial institution or enterprise, the superintendent shall collect the first year's annual assessment or renewal fee for the financial institution or enterprise prorated according to the number of quarters remaining until the date of the next annual assessment or renewal.
C. The following annual renewal fees shall be paid each year:
1. For an escrow agent, or trust company, one thousand dollars plus two hundred fifty dollars for each branch office.
2. For a debt management company or sales finance company, five hundred dollars plus two hundred dollars for each branch office.
3. For a collection agency, six hundred dollars plus two hundred dollars for each branch office.

4. For a motor vehicle dealer, one hundred fifty dollars.
5. For an inactive mortgage broker or commercial mortgage broker, two hundred fifty dollars.
6. For a mortgage banker that negotiates or closes in the aggregate one hundred loans or less in the immediately preceding calendar year, seven hundred fifty dollars, and for a mortgage banker that negotiates or closes in the aggregate over one hundred loans in the immediately preceding calendar year, one thousand two hundred fifty dollars. In addition, a mortgage banker shall pay two hundred fifty dollars for each branch office.
7. For a commercial mortgage banker, one thousand two hundred fifty dollars. In addition, a commercial mortgage banker shall pay two hundred fifty dollars for each branch office.
8. For a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate fifty loans or less in the immediately preceding calendar year, two hundred fifty dollars and for a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate more than fifty loans in the immediately preceding calendar year, five hundred dollars. In addition, a mortgage broker or commercial mortgage broker shall pay two hundred dollars for each branch office.
9. For a consumer lender, one thousand dollars plus two hundred dollars for each branch office.
10. For a money transmitter, five hundred dollars plus twenty-five dollars for each branch office and each authorized delegate to a maximum of two thousand five hundred dollars.
11. For a deferred presentment company, four hundred dollars. In addition, a deferred presentment company shall pay two hundred dollars for each branch office.
12. For a loan originator, an amount to be determined by the superintendent.
13. For an inactive status loan originator, an amount to be determined by the superintendent.
D. The license, renewal or branch office permit fee for a premium finance company for each calendar year or part thereof shall not be less than one hundred dollars or more than three hundred dollars as set by the superintendent. If the license is issued or the branch office is opened after June 30 in any year, the fees shall not be less than fifty dollars or more than one hundred fifty dollars for that year.

6-137. Cease and desist orders; injunctions; public inspection
D. A person aggrieved by an order issued by the superintendent under this section may request a hearing pursuant to title 41, chapter 6, article 10. After requesting a hearing, the person may move that the order be stayed or modified pending the hearing. If the order is not stayed or modified or the motion is not acted on within ten days, the person may apply to the superior court for an order for relief.

6-138. Hearings
The superintendent or an administrative law judge shall conduct hearings, including hearings relating to orders of the superintendent granting, denying,

revoking or suspending a permit, certificate or license provided for under this title, in accordance with title 41, chapter 6, article 10.

6-145. Application for approval
A. An application for approval of the superintendent shall be in writing in such form as the superintendent may prescribe and shall be accompanied by such information, data and records as the superintendent may require. For such purpose the superintendent shall adopt rules prescribing the form and the information, data or records which may be required.
B. Upon receipt of any initial application for approval or any amendment or supplement to such application, the superintendent shall cause copies of such application, amendment or supplement to be given to the bank, trust company or savings and loan association concerned within three business days.

6-991.03. Licensing; renewal; qualifications; application; fees
A. A natural person shall not act as a loan originator unless the person is licensed under this article.
B. The superintendent shall not grant a loan originator license to a person, other than a natural person. An applicant for an original loan originator's license shall have done all of the following:
1. Satisfactorily completed a course of study, including at least twenty hours of education, for loan originators approved by the superintendent during the three-year period immediately preceding the time of application. The twenty hours of education must include at least all of the following:
(a) Three hours of federal law.
(b) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues.
(c) Two hours of training related to lending standards of the nontraditional mortgage product marketplace.
(d) Four hours of the laws of this state.
2. Completed late continuing education for the purposes of satisfying continuing education for the last year that the loan originator was in renewable status.
3. Passed a loan originator's examination pursuant to section 6-991.07. The applicant shall demonstrate knowledge and understanding of the following:
(a) Federal laws.
(b) Other applicable laws.
(c) Subjects described in section 6-991.07, subsection A.
4. Retaken the loan originator's examination if the licensed loan originator failed to maintain a valid license for a period of five years or longer, not including any time during which the applicant is a registered loan originator.
5. Obtained a unique identifier through the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor.
6. Deposited with the superintendent a bond executed by the applicant's employer or registered exempt person as principal and a surety company

licensed to do business in this state as a surety pursuant to section 6-903, 6-912 or 6-943.
7. Submitted fingerprints to the department for the purpose of a background investigation.
8. Paid an amount to be determined by the superintendent for deposit in the mortgage recovery fund established pursuant to section 6-991.09 or deposited with the superintendent a bond executed by the applicant's employer or registered exempt person as principal and a surety company licensed or approved to do business in this state for the benefit of any person aggrieved by any act, representation, transaction or conduct of a licensed loan originator that violates this title or the rules adopted pursuant to this title. Notwithstanding section 6-903 or 6-943, the amount of the bond shall be in an amount of not less than two hundred thousand dollars. Loan originators working under the employer or registered exempt person bond described in this paragraph do not have to contribute to the mortgage recovery fund.
C. A person shall apply for a license or renewal of a license in writing in the manner prescribed by the superintendent and accompanied by the information prescribed by the superintendent.
D. Before submitting a renewal application, an applicant for renewal of a loan originator license shall have satisfactorily completed eight approved continuing education units that include at least:
1. Three hours of federal law.
2. Two hours of ethics, including instruction on fraud, consumer protection and fair lending issues.
3. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
4. One hour of the laws of this state.
E. Education courses taken before licensure shall be reviewed and approved by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor.
F. Continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. A licensed loan originator:
1. May only receive credit for a continuing education course in the year in which the course is taken.
2. May not take the same approved course in the same year or successive years to meet the annual requirements for continuing education.
G. The nonrefundable application fee shall accompany each application for an original loan originator license.
H. A license issued pursuant to this article is not transferable or assignable.
I. At the superintendent's discretion, application fees may be waived if the applicant is a housing counselor certified by the United States department of housing and urban development and employed by a nonprofit agency.

J. Each mortgage broker, mortgage banker or registered exempt person shall submit to the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor reports of condition that are in a form and that contain information required by the nationwide mortgage licensing system.
K. The superintendent shall establish a process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

6-991.04. Issuance of license; notice from employing mortgage broker, mortgage banker or consumer lender or registered exempt person; renewal; inactive status; address change; fee
A. The superintendent, on determining that an applicant is qualified and has paid the required fees, shall issue a loan originator's license to the applicant evidenced by a continuous certificate. The superintendent shall grant or deny a license within one hundred twenty days after receiving the completed application and fees. An applicant who has been denied a license may not reapply for a license before one year from the date of the previous application.
B. On issuance of the license, the superintendent shall keep the loan originator's license until a mortgage broker or mortgage banker licensed pursuant to this chapter or a consumer lender employs the loan originator and the employer provides a written notice that the employer has hired the loan originator or until an exempt person who is registered pursuant to section 6-912 provides a written notice that the exempt person has engaged the loan originator on an exclusive contract with the exempt person. The employer shall provide the notice before the loan originator begins working for the employer. Exempt persons who are registered pursuant to section 6-912 shall provide the notice before the loan originator begins work under the exclusive contract with the exempt person. The notice shall be from an officer or other person authorized by the employer or registered exempt person. The notice shall contain a request for the loan originator's license and shall be dated, signed and notarized. On receipt of the request, the superintendent shall forward the loan originator's license to the employing mortgage broker, mortgage banker, consumer lender or registered exempt person.
C. Licenses shall be issued for a one-year period.
D. A loan originator shall apply for renewal on forms prescribed by the superintendent. The application shall include original certificates evidencing the loan originator's successful completion of eight continuing education units during the preceding one-year period by a continuing education provider approved by the superintendent.
E. A loan originator shall pay the renewal fee every year on or before December 31. Licenses not renewed by December 31 are suspended, and the licensee shall not act as a loan originator until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus a dollar amount to be

determined by the superintendent for each day after December 31 that a license renewal fee is not received by the superintendent.
F. Licenses that are not renewed by January 31 of each year expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.
G. From December 1 through December 31 of each renewal period, a licensee may request inactive status for the following license period. The license shall be placed on inactive status after the licensee pays to the superintendent the inactive status renewal fee and surrenders the license to the superintendent. During inactive status, an inactive licensee shall not act as a loan originator. The license expires if the licensee violates this subsection.
H. At renewal an inactive licensee may return to active status by doing all of the following:
1. Providing the superintendent with evidence that the licensee has met the requirements of section 6-991.03, subsection B.
2. Making a written request to the superintendent for reactivation.
3. Paying the annual licensing fee.
4. Providing the superintendent with proof that the licensee meets all other requirements for acting as a loan originator.
I. The mortgage broker, mortgage banker, consumer lender or registered exempt person shall keep and maintain at the principal place of business in this state the loan originator's license during the loan originator's employment or exclusive contract term. A copy of the loan originator's license shall be available for public inspection during regular business hours.
J. A loan originator shall immediately notify the superintendent of a change in the loan originator's residence address. The superintendent shall endorse the change of address on the license for a fee to be determined by the superintendent.
K. Within five business days after any licensee's employment termination, the employing mortgage broker, mortgage banker, consumer lender or registered exempt person shall do both of the following:
1. Notify the superintendent of the licensee's termination.
2. Return the license to the superintendent.
L. An applicant for a loan originator license who is currently registered with the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor may be granted a temporary license for a period not to exceed one hundred eighty days.
M. The superintendent shall establish a process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

12-2212. Subpoena by public officer; contempt
A. When a public officer is authorized by law to take evidence, he may issue subpoenas, compel attendance of witnesses and production of documentary

evidence, administer oaths to witnesses, and cause depositions to be taken, in like manner as in civil actions in the superior court.
B. If a witness fails to appear at the time and place designated in the subpoena, or fails to answer questions relating to the matter about which the officer is authorized to take testimony, or fails to produce a document, the officer may, by affidavit setting forth the facts, apply to the superior court of the county where the hearing is held, and the court shall thereupon proceed as though such failure had occurred in an action pending before it.

32-1021. Original application for license; financial statement; bond; definition
A. A person desiring to conduct a collection agency shall make an original application to the department upon forms prescribed by the superintendent setting forth verified information to assist the superintendent in determining the applicant's ability to meet the requirements of this chapter.
B. An application for an original or a renewal license shall be accompanied by:
1. A financial statement in the form provided in section 32-1022, showing the applicant's assets and liabilities and truly reflecting the applicant's net worth in cash or its equivalent.
2. A bond in the form provided in section 32-1022, computed on a base consisting of the gross annual income of the licensee generated from all business transacted in this state by the licensee during the preceding year, in the minimum amount as follows:

Base	Minimum Bond
Not over $250,000	$10,000
$250,001 to $500,000	$15,000
$500,001 to $750,000	$25,000
$750,001 and over	$35,000

C. The superintendent may require from all applicants additional information that the superintendent deems necessary in determining whether the applicant is entitled to the license sought.
D. For the purposes of this section, "all business transacted in this state" includes:
1. The collection of debts from debtors who reside in this state, regardless of where the licensee is located.
2. The collection of debts made from an office in this state, regardless of where the debtor resides.
3. The collection of debts made on behalf of creditors who reside in this state, regardless of where the debtor and the collection agent reside.

32-1023. Qualifications of applicants
A. An applicant for a license issued under this chapter shall:
1. Be a citizen of the United States and be of good moral character.
2. Not have been convicted of a crime involving moral turpitude.
3. Not have defaulted on payment of money collected or received for another.
4. Not have been a former licensee under the provisions of this chapter whose license was suspended or revoked and not subsequently reinstated.

B. If the applicant for a license is a firm, partnership, association or corporation, the qualifications required by subsection A of this section shall be required of the individual in active management of the firm, partnership, association or corporation.
C. When a licensed agency ceases to be under the active management of a qualified person, as defined in rules, notice of this fact shall be given to the superintendent within ten days. The licensee shall have ninety days after the termination of the services of the acting manager to replace the qualified person and notify the superintendent of the qualified replacement. If the agency is not placed under the active management of a new qualified person and notice thereof given to the superintendent within the ninety-day period, the license of the agency expires unless a provisional license has been granted under the provisions of section 32-1027.

32-1051. Duties of licensees
An individual, firm, partnership, association or corporation to whom a license is to be issued under this chapter shall:
1. Meet the financial responsibility and bonding requirements of this chapter.
2. Not have been a former licensee under the provisions of this chapter whose license was suspended or revoked and not subsequently reinstated.
3. Deal openly, fairly and honestly in the conduct of the collection agency business.
4. Except for attorneys licensed to practice law, not attempt to collect any collection fee, attorney's fee, court cost or expenses unless the fees, charges or expenses are justly due from and legally chargeable against the debtor, or have been judicially determined, nor shall any licensee engage in any unfair or misleading practices or resort to any oppressive, vindictive or illegal means or methods of collection.
5. Except for attorneys licensed to practice law, not give or send to any debtor, or cause to be given or sent to any debtor, any notice, letter, message or form which:
(a) Simulates any legal process.
(b) Is ambiguous as to or misrepresents the character, extent or amount of the obligation of the debtor.
(c) Represents or infers that the existing obligation of the debtor may be increased by the addition of attorneys' fees, investigation fees, service fees, or any other fees or charges when in fact these fees or charges may not legally be added to the existing obligation of the debtor.
(d) Threatens to sell the obligation of the debtor to any person, firm or group.
(e) Uses or sets forth the name of or purports to be from any attorney at law or legal firm.
6. Except for attorneys licensed to practice law, not use any letterhead, or literature bearing any heading, slogan or statement representing or inferring that the licensee practices law, renders legal services or advice, or maintains a legal department.
7. Not by the use of any letterhead, advertisement, agreement, form, circular or other printed matter, or otherwise, convey the impression that the

individual, firm, partnership, association or corporation is vouched for or is an instrumentality of the state, a political subdivision of the state, or the department.

32-1055. Unlawful acts

A. It is unlawful for a person to conduct a collection agency in this state without having first applied for and obtained a license under this chapter.

B. A collection agency licensed under this chapter shall not directly or indirectly aid, abet or receive compensation from an unlicensed person. Nothing in this chapter shall prevent a licensed agency from accepting, as forwardee, claims for collection from a collection agency or attorney whose place of business is outside this state.

C. A licensee shall not advertise a claim for sale or threaten to so advertise a claim as a means of endeavoring to enforce payment, nor shall a licensee agree to do so for the purpose of soliciting claims. This subsection shall not be deemed to affect a licensee acting as assignee for the benefit of a creditor or acting under a court order.

D. It is unlawful for a person conducting a collection agency in this state to:

1. Fail to render an account of and pay to the client for whom collection has been made the proceeds collected, less collection charges as agreed to by the person and the client, within thirty days from the last day of the month in which the proceeds were collected. If the amount due the client is less than five dollars, payment may be deferred for an additional thirty days.

2. Fail to deposit with a local depository all monies collected by the person and due to the person's clients, and to fail to keep these monies deposited until these monies or equivalent amounts are remitted to the person's clients. Notwithstanding this paragraph, if a person conducting a collection agency does not maintain an office in this state, the person may deposit and keep these monies in a depository in a state where the person maintains the person's principal office.

3. Fail to keep a record of monies collected and the remittance of these monies.

4. Fail to notify the department within ten days of any change of name under which the person does business as a collection agency or address at which the person conducts business.

5. Aid or abet, directly or indirectly, any person, persons or organizations in evading or violating any of the provisions of this chapter.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law

to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.