ARIZONA STATE LOTTERY COMMISSION (R-16-0901)
Title 19, Chapter 3, Article 5, Procurements

Amend: R19-3-501; R19-3-505; R19-3-506; R19-3-508; R19-3-509; R19-3-510; R19-3-514; R19-3-517; R19-3-518; R19-3-520; R19-3-521; R19-3-523; R19-3-524; R19-3-525; R19-3-526; R19-3-527; R19-3-528; R19-3-531; R19-3-532; R19-3-534; R19-3-535; R19-3-544; R19-3-545; R19-3-546; R19-3-547; R19-3-549; R19-3-553; R19-3-562; R19-3-564; R19-3-566; R19-3-569

New Section: R19-3-563

Renumber: R19-3-563; R19-3-564; R19-3-565; R19-3-566; R19-3-567; R19-3-568; R19-3-569

Repeal: R19-3-533

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-1**

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

FROM: Shama Thathi, Staff Attorney

DATE: August 19, 2016

SUBJECT: **ARIZONA STATE LOTTERY COMMISSION (R-16-0901)**
Title 19, Chapter 3, Article 5, Procurements

Amend: R19-3-501; R19-3-505; R19-3-506; R19-3-508; R19-3-509; R19-3-510; R19-3-514; R19-3-517; R19-3-518; R19-3-520; R19-3-521; R19-3-523; R19-3-524; R19-3-525; R19-3-526; R19-3-527; R19-3-528; R19-3-531; R19-3-532; R19-3-534; R19-3-535; R19-3-544; R19-3-545; R19-3-546; R19-3-547; R19-3-549; R19-3-553; R19-3-562; R19-3-564; R19-3-566; R19-3-569

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Repeal: R19-3-533

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The Arizona State Lottery Commission (Commission) oversees the Arizona Lottery (Lottery) and is charged with maximizing net revenue while maintaining the dignity of the state. See A.R.S. § 5-554(B).

This rulemaking amends thirty-one rules, adds one new rule, renumbers seven rules and repeals one rule in A.A.C. Title 19, Chapter 3, Article 5. A.R.S. § 41-2501(F) requires the Lottery to adopt rules "substantially equivalent" to the policies and procedures found in A.R.S.

Title 41, Chapter 23, Arizona Procurement Code for procurement relating to "design and operation of the lottery or [for the] purchase of lottery equipment, tickets or related materials."

Article Contents, Including the Subject Matter of Each Rule Affected

Article 5 contains sixty-eight rules, thirty-seven of which are impacted by this rulemaking. The rules contain general procurement definitions, guidance on vendor selection criteria, methodology for source selection, solicitation procedures, general solicitation and evaluation processes, and protest and appeal requirements. The article sets forth the policies and procedures for procurements relating to the design and operation of the Lottery and purchase of lottery equipment, tickets, and related materials.

Year that Each Rule was Last Amended or Newly Made

January 6, 2007:	R19-3-510, R19-3-526, R19-3-527, R19-3-532, R19-3-546
August 4, 2013:	R19-3-501, R19-3-505, R19-3-506, R19-3-508, R19-3-509, R19-3-514, R19-3-517, R19-3-518, R19-3-520, R19-3-521, R19-3-523, R19-3-524, R19-3-525, R19-3-528, R19-3-531, R19-3-533, R19-3-534, R19-3-535, R19-3-544, R19-3-545, R19-3-547, R19-3-549, R19-3-553, R19-3-562, R19-3-563, R19-3-564, R19-3-565, R19-3-566, R19-3-567, R19-3-568

Proposed Action

The following is a non-exhaustive summary of the actions being taken by the Commission in this rulemaking:

- R19-3-501: To ensure clarity, definitions are being added and amended.
- R19-3-505: Procedures for maintaining a prospective suppliers list are being amended.
- R19-3-506: Subsections (C) and (D), which require the procurement officer to make determinations in writing that the bid is advantageous to the Lottery, are being struck.
- R19-3-508: Clarifying change is being made.
- R19-3-509: Clarifying changes are being made.
- R19-3-510: Time frame to conduct pre-offer conferences is being amended to allow greater flexibility.
- R19-3-514: Requirement for the procurement officer to open offers publicly, in the presence of witnesses, is being struck.
- R19-3-517: A new subsection (B) is being added to provide references to rules that should be complied with for a bid solicitation or proposal solicitation.
- R19-3-518: Clarifying change is being made.
- R19-3-520: Clarifying changes are being made.
- R19-3-521: Examples of measurable factors used to determine which offer provides the lowest cost to the Lottery are being struck. Clarifying changes are also being made.
- R19-3-523: Clarifying changes are being made.

- R19-3-524: A new subsection (B) is being added to clarify a procedure that the procurement officer should use when requesting best and final offers from any offeror. Additional clarifying changes are also being made.
- R19-3-525: Clarifying change is being made.
- R19-3-526: Subsection (C) is being amended to include an exception to the requirement that the procurement officer should promptly send a determination to the offeror, if the officer determines an offeror is nonresponsible.
- R19-3-527: The number of days the procurement officer has to make the procurement file is being shortened from 10 to 3 days in subsection (E).
- R19-3-528: Subsection (B), which requires the procurement officer to make determinations in writing before awarding any cost reimbursement contracts, is being struck.
- R19-3-531: Citations are being updated. Requirements for when the procurement officer shall issue a request for quotation are also being modified.
- R19-3-532: A new subsection (B) is being added to establish a requirement that the procurement officer must issue the request for quotation by distributing the request to at least three small businesses registered on the prospective suppliers list.
- R19-3-533: The rule is being repealed.
- R19-3-534: Procedures that the procurement officer must follow if only one responsive offer is received are being amended for clarity.
- R19-3-535: To ensure clarity, a new subsection (B) is being added with an updated reference.
- R19-3-544: Clarifying changes are being made.
- R19-3-545: Subsection (B) is being amended to provide the Commission with the authority to pre-approve an extended contract period.
- R19-3-546: Subsection (B) is being amended to make clear that the procurement officer must give notice to the procurement administrator before making any changes to uniform terms and conditions.
- R19-3-547: Clarifying change is being made, in regards to the Lottery entering into statewide contracts.
- R19-3-549: The amendment to Subsection (B) provides more clarity in circumstances where the director or the procurement officer is the person with the conflict of interest.
- R19-3-553: Citations are being updated.
- R19-3-562: Reference is being added to a new section.
- New R19-3-563: This section is being added to address procedure for conducting informal settlement conferences.
- R19-3-564: This section, related to dismissal before hearing, is being renumbered from R19-3-563.
- R19-3-565: This section, related to controversies involving contract claims against the Lottery, is being renumbered from R19-3-564.
- R19-3-566: This section, related to procurement officer's decision regarding contract claims, is being renumbered from R19-3-565. Citations are being updated.
- R19-3-567: This section, related to appeals and reports to the director regarding contract claims, is being renumbered from R19-3-566.

- R19-3-568: This section, related to controversies involving Lottery claims against the contractor, is being renumbered from R19-3-567.
- R19-3-569: This section, related to guidance, is being renumbered from R19-3-568. Clarifying change is also being made.

Summary of Reasons for the Proposed Action

The Commission is amending the rules to conform to rule changes, made by the State Procurement Office. The changes became effective as of February 2015. The rulemaking removes outdated terminology and procedures, clarifies existing language and procedures, and adds new language as necessary.

Exemption or Request and Approval for Exception from the Moratorium

The Commission received permission from the Governor's Office to proceed with this rulemaking on June 4, 2015.

Substantive or Procedural Concerns

None.

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

Yes. The Commission cites applicable statutory authority for the rules. Under A.R.S. § 5-554(B), the Commission shall "oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state." The statute indicates that the rules may include provisions relating to games, selection of winners, payment of prizes, ticket sales, licensing of sales agents, compensation of sales agents, and other matters "necessary and desirable for the efficient and economical operation and administration" of the Lottery. See A.R.S. § 5-554(B)(1) through (7), respectively. The Commission cites to A.R.S. §§ 5-559 and 41-2501(G) as specific authority for the rules.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. As a whole, the rules are written in a clear, concise, and understandable manner.

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

Yes. The Commission indicates that it did not receive any written comments on the proposed rules.

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

No. Only non-substantive changes were made between the proposed and final rules at the request of the Council staff. Staff does not believe that the changes, when considered as a whole, constitute substantial substantive changes.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Commission indicates that it did not review or rely upon any study for this rulemaking.

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

No. The Commission indicates that no federal laws directly correspond to the rules.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. The rules do not require a permit or license.

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

No. The rules do not establish a new fee or contain a fee increase.

9. Conclusion

The Commission requests the usual 60-day delayed effective date for the rules. This analyst recommends approval of the rules.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-1**

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

FROM: GRRC Economic Team

DATE : August 19, 2016

SUBJECT: **ARIZONA STATE LOTTERY COMMISSION (R-16-0901)**
Title 19, Chapter 3, Article 5, Procurements

Amend: R19-3-501; R19-3-505; R19-3-506; R19-3-508; R19-3-509; R19-3-510; R19-3-514; R19-3-517; R19-3-518; R19-3-520; R19-3-521; R19-3-523; R19-3-524; R19-3-525; R19-3-526; R19-3-527; R19-3-528; R19-3-531; R19-3-532; R19-3-534; R19-3-535; R19-3-544; R19-3-545; R19-3-546; R19-3-547; R19-3-549; R19-3-553; R19-3-562; R19-3-564; R19-3-566; R19-3-569

New Section: R19-3-563

Renumber: R19-3-563; R19-3-564; R19-3-565; R19-3-566; R19-3-567; R19-3-568; R19-3-569

Repeal: R19-3-533

I have reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments.

GRRC Economist comments:

The Arizona State Lottery Commission (Commission) is updating its procurement policies to conform to state procurement rule changes approved by the Council. A.R.S. § 41-2501(G) requires that the Lottery Director to set procurement rules at an equivalent standard to the policies and procedures of the Arizona Procurement Code. The Commission also proposed changes to clarify existing language and procedures after a review by a representative of the State Procurement Office.

1. **Costs and Benefits for:**

a. The implementing agency:

Reported Cost: The Commission has reported that costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency, in addition to the cost of procurement itself. The Commission does not anticipate any additional costs to the agency or procurement functions as a result of this rulemaking.

Reported Benefit: The Commission states that benefits include improved procedures related to the approval authority as reflected in amendments to sections R19-3-544 through R19-3-546, and section R19-3-549. In addition, the Commission reports that it will benefit from updated, consistent rules that govern procurement processes; thus reducing the potential for protests and appeals, and improving the rule for clarity and ease of understanding.

b. Political subdivisions:

The Commission indicates that the rulemaking will have no identifiable impact on political subdivisions of the state.

c. Businesses:

The Commission states that businesses will benefit from these rule changes because the rules provide for "competition and consistency with respect to procurement procedures." The changes aim to allow greater efficiency and transparency of the procurement process, which the Commission believes will help the businesses providing supplies. Some of the changes that will make the rules align with procurement standard include "requiring a best and final offering if negotiations are conducted, adjusting the quotations threshold requirement form $5,000 to $10,000, changing the time frame for publication of contract awards from 10 days to 3 days, and introducing an option for informal settlement conferences during a procurement appeal."

The Commission notes that costs to businesses include any operational expenses needed to comply with procurement procedures. The Commission expects to include this cost in the vendor pricing.

d. Small businesses:

According to the Commission, in fiscal year 2015, $13.5 million of expended funds were awarded to small businesses. The Commission notes that the small businesses impacted by this rulemaking are also vendors supplying products or services to the Commission. This means that small businesses will be impacted similarly to larger businesses and have the impacts noted above. Further, small businesses will benefit from procurements specifically targeted towards them which is referenced in rule R19-3-532.

e. Consumers directly affected by the rulemaking:

The Commission states that there are no direct costs to consumers or the general public.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the Commission indicates that the probable benefits outweigh the probable costs.

3. Analysis of methods to reduce the small business impact:

The Commission states that that this question is not applicable to the rulemaking. The Commission explains that the rules are expected to have a positive impact on small business. Further, requests for quotation must be disseminated specifically to small businesses, and unless specific exceptions apply, the contract must be awarded to the small business.

4. The probable effect on state revenues:

The Commission reports that the rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses.

5. Analysis of any less intrusive or less costly alternative methods:

The Commission is unaware of any less intrusive or less costly alternative methods.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis regarding the rule’s impact on competitiveness was submitted.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Commission indicates that this question is not applicable to the rulemaking.

8. Conclusion:

The submitted economic, small business and consumer impact statement contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. The Commission indicates that probable benefits will outweigh the probable costs, by providing consistency with state procurement procedures and providing clarity and effectiveness in the procurement process for the Arizona Lottery Commission. This analyst recommends approval.

Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

June 17, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: A.A.C. Title 19. Alcohol, Horse and Dog Racing, Lottery, and Gaming
Chapter 3. Arizona State Lottery Commission
Article 5: Procurements

Dear Ms. Ong:

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

1. Close of record date: The proposed rule was adopted by the agency and the rulemaking record was closed on June 17, 2016, following a period for public comment and an oral proceeding.

2. Relation of rulemaking to a five-year review: This rulemaking is not related to a five-year review report.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the preamble accurately discloses all studies relating to the rule that were either reviewed and relied on or not relied on in the agency's evaluation of or justification for the rules.

6. JLBC notification regarding new full-time employees. This rulemaking does not require any new full-time positions to implement and enforce the rules.

7. Comments regarding proposed rule: A public meeting regarding the proposed rulemaking was conducted by the Arizona State Lottery Commission on June 17, 2016. At that time, interested persons were afforded the opportunity to comment on the rules. No oral or written comments from the public were received. The Lottery Commission authorized the Director to adopt the rules on June 17, 2016.

8. List of documents enclosed:
    a. Cover letter signed by the Director of the Arizona Lottery;
    b. Documentation from the Office of the Governor providing authorization to proceed with the rulemaking;
    c. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
    d. Economic, Small Business, and Consumer Impact Statement.

Please contact me at (480) 921-4505 if I may be of further assistance.

Sincerely,

Gregg Edgar
Executive Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R19-3-501	Amend
R19-3-505	Amend
R19-3-506	Amend
R19-3-508	Amend
R19-3-509	Amend
R19-3-510	Amend
R19-3-514	Amend
R19-3-517	Amend
R19-3-518	Amend
R19-3-520	Amend
R19-3-521	Amend
R19-3-523	Amend
R19-3-524	Amend
R19-3-525	Amend
R19-3-526	Amend
R19-3-527	Amend
R19-3-528	Amend
R19-3-531	Amend

R19-3-532	Amend
R19-3-533	Repeal
R19-3-534	Amend
R19-3-535	Amend
R19-3-544	Amend
R19-3-545	Amend
R19-3-546	Amend
R19-3-547	Amend
R19-3-549	Amend
R19-3-553	Amend
R19-3-562	Amend
R19-3-563	Renumber
R19-3-563	New Section
R19-3-564	Renumber
R19-3-564	Amend
R19-3-565	Renumber
R19-3-566	Renumber
R19-3-566	Amend
R19-3-567	Renumber
R19-3-568	Renumber
R19-3-569	Renumber
R19-3-569	Amend

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

Authorizing statute: A.R.S. § 5-554(B)

Implementing statutes: A.R.S. §§ 5-559, 41-2501(G)

3. The effective date of the rules:

Sixty days after filing with the Secretary of State

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 rules:

Notice of Rulemaking Docket Opening: 22 A.A.R. 582, March 11, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 1091, May 13, 2016

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

Name: Pam DiNunzio

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4489

Fax: (480) 921-4488

E-mail: pdinunzio@azlottery.gov

Website: www.arizonalottery.com

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 Lottery's Procurement rules establish the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets

and related materials. The Lottery is amending these rules to conform to state procurement rule changes approved by the Governor's Regulatory Review Council and effective February 2015. A.R.S. § 41-2501(G) requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, or related materials. Changes have also been made where necessary to clarify existing language and procedures after review by a representative of the State Procurement Office.

An exemption from the rulemaking moratorium outlined in Executive Order 2015-01 was approved by the Governor's Office on June 4, 2015.

7. A reference to any study relevant to the rules 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:

None

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:

1. Identification of the proposed rulemaking:

The rules for Article 5, Procurements, prescribe procurement policies and procedures relating to the design and operation of the Lottery or the purchase of Lottery equipment,

tickets, and related materials. These rules govern the Lottery's procurement processes and provide open access to procurement opportunities. The rulemaking clarifies existing language and procedures and makes changes that conform to approved amendments to state procurement rules. This rulemaking does not change the Lottery's procurement authority. The Governor's Office approved an exemption from the rulemaking moratorium on June 4, 2015.

a. The conduct and its frequency of occurrence that the rule is designed to change: There is no specific conduct this rulemaking is designed to change. The intent is to create consistency with state procurement rules and to clarify procurement procedures.

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

The harm is that discrepancies in procedures will exist, detracting from clarity. If the rules are not changed, it may create confusion for vendors as a result of inconsistencies between Lottery rules and state rules that govern procurement procedures.

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

Not applicable. There is no specific targeted conduct prompting the rule amendments.

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

The Lottery anticipates this rulemaking will primarily impact the agency and businesses supplying products or services to the Lottery.

3. Cost-benefit Analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rules.

A.R.S. § 41-2501(G) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. A.R.S. § 41-2501(G) also requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements. In FY15, the expenditure for procurement contracts was approximately $34.7 million, of which about 54% ($18.6 million dollars) was expended on contracts awarded under the Lottery procurement rules.

The Lottery has one full-time Procurement position. Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency, in addition to the cost of the procurement itself. These costs are included in the agency's appropriated budget allocation for operating expenses. The rule amendments are primarily administrative and conforming in nature and the Lottery does not anticipate any additional costs to the agency or procurement functions as a result of this rulemaking.

The agency has only had one procurement appeal within the last five years. This appeal involved the Lottery's procurement for draw game services and was not completely unexpected due to the multi-million dollar value of the contract. The protest was unsuccessful.

The benefits of this rulemaking are greater efficiency in Lottery procurements and consistency with state procurement rules. In addition, the agency benefits from improved procedures related to approval authority as reflected in amendments to sections R19-3-544, R19-3-545, R19-3-546, and R19-3-549. The State Procurement Office provided input for strengthening these provisions, which will serve to protect the Lottery's interest in procurement actions. In general, the Lottery will benefit from updated, consistent rules that govern procurement processes, thus reducing the potential for protests and appeals, and improving rule clarity and ease of use.

Impact on Other Agencies: The rules have no identifiable impact on other agencies.

Full-Time Employees: The Lottery does not anticipate the need to hire any additional full-time employees; existing staff resources will be used to implement the proposed rules.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking will not have any identifiable impact on political subdivisions of the state.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

Businesses impacted by these rules are vendors supplying products or services to the Lottery. The impact on these businesses, including small businesses, should be positive. The rules provide for competition and consistency with respect to procurement procedures. The proposed amendments should improve efficiency and

provide better understanding and ease of use as compared to the existing rules. Consistent with state procurement amendments, key provisions include requiring a best and final offering if negotiations are conducted, adjusting the quotations threshold requirement to $10,000 from $5,000, changing the time frame for publication of contract awards from 10 day to 3 days, and introducing an option for informal settlement conferences during a procurement appeal. These provisions serve to improve the efficiency and transparency of the procurement process. Expanded levels of Lottery procurement oversight and approvals will serve to protect the interests of potential suppliers, in addition to the Lottery. Businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

Costs to businesses include any operational expenses necessary to comply with procurement procedures, in addition to the cost of providing supplies or services to the Lottery. These operational expenses are a cost of conducting business and are presumed to have been reflected in vendor pricing.

4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of the state directly affected by the proposed rulemaking.

This rulemaking is not expected to have any identifiable impact on private and public employment.

5. Probable impact of the proposed rulemaking on small business.

a. Identification of the small businesses subject to the proposed rulemaking.

Small businesses impacted by these rules are also vendors supplying products or services to the Lottery. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses as

provided in R19-3-532, consistent with state procurement rules. Requests for quotation must be distributed to small businesses only, and except in specific instances, contracts must be awarded to a small business. In FY15, small businesses accounted for about $13.5 million of expended funds. Small businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

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

Any administrative costs incurred to comply with procurement procedures will apply to all businesses, including small businesses.

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

Not applicable to this rulemaking; the rules are expected to have a positive impact on small businesses. Requests for quotation must be disseminated specifically to small businesses, and unless specific exceptions apply, the contract must be awarded to a small business.

6. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

There are no direct costs to consumers or the general public associated with this rulemaking. Private persons and consumers will benefit from lower costs as a result of a more efficient procurement process and the ability to secure the best value for the Lottery.

7. Probable effect on state revenues.

This rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses. However, efficient procurement procedures will help ensure the best long-term value to the state when purchasing goods and services.

8. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Lottery is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. The Lottery does not require additional funding or personnel resources to implement the amended rules and is required by A.R.S. § 41-2501(G) to adopt rules that are consistent with the policies and procedures of the Arizona Procurement Code. Procurement procedures are designed to ensure fairness to vendors while providing the best value to the Lottery and the state.

9. Description of any data on which the rule is based.

Not applicable to this rulemaking.

10. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name:	Pam DiNunzio
Address:	Arizona State Lottery
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11. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no substantive changes between the proposed rules and the final rules. Technical and clarifying changes were made to the rules at the request of Governor's Regulatory Review Council staff

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

No oral or written comments were received regarding the rulemaking.

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

No other matters are applicable.

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

Not applicable

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

There is no corresponding federal law that is applicable to the subject matter. The rules are based on state law

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

No analysis was submitted.

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

None

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 5. PROCUREMENTS

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~~R19-3-567.~~R19-3-568.Controversies Involving Lottery Claims Against the Contractor

~~R19-3-568.~~R19-3-569.Guidance

ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
3. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.

~~3.~~4. "Best interests of the Lottery" means advantageous to the Lottery.

~~4.~~5. "Bid" means an offer in response to solicitation.

~~5.~~6. "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

~~6.~~7. "Change order" means a ~~document,~~ written order that is signed by the ~~Director, which~~ procurement officer and that directs the contractor to make ~~a change that~~ changes that the changes clause of the contract authorizes the ~~Director~~ procurement officer to order.

~~7. "Competitive range" is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in~~

~~accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:~~

~~a. Affirmative compliance with mandatory requirements designated in the solicitation.~~

~~b. An ability to deliver goods or services on terms advantageous to the Lottery sufficient to be entitled to continue in the competition~~.

~~c. That the proposal is technically acceptable as submitted.~~

8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
10. "Contractor" means a person who has a contract with the Lottery.
11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.

13. “Cost reimbursement contract” means a contract under which a contractor is reimbursed for costs that are reasonable, allowable, and allocable in accordance with the ~~contact~~ contract terms and the provisions of this Article, and a fee, if provided for in the contract.
14. “Day” means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
15. “Defective data” means data that is inaccurate, incomplete, or outdated.
16. “Director” means the Executive Director of the State Lottery.
17. “Discussions” means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute “discussions.”
18. “Filed” means delivered to the ~~Arizona Lottery, 4740 E. University Dr., Phoenix, AZ 85034. A time/date stamp affixed to a document by the procurement officer or the procurement officer’s delegate when the document is delivered determines the time of filing~~ procurement officer or to the Director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
19. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
20. “Interested party” means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.

21. “Invitation for bids” means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
22. “Minor informality” means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
23. “Multiple award” means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
24. “Multi-step sealed bidding” means a two-phase bidding process consisting of a technical phase and a price phase.
25. “Negotiation” means an exchange or series of exchanges, including a request for a best and final offer, between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
26. “Offer” means a response to a solicitation.
27. “Offeror” means a person who responds to a solicitation.
28. “Person” means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
29. “Price data” means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.

30. “Procurement” means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.

31. “Procurement file” means the official records file of the Lottery. The procurement file shall include (electronic or paper) the following:

    a. List of notified vendors;

    b. Final solicitation;

    c. Solicitation amendments;

    d. Bids and offers;

    e. ~~Final proposal revisions~~ Offer revisions and best and final offers;

    f. Discussions;

    g. Clarifications;

    h. Final evaluation reports; and

    i. Additional information, if requested by the procurement officer.

32. “Proposal” means an offer submitted in response to a solicitation.

33. “Prospective offeror” means a person that expresses an interest in a specific solicitation.

34. “Purchase description” means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.

35. “Purchase request” or “purchase requisition” means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.

36. “Request for proposals” means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.

37. “Responsible bidder or offeror” means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.

38. “Responsive bidder or offeror” means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.

39. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.

40. “Services” means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.

41. “Significant procurement role”:

a. Means any role that includes any of the following duties:

i. Participating in the development of a procurement.

ii. Participating in the development of an evaluation tool.

iii. Approving a procurement or an evaluation tool.

iv. Soliciting quotes greater than ten thousand dollars for the provision of materials or services.

v. Serving as a technical advisor or an evaluator who evaluates a procurement.

vi. Recommending or selecting a vendor that will provide materials or services to the Lottery.

vii. Serving as a decision maker or designee on a protest or an appeal by a party regarding a Lottery procurement selection or decision.

b. Does not include making a decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the Lottery as applied to the project, services, goods, or materials.

~~41.~~42. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.

~~42.~~43. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.

~~43.~~44. "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.

~~44.~~45. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.

~~45.~~46. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.

~~46.~~47. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

~~47.~~48. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

R19-3-505. Prospective Suppliers List

A. The procurement officer ~~shall compile and maintain~~ may refer to a prospective suppliers list maintained by the state procurement administrator as a resource for selection of suppliers. ~~To be included on the prospective suppliers list, a person shall register with the procurement officer the company name, address, e-mail, contact name, and area of product or service interest.~~

B. The procurement officer may ~~remove suppliers from the prospective suppliers list if a notice or e-mail sent to the supplier is returned. The procurement officer shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list~~ choose to compile and maintain a Lottery prospective suppliers list as a resource for selection of suppliers.

R19-3-506. Source Selection Method: Determination Factors

A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-559 and ~~41-2501(F)~~ 41-2501(G).

B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.

~~**C.** The procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery before soliciting for offers for a competitive sealed proposal. An invitation for bid may not be practicable or advantageous if it is necessary to:~~

~~1. Use a contract other than a fixed-price type;~~

~~2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;~~

~~3. Permit offerors to revise their offers; or~~

~~4. Compare the different price, quality, and contractual factors of the offers submitted.~~

~~**D.** The procurement officer may make a class determination that it is either not practicable or not advantageous to the Lottery to procure specified types of materials or services by invitation for bid. The procurement officer may modify or revoke a class determination at any time.~~

~~**E.**~~**C.** The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

R19-3-508. Bid Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:

a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;

b. The deadline date for requesting a substitution or exception to the solicitation;

c. The manner by which the offeror is required to acknowledge amendments;

d. The minimum required information in the offer;

e. The specific requirements for designating trade secrets and other proprietary information as confidential;

f. Any specific responsibility criteria;

g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;

h. Any evaluation criteria;

i. A statement of where documents incorporated by reference are available for inspection and copying;

j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;

k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;

l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;

m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public

procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

n. Any bid security required;

o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

p. Any designation of the specific bid items and amounts to be recorded at offer opening; and

q. Any other offer submission requirements;

2. Specifications, including:

a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

b. If a brand name or ~~equal~~ equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and

c. Any other specification requirements;

3. Terms and Conditions, including:

a. Whether the contract will include an option for extension, and

b. Any other contract terms and conditions.

R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
    a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
    b. The deadline date for requesting a substitution or exception to the solicitation;
    c. The manner by which the offeror is required to acknowledge amendments;
    d. The minimum information required in the offer;
    e. The specific requirements for designating trade secrets and other proprietary information as confidential;
    f. Any specific responsibility or susceptibility criteria;
    g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
    h. Evaluation factors and the relative order of importance;
    i. A statement of where documents incorporated by reference are available for inspection and copying;
    j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
    k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
    l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
    m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public

procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

n. Any offer security required;

o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

p. Any cost or pricing data required;

q. The type of contract to be used;

r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award ~~and that fall within the competitive range~~; and

s. Any other offer requirements specific to the solicitation.

2. Specifications, including:

a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

b. If a brand name or ~~equal~~ equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and

c. Any other specification requirements specific to the solicitation.

3. Terms and Conditions, including:

a. Whether the contract is to include an extension option, and

b. Any other contract terms and conditions.

R19-3-510. Pre-Offer Conferences

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted for a solicitation, it shall be ~~not less than seven days before the offer due date and time, unless the procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation~~ within a reasonable time prior to the offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R19-3-511.

R19-3-514. Receipt, Opening, and Recording of Offers

A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.

C. For a bid solicitation, the procurement officer shall open offers ~~publicly, in the presence of one or more witnesses,~~ after the offer due date and time. ~~The procurement officer shall announce the name of the offeror, the amount of each offer, and any other relevant information as determined by the procurement officer.~~ The procurement officer shall record the name of each offeror, ~~and~~ the amount of each offer, and any other relevant information as determined by the procurement officer. ~~The reader and the witness shall sign the record of offers and place it in~~

~~the procurement file.~~ The procurement officer shall make the record of offers available for public viewing.

D. For a proposal solicitation, the procurement officer shall open offers ~~publicly, in the presence of one or more witnesses,~~ after the offer due date and time. The procurement officer shall ~~announce and~~ record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.

E. Except for the information identified in subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

R19-3-517. One Offer Received

A. If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
    a. The price submitted is fair and reasonable under R19-3-550,
    b. The offer is responsive, and
    c. The offeror is responsible, or
2. Reject the offer and:
    a. Resolicit for new offers,
    b. Cancel the procurement, or
    c. Use a different source selection method authorized under these rules.

B. If the procurement officer awards a contract for a solicitation under (A)(1), the award shall comply with R19-3-527 for a bid solicitation and R19-3-528 for a proposal solicitation.

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

C. The procurement officer may permit an offeror to correct a mistake if the mistake involves a minor informality or if the mistake and the intended offer are evident in the uncorrected offer;

for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.

D. The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R19-3-520. Determination of Not Susceptible for Award

A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award ~~or not within the competitive range~~. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:

1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
3. The offer is not susceptible for award ~~or is not within the competitive range~~ in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award ~~or is in the competitive range~~, the offer should be included for further consideration.

B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award ~~or not within the competitive range~~, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

R19-3-521. Bid Evaluation

A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation. ~~Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.~~

B. The procurement officer ~~shall~~ may consider life cycle costs and application benefits when evaluating offers for the procurement of ~~material or services, information systems, and telecommunication systems~~ materials.

C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.

D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the procurement officer shall confirm the negotiations in writing and provide the document to the offeror.

C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be ~~in the competitive range or~~ reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.

D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.

E. Responsible offerors determined to be susceptible for award ~~and within the competitive range~~, with which negotiations have been held, may revise their offer in writing during negotiations.

F. An offeror may withdraw an offer at any time before the ~~final proposal revision~~ best and final offer due date and time by submitting a written request to the procurement officer.

R19-3-524. ~~Final Proposal~~ Offer Revisions and Best and Final Offers

A. The procurement officer ~~shall~~ may request written ~~final proposal~~ revisions ~~from any offeror with whom negotiations have been conducted, unless the offeror has been determined not within the competitive range or not susceptible for award under R19-3-520 or non-responsible under R19-3-526~~ to an offer. The procurement officer shall include in the written request:

1. The date, time, and place for submission of ~~final proposal~~ offer revisions; and

2. A statement that if offerors do not submit a written notice of withdrawal or a written ~~final proposal~~ offer revision, their immediate previous written ~~proposal revision~~ offer will be accepted as their final ~~proposal revision~~ offer.

B. The procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted, however it is not mandatory to conduct negotiations prior to requesting a best and final offer. The procurement officer shall include in the written request:

1. The date, time, and place for submission of best and final offer; and
2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.

~~**B.**~~**C.**The procurement officer shall request written ~~final proposal revisions~~ best and final offers only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.

~~**C.**~~**D.**If an apparent mistake, relevant to the award determination, is discovered after opening of ~~final proposal revisions~~ best and final offers, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

~~**D.**~~**E.** An offeror who discovers a mistake in their ~~final proposal revision~~ best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

~~**E.**~~**F.** In response to a request made under subsections ~~(C)~~ (D) or ~~(D)~~ (E), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the ~~final proposal revision~~ best and final offer, the procurement officer shall make a written determination that the most recent written ~~proposal revision~~ best and final offer submitted is the ~~final proposal revision~~ final best and final offer.

R19-3-525. Evaluation of Proposal Offers

A. The procurement officer shall evaluate offers and ~~final proposal revisions~~ best and final offers based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.

B. The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:

1. Accept or reject the findings of the evaluation committee,
2. Request additional information from the evaluation committee, or
3. Replace the evaluation committee.

C. The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R19-3-526. Responsibility Determinations

A. The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.

B. The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the Lottery;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets the responsibility criteria specified in the solicitation.

C. If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors. The procurement officer shall file a copy of the determination in the procurement file.

D. The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

E. For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R19-3-527. Bid Contract Award

A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.

E. Within ~~10~~ 3 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-528. Proposal Contract Award

A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

~~**B.** Before awarding any cost reimbursement contract, the procurement officer shall determine in writing that:~~

~~1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and~~

~~2. It is adequate to allocate costs under R19-3-550 through R19-3-553.~~

~~**C.**~~**B.**The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

~~**D.**~~**C.**If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.

1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
2. The Lottery Commission shall not take action in the executive session.
3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.

~~**E.**~~**D.**The procurement officer shall notify all offerors of an award that has become effective and binding.

~~F.~~**E.**After an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.

~~G.~~**F.**Within ~~10~~ 3 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under ~~R19-3-533~~ R19-3-532 unless any of the following apply:

1. The purchase can be made from a state or agency contract,
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636,
3. The purchase is not expected to exceed ~~$5,000.00,~~ $10,000.00, or
4. ~~The purchase is made as a sole-source procurement, or~~

~~5.~~4.The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

R19-3-532. Solicitation – Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed ~~$5,000~~ $10,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:

1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;

2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
3. The minimum information that the offer shall contain;
4. Any evaluation factors;
5. Whether negotiations may be held;
6. Any contract options including renewal or extension;
7. The uniform terms and conditions by text or reference; and
8. Any other terms, conditions, or instructions specific to the procurement.

B. The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.

~~B.~~C. The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:

1. The purchase has been unsuccessfully competed under ~~R19-3-533~~ Subsection (B) of this Section, including failure to obtain fair and reasonable prices; ~~or~~
2. The procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list, or

~~2.~~3. The procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

R19-3-533. ~~Request for Quotation Issuance~~ Repealed

~~The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers~~

~~invited to submit quotations. The procurement officer may cancel the request for quotation at any time.~~

R19-3-534. Quotation Contract Award

A. If only one responsive offer is received, the procurement officer shall ~~explain in writing whether award of the contract is advantageous to the Lottery and place the determination in the procurement file~~ determine if the price is fair and reasonable, and in the best interest of the Lottery to award a contract, and place the determination in the procurement file. If time permits, the procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.

B. The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. The procurement officer shall make the procurement file available to the public on the date the contract award becomes effective and binding.

R19-3-535. Sole Source Procurements

A. For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:

1. There is only a single source for the material or service, or
2. No reasonable alternative source exists.

B. This Section applies only to sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.

~~**B.**~~**C.**The procurement officer shall make a written determination that includes the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
2. The name of the proposed supplier,
3. The duration and estimated total dollar value of the proposed procurement,
4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-550, and
5. A description of efforts made to seek other sources.

~~**C.**~~**D.**The procurement officer shall post the request on the Lottery ~~web site~~ website and send notice to registered vendors on the state's electronic system to invite comments on the sole-source request for three working days. Following this period, the procurement officer shall either:

1. Issue a written determination with any conditions or restrictions, or
2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

~~**D.**~~**E.**If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.

~~**E.**~~**F.**The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.

~~**F.**~~**G.**The procurement officer shall keep a record of all sole-source procurements.

R19-3-544. Contract Change Orders and Amendments

A. The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds ~~$100,000~~ 25% of the original contract amount may be executed only if approved by the budget manager and the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-550.

C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

R19-3-545. Multi-term Contracts

A. Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.

B. A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery and the Lottery Commission pre-approves the extended contract period. The written determination shall include:

1. The initial and renewal option periods for the contract,
2. Documentation that the estimated requirements are reasonable and continuing, and

3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.

C. The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R19-3-546. Terms and Conditions

A. The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.

B. The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements, provided that the procurement officer gives notice to the state procurement administrator of those changes.

R19-3-547. Mandatory Statewide Contracts

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts~~, unless a written determination is made by the procurement officer that the available statewide contracts do not meet the Lottery's needs~~ for all non-Lottery specific materials and services, unless an off-contract request is approved by the state procurement administrator.

R19-3-549. Conflict of Interest

A. A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.

B. The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived. If the procurement officer is the individual with the restriction, the Director may waive the restriction set forth in subsection (A) if the Director determines in writing that the rule's application would not be in the Lottery's best interest. If the Director is the person with the restriction, the restriction may be waived by a determination of the office of the Governor.

R19-3-553. Defective Cost or Pricing Data

A. The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.

B. The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.

C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under ~~R19-3-564~~ R19-3-565 through ~~R19-3-566~~ R19-3-567. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

R19-3-562. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a ~~not susceptible for award~~ not-susceptible-for-award determination, or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557 or R19-3-563.

R19-3-563. Informal Settlement Conference

A. In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing.

C. If any interested party chooses not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference.

D. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or

some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings.

E. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision.

F. When making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

~~R19-3-563.~~R19-3-564.Dismissal Before Hearing

A. The Director ~~shall~~ may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:

1. The appeal does not state a valid basis for protest,
2. The appeal is untimely as prescribed under R19-3-558, or
3. The appeal attempts to raise issues not raised in the protest.

B. The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

~~R19-3-564.~~R19-3-565.Controversies Involving Contract Claims Against the Lottery

A. A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the solicitation or contract number;

4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. The procurement officer shall have the authority to settle and resolve contract claims.

~~R19-3-565.~~R19-3-566.Procurement Officer's Decision Regarding Contract Claims

A. If a claim cannot be resolved under ~~R19-3-564~~ R19-3-565, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:

1. A description of the claim;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the procurement officer's decision, with supporting rationale; and
5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in ~~R19-3-566(B)~~ R19-3-567(B) with the procurement officer within 30 days from the date you receive this decision."

C. If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

~~R19-3-566.~~R19-3-567.Appeals and Reports to the Director Regarding Contract Claims

A. The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.

B. The claimant shall file the appeal in writing and shall include the following:

1. A copy of the decision of the procurement officer,
2. A statement of the factual areas of agreement or disagreement, and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

C. The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

~~R19-3-567.~~R19-3-568.Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

~~R19-3-568.~~R19-3-569.Guidance

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or ~~A.A.C. R2-7-101 through R2-7-1009~~ 2 A.A.C. 7, including, but not limited to a procurement utilizing a cooperative contract.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 19: ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3: ARIZONA STATE LOTTERY COMMISSION

ARTICLE 5: PROCUREMENTS

1. Identification of the proposed rulemaking.

The rules for Article 5, Procurements, prescribe procurement policies and procedures relating to the design and operation of the Lottery or the purchase of Lottery equipment, tickets, and related materials. These rules govern the Lottery's procurement processes and provide open access to procurement opportunities. The rulemaking clarifies existing language and procedures and makes changes that conform to approved amendments to state procurement rules. This rulemaking does not change the Lottery's procurement authority. The Governor's Office approved an exemption from the rulemaking moratorium on June 4, 2015.

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

There is no specific conduct this rulemaking is designed to change. The intent is to create consistency with state procurement rules and to clarify procurement procedures.

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

The harm is that discrepancies in procedures will exist, detracting from clarity. If the rules are not changed, it may create confusion for vendors as a result of inconsistencies between Lottery rules and state rules that govern procurement procedures.

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

Not applicable. There is no specific targeted conduct prompting the rule amendments.

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

The Lottery's procurement rules establish policies and procedures for procurements pertaining to Lottery game design and operation or the purchase of Lottery equipment, tickets, and related materials. The rulemaking will primarily impact the agency and businesses supplying products or services to the Lottery. The rule amendments are largely administrative in nature and no additional costs to the agency or businesses are anticipated. The Lottery will benefit from greater efficiency and reduced potential for protests and appeals. The Lottery has only had one protest within the last 5 years, which was unsuccessful. Businesses will benefit from improved clarity and from consistency with state procurement rules. Small businesses will continue to benefit from provisions that target procurements specifically to these businesses, with the added provision that quotation requests must be solicited from small businesses only. No measurable impact on state revenues or expenses is anticipated and no additional full-time employees are required in order to implement this rulemaking.

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

Name: Pam DiNunzio, Budget Manager

Address: 4740 E. University Dr.

Phoenix, AZ 85034

Telephone: (480) 921-4489

Fax: (480) 921-4488

E-mail: pdinunzio@azlottery.gov

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

The Lottery anticipates this rulemaking will primarily impact the agency and businesses supplying products or services to the Lottery.

5. ***Cost-benefit Analysis:***

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rules.

A.R.S. § 41-2501(G) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. A.R.S. § 41-2501(G) also requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements. In FY15, the expenditure for procurement contracts was approximately $34.7 million, of which about 54% ($18.6 million dollars) was expended on contracts awarded under the Lottery procurement rules.

The Lottery has one full-time Procurement position. Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency, in addition to the cost of the procurement itself. These costs are included in the agency's appropriated budget allocation for operating expenses. The rule amendments are primarily administrative and conforming in nature and the Lottery does not anticipate any additional costs to the agency or procurement functions as a result of this rulemaking.

The agency has only had one procurement appeal within the last five years. This appeal involved the Lottery's procurement for draw game services and was not completely unexpected due to the multi-million dollar value of the contract. The protest was unsuccessful. The benefits of this rulemaking are greater efficiency in Lottery procurements and consistency with state procurement rules. In addition, the agency benefits from improved procedures related to approval authority as reflected in amendments to sections R19-3-544, R19-3-545, R19-3-546, and R19-3-549. The State Procurement Office provided input for strengthening these provisions, which will serve to protect the Lottery's interest in procurement actions. In general, the Lottery will benefit from updated, consistent rules that govern procurement processes, thus reducing the potential for protests and appeals, and improving rule clarity and ease of use.

Impact on Other Agencies: The rules have no identifiable impact on other agencies.

FTE Requirements: The Lottery does not anticipate the need to hire any additional full-time employees; existing staff resources will be used to implement the proposed rules.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking will not have any identifiable impact on political subdivisions of the state.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

Businesses impacted by these rules are vendors supplying products or services to the Lottery. The impact on these businesses, including small businesses, should be positive. The rules provide for competition and consistency with respect to procurement procedures. The proposed

amendments should improve efficiency and provide better understanding and ease of use as compared to the existing rules. Consistent with state procurement amendments, key provisions include requiring a best and final offering if negotiations are conducted, adjusting the quotations threshold requirement to $10,000 from $5,000, changing the time frame for publication of contract awards from 10 day to 3 days, and introducing an option for informal settlement conferences during a procurement appeal. These provisions serve to improve the efficiency and transparency of the procurement process. Expanded levels of Lottery procurement oversight and approvals will serve to protect the interests of potential suppliers, in addition to the Lottery. Businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

Costs to businesses include any operational expenses necessary to comply with procurement procedures, in addition to the cost of providing supplies or services to the Lottery. These operational expenses are a cost of conducting business and are presumed to have been reflected in vendor pricing.

6. ***Probable impact on private and public employment in businesses, agencies, and political subdivisions of the state directly affected by the proposed rulemaking***.

This rulemaking is not expected to have any identifiable impact on private and public employment.

7. ***Probable impact of the rulemaking on small businesses.***

   a. ***Identification of the small businesses subject to the rulemaking.***

Small businesses impacted by these rules are also vendors supplying products or services to the Lottery. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses as provided in R19-3-532,

consistent with state procurement rules. Requests for quotation must be distributed to small businesses only, and except in specific instances, contracts must be awarded to a small business. In FY15, small businesses accounted for about $13.5 million of expended funds. Small businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

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

Any administrative costs incurred to comply with procurement procedures will apply to all businesses, including small businesses.

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

Not applicable to this rulemaking; the rules are expected to have a positive impact on small businesses. Requests for quotation must be disseminated specifically to small businesses, and unless specific exceptions apply, the contract must be awarded to a small business.

8. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

There are no direct costs to consumers or the general public associated with this rulemaking. Private persons and consumers will benefit from lower costs as a result of a more efficient procurement process and the ability to secure the best value for the Lottery.

9. Probable effect on state revenues.

This rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses. However, efficient procurement procedures will help ensure the best long-term value to the state when purchasing goods and services.

10. Less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

The Lottery is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. The Lottery does not require additional funding or personnel resources to implement the amended rules and is required by A.R.S. § 41-2501(G) to adopt rules that are consistent with the policies and procedures of the Arizona Procurement Code. Procurement procedures are designed to ensure fairness to vendors while providing the best value to the Lottery and the state.

11. Description of any data on which the rule is based.

Not applicable to this rulemaking.

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

Authority: A.R.S. § 5-501 et seq.

19 A.A.C. 3, consisting of R19-3-101, R19-3-201 through R19-3-207, R19-3-301 through R19-3-381, R19-3-401, R19-3-501 through R19-3-549, and R19-3-601 recodified from 4 A.A.C. 37, consisting of R4-37-101, R4-37-201 through R4-37-207, R4-37-301 through R4-37-381, R4-37-401, R4-37-501 through R4-37-549, and R4-37-601, pursuant to R1-1-102 (Supp. 95-1).

ARTICLE 1. EXPIRED

Article 1, consisting of Section R19-3-101, expired under A.R.S. § 41-1056(E) at 17 A.A.R. 300, effective January 31, 2011 (Supp. 11-1).

Section
R19-3-101. Expired

ARTICLE 2. RETAILERS

Section
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Section
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Exhibit C. Repealed
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R19-3-397. Repealed
R19-3-398. Repealed
R19-3-399. Repealed

ARTICLE 4. DESIGN AND OPERATION OF ON-LINE GAMES

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R19-3-402. Game Profile
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Exhibit 2. Repealed
Exhibit 3. Repealed
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R19-3-403. Ticket Purchases, Characteristics, and Restrictions
R19-3-404. Drawings
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R19-3-411. Prize Fund
R19-3-412. Multi-State Lottery Association Games

ARTICLE 5. PROCUREMENTS

Article 5, consisting of Sections R4-37-501 through R4-37-549, adopted as permanent rules effective August 29, 1985.

Former Article 5, consisting of Sections R4-37-501 through R19-3-549, adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). R19-3-501 through R19-3-549 recodified from R4-37-501 through R4-37-549 (Supp. 95-1).

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R19-3-502. Written Determination
R19-3-503. Confidential Information
R19-3-504. General Provisions
R19-3-505. Prospective Suppliers List
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R19-3-525. Evaluation of Proposal Offers
R19-3-526. Responsibility Determinations
R19-3-527. Bid Contract Award
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R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535
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R19-3-537. Competition Impracticable Procurements
R19-3-538. Request for Information
R19-3-539. Demonstration Projects
R19-3-540. General Services Administration Contracts
R19-3-541. Contract Clauses
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R19-3-544. Contract Change Orders and Amendments
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R19-3-548. Multiple Source Contracts
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R19-3-553. Defective Cost or Pricing Data
R19-3-554. Protest of Solicitations and Contract Awards
R19-3-555. Stay of Procurements During the Protest
R19-3-556. Resolution of Solicitation and Contract Award Protests
R19-3-557. Remedies by the Procurement Officer
R19-3-558. Appeals to the Director Regarding Protest Decision
R19-3-559. Notice of Appeal to the Director Regarding Protests
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R19-3-561. Agency Report Regarding Protest Appeals
R19-3-562. Remedies by the Director
R19-3-563. Dismissal Before Hearing
R19-3-564. Controversies Involving Contract Claims Against the Lottery
R19-3-565. Procurement Officer's Decision Regarding Contract Claims
R19-3-566. Appeals and Reports to the Director Regarding Contract Claims
R19-3-567. Controversies Involving Lottery Claims Against the Contractor
R19-3-568. Guidance

ARTICLE 6. ANNUITY ASSIGNMENTS

Article 6, consisting of Section R19-3-601, made by final rulemaking at 11 A.A.R. 2028, effective July 2, 2005 (Supp. 05-2).

Article 6, consisting of Section R19-3-601, repealed effective June 17, 1997 (Supp. 97-1).

R19-3-601 recodified from R4-37-601 (Supp. 95-1).

Article 6, consisting of Section R4-37-601, adopted as a permanent rule effective February 25, 1987.

Article 6, consisting of Section R4-37-601, adopted as an emergency effective October 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days.

Section
R19-3-601. Voluntary Assignment of Prizes Paid in Installments

ARTICLE 7. DESIGN AND OPERATION OF INSTANT GAMES

Article 7, consisting of Sections R19-3-701 through R19-3-709, adopted effective October 25, 1996 (Supp. 96-4).

Section
R19-3-701. Definitions
R19-3-702. Game Profile
R19-3-703. Game Playstyle
R19-3-704. Determination of a Winning Ticket
R19-3-705. Ticket Validation and Confirmation Requirements
R19-3-706. Ticket Ownership and Responsibility; Prize Payment
R19-3-707. Claim Period
R19-3-708. Procedure for Claiming Prizes
R19-3-709. Disputes Concerning a Ticket

ARTICLE 8. RESERVED

ARTICLE 9. RESERVED

ARTICLE 10. PROMOTIONS

Article 10, consisting of Sections R19-3-1001 through R19-3-1008, adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1).

Section
R19-3-1001. Definitions
R19-3-1002. Promotion Profile
R19-3-1003. Promotion Playstyle - Promotion Type
R19-3-1004. Determination of a Winning Promotion
R19-3-1005. Repealed
R19-3-1006. Repealed
R19-3-1007. Procedure for Claiming Prizes and Claim Period
R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

ARTICLE 1. EXPIRED

R19-3-101. Expired

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-101 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-101 recodified from R4-37-101 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 354, effective March 11, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 300, effective January 31, 2011 (Supp. 11-1).

ARTICLE 2. RETAILERS

R19-3-201. Definitions

In this Article, unless the context otherwise requires:

1. "Act" means A.R.S. Title 5, Chapter 5.1, Article 2.
2. "Activated" means the process taken by retailers to make a pack of instant scratch tickets valid for sale to the general public.
3. "Chapter" means Arizona Administrative Code, Title 19, Chapter 3.
4. "Charitable Organization" means an organization including not more than one auxiliary, to which the United States Internal Revenue Service has issued a letter of determination of the organization's tax-exempt status, and the organization has operated for charitable purposes in Arizona for at least two years.
5. "Controlling agent" means a stockholder, director, officer, managerial employee, or other person directly or indirectly controlling or operating the retailer's business.
6. "Controlling person" means a person at least 21 years of age accountable for the Lottery license.
7. "Flare" means the board or placard that accompanies each package of instant tab tickets and that has printed on or affixed to it the following information:
   a. Game name,
   b. Serial number,
   c. Ticket count,
   d. Prize structure, and
   e. Cost per play.
8. "Instant scratch ticket" means an instant game ticket where the protective covering is made of latex or another substance that is scratched off.
9. "Instant tab ticket" means an instant game ticket where the protective covering is a perforated paper tab that is

opened. Instant tab ticket is the brand name for Arizona Lottery pull tabs.

10. "License" means:
    a. "Full product license" means a license to sell the products authorized by the Lottery.
    b. "Charitable organization license" means a license issued to a qualified charitable organization to sell only instant tab tickets.
    c. "Instant tab license" means a license to sell only instant tab tickets.
11. "Limited license" means a license issued by the Lottery that restricts the type of Lottery products sold, methods of selling, methods of validating Lottery products, or the type of applicant that qualifies for a Lottery license.
12. "Local premise manager" means a person who resides in Arizona that manages or is responsible for the operation of a premise or a number of premises.
13. "Minor" means an individual under the age of 18.
14. "On-line ticket" means a ticket purchased through a network of Lottery-authorized equipment linked to a central computer that records the wagers.
15. "Partial pack of tickets" means less than a complete pack of consecutively numbered and connected tickets.
16. "Premise manager" means the contact representative for a specific premise of a business or charitable organization.
17. "Pull tab" means an instant game ticket where the protective covering is a perforated paper tab that is opened to reveal the predetermined winning and non-winning symbols.
18. "Raffle" means the selling of numbered tickets, where each ticket has an equal chance of winning a prize in a random drawing held after the completion of all ticket sales.
19. "Retailer" means a licensed provider of sales and redemptions services for Lottery products. A retailer may hold a full product license, a charitable organization license, an instant tab license, or a combination of licenses.
20. "Retailer bonus" means a sum of money credited to the retailer in addition to the retailer commission for specific actions or efforts in selling or validating Lottery products.
21. "Retailer commission" means a retailer incentive designed to maximize the sale of Lottery products by establishing a specific percent of the sales price of each ticket sold as payment for services in selling Lottery tickets.
22. "Retailer compensation" means all types of cash and non-cash compensation to the retailer for selling Lottery tickets.
23. "Retailer compensation profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all the fundamentals required by these rules for retailer compensation including commission, bonus, and incentive compensation to be credited to Lottery retailers.
24. "Retailer incentive" means cash and non-cash methods to motivate action by the Lottery retailer to stimulate sales.
25. "Sales benchmark" means sales objectives established by the Lottery based upon previous performance.
26. "Ticket" means one or more Lottery game plays.
27. "Validation" means confirmation of a winning Lottery ticket.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-201 adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (A) effective September 14, 1983 (Supp. 83-5). Amended subsection (E) and added subsection (F) effective January 6, 1987 (Supp 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-201 recodified from R4-37-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-201 renumbered to R19-3-202; new R19-3-201 made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202. Retailer's Application for License

All applicants shall provide the Director with the following to apply for a license to sell Lottery tickets:

1. A verified application on forms prescribed by the Director containing the following information:
    a. The applicant's name, and if different, the trade name of the business premise, address of the physical location of the place of business, the mailing address if different, and phone number;
    b. The applicant's current transaction privilege tax license number issued under A.R.S. § 42-5005 and federal taxpayer identification number issued by the Internal Revenue Service and recorded on Form W-9;
    c. Certification that access to the applicant's business complies with the Americans with Disabilities Act;
    d. Marketing and sales information on the forms provided by the Lottery. The information required includes the number of cash registers, hours of operation, products presently offered for sale, and the approximate daily volume of customers entering the place of business;
    e. Evidence the applicant operates a business with other products or services unrelated to lottery products or services concerning lotteries;
    f. Financial relationship and any outstanding debt owed to the state of Arizona, any of its political subdivisions, or the United States government;
    g. Evidence the applicant for a full product license is financially solvent. The evidence may include either of the following:
        i. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the three years immediately preceding the date of application, and does not have outstanding legal actions, judgments, or tax liens; or
        ii. Personal guarantee, in writing, of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property.
    h. An Electronic Funds Transfer Authorization agreement showing a valid bank account number for the full product applicant from which the Lottery will withdraw any amounts due.
2. If the applicant does business as a sole proprietorship or partnership:
    a. The name, home address, and home phone number of each owner or partner, including spouse if community property owner, unless applicant provides

proof that the business is sole property separate from the community; and
b. Written authorization and tax identification number for the business entity and Social Security number of each applicant in order to obtain a credit check from a credit reporting agency.

3. If the applicant does business as a limited liability partnership ("LLP") or a limited liability company ("LLC"):
   a. The name, home address, and home phone number of each partner or member; and
   b. Written authorization and a tax identification number to perform a credit check.
4. If the applicant does business as a corporation:
   a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address and home phone number of the responsible local premise manager who is the contact representative for the applicant's corporate location in Arizona; and
   b. Written authorization and a tax identification number to perform a credit check.
5. If the applicant does business as a charitable organization:
   a. A copy of the organization charter or formation, documentation of current membership status in the organization, and if applicable, the authorization of the auxiliary;
   b. The name, home address, and home phone number of each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary;
   c. A letter of determination issued in the organization's name by the United States Internal Revenue Service verifying the organization's tax-exempt status; and
   d. Evidence the charitable organization has maintained a premise within the state of Arizona for the two years immediately preceding the date of application.
6. If the Lottery licenses an applicant under subsection (1)(g)(ii), the guarantor shall provide a written authorization to perform a credit check. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit check.
7. An application fee of $45.00 and an additional credit check fee of $22 if the applicant does business as a corporation, limited liability company, limited liability partnership, or partnership.
8. If the applicant is a business with more than one currently licensed location, the application fee for the new location shall be pro-rated at $1.25 per month from the application date until the date the other licenses are due for renewal under R19-3-202.04(B)(3).

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-202 adopted effective August 17, 1981 (Supp. 81-4). Spelling correction, subsection (A) to adoption effective August 17, 1981 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-202 recodified from R4-37-202 (Supp. 95-1). Section repealed; new Section R19-3-202 renumbered from R19-3-203 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-202 renumbered to R19-3-203; new R19-3-202 renumbered from R19-3-201 and amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 20 A.A.R. 964, effective June 1, 2014 (Supp. 14-2).

R19-3-202.01. Prerequisites to Issue or Renew a License

A. Evidence the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines the person has committed any act which, if committed by a licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona.

B. An applicant, a director or officer of a corporation, member of a limited liability company, or charitable organization shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months.

C. An applicant, a director or officer of a corporation, member of a limited liability company, or charitable organization shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than noncompliance with the Americans with Disabilities Act, and shall not have sold Lottery products without being licensed within one year of the person's date of application.

D. An applicant for a full product license shall have demonstrated financial solvency based on the information obtained through the application, credit check, or pending litigation, if any, or tax liens, if any.

E. An applicant shall be one of the following to fulfill residency requirements:
1. A resident of Arizona,
2. A corporation incorporated in Arizona or authorized to do business in Arizona,
3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona,
4. A partnership in which at least one of the general partners resides in Arizona,
5. A limited liability partnership in which at least one of the partners resides in Arizona, or
6. A charitable organization authorized to do business in Arizona.

F. As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its commissioners, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.02. Time-frame for Licensure

A. For the purpose of A.R.S. §§ 41-1072 through 41-1079, the Director establishes the time-frames for a license to sell Lottery tickets:
1. Administrative completeness review time-frame: 15 days.
2. Substantive review time-frame: 75 days.

3. Overall time-frame: 90 days.

B. The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fees prescribed in R19-3-202.
1. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.
2. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing or deficient information.
3. The 15-day time-frame for the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.
4. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.

C. An applicant shall respond to a request for missing information within 20 days of notice of incompleteness.

D. If an applicant fails to submit a complete application within the time allowed, the Director may close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to R19-3-202.

E. From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
1. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
2. If an applicant is found to be eligible for a license, the Director shall issue a license to the applicant permitting the applicant to engage in business as a retailer under the terms of this Chapter.
3. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
4. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
5. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than 18 days.

F. If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.03. Denial of License Application

The Lottery shall not issue a license to an applicant if any of the following applies:
1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members or managers is a minor, or a corporation in which a corporate officer, director, or manager of Lottery sales is a minor;
2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507;
3. The applicant has sold a Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license; or
4. The applicant fails to have a controlling person at least 21 years of age.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.04. Duration and Renewal of License

A. A license issued under this Chapter shall expire three years from the license issuance date by operation of law.

B. A retailer may renew a license to sell Lottery tickets by submitting to the Director a verified application for renewal of the current license on forms prescribed by the Director containing the information required in R19-3-202 and R19-3-202.01. By filing an application for renewal, a retailer holding a full product license authorizes the Lottery to collect a $45.00 renewal fee by an electronic transfer of funds from the bank account from which the Lottery regularly bills the retailer. A retailer holding a charitable organization license or instant tab license shall submit cash, check, or a money order with its renewal application.
1. An application for renewal of a Lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the retailer to continue to operate until actual issuance of the renewal license.
2. The Director may refuse to renew a license according to the provisions of R19-3-204.
3. A retailer holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at $1.25 per month from the license expiration date until the next renewal date of the other licenses held by the same retailer.

C. A license issued under this Chapter is subject to termination by the Director according to the provisions of this Chapter.

D. A retailer may voluntarily surrender a license unless an investigation or action has been initiated against the retailer.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.05. Display of License and Point-of-sale Material

A. A retailer shall conspicuously display to the public that it is a licensed Lottery retailer. A retailer may do this by:
1. Posting the Lottery license in a prominent place on the premises; or
2. Posting the authorized Lottery retailer decal in a prominent place in public view, and retaining a copy of the license on the premise, available upon request.

B. A retailer shall prominently display the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number.

C. A retailer holding a charitable organization license or instant tab license shall prominently display the flare for each instant tab game currently on sale at or near the point of sale.

D. A violation of this subsection is grounds for disciplinary action according to the provisions of R19-3-204.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-202.06. Use of Lottery Logo and Trademark

A. A retailer may not use the logos, trademarks, or other advertising materials of the Lottery without prior written permission or authorization of the Lottery, except for materials provided to the retailer by the Lottery.

B. A retailer shall not display or publish on the licensed premises material which may be considered derogatory or adverse to the operation or dignity of the Lottery or the state of Arizona. A retailer shall remove any such materials from the licensed premise upon request of the Lottery.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-203. Direct and Promotional Sales

A. The Lottery may sell Lottery tickets at its main office or any branch it establishes in the state.

B. The Lottery may sell Lottery tickets at any promotional event.

C. The Lottery may authorize a licensed retailer to sell Lottery tickets at an auxiliary premise for a promotional event.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R5-37-203 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-2-203 recodified from R4-37-203 (Supp. 95-1). R19-2-203 renumbered to R19-3-202; new Section R19-2-203 renumbered from R19-4-204 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 914, effective February 10, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-203 renumbered to R19-3-204; new R19-3-203 renumbered from R19-3-202 by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License

A. A license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:

1. The retailer violates a provision of the criminal laws of the state of Arizona or the United States, which could be punished by jail time or imprisonment;
2. The retailer offers to sell a Lottery ticket, sells a Lottery ticket, or pays a prize on any winning Lottery ticket to a person under 21 years of age;
3. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
4. The retailer fails to maintain minimum sales requirements or does not follow the guidelines established by the Lottery. The Lottery shall provide minimum sales requirements to retailers at least 30 days prior to the effective change date;
5. The retailer commits an act that impairs the retailer's reputation for honesty and integrity;
6. The retailer sells a ticket at a price greater than face value;
7. The retailer pays less than the full prize value of the ticket at validation;
8. The retailer advises a player that a winning ticket presented for validation was not a prize winner;
9. The retailer sells tickets not activated for sale on three or more occasions within any 12-month period;
10. The retailer sells a ticket while license is suspended for insufficient funds;
11. The retailer does not make purchase or redemption of Lottery tickets convenient and readily accessible to the public;
12. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, incomplete, or omits relevant information;
13. The retailer's actions cause two payments to be returned to the Lottery for insufficient funds in a 12-month period;
14. The retailer becomes insolvent, unable or unwilling to pay debts, or is declared bankrupt;
15. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager of the retailer:
    a. Is convicted of a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices; or
    b. Is the subject of a civil order, judgment, or decree of a federal or state authority for misrepresentation, consumer fraud, or any other fraud;
16. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure;
17. The retailer adds a minor as an owner, partner, or officer of the business;
18. The retailer, or an officer, employee, or agent of the retailer does any of the following:
    a. Plays any Lottery game while working,
    b. Fails to purchase or validate the ticket from another on-duty employee or through a Lottery product vending machine, or
    c. Fails to pay for the ticket prior to playing the Lottery game.
19. The retailer, or an officer, employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
20. The retailer, or an officer, employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the internet, or on premises not authorized by the Lottery;
21. The retailer, or an officer, employee, or agent of the retailer sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
22. The retailer fails to display the Authorized Retailer Notice, which includes the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number;
23. The retailer fails to report a change event defined in R19-3-210;
24. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws, Lottery regulations, or denies access to Lottery personnel;
25. The retailer holding a charitable organization license or instant tab license fails to prominently display the flare for each instant tab game currently on sale within public view near the point of sale;
26. The retailer holding a charitable organization license no longer qualifies as a charitable organization or its letter of determination of tax-exempt status is suspended or revoked; or

27. The retailer fails to comply with the rules governing its license.

B. An investigation of a violation of Lottery rules may be initiated by action of the Director or by a written complaint of any person.
1. An investigation initiated by a written complaint shall be investigated within 30 days of receiving the complaint.
2. During an investigation the Director may temporarily suspend a license under an emergency action, or impose specific conditions on a retailer.

C. An action to suspend or revoke a license shall be initiated by a notice of action to the retailer. Notice may be made by mail, hand-delivery, or electronic mail with a copy by regular mail. Notice to the retailer is effective notice if it is sent to the address in the application or the last address provided under R19-3-210.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-204 adopted effective August 17, 1981 (Supp. 81-4). Amended as an emergency effective June 26, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Correction, former emergency amendment shown effective June 26, 1983 should read effective June 10, 1983. Former emergency amendment now adopted as a permanent amendment without change effective September 14, 1983 (Supp. 83-5). Amended effective March 6, 1986 (Supp. 86-2). Amended subsection (B) effective January 6, 1987 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-204 recodified from R4-37-204 (Supp. 95-1). Section R19-3-204 renumbered to R19-3-203; new Section R19-3-204 renumbered from R19-3-205 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-204 repealed; new R19-3-204 renumbered from R19-3-203 and amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.01. Procedure for Requesting a Hearing

A. A retailer may request a hearing on any notice to revoke or suspend a Lottery license.

B. The hearing shall be held before the Office of Administrative Hearings. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.

C. The Director may accept, modify, reject, or allow the recommended decision of the Administrative Law Judge to become final by expiration of time. This is a final administrative decision of the Lottery.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.02. Lottery Determination of Need for Emergency Action

A. The Director may determine the need for emergency action to disable a retailer's Lottery-issued equipment, suspend sales of Lottery games, or remove tickets if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
1. The retailer's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the retailer's account is returned by the bank as insufficient funds or closed account and the retailer does not immediately pay the insufficiency;
2. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws or Lottery regulations;
3. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager is charged with a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices;
4. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
5. The retailer sells an altered or expired ticket;
6. The retailer sells a ticket at a price greater than face value; or
7. The retailer pays less than the full prize value of the ticket at validation.

B. A retailer who receives a Notice of Intent to Revoke a Retailer's License with a finding of emergency action shall:
1. Immediately cease all sales of Lottery products, and
2. Surrender the license and all other Lottery property and products upon request by the Director's representative.

C. The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under A.A.C. R2-19-103 and A.A.C. R2-19-110.

D. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery property and products.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.03. Appealing a Final Administrative Decision of the Lottery

A. An optional motion for rehearing may be made to the Lottery Commission by filing a Notice of Appeal to the Lottery Commission within 10 days of receipt of the final administrative decision.
1. The notice shall contain:
   a. A copy of the Director's final administrative decision, and
   b. The alleged factual or legal error in the final administrative decision from which the appeal is taken.
2. A person appealing the decision of the Director may file a written brief stating the factual and legal position on the appeal within 30 days after receipt of the decision being appealed.
3. The Lottery may file a response brief within 15 days after receipt of the appellant's brief.
4. The Lottery Commission may rule based on the written briefs, or if requested, may provide for oral argument.
5. The Lottery Commission shall make its ruling on the appeal on the record.
6. A decision of the Lottery Commission is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.

B. A direct appeal of a final decision of the Director under R19-3-204.01(C) may be taken for judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-204.04. Surrender of Lottery Equipment and Property Upon Revocation

A. A retailer who receives a final administrative decision revoking the license shall:
1. Immediately cease all sales of Lottery products; and
2. Surrender the license and all other Lottery equipment, property, and products upon request of the Director's representative.

B. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take all steps allowed by law to secure payment and the return of Lottery property and products.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-205. Lottery-issued Equipment

A. Retailers holding a charitable organization license or instant tab license shall not be issued Lottery equipment to sell or validate Lottery products, but may use an authorized Lottery product vending machine in accordance with subsection (C).

B. Retailers holding a full product license shall only sell or validate Lottery products using authorized Lottery-issued equipment.
1. A retailer shall locate the equipment at a site approved by the Lottery and shall not move the equipment from that site without prior approval from the Lottery.
2. A retailer shall ensure electrical service to the equipment location is installed according to the specifications established by the Lottery. The cost of electrical service shall be the responsibility of the retailer.
3. A retailer shall cooperate with the Lottery to the extent reasonable and practicable to accomplish any modifications to the equipment or systems in a timely and economical fashion.
4. The Lottery shall not be liable for damages of any kind due to interruption or failure of any Lottery-issued or authorized equipment.
5. A retailer shall operate the Lottery-issued equipment and accessories only in the ordinary course of its Lottery business and only according to the requirements established by the Lottery.
6. A retailer shall exercise diligence and care to prevent damage to the Lottery-issued equipment and other property of the Lottery, or property of Lottery contractors.
7. A retailer shall maintain the Lottery-issued equipment and accessories in a clean and orderly condition.
8. A retailer shall minimize equipment downtime by notifying the Lottery or its contractor immediately of any equipment failure, malfunction, damage, or accident.
9. A retailer shall make the equipment available for repair, adjustment, or replacement at all times during the retailer's regular business hours.
10. A retailer shall order and use equipment supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish equipment supplies, at no cost, to the retailer.
11. A retailer shall install and use only approved Lottery paper stock specifically assigned to the retailer.

C. Retailers may sell tickets using an authorized Lottery product vending machine in accordance with the Act and this Chapter.
1. A retailer shall establish loss prevention policies to ensure Lottery product vending machines are not operated by persons under 21 years of age to purchase Lottery tickets.
2. The Lottery product vending machine shall remain operational during the retailer's regular business hours and be placed in an area visible to retail personnel and easily accessible to players.
3. A retailer shall maintain an adequate supply of instant scratch or instant tab tickets for the Lottery product vending machine.

Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Sections R4-37-205 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-205 recodified from R4-37-205 (Supp. 95-1). Section R19-3-205 renumbered to R19-3-204; new Section R19-3-205 renumbered from R19-3-206 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-206. Retailer Training

A. A retailer holding a full product license shall participate in training provided by the Lottery in the operation of Lottery equipment and sale of Lottery products. Training may take place at a retailer's place of business.

B. A retailer holding a full product license shall ensure all employees selling Lottery products or operating Lottery equipment are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment.

C. A retailer holding a full product license shall be responsible for any compensation and other associated costs payable to employees for participation in Lottery training courses and instruction.

D. A retailer holding a full product license shall provide all employees operating Lottery equipment with copies of the procedures manual, bulletins, and technical materials furnished to the retailer by the Lottery or its contractors.

E. A retailer holding a charitable organization license or instant tab license shall ensure all employees or volunteers selling instant tab tickets are properly trained.

Historical Note

Adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (B) as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Subsection (B), amended as an emergency, now adopted as permanent with further amendment effective April 21, 1982 (Supp. 82-2). Amended subsection (A)(1), (3) and (4) as an emergency effective November 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former emergency amendment effective November 24, 1982 now adopted as permanent effective December 28, 1982 (Supp. 82-6). Amended as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-

3). Former Section R4-37-206 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsection (A)(4) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). R19-3-206 recodified from R4-37-206 (Supp. 95-1). R19-3-206 renumbered to R19-3-205; new Section R19-3-206 renumbered from R19-3-207 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-207. Compliance Investigations

A. A retailer shall comply with all provisions of the Act and this Chapter. The Lottery may conduct inspections to verify compliance and, if necessary, order an audit or investigation of the business.

B. A retailer shall allow investigations by authorized Lottery investigators during the retailer's regular business hours to determine whether the retailer is complying with the provisions of the Act and this Chapter.

C. A retailer shall keep all documentation relating to the purchase, sale, and validation of Lottery products that are kept in the normal course of business for tax purposes for three years. This documentation shall be easily accessible to the Lottery-authorized investigator for examination or audit.

Historical Note

Adopted as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-207 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsections (B) and (J) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). R19-3-207 recodified from R4-37-207 (Supp. 95-1). R19-3-207 renumbered to R19-3-206; new Section R19-3-207 adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-208. Penalties

A. The Director shall assess a civil penalty against a retailer for any of the following acts:
1. Offering to sell or selling a Lottery ticket to any person who is under 21 years of age, or
2. Selling a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security.

B. The Director shall, on the written complaint of any person, or upon receipt of information indicating a retailer has committed an act listed in subsection (A), investigate the act or acts. The Director shall give notice to the retailer as provided in A.R.S. §§ 41-1092.03 and 41-1092.04 of imposition of a civil penalty if the Director finds the retailer has committed such an act. A violation of an act listed in subsection (A) is a civil penalty in the amount of:
1. Up to $300 for the first violation within a 12-month period;
2. More than $300 and up to $500 for the second violation within a 12-month period; and
3. More than $500 and up to $1,000 for the third violation within a 12-month period.

C. A retailer against whom a penalty is assessed shall pay the penalty to the Lottery by the 31st day after the retailer receives notice of imposition of the civil penalty, if the retailer does not request a hearing as provided in subsection (D).

D. A retailer may request a hearing regarding imposition of a civil penalty. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.

E. A decision of the Director accepting, modifying or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
1. If the retailer decides not to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the retailer receives the Director's decision.
2. If the retailer decides to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the Superior Court's decision.
3. If the retailer decides to appeal the Superior Court's decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the decision on appeal.
4. A retailer shall pay interest at the rate provided in A.R.S. § 44-1201 from the date final judgment assessing a civil penalty is entered until satisfaction of the judgment.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 3043, effective June 19, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-209. Notice and Service

Service shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the retailer, premise manager, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the retailer or guarantor at the address listed on the application for license or as reported as a change event under R19-3-210.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-210. Reportable Events

A. A retailer shall report the following events to the Lottery in writing a minimum of 10 business days before the event:
1. Change in business location of the licensed premise;
2. Sale of ownership, merger, or acquisition of the licensed entity;
3. Addition, removal, or change of address or phone number of the following persons:

a. A partner in a partnership or a limited liability partnership;
b. A member or manager in a limited liability company;
c. An officer holding the position or functional equivalent of president, secretary, or treasurer of a corporation; or
d. A controlling agent, local premise manager, or designated corporate contact representative.

4. A charge of felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices that is brought against any person listed in subsection (3);
5. Divorce or legal separation action filed by a sole proprietor or partner licensed as a retailer, or retailer's spouse;
6. Retailer or guarantor becomes insolvent, files bankruptcy, or a receivership is ordered;
7. Change in bank account from which the Lottery's electronic funds transfers are made; or
8. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status.

B. A retailer shall report to the Lottery in writing the death of a sole proprietor or partner licensed as a retailer within 10 business days after the death occurs.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-211. Change of Ownership or Business Location

A license is not assignable or transferable. A license authorizes the entity described in the application to sell Lottery tickets only at the specific premise authorized by the Lottery.

1. If there is a change of ownership as reportable in R19-3-210(A)(1) through (3) or R19-3-210(B), change of business location, or a criminal charge as reportable in R19-3-210(A)(4), the retailer shall:
   a. Surrender the license to the Director on the date of the event,
   b. Not sell any additional Lottery tickets, and
   c. Not allow the sale of Lottery products under a subcontract.
2. If the retailer does not notify the Lottery of a change in ownership or business location at least 10 business days before the change, the retailer may not receive credit for any activated partial packs of tickets.
3. The new owner shall apply for a license according to R19-3-202.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-212. Retailer Compensation

A. Retailer compensation shall be set within the statutory limits by a retailer compensation profile ordered by the Lottery Commission. Each retail compensation profile shall contain the following information:
1. Retailer compensation profile number;
2. Specific type of retailer compensation: commission, bonus, or other incentive;
3. The retailer group to which the retailer commission, bonus, or other incentive applies;
4. Criteria required to qualify for the commission, bonus, or other incentive;
5. Duration of the retailer commission, bonus, or other incentive;
6. Targeted games, if any; and
7. Special features, if any.

B. The category of retailer commissions, bonuses, or other incentives shall be one or more of the following:
1. Full product license basic commission rate,
2. Limited license basic commission rate,
3. Sales benchmark rate,
4. Game product rate,
5. Promotional incentive or bonus rate,
6. Temporary incentive or bonus rate, or
7. Alternate incentive or bonus rate.

C. More than one retailer commission, bonus, or other incentive may run concurrently.

D. Promotion bonuses or incentives may be held during a designated period, specific days of the week, specific hours of the day, or a combination thereof.

E. The Commission shall approve and the Director shall distribute a schedule of available retailer compensation to licensed retailers at least 30 days prior to its effective date and shall post it on the Lottery web site. A technological problem or failure that either prevents the posting of the retailer commission, bonus, or other incentive on the Lottery web site or that temporarily or permanently prevents the use of all or part of the web site does not preclude the authorization of the retailer compensation.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-213. Ticket Sales to Players

A. A retailer shall sell only the type of Lottery products authorized by its Lottery-issued license.

B. The Director may require a retailer to sell any one or combination of Lottery game products based on the retailer's license.

C. A retailer shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.

D. On-line tickets.
1. All on-line ticket sales are final. If a retailer holding a full product license accepts a returned on-line ticket from a player or generates an on-line ticket refused by the player and the retailer does not resell the ticket, the Lottery shall deem the on-line ticket to be owned by the retailer.
2. A retailer holding a full product license shall not devote more than 15 consecutive minutes of sales to an on-line game purchase by any single player if other customers are waiting to make a purchase.
3. A retailer holding a full product license shall only use selection slips, materials, or methods authorized by the Lottery to generate plays selected by the player.

E. Instant scratch tickets.
1. All instant scratch ticket sales are final.
2. A retailer holding a full product license shall sell instant scratch tickets within each pack in sequential order.

3. A retailer holding a full product license shall not sell an instant scratch ticket after the announced end of game.

F. All instant tab ticket sales are final.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-214. Payments to Lottery

A. Money collected from the sale of Lottery tickets by retailers holding a full product license are trust monies required to be collected for the benefit of the state and shall be paid to the Lottery according to subsection (B).

B. A retailer holding a full product license shall pay for ticket sales in the following manner:

1. Pay to the Lottery each Friday, by an electronic funds transfer, the amount due from the sale of its Lottery tickets for the seven-day period ending at the close of business on the previous Saturday.
2. The amount due for on-line tickets means the retailer's gross on-line sales revenue, minus any promotional tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments.
3. The amount due for instant scratch tickets is based on billing for instant ticket packs issued to a retailer with billing occurring 45 days after a pack is activated, or after 85% of winning tickets in the pack are validated, whichever occurs first, minus any promotional tickets, returned tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments.
4. The retailer shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.
   a. The retailer shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due the Lottery will be transferred, and
   b. The retailer shall notify the Lottery of any bank account changes a minimum of 10 business days before the effective date of the change.
5. If a retailer's payment is returned to the Lottery for any reason, the retailer shall deliver a certified check, cashier's check, or money order, or make a direct deposit for the amount due to the Lottery's bank account within 24 hours of notification. Additionally, if the retailer's payment is returned to the Lottery:
   a. The Director may require that the retailer's Lottery-issued equipment be disabled;
   b. The Director may revoke, suspend, or deny renewal of the retailer's license according to R19-3-204;
   c. The Director may require payment for instant scratch tickets upon activating the pack for sale; and
   d. The Director may require the return of the retailer's current inventory of instant scratch tickets and suspend further delivery of instant scratch tickets.

C. A retailer holding a charitable organization license or instant tab license shall pay the Lottery's authorized representative for instant tab tickets.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-215. Prize Validation and Payment

A. A retailer holding a full product license shall provide prize validation and payment services for instant scratch tickets or on-line tickets to any Lottery claimant regardless of where the ticket was purchased.

B. A retailer holding a full product license shall pay all winning prizes for instant scratch tickets or on-line tickets up to and including $100, and may pay all winning prizes from $101 up to and including $599.

1. A winning instant scratch ticket shall satisfy the validation criteria in R19-3-705 and R19-3-706 and have a proper validation receipt issued by the Lottery-authorized equipment.
2. A winning on-line ticket shall satisfy the validation criteria in R19-3-406 and R19-3-407 and have a proper validation receipt issued by the Lottery-authorized equipment.

C. A retailer selling instant tab tickets shall pay all winning prizes for tickets sold at its location.

1. A winning instant tab ticket shall satisfy the validation criteria in R19-3-705(A) and (B)(1) through (8), and contain the necessary play, prize, and win symbol captions that enable visual confirmation of a prize.
2. Prizes shall not be paid by the Lottery or by another retailer.

D. Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets. If a retailer pays a prize with a money order, any associated fees shall be paid by the retailer.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-216. Distribution and Return of Instant Tickets

A. The Lottery or its authorized representative shall distribute instant scratch tickets and accept returned instant scratch tickets as follows:

1. Distribute to each retailer holding a full product license the quantity of tickets on which the Lottery and the retailer agree, based on the retailer's anticipated sales volume.
2. Collect full and partial packs of tickets during a game if the Lottery and a retailer holding a full product license determine the retailer's sales for a specific game are minimal.
3. Collect full and partial packs of tickets when a game is ended. The Lottery shall announce the ending date of a game and communicate this information to all retailers holding a full product license in a timely manner.
4. Credit to a retailer holding a full product license, in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and any partial packs of tickets.

B. The Lottery or its authorized representative shall distribute instant tab tickets and shall not accept returns of instant tab tickets.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

R19-3-217. Unaccounted for and Stolen Instant Scratch Tickets

A. All Lottery tickets issued to a retailer holding a full product license shall be the property of the retailer until their return is acknowledged by the Lottery. The Lottery is not responsible for lost tickets.

B. A retailer holding a full product license shall report stolen Lottery tickets to the local law enforcement agency and the Lottery Investigations unit within one hour from the time the theft occurs or the theft first could have been discovered. The retailer shall:
1. Provide a copy of the written police report to the Lottery,
2. Cooperate in any investigation and prosecution of the theft,
3. Sign an affidavit providing the details as known by the retailer, and
4. Maintain and report current game, pack, and ticket inventory.

C. If a retailer holding a full product license sustains a loss from stolen tickets, the retailer's insurance is the loss payee.

D. If a retailer holding a full product license has insufficient insurance to pay for the retailer's loss and the retailer complies with subsection (B), the Lottery will credit the retailer's account for stolen instant tickets as follows:
1. The Lottery shall credit all charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from a source not associated with the retailer or by an unknown party.
2. The Lottery shall credit 50% of the charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from an employee, manager, officer, director, or a relative with access to Lottery tickets.
3. Each retailer is limited to no more than two stolen ticket credit requests within any 12-month period.

E. The Lottery shall not issue a credit for stolen tickets if the Lottery finds a retailer holding a full product license was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.

F. If a prize claim is made against a ticket that has been reported as stolen or a ticket unaccounted for by the retailer holding a full product license, the Lottery shall hold the prize money in trust pending the findings of an investigation by an appropriate law enforcement agency.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

ARTICLE 3. REPEALED

R19-3-301. Repealed

Historical Note
Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-301 adopted effective August 17, 1981 (Supp. 81-4). Former Section R4-37-301 repealed, new Section R4-37-301 adopted effective March 6, 1986 (Supp. 86-2). Amended subsections (F) and (I) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). Emergency amendment adopted effective April 20, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency amendments permanently adopted with changes effective July 20, 1993 (Supp. 93-3). R19-3-301 recodified from R4-37-301 (Supp. 95-1). Repealed effective October 25, 1996 (Supp. 96-4).

R19-3-302. Repealed

Historical Note
Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-302 adopted as an emergency effective August 13, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-4). Former Section R4-37-302 adopted R4-37-302 adopted as an emergency now adopted as a permanent rule effective October 15, 1981 (Supp. 81-5). Former Section R4-37-302 repealed, new Section R4-37-302 adopted effective March 6, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R-19-3-302 recodified from R4-37-302. Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-303. Repealed

Historical Note
Adopted as an emergency effective October 14, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-5). Former Section R4-37-303 adopted as an emergency now adopted as a permanent rule effective December 17, 1981 (Supp. 81-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-303 adopted effective May 2, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-303 recodified from R4-37-303. (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-304. Repealed

Historical Note
Adopted as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Former Section R4-37-304 adopted as an emergency now adopted as a permanent rule effective February 16, 1982 (Supp. 82-1). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-304 adopted effective June 30, 1986 (Supp. 86-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective March 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-304 recodified from R4-37-304 (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-305. Repealed

Historical Note

Adopted as an emergency effective May 21, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R4-37-305 adopted as an emergency now adopted as a permanent rule effective August 19, 1982 (Supp. 82-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-305 adopted effective August 28, 1986 (Supp. 86-4) Repealed effective September 12, 1989 (Supp. 89-3). Former R4-37-323 adopted and renumbered as R4-37-305 effective November 1, 1989 (Supp. 89-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-305 recodified from R4-37-305 (Supp. 95-1). New Section R19-3-305 adopted effective November 3, 1995 (Supp. 95-4). Section, including Illustration A, B and C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-306. Repealed

Historical Note

Adopted as an emergency effective July 15, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Former Section R4-37-306 adopted as an emergency now adopted as a permanent rule effective October 20, 1982 (Supp. 82-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-306 adopted as an emergency effective November 14, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Adopted without change as a permanent rule effective February 12, 1987 (Supp. 87-1). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective January 5, 1990 (Supp. 90-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-306 recodified from R4-37-306. (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-307. Repealed

Historical Note

Adopted as an emergency effective September 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-5). Readopted without change as an emergency effective December 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-5). Former Section R4-37-307 adopted as an emergency now adopted as a permanent rule without change effective March 23, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-307 adopted effective January 6, 1987 Supp. 87-1). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective March 7, 1990 (Supp. 90-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-307 recodified from R4-37-307. (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-308. Repealed

Historical Note

Adopted as an emergency effective December 28, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Former Section R4-37-308 adopted as an emergency now adopted as a permanent rule without change effective March 23, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-308 adopted effective March 5, 1987 (Supp. 87-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective April 10, 1990 (Supp. 90-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-308 recodified from R4-37-308 (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-309. Repealed

Historical Note

Adopted as an emergency effective February 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Former Section R4-37-309 adopted as an emergency now adopted as a permanent rule with amendments in subsection (F)(1) and (4) effective April 13, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-309 adopted effective April 8, 1987 (Supp. 87-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective June 25, 1990 (Supp. 90-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-309 recodified from R4-37-309 (Supp. 95-1). New Section adopted effective January 30, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-310. Repealed

Historical Note

Adopted as an emergency effective May 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-310 adopted as an emergency now adopted as a permanent rule without change effective August 17, 1983 (Supp. 83-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-310 adopted effective June 26, 1987 (Supp. 87-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-310 adopted effective August 2, 1990 (Supp. 90-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-310 recodified from R4-37-310 (Supp. 95-1). New Section adopted effective March 6, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-311. Repealed

Historical Note

Adopted as an emergency effective July 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R4-37-301 adopted as an emergency now adopted as a permanent rule without change effective September 29, 1983 (Supp. 83-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-311 adopted effective September 10, 1987 (Supp. 87-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-311 adopted effective August 2, 1990 (Supp. 90-3). Labels for subsections (E) and (F) changed (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-311 recodified from R4-37-311 (Supp. 95-1). New Section adopted effective March 6, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-312. Repealed

Historical Note

Adopted effective September 21, 1983 (Supp. 83-5). Repealed effective March 6, 1986 (Supp. 86-2). New

Section R4-37-312 adopted effective November 12, 1987 (Supp. 87-4). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-312 adopted effective October 12, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-312 recodified from R4-37-312 (Supp. 95-1). New Section adopted effective May 13, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-313. Repealed

Historical Note

Adopted effective December 1, 1983 (Supp. 83-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-313 adopted effective January 7, 1988 (Supp. 88-1). Automatically repealed effective January 7, 1989 (Supp. 89-1). New Section R4-37-313 adopted effective November 6, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-313 recodified from R4-37-313 (Supp. 95-1). New Section adopted effective May 13, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-314. Repealed

Historical Note

Adopted effective January 6, 1984 (Supp. 84-1). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-314 adopted effective March 11, 1988 (Supp. 88-1). Automatically repealed effective March 11, 1989 (Supp. 89-1). New Section R4-37-314 adopted effective December 12, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-314 recodified from R4-37-314 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-315. Repealed

Historical Note

Adopted effective March 22, 1984 (Supp. 84-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-315 adopted effective May 5, 1988. Automatically repealed effective May 5, 1989 (Supp. 89-2). New Section R4-37-315 adopted effective January 21, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-315 recodified from R4-37-315 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-316. Repealed

Historical Note

Adopted effective May 31, 1984 (Supp. 84-3). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-316 adopted effective June 30, 1988 (Supp. 88-2). Amended by deleting subsection (C) effective June 12, 1989 (Supp. 89-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-316 recodified from R4-37-316 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-317. Repealed

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-317 adopted effective January 21, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-317 recodified from R4-37-317 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-318. Repealed

Historical Note

Adopted effective July 26, 1984 (Supp. 84-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-318 adopted effective August 10, 1988 (Supp. 88-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-318 recodified from R4-37-318 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

Illustration "A" Repealed

Historical Note

Adopted effective July 19, 1996 (Supp. 96-3). Illustration A repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-319. Repealed

Historical Note

Adopted effective September 14, 1984 (Supp. 84-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-319 adopted effective November 9, 1988 (Supp. 88-4). Section expired November 9, 1989 (Supp. 90-1). R19-3-319 recodified from R4-37-319 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-320. Repealed

Historical Note

Adopted effective November 15, 1984 (Supp. 84-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-320 adopted effective January 6, 1989 (Supp. 89-1). Section expired effective January 6, 1990 (Supp. 90-1). R19-3-320 recodified from R4-37-320 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-321. Repealed

Historical Note

Adopted effective November 15, 1984 (Supp. 84-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-321 adopted effective March 10, 1989 (Supp. 89-1). Section expired effective March 10, 1990 (Supp. 90-1). R19-3-321 recodified from R4-37-321 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-322. Repealed

Historical Note

Adopted effective March 7, 1985 (Supp. 85-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-222 adopted effective May 3, 1989 (Supp. 89-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-222 recodified from R4-37-222 (Supp. 95-1). New Section adopted effective August 27, 1996 (Supp. 96-3).

Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-323. Repealed

Historical Note
Adopted effective May 1, 1985 (Supp. 85-3). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-323 adopted and renumbered as R4-37-305 effected November 1, 1989 (Supp. 89-4). New Section R4-37-323 adopted effective March 25, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-323 recodified from R4-37-323 (Supp. 95-1). New Section adopted effective October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-324. Repealed

Historical Note
Adopted effective June 12, 1985 (Supp. 85-3). Repealed effective May 2, 1986 (Supp. 86-3). New Section adopted effective May 2, 1991 (Supp. 91-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-324 recodified from R4-37-324 (Supp. 95-1). New Section adopted effective October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-325. Repealed

Historical Note
Adopted effective September 4, 1985 (Supp. 85-5). Repealed effective August 28, 1986 (Supp. 86-4). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-325 recodified from R4-37-325 (Supp. 95-1). New Section adopted October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-326. Repealed

Historical Note
Adopted effective October 28, 1985 (Supp. 85-5). Repealed effective January 6, 1987 (Supp. 87-1). Adopted effective July 3, 1991 (Supp. 91-3). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-326 recodified from R4-37-326 (Supp. 95-1). New Section adopted effective October 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-327. Repealed

Historical Note
Adopted effective January 9, 1986 (Supp. 86-1). Repealed effective January 6, 1987 (Supp. 87-1). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-327 recodified from R4-37-327 (Supp. 95-1). New Section adopted effective October 24, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-328. Repealed

Historical Note
Adopted effective October 28, 1985 (Supp. 85-5). Repealed effective January 6, 1987 (Supp. 87-1). Adopted effective July 3, 1991 (Supp. 91-3). New Section adopted effective September 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-328 recodified from R4-37-328 (Supp. 95-1). New Section adopted effective October 24, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-329. Repealed

Historical Note
Adopted effective January 9, 1986 (Supp. 86-1). Repealed effective January 6, 1987 (Supp. 87-1). New Section adopted effective September 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-329 recodified from R4-37-329 (Supp. 95-1). New Section adopted November 22, 1996 (Supp. 96-4). Section, including Exhibit A, B and C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-330. Repealed

Historical Note
Adopted effective November 21, 1991 (Supp. 91-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-330 recodified from R4-37-330 (Supp. 95-1).

R19-3-331. Repealed

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-331 recodified from R4-37-331 (Supp. 95-1).

R19-3-332. Repealed

Historical Note
Adopted effective March 13, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-332 recodified from R4-37-332 (Supp. 95-1).

R19-3-333. Repealed

Historical Note
Adopted effective July 10, 1992 (Supp. 92-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-333 recodified from R4-37-333 (Supp. 95-1).

R19-3-334. Repealed

Historical Note
Adopted effective July 10, 1992 (Supp. 92-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-334 recodified from R4-37-334 (Supp. 95-1).

R19-3-335. Repealed

Historical Note
Adopted effective July 10, 1992 (Supp. 92-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-335 recodified from R4-37-335 (Supp. 95-1).

R19-3-336. Repealed

Historical Note
Adopted effective December 18, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-336 recodified from R4-37-336 (Supp. 95-1).

R19-3-337. Repealed

Historical Note
Adopted effective December 18, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-337 recodified from R4-37-337 (Supp. 95-1).

R19-3-338. Repealed

Historical Note
Adopted effective December 18, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-338 recodified from R4-37-338 (Supp. 95-1).

R19-3-339. Repealed

Historical Note
Adopted effective December 23, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-339 recodified from R4-37-339 (Supp. 95-1).

R19-3-340. Repealed

Historical Note
Adopted effective December 23, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-340 recodified from R4-37-340 (Supp. 95-1).

R19-3-341. Repealed

Historical Note
Adopted effective December 23, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-341 recodified from R4-37-341 (Supp. 95-1).

R19-3-342. Repealed

Historical Note
Adopted effective December 23, 1992 (Supp. 92-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-342 recodified from R4-37-342 (Supp. 95-1).

R19-3-343. Repealed

Historical Note
Adopted effective February 3, 1993 (Supp. 93-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-343 recodified from R4-37-343 (Supp. 95-1).

R19-3-344. Repealed

Historical Note
Adopted effective February 3, 1993 (Supp. 93-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-344 recodified from R4-37-344 (Supp. 95-1).

R19-3-345. Repealed

Historical Note
Adopted effective March 4, 1993 (Supp. 93-1). R19-3-345 recodified from R4-37-345 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-346. Repealed

Historical Note
Adopted effective March 4, 1993 (Supp. 93-1). R19-3-346 recodified from R4-37-346 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2)

R19-3-347. Repealed

Historical Note
Adopted effective March 4, 1993 (Supp. 93-1). R19-3-347 recodified from R4-37-347 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-348. Repealed

Historical Note
Adopted effective March 4, 1993 (Supp. 93-1). R19-3-348 recodified from R4-37-348 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-349. Repealed

Historical Note
Adopted effective April 20, 1993 (Supp. 93-2). R19-3-349 recodified from R4-37-349 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-350. Repealed

Historical Note
Reserved; Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-351. Repealed

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). R19-3-351 recodified from R4-37-351 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-352. Repealed

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). R19-3-352 recodified from R4-37-352 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-353. Repealed

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). R19-3-353 recodified from R4-37-353 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-354. Repealed

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). R19-3-354 recodified from R4-37-354 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-355. Repealed

Historical Note
Adopted effective October 1, 1993 (Supp. 93-4). R19-3-355 recodified from R4-37-355 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-356. Repealed

Historical Note
Adopted effective October 1, 1993 (Supp. 93-4). R19-3-356 recodified from R4-37-356 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-357. Repealed

Historical Note
Adopted effective December 2, 1993 (Supp. 93-4). R19-3-357 recodified from R4-37-357 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-358. Repealed

Historical Note
Adopted effective December 2, 1993 (Supp. 93-4). R19-3-358 recodified from R4-37-358 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-359. Repealed

Historical Note
Adopted effective December 2, 1993 (Supp. 93-4). R19-3-359 recodified from R4-37-359 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

R19-3-360. Repealed

Historical Note
Adopted effective December 2, 1993 (Supp. 93-4). R19-3-360 recodified from R4-37-360 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-361. Repealed

Historical Note
Adopted effective December 2, 1993 (Supp. 93-4). R19-3-361 recodified from R4-37-361 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-362. Repealed

Historical Note
Adopted effective January 6, 1994 (Supp. 94-1). R19-3-362 recodified from R4-37-362 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-363. Repealed

Historical Note
Adopted effective January 6, 1994 (Supp. 94-1). R19-3-363 recodified from R4-37-363 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-364. Repealed

Historical Note
Adopted effective January 6, 1994 (Supp. 94-1). R19-3-364 recodified from R4-37-364 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-365. Repealed

Historical Note
Adopted effective January 6, 1994 (Supp. 94-1). R19-3-365 recodified from R4-37-365 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-366. Repealed

Historical Note
Adopted effective May 23, 1994 (Supp. 94-2). R19-3-366 recodified from R4-37-366 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-367. Repealed

Historical Note
Adopted effective May 23, 1994 (Supp. 94-2). R19-3-367 recodified from R4-37-367 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-368. Repealed

Historical Note
Adopted effective May 23, 1994 (Supp. 94-2). R19-3-368 recodified from R4-37-368 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-369. Repealed

Historical Note
Adopted effective June 10, 1994 (Supp. 94-2). R19-3-369 recodified from R4-37-369 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-370. Repealed

Historical Note
Adopted effective June 10, 1994 (Supp. 94-2). R19-3-370 recodified from R4-37-370 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-371. Repealed

Historical Note
Adopted effective June 10, 1994 (Supp. 94-2). R19-3-371 recodified from R4-37-371 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-372. Repealed

Historical Note
Adopted effective July 15, 1994 (Supp. 94-3). R19-3-372 recodified from R4-37-372 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-373. Repealed

Historical Note
Adopted effective July 15, 1994 (Supp. 94-3). R19-3-373 recodified from R4-37-373 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-374. Repealed

Historical Note
Adopted effective July 15, 1994 (Supp. 94-3). R19-3-374 recodified from R4-37-374 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-375. Repealed

Historical Note
Adopted effective September 15, 1994 (Supp. 94-3). R19-3-375 recodified from R4-37-375 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-376. Repealed

Historical Note
Adopted effective September 15, 1994 (Supp. 94-3). R19-3-376 recodified from R4-37-376 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-377. Repealed

Historical Note
Adopted effective October 11, 1994 (Supp. 94-4). R19-3-377 recodified from R4-37-377 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-378. Repealed

Historical Note
Adopted effective October 11, 1994 (Supp. 94-4). R19-3-378 recodified from R4-37-378 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-379. Repealed

Historical Note
Adopted effective November 28, 1994 (Supp. 94-4). R19-3-379 recodified from R4-37-379 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-380. Repealed

Historical Note
Adopted effective November 28, 1994 (Supp. 94-4). R19-3-380 recodified from R4-37-380 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-381. Repealed

Historical Note
Adopted effective December 20, 1994 (Supp. 94-4). R19-3-381 recodified from R4-37-381 (Supp. 95-1). Repealed

effective May 13, 1997 (Supp. 97-2).

R19-3-382. Repealed

Historical Note
Adopted effective January 13, 1995 (Supp. 95-1). R19-3-382 recodified from R4-37-382 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-383. Repealed

Historical Note
Adopted effective January 13, 1995 (Supp. 95-1). R19-3-383 recodified from R4-37-383 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-384. Repealed

Historical Note
Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-385. Repealed

Historical Note
Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-386. Repealed

Historical Note
Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

R19-3-387. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-388. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-389. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-390. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-391. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-392. Repealed

Historical Note
Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-393. Repealed

Historical Note
Adopted effective July 17, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-394. Repealed

Historical Note
Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit A and B, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-395. Repealed

Historical Note
Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-396. Repealed

Historical Note
Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit D, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-397. Repealed

Historical Note
Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-398. Repealed

Historical Note
Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

R19-3-399. Repealed

Historical Note
Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

ARTICLE 4. DESIGN AND OPERATION OF ON-LINE GAMES

R19-3-401. Definitions

Definitions. In this Article, unless the context otherwise requires, these words and terms shall have the following meanings:

1. "Cash Value" means payment of the Division 1 (jackpot) prize pool share amount paid in one lump sum as provided in the prize structure in the game profile.
2. "Drawing" means the process used to randomly select the winning play symbols from the defined game matrix.
3. "On-line Lottery Game" means a game where tickets are purchased through a network of Arizona Lottery-issued computer terminals located in retail outlets. The terminals are linked to a central computer that records the wagers.
4. "Fixed payout" means a set prize dollar amount for that specific prize in the prize structure.
5. "Game board" or "board" means the area of the selection slip which contain a matrix that lists all the offered play symbols. More than one game board may appear on the selection slip.
6. "Game option" means a game feature that is tied to a specific game which the player has a choice to play.

7. "Game play" or "play" means the selected play symbols which appear on a ticket as a single wager. More than one game play may appear on a ticket.
8. "Game profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential game fundamentals required by these rules for an on-line game.
9. "Game ticket" or "ticket" means a receipt produced by a Lottery-issued terminal evidencing the purchase of a participation in a game or game option. The ticket contains a security code, ticket price, a retailer number, a serial number and the game symbols purchased for one or more specific drawings.
10. "Matrix" means the number of selections a player may choose from a predetermined pool of play symbols.
11. "Multiple winners" means a situation in which more than one claimant redeems an individual share in one wager.
12. "Pari-mutuel" means a system in which those holding winning tickets divide the total prize amount in proportion to their wagers.
13. "Play style" means the description in the game profile of the matrix, play symbols, and the manner of selecting the winning play symbols.
14. "Play symbols" means the numbers, letters, symbols, or pictures used in the matrix to determine if a player is entitled to a prize.
15. "POWERBALL" means a multi-state game that is conducted pursuant to the rules of the Multi-State Lottery Association (MUSL) and approved by a game profile.
16. "Prize category" means the value of a specific prize.
17. "Prize structure" means the chart of the prize value, number of prizes or prize payout percentage, any fixed payments, any pari-mutuel payments, and the odds of winning the prizes.
18. "Prohibited games" mean on-line or electronic keno or internet games.
19. "Quick pick" means the random selection by a terminal of one or more play symbols from the defined game matrix.
20. "Selection slip" means a preprinted set of game boards provided by the Lottery upon which the player selects play symbols and game options. Each selection slip may have multiple game boards.
21. "Share" means any single winning game play, which is equal to any other share in the same prize division.
22. "Terminal" means a device authorized by the Lottery linked to a central computer for the purpose of issuing Lottery tickets and entering, receiving, and processing Lottery transactions.
23. "Winning numbers or winning play symbols" means the numbers or play symbols from the defined game matrix randomly selected at each drawing which determine winning game plays contained on a ticket.

Historical Note

Adopted as an emergency effective June 10, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-401 adopted as an emergency effective June 10, 1983, now adopted without change as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsections (A), (D), (E), (J), (K) effective September 7, 1984 (Supp. 84-4). Amended subsection (K) effective March 14, 1985 (Supp. 85-2). Amended effective September 26, 1986 (Supp. 86-5). Amended effective June 29, 1989 (Supp. 89-2). Amended as an emergency effective September 25, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments permanently adopted effective March 3, 1992 (Supp. 92-1). Amended effective March 9, 1992 (Supp. 92-1). Amended effective April 4, 1994 (Supp. 94-2). R19-3-401 recodified from R4-37-401 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-402. Game Profile

A. Each game or game option shall have a Game Profile and at a minimum, the Profile shall contain the following information:
1. Game name or game option name;
2. Matrix/description of how to play and win;
3. Retail sales price;
4. Purchase conditions and characteristics;
5. Play symbols and prize symbols, if any;
6. Prize structure, including the approximate odds, the prize amounts available, the prize pool percentage, if alternate prize structures are be used, any subsection (B) provisions, and any special Division 1 (jackpot) prize specifications;
7. Special features, if any; and
8. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.

B. Each on-line game or option may include specific variants that provide added or alternative methods of winning. Any variants shall be described in the Game Profile.

C. The Commission shall approve the Game Profile prior to the game being sold to the public.

Historical Note

Adopted effective June 27, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 1. Repealed

Historical Note

Exhibit 1 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 2. Repealed

Historical Note

Exhibit 2 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 3. Repealed

Historical Note

Exhibit 3 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 4. Repealed

Historical Note

Exhibit 4 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 5. Repealed

Historical Note

Exhibit 5 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 6. Repealed

Historical Note
Exhibit 6 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 7. Repealed

Historical Note
Exhibit 7 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 8. Repealed

Historical Note
Exhibit 8 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 9. Repealed

Historical Note
Exhibit 9 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 10. Repealed

Historical Note
Exhibit 10 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 11. Repealed

Historical Note
Exhibit 11 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 12. Repealed

Historical Note
Exhibit 12 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 13. Repealed

Historical Note
Exhibit 13 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 14. Repealed

Historical Note
Exhibit 14 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

Exhibit 15. Repealed

Historical Note
Exhibit 15 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-403. Ticket Purchases, Characteristics, and Restrictions

A. To play an on-line game, a player shall select the specified number of play symbols from the defined game matrix approved in the Game Profile for input into the terminal. Selection methods include:
1. Communicating the play symbols and game options to a retailer, or
2. Marking the selection slip and submitting the selection slip to a retailer, or
3. Requesting a "Quick Pick," or
4. Marking a "Quick Pick" box on a selection slip.

B. Game plays must be entered into the Lottery terminal manually or by inserting a Lottery selection slip that is hand marked by the player. Facsimiles, simulations, copies of selection slips, or other materials not printed or approved by the Lottery are prohibited from use.

C. To claim a prize, a player must submit the original ticket for validation. Selection slips are not proof of purchase.

D. The ticket holder is responsible for the accuracy of ticket data. The Lottery shall not be liable for ticket errors.

Historical Note
Adopted effective April 30, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-404. Drawings

A. The drawings shall be held at the times and places established in the Game Profile.

B. The on-line game drawing shall randomly select the winning play symbols from those defined in the Game Profile. Mechanical, electrical, or computerized drawing methods may be used to make the random selection.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-405. Determination of a Winning Game Play

A. A player shall win the prize(s) indicated in the prize structure by matching the winning play symbols selected at the drawing to the play symbols selected by the player.

B. Players may win on each game play on a ticket.

C. There may be multiple winning patterns on a single ticket that match winning patterns described in the Game Profile.

D. The prize structure ordered in the Game Profile shall determine the pari-mutuel and/or fixed prize amount to be paid on a single winning game play.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-406. Ticket Ownership and Responsibility; Prize Payment

A. Until a ticket is signed, the ticket is owned by its physical possessor.

B. The Director shall recognize as the owner of a winning on-line ticket the person whose signature appears upon the ticket in the area designated for that purpose.
1. If more than one signature appears on the ticket, the Director is authorized to require that one or more of those claimants be designated to receive the payment. A claim form shall be submitted by each claimant who is designated to receive a portion of the prize claimed from the winning ticket.
2. Prior to payment of a prize, a claimant who has signed the ticket may designate another claimant to receive the prize by signing a relinquishment of claim statement.
3. When the winning ticket was purchased by a group of players, the group shall designate one of the claimants to sign the ticket for the group. Each claimant shall com-

plete an individual claim form to receive the claimant's portion of the prize.

4. In the event there is an inconsistency in the information submitted on a claim form and as shown on the winning on-line ticket, the Director shall authorize an investigation and withhold all winnings payable to the ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.

C. Prior to paying the claimant a prize of $600 or more, the Lottery shall match the winner's name against the lists of persons owing a debt to a participating state agency, furnished to the Lottery under A.R.S. § 5-575.

1. If there is a match on any of the claims submitted with a ticket, the amount that is owed shall be deducted from the prize due the claimant.
2. The claimant shall be notified in writing of the amount of the set-off and the agency to which it shall be paid.
3. If the claimant has two or more agencies which are owed a debt, the Lottery shall pay a pro-rata share to each of the agencies, except that a Department of Economic Security overdue child support set-off shall be paid in full before any amount shall be paid to another agency.
4. The claimant shall be notified in writing that a right to appeal the set-off exists and must be commenced within 30 days of the receipt of this notification. The notification shall include the name and address of the agency with which to file the appeal.
5. If, after deducting withholding taxes and the set-off, a portion of the prize remains then that portion shall be paid to the winner with the notification of set-off.
6. The amount of set-off shall be forwarded to the agency, and that agency shall be responsible for any appeal and crediting of the payment against the amount owed or refunding any amount to the winner.
7. Upon a determination that a set-off is due, the winner loses the right under subsection (B)(2) to assign any portion of the claim.

D. Prizes shall be paid by cash, check, or if requested by the player, by Lottery tickets.

1. If a ticket contains more than one winning game play, any prize amounts shall be combined and paid in accordance with the prize payment limits specified in Section R19-3-408.
2. Each winning game play wins the prize amount specified in the Game Profile.

E. The Lottery is not responsible for lost or stolen tickets.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (C) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

R19-3-407. Ticket Validation Requirements

A. Each on-line game ticket shall be validated prior to the payment of a prize.

B. To be eligible for a prize, a ticket holder must present a ticket meeting all of the following requirements;

1. Issued by the Lottery through a retailer, from a terminal, in an authorized manner;
2. Intact and not mutilated or tampered with in any manner;
3. Not defectively printed;
4. Not a reprinted ticket stating "Not for Sale" on the ticket;
5. Not counterfeit or stolen;
6. Able to pass all other confidential validation tests determined by the Director; and
7. Validated in accordance with the provisions of sections R19-3-406 and R19-3-408.
8. The ticket data is:
   a. Recorded in the designated central computer system prior to the drawing;
   b. In agreement with the computer record;
   c. In the Lottery's official file of winning tickets;
9. Any winning game play on the ticket consists of a selected set of play symbols from the defined game matrix.
10. Has not been previously paid.

C. If the ticket fails to pass any of the requirements in Section R19-3-407(B), the ticket is void and ineligible for any prize payout.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-408. Procedure for Claiming Prizes

A. To claim a prize of up to and including $599, the claimant shall present the ticket to any participating on-line licensed retailer or to a Lottery office, or mail the ticket to a Lottery office for validation. The licensed retailer shall pay a winner a prize up to and including $100 and may pay a winner a prize up to and including $599 provided that:

1. All of the ticket validation criteria in Section R19-3-407 has been satisfied; and
2. A proper validation slip, which is an authorization to pay, has been issued by the terminal.

B. To claim a prize that the retailer does not validate or is not authorized to pay, including all prizes of $600 or more, the claimant shall submit a claim form, available from any retailer, and the ticket to the Lottery. If the claim is:

1. Verified and validated by the Lottery as a winning ticket, the Lottery shall make payment of the amount due to the claimant, less any authorized debt set-off amounts and/or withheld taxes.
2. Denied by the Lottery, the claimant shall be notified within 15 days from the day the claim is received in the Lottery office.

C. If a prize winner dies prior to receiving full payment, the Lottery shall pay all remaining prize money to the prize winner's beneficiary or to any person designated by an appropriate judicial order.

D. The Lottery is discharged of all liability upon payment of the prize money.

E. Payment of prize money shall not be accelerated ahead of its normal date of payment.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-409. Claim Period

A. In order for the claimant to receive payment, a winning on-line game ticket shall be received by the Lottery or a retailer no later than 5:00 p.m. (Phoenix time) on the 180th calendar day following the game drawing date.

B. If a claimant presents a valid winning ticket to a retailer for payment on the 180th calendar day following the game drawing date and is not paid the prize, the Director is authorized to pay the prize if the claimant presents the valid winning ticket to the Lottery no later than 5:00 p.m. (Phoenix time) on the following business day.

C. The end of an on-line game shall be designated by the Director and on file at the Lottery.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-410. Disputes Concerning a Ticket

A. If a dispute between the Lottery and a claimant occurs concerning a ticket, the Director is authorized to replace the disputed ticket with a ticket of equivalent sales price for any subsequent drawing from the same game.

B. If a defective ticket is purchased, the Lottery shall replace the defective ticket with a ticket or tickets of equivalent sales price from the same game.

C. Replacement of the disputed ticket is the sole and exclusive remedy for a claimant.

D. If a dispute between the Lottery and a claimant occurs concerning the eligibility of an entry into a Grand Prize drawing, the Director is authorized to place any person's eligible entry that was not entered in the Grand Prize drawing into a subsequent Grand Prize drawing or drawings.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-411. Prize Fund

A. Not less than 50 percent of the total annual revenue accruing from the sale of on-line game tickets shall be deposited in the state lottery prize fund for payment of prizes to the holders of winning tickets.

B. If an on-line game is terminated for any reason, any remaining prize monies shall be held by the Lottery for a period of 180 days from the date of the last drawing and then used for additional prizes in any other Lottery game.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

R19-3-412. Multi-State Lottery Association Games

A. The Arizona Lottery is a participating member of the Multi-State Lottery Association (MUSL) referred to as a "party lottery" in the MUSL game rules.

B. A game profile approved by the Commission and conforming to the information required in R19-3-403 shall be on file at the Arizona State Lottery for all MUSL games played in Arizona.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
3. "Best interests of the Lottery" means advantageous to the Lottery.
4. "Bid" means an offer in response to solicitation.
5. "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
6. "Change order" means a document, signed by the Director, which directs the contractor to make a change that the contract authorizes the Director to order.
7. "Competitive range" is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:
   a. Affirmative compliance with mandatory requirements designated in the solicitation.
   b. An ability to deliver goods or services on terms advantageous to the Lottery sufficient to be entitled to continue in the competition.
   c. That the proposal is technically acceptable as submitted.
8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
10. "Contractor" means a person who has a contract with the Lottery.
11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
13. "Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reasonable, allowable, and allocable in accordance with the contact terms and the provisions of this Article, and a fee, if provided for in the contract.
14. "Day" means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
15. "Defective data" means data that is inaccurate, incomplete, or outdated.
16. "Director" means the Executive Director of the State Lottery.
17. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
18. "Filed" means delivered to the Arizona Lottery, 4740 E. University Dr., Phoenix, AZ 85034. A time/date stamp affixed to a document by the procurement officer or the

procurement officer's delegate when the document is delivered determines the time of filing.

19. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
20. "Interested party" means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
22. "Minor informality" means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
25. "Negotiation" means an exchange or series of exchanges between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
26. "Offer" means a response to a solicitation.
27. "Offeror" means a person who responds to a solicitation.
28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
30. "Procurement" means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.
31. "Procurement file" means the official records file of the Lottery. The procurement file shall include (electronic or paper) the following:
    a. List of notified vendors;
    b. Final solicitation;
    c. Solicitation amendments;
    d. Bids and offers;
    e. Final proposal revisions;
    f. Discussions;
    g. Clarifications;
    h. Final evaluation reports; and
    i. Additional information, if requested by the procurement officer.
32. "Proposal" means an offer submitted in response to a solicitation.
33. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
34. "Purchase description" means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
35. "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
36. "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
37. "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
38. "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
39. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
40. "Services" means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
41. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
42. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
43. "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.
44. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
45. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
46. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
47. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29,

1985 (Supp. 85-4). Former Section R4-37-501 repealed, new Section R4-37-501 renumbered from R4-37-502 and amended effective May 7, 1990 (Supp. 90-2). R19-3-501 recodified from R4-37-501 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-502. Written Determination

A. If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.

B. The procurement officer shall place the written determination into the Lottery's procurement file.

C. A procurement file is considered the official records file of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-502 renumbered to R4-37-501, new Section R4-37-502 renumbered from R19-3-503 and amended effective May 7, 1990 (Supp. 90-2). R19-3-502 recodified from R4-37-502 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-503. Confidential Information

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.

C. Upon protest to a confidential submission, the procurement officer shall request that the offeror and protester submit factual and legal comments on the issue by a date certain.

D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a determination that:

1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest,
2. The designated information is not confidential, or
3. Additional information is required before a final confidentiality determination can be made.

E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.

F. The procurement officer may release information designated as confidential under subsection (A) if:

1. A request for review is not received by the procurement officer within the time period specified in the notice; or
2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-503 renumbered to R4-37-502, new Section R4-37-503 renumbered from R19-3-504 and amended effective May 7, 1990 (Supp. 90-2). R19-3-503 recodified from R4-37-503 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-504. General Provisions

A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.

B. The Director shall not pay for any material or service unless fully approved.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-504 renumbered to R4-37-503, new Section R4-37-504 renumbered from R4-37-505 and amended effective May 7, 1990 (Supp. 90-2). R19-3-504 recodified from R4-37-504 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-505. Prospective Suppliers List

A. The procurement officer shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the procurement officer the company name, address, e-mail, contact name, and area of product or service interest.

B. The procurement officer may remove suppliers from the prospective suppliers list if a notice or e-mail sent to the supplier is returned. The procurement officer shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-505 renumbered to R4-37-504, new Section R19-3-505 renumbered from R4-37-507 and amended effective May 7, 1990 (Supp. 90-2). R19-3-505 recodified from R4-37-505 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-506. Source Selection Method: Determination Factors

A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procure-

ment is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-559 and 41-2501(F).

B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.

C. The procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery before soliciting for offers for a competitive sealed proposal. An invitation for bid may not be practicable or advantageous if it is necessary to:
1. Use a contract other than a fixed-price type;
2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
3. Permit offerors to revise their offers; or
4. Compare the different price, quality, and contractual factors of the offers submitted.

D. The procurement officer may make a class determination that it is either not practicable or not advantageous to the Lottery to procure specified types of materials or services by invitation for bid. The procurement officer may modify or revoke a class determination at any time.

E. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-506 repealed, new Section R4-37-506 renumbered from R4-37-508 and amended effective May 7, 1990 (Supp. 90-2). R19-3-506 recodified from R4-37-506 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the first A.R.S. citation in subsection (A) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-507. Solicitation

A. The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.

B. The procurement officer shall:
1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-507 renumbered to R4-37-505, new Section R4-37-507 renumbered from R4-37-509 and amended effective May 7, 1990 (Supp. 90-2). R19-3-507 recodified from R4-37-507 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-508. Bid Solicitation Requirements

The procurement officer shall include the following in the solicitation:
1. Instruction to offerors, including:
   a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
   b. The deadline date for requesting a substitution or exception to the solicitation;
   c. The manner by which the offeror is required to acknowledge amendments;
   d. The minimum required information in the offer;
   e. The specific requirements for designating trade secrets and other proprietary information as confidential;
   f. Any specific responsibility criteria;
   g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
   h. Any evaluation criteria;
   i. A statement of where documents incorporated by reference are available for inspection and copying;
   j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
   k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
   l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
   m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
   n. Any bid security required;
   o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
   p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
   q. Any other offer submission requirements;
2. Specifications, including:
   a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, perfor-

mance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and

c. Any other specification requirements;

3. Terms and Conditions, including:
   a. Whether the contract will include an option for extension, and
   b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-508 renumbered to R4-37-506, new Section R4-37-508 renumbered from R4-37-510 and amended effective May 7, 1990 (Supp. 90-2). R19-3-508 recodified from R4-37-508 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
   a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
   b. The deadline date for requesting a substitution or exception to the solicitation;
   c. The manner by which the offeror is required to acknowledge amendments;
   d. The minimum information required in the offer;
   e. The specific requirements for designating trade secrets and other proprietary information as confidential;
   f. Any specific responsibility or susceptibility criteria;
   g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
   h. Evaluation factors and the relative order of importance;
   i. A statement of where documents incorporated by reference are available for inspection and copying;
   j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
   k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
   l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
   m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
   n. Any offer security required;
   o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
   p. Any cost or pricing data required;
   q. The type of contract to be used;
   r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and that fall within the competitive range; and
   s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
   a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
   c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
   a. Whether the contract is to include an extension option, and
   b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-509 renumbered to R4-37-507, new Section R4-37-509 renumbered from R4-37-512 and amended effective May 7, 1990 (Supp. 90-2). R19-3-509 recodified from R4-37-509 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-510. Pre-Offer Conferences

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-510 renumbered to R4-37-508, new Section R4-37-510 renumbered from R4-37-513 and amended effective May 7, 1990 (Supp. 90-2). R19-3-510 recodified from R4-37-510 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-511. Solicitation Amendment

A. The procurement officer shall issue a solicitation amendment to do any or all of the following:

1. Make changes in the solicitation,
2. Correct defects or ambiguities,
3. Provide additional information or instructions, or
4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.

B. If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-511 repealed, new Section R4-37-511 renumbered from R4-37-514 and amended effective May 7, 1990 (Supp. 90-2). R19-3-511 recodified from R4-37-511 (Supp. 95-1). Former Section R19-3-511 renumbered to R19-3-513 and amended; new Section R19-3-511 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.

B. The procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-512 renumbered to R4-37-509, new Section R4-37-512 renumbered from R4-37-515 and amended effective May 7, 1990 (Supp. 90-2). R19-3-512 recodified from R4-37-512 (Supp. 95-1). Former Section R19-3-512 renumbered to R19-3-514 and amended; new Section R19-3-512 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time

A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation before the offer due date and time.

B. The procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.

C. The procurement officer shall not open offers after cancellation. The procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-513 renumbered to R4-37-510, new Section R4-37-513 renumbered from R19-3-516 and amended effective May 7, 1990 (Supp. 90-2). R19-3-513 recodified from R4-37-513 (Supp. 95-1). Former Section R19-3-513 renumbered to R19-3-515 and amended; new Section R19-3-513 renumbered from R19-3-511 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-514. Receipt, Opening, and Recording of Offers

A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.

C. For a bid solicitation, the procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce the name of the offeror, the amount of each offer, and any other relevant information as determined by the procurement officer. The procurement officer shall record the name of each offeror and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.

D. For a proposal solicitation, the procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.

E. Except for the information identified in subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-514 renumbered to R4-37-511, new Section R4-37-514 renumbered from R4-37-517 and amended effective May 7, 1990 (Supp. 90-2). R19-3-514 recodified from R4-37-514 (Supp. 95-1). Former Section R19-3-514 renumbered to R19-3-516 and amended; new Section R19-3-514 renumbered from R19-3-512 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-515. Late Offers, Modifications, Withdrawals

A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.

B. The procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before the contract award at the location designated in the solicitation; and
2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.

C. Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-515 renumbered to R4-37-512, new Section R4-37-515 renumbered from R4-37-518 and amended effective May 7, 1990 (Supp. 90-2). R19-3-515 recodified from R4-37-515 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Former Section R19-3-515 renumbered to R19-3-517 and amended; new Section R19-3-515 renumbered from R19-3-513 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

B. The procurement officer shall notify offerors of the cancellation in writing.

C. The procurement officer shall retain offers received under the cancelled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.

D. In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-516 renumbered to R4-37-513, new Section R4-37-516 renumbered from R4-37-519 and amended effective May 7, 1990 (Supp. 90-2). R19-3-516 recodified from R4-37-516 (Supp. 95-1). Former Section R19-3-516 renumbered to R19-3-518 and amended; new Section R19-3-516 renumbered from R19-3-514 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-517. One Offer Received

If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:
1. Award the contract to the offeror and prepare a written determination that:
   a. The price submitted is fair and reasonable under R19-3-550,
   b. The offer is responsive, and
   c. The offeror is responsible, or
2. Reject the offer and:
   a. Resolicit for new offers,
   b. Cancel the procurement, or
   c. Use a different source selection method authorized under these rules.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-517 renumbered to R4-37-514, new Section R4-37-517 renumbered from R4-37-520 and amended effective May 7, 1990 (Supp. 90-2). R19-3-517 recodified from R4-37-517 (Supp. 95-1). Former Section R19-3-517 renumbered to R19-3-519 and amended; new Section R19-3-517 renumbered from R19-3-515 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

C. The procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of

unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.

D. The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-518 renumbered to R4-37-515, new Section R4-37-518 renumbered from R4-37-521 and amended effective May 7, 1990 (Supp. 90-2). R19-3-518 recodified from R4-37-518 (Supp. 95-1). Former Section R19-3-518 renumbered to R19-3-520 and amended; new Section R19-3-518 renumbered from R19-3-516 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-519. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.

B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-519 renumbered to R4-37-516, new Section R4-37-519 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-519 recodified from R4-37-519 (Supp. 95-1). Former Section R19-3-519 renumbered to R19-3-521 and amended; new Section R19-3-519 renumbered from R19-3-517 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-520. Determination of Not Susceptible for Award

A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award or not within the competitive range. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:

1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
3. The offer is not susceptible for award or is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award or is in the competitive range, the offer should be included for further consideration.

B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award or not within the competitive range, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-520 renumbered to R4-37-517, new Section R4-37-520 renumbered from R4-37-523 and amended effective May 7, 1990 (Supp. 90-2). R19-3-520 recodified from R4-37-520 (Supp. 95-1). Former Section R19-3-520 renumbered to R19-3-522 and amended; new Section R19-3-520 renumbered from R19-3-518 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-521. Bid Evaluation

A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.

B. The procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services, information systems, and telecommunication systems.

C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.

D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-521 renumbered to R4-37-518, new Section R4-37-521 renumbered from R4-37-524 and amended effective May 7, 1990 (Supp. 90-2). R19-3-521 recodified from R4-37-521 (Supp. 95-1). Former Section R19-3-521 renumbered to R19-3-523 and amended; new Section R19-3-521 renumbered from R19-3-519 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section

made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-522. Clarification of Proposal Offers

A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.

B. The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.

C. The procurement officer shall retain any clarifications in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-522 renumbered to R4-37-519, new Section R4-37-522 renumbered from R4-37-525 and amended effective May 7, 1990 (Supp. 90-2). R19-3-522 recodified from R4-37-522 (Supp. 95-1). Former Section R19-3-522 renumbered to R19-3-524 and amended; new Section R19-3-522 renumbered from R19-3-520 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the procurement officer shall confirm the negotiations in writing and provide the document to the offeror.

C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.

D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.

E. Responsible offerors determined to be susceptible for award and within the competitive range, with which negotiations have been held, may revise their offer in writing during negotiations.

F. An offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-523 renumbered to R4-37-520, new Section R4-37-523 renumbered from R4-37-526 and amended effective May 7, 1990 (Supp. 90-2). R19-3-523 recodified from R4-37-523 (Supp. 95-1). Former Section R19-3-523 renumbered to R19-3-525 and amended; new Section R19-3-523 renumbered from R19-3-521 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-524. Final Proposal Revisions

A. The procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not within the competitive range or not susceptible for award under R19-3-520 or non-responsible under R19-3-526. The procurement officer shall include in the written request:

1. The date, time, and place for submission of final proposal revisions; and
2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.

B. The procurement officer shall request written final proposal revisions only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.

C. If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

D. An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

E. In response to a request made under subsections (C) or (D), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the final proposal revision, the procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

Historical Note

Adopted as an emergency effective June 5, 1985, pursu-

ant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-524 renumbered to R4-37-521, new Section R4-37-524 renumbered from R4-37-527 and amended effective May 7, 1990 (Supp. 90-2). R19-3-524 recodified from R4-37-524 (Supp. 95-1). Former Section R19-3-524 renumbered to R19-3-526 and amended; new Section R19-3-524 renumbered from R19-3-522 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-525. Evaluation of Proposal Offers

A. The procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.

B. The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:

1. Accept or reject the findings of the evaluation committee,
2. Request additional information from the evaluation committee, or
3. Replace the evaluation committee.

C. The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-525 renumbered to R4-37-522, new Section R4-37-525 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-525 recodified from R4-37-525 (Supp. 95-1). Former Section R19-3-525 renumbered to R19-3-527 and amended; new Section R19-3-525 renumbered from R19-3-523 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-526. Responsibility Determinations

A. The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.

B. The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the Lottery;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets the responsibility criteria specified in the solicitation.

C. If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The procurement officer shall file a copy of the determination in the procurement file.

D. The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

E. For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-526 renumbered to R4-37-523, new Section R4-37-526 renumbered from R4-37-529 and amended effective May 7, 1990 (Supp. 90-2). R19-3-526 recodified from R4-37-526 (Supp. 95-1). Former Section R19-3-526 renumbered to R19-3-528 and amended; new Section R19-3-526 renumbered from R19-3-524 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-527. Bid Contract Award

A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.

E. Within 10 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-527 renumbered to R4-37-524, new Section R4-37-527 renumbered from R4-37-530 effective May 7, 1990 (Supp. 90-2). R19-3-527 recodified from R4-37-527 (Supp. 95-1). Former Section R19-3-527 renumbered to R19-3-529 and amended; new Section R19-3-527 renumbered from R19-3-525 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-528. Proposal Contract Award

A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

B. Before awarding any cost reimbursement contract, the procurement officer shall determine in writing that:
1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
2. It is adequate to allocate costs under R19-3-550 through R19-3-553.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.
1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
2. The Lottery Commission shall not take action in the executive session.
3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.

E. The procurement officer shall notify all offerors of an award that has become effective and binding.

F. After an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.

G. Within 10 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-528 renumbered to R4-37-525, new Section R4-37-528 renumbered from R4-37-531 and amended effective May 7, 1990 (Supp. 90-2). R19-3-528 recodified from R4-37-528 (Supp. 95-1). Former Section R19-3-528 renumbered to R19-3-530 and amended; new Section R19-3-528 renumbered from R19-3-526 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-529. Mistakes Discovered After Bid Award

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
2. Cancel all or part of the award; or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-529 renumbered to R4-37-526, new Section R4-37-529 renumbered from R4-37-532 and amended effective May 7, 1990 (Supp. 90-2). R19-3-529 recodified from R4-37-529 (Supp. 95-1). Former Section R19-3-529 renumbered to R19-3-531 and amended; new Section R19-3-529 renumbered from R19-3-527 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-530. Mistakes Discovered After Proposal Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake,
2. Cancel all or part of the award, or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-530 renum-

bered to R4-37-527, new Section R4-37-530 renumbered from R4-37-533 and amended effective May 7, 1990 (Supp. 90-2). R19-3-530 recodified from R4-37-530 (Supp. 95-1). Former Section R19-3-530 renumbered to R19-3-533 and amended; new Section R19-3-530 renumbered from R19-3-528 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-533 unless any of the following apply:

1. The purchase can be made from a state or agency contract,
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636,
3. The purchase is not expected to exceed $5,000.00,
4. The purchase is made as a sole-source procurement, or
5. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-531 renumbered to R4-37-528, new Section R4-37-531 renumbered from R4-37-534 and amended effective May 7, 1990 (Supp. 90-2). R19-3-531 recodified from R4-37-531 (Supp. 95-1). Former Section R19-3-531 renumbered to R19-3-535 and amended; new Section R19-3-531 renumbered from R19-3-529 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-532. Solicitation – Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed $5,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:

1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
3. The minimum information that the offer shall contain;
4. Any evaluation factors;
5. Whether negotiations may be held;
6. Any contract options including renewal or extension;
7. The uniform terms and conditions by text or reference; and
8. Any other terms, conditions, or instructions specific to the procurement.

B. The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:

1. The purchase has been unsuccessfully competed under R19-3-533, including failure to obtain fair and reasonable prices; or
2. The procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-532 renumbered to R4-37-529, new Section R4-37-532 renumbered from R4-37-535 and amended effective May 7, 1990 (Supp. 90-2). R19-3-532 recodified from R4-37-532 (Supp. 95-1). Former Section R19-3-532 renumbered to R19-3-536 and amended; new Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-533. Request for Quotation Issuance

The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations. The procurement officer may cancel the request for quotation at any time.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-533 renumbered to R4-37-530, new Section R4-37-533 renumbered from R4-37-536 and amended effective May 7, 1990 (Supp. 90-2). R19-3-533 recodified from R4-37-533 (Supp. 95-1). Former Section R19-3-533 renumbered to R19-3-537 and amended; new Section R19-3-533 renumbered from R19-3-530 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-534. Quotation Contract Award

A. If only one responsive offer is received, the procurement officer shall explain in writing whether award of the contract is advantageous to the Lottery and place the determination in the procurement file.

B. The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. The procurement officer shall make the procurement file available to the public on the date the contract award becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-534 renum-

bered to R4-37-531, new Section R4-37-534 renumbered from R4-37-538 and amended effective May 7, 1990 (Supp. 90-2). R19-3-534 recodified from R4-37-534 (Supp. 95-1). Former Section R19-3-534 renumbered to R19-3-538 and amended; new Section R19-3-534 adopted December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-535. Sole Source Procurements

A. For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:
1. There is only a single source for the material or service, or
2. No reasonable alternative source exists.

B. The procurement officer shall make a written determination that includes the following information:
1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
2. The name of the proposed supplier,
3. The duration and estimated total dollar value of the proposed procurement,
4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-550, and
5. A description of efforts made to seek other sources.

C. The procurement officer shall post the request on the Lottery web site and send notice to registered vendors on the state's electronic system to invite comments on the sole-source request for three working days. Following this period, the procurement officer shall either:
1. Issue a written determination with any conditions or restrictions, or
2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

D. If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.

E. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.

F. The procurement officer shall keep a record of all sole-source procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-535 renumbered to R4-37-532, new Section R4-37-535 renumbered from R4-37-539 and amended effective May 7, 1990 (Supp. 90-2). R19-3-535 recodified from R4-37-535 (Supp. 95-1). Former Section R19-3-535 renumbered to Section R19-3-339 and amended; new Section R19-3-535 renumbered from R19-3-531 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-536. Emergency Procurements

A. For the purposes of this Section, the term "emergency" means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.

B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.

C. A Lottery employee with the approval of the immediate supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency procurement to the procurement officer within five working days of the emergency.

D. An emergency procurement shall be limited to such actions necessary to address the emergency.

E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.

F. The procurement officer shall keep a record of all emergency procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-536 renumbered to R4-37-533, new Section R4-37-536 renumbered from R4-37-540 and amended effective May 7, 1990 (Supp. 90-2). R19-3-536 recodified from R4-37-536 (Supp. 95-1). Former Section R19-3-536 renumbered to Section R19-3-541 and amended; new Section R19-3-536 renumbered from R19-3-532 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-537. Competition Impracticable Procurements

A. For the purposes of this Section, "competition impracticable" means a procurement requirement exists which makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.

B. The procurement officer shall make a written determination that includes the following information:
1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest;
2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
4. The scope, duration, and estimated total dollar value of the procurement need.

C. The procurement officer shall keep a record of all competition impracticable procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-537 repealed, new Section R4-37-537 renumbered from R4-37-541 and amended effective May 7, 1990 (Supp. 90-2). R19-3-537 recodified from R4-37-537 (Supp. 95-1). Former Section R19-3-537 renumbered to R19-3-542 and amended; new Section R19-3-537 renumbered from R19-3-533 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citations in subsections (A) and (B)(1) were updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-538. Request for Information

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
3. There is no required format to be used for requests for information.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-538 renumbered to R4-37-534, new Section R4-37-538 renumbered from R4-37-542 and amended effective May 7, 1990 (Supp. 90-2). R19-3-538 recodified from R4-37-538 (Supp. 95-1). Former Section R19-3-538 renumbered to R19-3-543 and amended; new Section R19-3-538 renumbered from R19-3-534 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-539. Demonstration Projects

A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:

1. Name of the contractor;
2. Description of the project, including unique and innovative features of the project;
3. Statement and explanation that the project is in the best interest of the Lottery;
4. Duration of the project; and
5. Proposed contract terms and conditions.

B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.

C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:

1. Name of the contractor;
2. Description of the project, including unique and innovative features of the project;
3. Statement and explanation that lease or purchase is in the best interest of the Lottery;
4. Cost to the Lottery;
5. Duration of the proposed contract; and
6. Proposed contract terms and conditions.

D. The term of the contract resulting from a demonstration project shall not exceed two years.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-539 renumbered to R4-37-535, new Section R4-37-539 renumbered from R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-539 recodified from R4-37-539 (Supp. 95-1). Former Section R19-3-539 renumbered to R19-3-547 and amended; new Section R19-3-539 renumbered from R19-3-535 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-540. General Services Administration Contracts

A. The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:

1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery,
2. Price is equal to or less than the contractor's current GSA price,
3. Price is fair and reasonable,
4. Contractor is willing to offer GSA pricing and terms to the Lottery,
5. Comparable products or services are not available under a state or agency contract,
6. Comparable products or services are not restricted under a set-aside contract, and
7. Contractor accepts required Lottery contract terms and conditions.

B. The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:

1. Name of the contractor;
2. GSA contract or schedule number;
3. Procurement description;
4. Analysis of price, quality, and other relevant factors; and
5. Statement that the price is fair and reasonable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-540 renumbered to R4-37-536, new Section R4-37-540 renumbered from R4-37-544 and amended effective May 7, 1990 (Supp. 90-2). R19-3-540 recodified from R4-37-540 (Supp. 95-1). Former Section R19-3-540 renumbered to R19-3-549 and amended; new Section R19-3-540

adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-541. Contract Clauses

The procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the Lottery's interests are addressed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-541 renumbered to R4-37-538, new Section R4-37-541 renumbered from R4-37-545 and amended effective May 7, 1990 (Supp. 90-2). R19-3-541 recodified from R4-37-541 (Supp. 95-1). Former Section R19-3-541 renumbered to R19-3-551 and amended; new Section R19-3-541 renumbered from R19-3-536 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-542. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-542 renumbered to R4-37-539, new Section R4-37-542 renumbered from R4-37-546 and amended effective May 7, 1990 (Supp. 90-2). R19-3-542 recodified from R4-37-542 (Supp. 95-1). Former Section R19-3-542 repealed; new Section R19-3-542 renumbered from R19-3-537 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-543. Change of Name

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-543 renumbered to R4-37-540, new Section R4-37-543 renumbered from R4-37-547 and amended effective May 7, 1990 (Supp. 90-2). R19-3-543 recodified from R4-37-543 (Supp. 95-1). Former Section R19-3-543 repealed; new Section R19-3-543 renumbered from R19-3-538 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-544. Contract Change Orders and Amendments

A. The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

B. Any contract change order or amendment not covered under subsection (A) that exceeds $100,000 may be executed only if the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-550.

C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-544 renumbered to R4-37-541, new Section R4-37-544 renumbered from R4-37-548 and amended effective May 7, 1990 (Supp. 90-2). R19-3-544 recodified from R4-37-544 (Supp. 95-1). Former Section R19-3-544 repealed; new Section R19-3-544 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-545. Multi-term Contracts

A. Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.

B. A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery. The written determination shall include:

1. The initial and renewal option periods for the contract,
2. Documentation that the estimated requirements are reasonable and continuing, and
3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.

C. The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-545 renumbered to R19-3-541, new Section R4-37-545 renumbered from R4-37-549 and amended effective May 7, 1990 (Supp. 90-2). R19-3-545 recodified from R4-37-545 (Supp. 95-1). Former Section R19-3-545 renumbered to R19-3-552 and amended; new Section R19-3-545 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495,

effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-546. Terms and Conditions

A. The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.

B. The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements.

Historical Note

Renumbered to Section R4-37-542 effective May 7, 1990 (Supp. 90-2). R19-3-546 recodified from R4-37-546 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-547. Mandatory Statewide Contracts

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts, unless a written determination is made by the procurement officer that the available statewide contracts do not meet the Lottery's needs.

Historical Note

Renumbered to Section R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-547 recodified from R4-37-547 (Supp. 95-1). New Section R19-3-547 renumbered from R19-3-339 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-547 renumbered to R19-3-550; new Section R19-3-547 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-548. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery, unless a written determination is made by the procurement officer providing otherwise.

Historical Note

Renumbered to Section R4-37-544 effective May 7, 1990 (Supp. 90-2). R19-3-548 recodified from R4-37-548 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-548 renumbered to R19-3-551; new Section R19-3-548 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-549. Conflict of Interest

A. A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.

B. The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived.

Historical Note

Renumbered to Section R4-37-545 effective May 7, 1990 (Supp. 90-2). R19-3-549 recodified from R4-37-549 (Supp. 95-1). R19-3-549 renumbered from R19-3-540 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-549 renumbered to R19-3-552; new Section R19-3-549 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-550. Determination of Fair and Reasonable Price

A. For contracts or contract modifications that exceed $100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
2. Price is supported by an established catalog or market prices;
3. Price is set by law or rule; or
4. Price is supported by relevant, historical price data.

B. The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A), or
2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

Historical Note

Adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-550 renumbered to R19-3-553; new Section R19-3-550 renumbered from R19-3-547 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-551. Submission and Certification of Cost or Pricing Data

A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.

B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.

C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief, as of a date mutually determined with the procurement officer.

Historical Note

Section R19-3-551 renumbered from R19-3-541 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-551 renumbered to R19-3-554; new Section R19-3-551 renumbered from R19-3-548 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-552. Refusal to Submit Cost or Pricing Data

A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.

B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
1. Reject the contract modification; or

2 Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R19-3-552 renumbered from R19-3-545 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-552 renumbered to R19-3-555; new Section R19-3-552 renumbered from R19-3-549 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-553. Defective Cost or Pricing Data

A. The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.

B. The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.

C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-564 through R19-3-566. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-553 renumbered to R19-3-556; new Section R19-3-553 renumbered from R19-3-550 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-554. Protest of Solicitations and Contract Awards

A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.

B. The interested party shall file the protest in writing with the procurement officer and shall include the following information:

1. The name, address, and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.

D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.

E. The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.

G. The procurement officer shall immediately give notice of a protest to all offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-554 renumbered to R19-3-557; new Section R19-3-554 renumbered from R19-3-551 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-555. Stay of Procurements During the Protest

A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:

1. Proceed with the award or contract performance, or
2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.

B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.

C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.

D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-555 renumbered to R19-3-561; new Section R19-3-555 renumbered from R19-3-552 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-556. Resolution of Solicitation and Contract Award Protests

A. The procurement officer has the authority to resolve a protest.

B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-554. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.

C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.

D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the procurement officer had issued an adverse decision.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-556 renumbered to R19-3-564; new Section R19-3-556 renumbered from R19-3-553 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-557. Remedies by the Procurement Officer

A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
1. The seriousness of the procurement deficiency,
2. The degree of prejudice to other interested parties or to the integrity of the procurement system,
3. The good faith of the parties,
4. The extent of performance,
5. The costs to the Lottery,
6. The urgency of the procurement,
7. The impact on the agency's mission, and
8. Other relevant issues.

C. The procurement officer may implement any of the following appropriate remedies:
1. Decline to exercise an option to renew under the contract,
2. Terminate the contract,
3. Amend the solicitation,
4. Issue a new solicitation,
5. Award a contract consistent with procurement statutes and regulations, or
6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). R19-3-557 renumbered to R19-3-565; new Section R19-3-557 renumbered from R19-3-554 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-558. Appeals to the Director Regarding Protest Decision

A. An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.

B. The interested party shall file the appeal in writing and shall include the following information:
1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503,
2. A copy of the decision of the procurement officer, and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

C. The Director may consider any appeal that is not filed timely if:
1. The interested party shows good cause, or
2. The Director finds there is a good cause.

D. The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-559. Notice of Appeal to the Director Regarding Protests

A. The procurement officer shall promptly give notice of the appeal to all offerors.

B. The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-559 renumbered to R19-3-566; new Section R19-3-559 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-560. Stay of Procurement During Appeal to Director

A. If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.

B. Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-560 renumbered to R19-3-567; new Section R19-3-560 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-561. Agency Report Regarding Protest Appeals

A. The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
2. The offer submitted by the interested party;
3. The offer of the firm that is being considered for award;
4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of offers or relevant portions;
6. Any other documents that are relevant to the protest; and
7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

B. The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.

C. The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.

D. The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section R19-3-561 renumbered from R19-3-555 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-562. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-562 renumbered to R19-3-568; new Section R19-3-562 made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-563. Dismissal Before Hearing

A. The Director shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest,
2. The appeal is untimely as prescribed under R19-3-558, or
3. The appeal attempts to raise issues not raised in the protest.

B. The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

Historical Note

New Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-564. Controversies Involving Contract Claims Against the Lottery

A. A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. The procurement officer shall have the authority to settle and resolve contract claims.

Historical Note

New Section R19-3-564 renumbered from R19-3-556 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-565. Procurement Officer's Decision Regarding Contract Claims

A. If a claim cannot be resolved under R19-3-564, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
1. A description of the claim;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the procurement officer's decision, with supporting rationale; and
5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-566(B) with the procurement officer within 30 days from the date you receive this decision."

C. If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

Historical Note

New Section R19-3-565 renumbered from R19-3-557 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-566. Appeals and Reports to the Director Regarding Contract Claims

A. The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.

B. The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the procurement officer,
2. A statement of the factual areas of agreement or disagreement, and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

C. The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section R19-3-566 renumbered from R19-3-559 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-567. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07.

The procurement officer shall furnish a copy of the claim to the Director.

Historical Note
New Section R19-3-567 renumbered from R19-3-560 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-568. Guidance
If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or A.A.C. R2-7-101 through R2-7-1009.

Historical Note
New Section R19-3-568 renumbered from R19-3-562 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

ARTICLE 6. ANNUITY ASSIGNMENTS

R19-3-601. Voluntary Assignment of Prizes Paid in Installments

A. A prize winner may request a voluntary assignment of an annuity or a portion of the remaining installments of the annuity by filing an action in a court of competent jurisdiction requesting judicial approval of the assignment. The prize winner and the purchaser of the annuity shall name the state of Arizona as a defendant in the action and shall bear all costs associated with filing the request for judicial approval of the assignment.

B. A prize winner shall include in the request for judicial approval under subsection (A) the following:
1. The affidavit required under A.R.S. § 5-563(A)(3);
2. A copy of the signed assignment agreement between the prize winner and the assignee; and
3. Proof that the fee under subsection (D) has been paid to the Lottery.

C. After the court approves the assignment, the prize winner shall send the written judicial approval to the Lottery. Upon receipt of judicial approval of the voluntary assignment, the Director shall direct the insurance company to make future annuity payments as provided in the Court order.

D. The prize winner or assignee shall pay a fee of $235.00 to the Lottery to process the voluntary assignment.

Historical Note
Adopted as an emergency effective October 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-5). Adopted without change as a permanent rule effective February 25, 1987 (Supp. 87-1). Amended effective May 7, 1993 (Supp. 93-2). R19-3-601 recodified from R4-37-601 (Supp. 95-1). Repealed effective June 14, 1997 (Supp. 97-2). New Section made by final rulemaking at 11 A.A.R. 2028, effective July 2, 2005 (Supp. 05-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (B)(1) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

ARTICLE 7. DESIGN AND OPERATION OF INSTANT GAMES

R19-3-701. Definitions
In this Article, unless the context otherwise requires:
1. "Caption" means the printed characters appearing below a play symbol or prize symbol that verify and correspond with that symbol. No more than one caption will appear under a symbol.
2. "Game profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential game fundamentals required by these rules for an instant game.
3. "Instant game" means a game that is played by removing the protective covering from a ticket to reveal the play symbols, or prize symbols, or both that determine if a ticket holder is entitled to a prize or prizes.
4. "Instant scratch game" means an instant game where the protective covering is made of latex or another substance that is scratched off.
5. "Instant tab game" means an instant game where the protective covering is a perforated paper tab that is opened.
6. "Pack" means a group of tickets bearing a common identification number.
7. "Pack-ticket number" means a unique multi-digit number that includes a game number, a pack number, and a ticket number which distinguishes each ticket from every other ticket within an instant game.
8. "PIN" means the designated characters within the validation number that allows an on-line terminal to validate an instant ticket.
9. "Play area" means the portion or portions of the ticket which contains the play symbol or symbols. More than one play area may appear on a ticket.
10. "Play symbols" means the printed image or images that appear within the defined play area of the ticket that determine if the ticket holder is entitled to a prize or prizes.
11. "Prize structure" means the estimated number of prizes, prize values, and odds of winning prizes for an individual game.
12. "Prize symbol" means the printed image or images that indicates the prize or prizes available in that game.
13. "Retailer validation code" means the multiple letters in the play area, under the protective covering that verify prizes less than $600.
14. "Validation code" means the unique multi-positional code on each ticket that is used to authenticate winning tickets.

Historical Note
Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-702. Game Profile

A. Each game shall have a Game Profile and at a minimum, the Profile shall contain the following information:
1. Game name;
2. Game number;
3. Prize structure;
4. Game Playstyle;
5. Play symbols;
6. Retailer validation codes, if any;
7. Special features, if any;
8. Retail sales price;
9. How to play and win instructions; and
10. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.

B. The Commission shall approve the individual Game Profile prior to the game being sold to the public.

Historical Note
Adopted effective October 25, 1996 (Supp. 96-4).

Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-703. Game Playstyle

A. The playstyle for an individual game shall be fully described in the Game Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Match Two,
2. Match Three,
3. Add-up,
4. Tic-Tac-Toe,
5. Key Symbol or Symbols Match,
6. Key Symbol or Symbols Beat,
7. Symbols in Sequence,
8. Spell Outs,
9. In Between,
10. Bingo,
11. Pattern,
12. Legend,
13. Coordinates,
14. Find,
15. Maze,
16. Grid,
17. Elimination,
18. Sets.

B. More than one game and more than one playstyle may appear on a ticket.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1).

R19-3-704. Determination of a Winning Ticket

A. The play symbols are the only determining factor for prize eligibility for a valid ticket.

B. For each play area on an individual ticket, the player shall remove the protective covering to find the play symbols, or the play and prize symbols. Eligibility to win a prize is based on compliance with the designated playstyle as follows:
1. Match Two. The player shall win the prize or prizes indicated by uncovering two identical play symbols on a play area.
2. Match Three. The player shall win the prize or prizes indicated by uncovering three identical play symbols on a play area.
3. Add-Up. The player shall win the prize or prizes indicated in either of the following ways:
   a. The player adds up the play symbols and the amount is greater than or equal to the designated key symbol on the ticket, or
   b. The player adds up the play symbols designated for the player and the total is greater than or equal to the control key symbol or symbols.
4. Tic-Tac-Toe. The player shall win the prize or prizes indicated by uncovering three identical play symbols, in any row, or any column, or any diagonal, on a multi-symbol grid on the play area.
5. Key Symbol or Symbols Match. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols identical to the designated key play symbol or symbols.
6. Key Symbol or Symbols Beat. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols designated for the player in the ticket play area which is greater than the control play symbol or symbols.
7. Symbols in Sequence. The player shall win the prize or prizes indicated by uncovering the designated play symbols in the specified sequential order.
8. Spell Outs. The player shall win the prize or prizes indicated by uncovering the play symbols to form the designated word or words.
9. In Between. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols designated for the player with a value less than the highest control play symbol or symbols and greater than the play lowest control play symbol or symbols.
10. Bingo. The player shall win the prize or prizes indicated by uncovering the play symbols on the designated play area or areas that are identical to the play symbols uncovered on the control play area to form the specified pattern or patterns.
11. Pattern. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols on a multi-symbol play area that follow a designated pattern.
12. Legend. The player shall win the prize or prizes indicated by uncovering the designated number or type of play symbols that correspond to a legend.
13. Coordinates. The player shall win the prize or prizes indicated by uncovering a play symbol or symbols that direct the player to a location on the play area to reveal the specified play symbol, or the number or pattern of play symbols.
14. Find. The player shall win the prize or prizes indicated by uncovering the designated play or prize symbol.
15. Maze. The player shall win the prize or prizes indicated by uncovering the directional symbols to make a path or paths leading to a designated prize symbol.
16. Grid. The player shall win the prize or prizes indicated by uncovering a specified number or pattern of play symbols on a grid on the play area.
17. Elimination. The player shall win the prize indicated by uncovering the corresponding prize or symbol on a prize table to eliminate all but one remaining prize amount or symbol.
18. Sets. The player shall win the prize or prizes indicated by uncovering the designated group or groups of play symbols, without repetition or deletion of any play symbol, within a specified location of the play area.

C. Each of the playstyles described in subsection (B) may include one or more special features such as “automatic win,” “multiplier,” “wild,” “win all,” “extra chance,” or “free space” that provides an added or alternative method of winning.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1).

R19-3-705. Ticket Validation and Confirmation Requirements

A. Each instant game ticket shall be validated prior to payment of a prize.

B. To be eligible for a prize, a ticket holder shall present a ticket meeting all of the following requirements:
1. The ticket shall not be stolen or appear on any list of omitted tickets on file with the Lottery;
2. The ticket shall not be counterfeit or forged, in whole or in part;
3. The ticket shall not be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

4. The ticket shall not be blank, partially blank, misregistered, defective, or printed or produced in error;
5. The play and prize symbols shall have the captions that confirm and agree with those applicable to that instant game;
6. The ticket shall have been issued by the Lottery in an authorized manner;
7. The ticket shall have been legally obtained;
8. The ticket shall pass all other confidential validation tests determined by the Director;
9. The ticket shall be validated in accordance with the provisions of R19-3-706 and R19-3-708;
10. The display printed on the ticket shall correspond precisely with the approved artwork on file at the Lottery;
11. All of the ticket symbols originally printed on the ticket shall appear in the play area on the ticket and shall correspond to those shown in the Game Profile; and
12. The play and prize symbols shall have the required captions that confirm and agree with those of the appropriate instant game.

C. In addition to the requirements in subsection (B), each instant scratch game ticket shall meet the following:
1. The ticket shall contain a game number, a pack-ticket number, a retailer validation code, and where applicable, a PIN number, and at least one ticket validation code; and
2. The validation code of a winning ticket shall appear in the Lottery's official file of validation codes of winning tickets and shall not have been previously paid.

D. In addition to the requirements in subsection (B), each instant tab game ticket shall meet the following:
1. The ticket shall contain a game number and a serial number, and
2. A winning tab ticket shall contain the necessary prize and win symbol captions to enable visual confirmation of a prize.

E. If the ticket fails to pass any of the requirements in subsections (B) and (C) for instant scratch games, or subsections (B) and (D) for instant tab games, the ticket is void and ineligible for any prize payout.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-706. Ticket Ownership and Responsibility; Prize Payment

A. Until a ticket is signed, the ticket is owned by its physical possessor.

B. The owner of a winning instant ticket is the person whose signature appears upon the ticket, if an area has been designated for that purpose.
1. If more than one signature appears on the ticket, the Director is authorized to require that one or more of those claimants be designated to receive the payment. A claim form shall be submitted by each claimant who is designated to receive a portion of the prize claimed from the winning ticket.
2. Prior to payment of a prize, a claimant who has signed the ticket may designate another claimant to receive the prize by signing a relinquishment of claim statement.
3. When the winning ticket was purchased by a group of players, the group shall designate one of the claimants to sign the ticket for the group. Each claimant shall complete an individual claim form to receive the claimant's portion of the prize.
4. In the event there is an inconsistency in the information submitted on a claim form, when required, and as shown on the winning instant ticket, the Director shall authorize an investigation and withhold all winnings payable to the ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.

C. Prior to paying the claimant a prize of $600 or more, the Lottery shall match the winner's name against the lists of persons owing a debt to a participating state agency, furnished to the Lottery under A.R.S. § 5-575.
1. If there is a match on any of the claims submitted with a ticket, the amount that is owed shall be deducted from the prize due the claimant.
2. The claimant shall be notified in writing of the amount of the setoff and the agency to which it shall be paid.
3. If the claimant has two or more agencies which are owed a debt, the Lottery shall pay a pro-rata share to each of the agencies, except that a Department of Economic Security overdue child support setoff shall be paid in full before any amount shall be paid to another agency.
4. The claimant shall be notified in writing that a right to appeal the setoff exists. The notification shall include the name and address of the agency with which to file the appeal and that the appeal shall commence within 30 days of receipt of the notification.
5. If, after deducting withholding taxes and the setoff, a portion of the prize remains, then that portion shall be paid to the winner with the notification of setoff.
6. The setoff amount shall be forwarded to the agency, and that agency shall be responsible for any appeal and crediting of the payment against the amount owed or refunding any amount to the winner.
7. Upon a determination that a setoff is due, the winner loses the right under subsection (B)(2) to assign any portion of the claim.

D. Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets.
1. If a ticket contains more than one winning game play, any prize amounts shall be combined and paid in accordance with the prize payment limits specified in R19-3-708.
2. Each winning game play wins the prize amount specified in the Game Profile.

E. The Lottery is not responsible for lost or stolen tickets.

Historical Note

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (C) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

R19-3-707. Claim Period

A. For the claimant to receive payment, a winning instant scratch game ticket shall be received by the Lottery or a retailer no later than 5:00 p.m. (Phoenix time) on the 180th calendar day following the announced end of the instant game.
1. If a claimant presents a valid winning instant scratch ticket to a retailer for payment on the 180th calendar day following the announced end of the instant scratch game and is not paid the prize, the Director is authorized to pay

the prize if the claimant presents the valid winning ticket to the Lottery no later than 5:00 p.m. (Phoenix time) on the following business day.

2. In the case of a drawing prize associated with an instant scratch game, the claimant shall claim the prize no later than 5:00 p.m. (Phoenix time) on the final day designated by the Director and on file at the Lottery.

B. The end of an instant game shall be designated by the Director and on file at the Lottery.

Historical Note
Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-708. Procedure for Claiming Prizes

A. To claim an instant scratch ticket prize of up to and including $599, the claimant shall present the ticket to any participating licensed retailer or to a Lottery office, or mail the ticket to a Lottery office for validation. The licensed retailer shall pay all winning prizes up to and including $100 and may pay all winning prizes from $101 up to and including $599 provided that:

1. All of the ticket validation criteria in Section R19-3-705 have been satisfied; and
2. A proper validation slip, which is an authorization to pay, has been generated by the terminal.

B. To claim an instant scratch ticket prize that the retailer does not validate or is not authorized to pay, including all prizes of $600 or more, the claimant shall submit a claim form, available from any retailer, and the ticket to the Lottery. If the claim is:

1. Verified and validated by the Lottery as a winning ticket, the Lottery shall make payment of the amount due to the claimant, less any authorized debt setoff amounts, or withheld taxes, or both.
2. Denied by the Lottery, the claimant shall be notified within 15 days from the day the claim is received in the Lottery office.

C. If an instant scratch ticket prize winner dies prior to receiving full payment, the Lottery shall pay all remaining prize money to the prize winner's beneficiary or to any person designated by an appropriate judicial order.

D. To claim an instant tab ticket prize, the claimant shall present the ticket to the selling retailer. The selling retailer shall pay all winning prizes provided that:

1. All of the ticket validation criteria in R19-3-705(A) and (B)(1) through (8) have been satisfied; and
2. The retailer has performed a visual confirmation of the winning play, prize, and win symbol captions.

E. Payment of prize money shall not be accelerated ahead of its normal date of payment.

F. The Lottery is discharged of all liability upon payment of the instant scratch ticket prize money.

G. The retailer has sole responsibility to pay prizes on instant tab tickets. The Lottery is discharged of all liability to pay prizes on instant tab tickets.

Historical Note
Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

R19-3-709. Disputes Concerning a Ticket

A. If a dispute between the Lottery and a claimant occurs concerning a ticket, the Director is authorized to replace the disputed ticket with a ticket or tickets of equivalent sales price from any current instant game.

B. If a defective ticket is purchased, the Lottery shall replace the defective ticket with a ticket or tickets of equivalent sales price from any current instant game.

C. Replacement of the disputed ticket is the sole and exclusive remedy for a claimant.

D. If a dispute between the Lottery and a claimant occurs concerning the eligibility of an entry into a grand prize, second chance or promotional drawing, the Director is authorized to place any person's eligible entry that was not entered in that drawing into any subsequent drawing or drawings.

Historical Note
Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

ARTICLE 8. RESERVED

ARTICLE 9. RESERVED

ARTICLE 10. PROMOTIONS

R19-3-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Category" means player, consumer, retailer, vendor, or other person who participates in the promotion.
2. "Charitable organization" means a non-profit organization organized and operated exclusively for charitable purposes and is qualified under § 502(c)(3) of the United States Internal Revenue Code.
3. "Media" means the method of communication, as in television, radio, print, outdoor, or Internet, with wide reach and influence.
4. "Prize type" means cash, free ticket or tickets, coupon or coupons, merchandise, retailer or vendor product or service, or discount on retailer or vendor product or service.
5. "Promotion" means a program designed to increase awareness of the Lottery, Lottery beneficiaries, and Lottery games that is intended to increase the sale of Lottery tickets to produce the maximum amount of net revenue for the state.
6. "Promotion playstyle" means the type of process or procedure used to control the promotion.
7. "Promotion Profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential promotion fundamentals required by these rules for a promotion.
8. "Promotional merchandise" means Lottery related goods, consumer products, or services provided by the Lottery for use in a promotion.
9. "Promotional ticket" means a Lottery ticket from a current, active game or a specially designed game provided by the Lottery for use in a promotion.
10. "Targeted game or targeted games" means the specific game or games a promotion is intended to increase sales or awareness of.
11. "Tickets" means one or more Lottery game plays from the targeted game or games.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R.

1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1002. Promotion Profile

A. Each promotion shall have a Promotion Profile and at a minimum, the Profile shall contain the following information:
1. Promotion name;
2. Promotion playstyle;
3. Category;
4. Targeted game, games or Lottery beneficiaries involved in the promotion;
5. Promotion description;
6. Promotion selection criteria, if applicable;
7. Prize type and structure, including the estimated number and size of monetary prizes, free tickets, coupons, certificates, discounts, and merchandise prizes available, if applicable;
8. Retail sales price, if applicable;
9. Promotion date range (beginning and ending promotion dates);
10. Time range, if applicable;
11. Day or days of the week, if applicable;
12. Special feature, if any; and
13. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.

B. The Commission shall approve the Promotion Profile prior to the promotion being introduced to the public for participation.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1003. Promotion Playstyle - Promotion Type

A. The playstyle for a specific promotion shall be fully described in the Promotion Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Second Chance Drawing – Player.
2. Second Chance Drawing – Retailer.
3. Retailer's Second Chance Drawing – Retailer/Player.
4. Increased Prize Payment.
5. Buy X and Get Y Free – Player.
6. Sell X and Get Y Free – Retailer.
7. Validate X and Get Y Free – Retailer.
8. Buy X and Get Y Free, Every Nth Transaction – Player.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer.
10. Complete Survey.
11. Special Events – Player.
12. Retailer Incentive.
13. Cross Promotion.
14. Media Promotion.
15. Customer Service.
16. Mystery Shopper – Retailer.
17. Ask For the Sale – Retailer.
18. Charitable Organization.
19. Public Contest – not related to specific Lottery game.
20. Multi-State Lottery (MUSL) Promotions.

B. More than one promotion may run concurrently.

C. Promotion may be held only on specific days of the week.

D. Promotion may be held only during specific hours of the day.

E. Promotion may be available for selected regions, zones, retailer groups or player groups. Groups may be made by business codes, regions, county, zip code, chain designator, field representative or sales quota.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1004. Determination of a Winning Promotion

Eligibility to win a prize is based on compliance with the designated promotion playstyle as follows:
1. Second Chance Drawing – Player. The player shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile. The player or players selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
2. Second Chance Drawing – Retailer. The retailer shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile, or the Lottery may use information collected on its database as defined in the Promotion Profile to qualify the retailer. The retailer or retailers selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
3. Retailer's Second Chance Drawing – Retailer/Player. Retailers participating in the promotion shall ask players to deposit the required coupon, tickets or entry form into a Drawing Container at the retailer's location. The retailer shall perform random drawings according to the Promotion Profile. The players selected in the drawings shall win the prize type designated in the Promotion Profile. The Lottery shall provide the participating retailer with a predetermined number of prizes for the promotion.
4. Increased Prize Payout. Players who win a particular prize denomination in the target game or games shall win an additional amount specified in the Promotion Profile. The Promotion Profile shall define any required level of participation to be eligible.
5. Buy X and Get Y Free – Player. Each time a player buys a predetermined number of tickets from the targeted game or games, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement and the Get Y Free shall be specified in the Promotion Profile.
6. Sell X and Get Y Free – Retailer. Each time a retailer sells a predetermined number of tickets from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement and the Get Y Free shall be specified in the Promotion Profile.
7. Validate X and Get Y Free – Retailer. Each time a retailer validates a predetermined number or prize amount from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Validate X requirement and the Get Y Free shall be specified in the Promotion Profile.
8. Buy X and Get Y Free, Every Nth Transaction – Player. Each time a player buys a predetermined number or type of ticket or tickets from the target game or games and that purchase is the Nth transaction produced by the on-line system, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer. Each time a retailer sells a predetermined number of tickets from the target game or games and that sale is the Nth transaction produced by the on-line system, the retailer

shall receive the prize type designated in the Promotion Profile. The Sell X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.

10. Complete Survey. The player or retailer who completes a designated survey shall receive the prize type designated in the Promotions Profile.
11. Special Events – Players. Players who attend a Lottery sponsored special event may participate in activities designed to promote Lottery products. Player participation may include spinning the Lottery prize wheel, various carnival type games of little or no skill, or purchase of tickets for targeted game or games. The prize type shall be designated and awarded according to the Promotion Profile.
12. Retailer Incentive. The retailer shall become eligible to earn the designated prize type through participation as defined in the Promotion Profile.
13. Cross Promotion. Players who present a predetermined number of non-winning tickets of the targeted game or games to a participating retailer or vendor shall win the prize type designated in the Promotion Profile.
14. Media Promotion. Players who participate in media-related promotions shall be eligible to receive the prize type designated in the Promotion Profile. The Lottery shall provide the participating media outlet with coupons or tickets from the targeted game or games or promotional merchandise items.
15. Customer Service. If a player is inconvenienced or dissatisfied as a result of Lottery actions below the usual level of service the Lottery provides, the Lottery may provide the player with the prize type designated in the Promotions Profile.
16. Mystery Shopper – Retailer. The Lottery shall send mystery shoppers or spotters to visit randomly selected retailers in the promotional area. Each retailer who meets the requirements specified in the Promotion Profile shall win the designated prize type.
17. Ask For The Sale – Retailer. Each retailer participating in the promotion shall ask all customers who are determined to be of legal gaming age if they want to purchase a Lottery ticket for the targeted game or games. If the retailer does not ask an eligible customer, the customer shall receive a free coupon or ticket from the designated game. The Lottery shall provide the participating retailer with a predetermined number of coupons or tickets from the targeted game or games according to the Promotion Profile.
18. Charitable Organization. The Lottery shall provide a qualifying charitable organization with a predetermined number of tickets, coupons, or promotional merchandise from a targeted game or games to distribute during their charitable event.
19. Public Contest – not related to specific Lottery game. The Lottery may conduct a contest not related to any specific Lottery game as defined in the Promotion Profile.
20. Multi-State Lottery (MUSL) Promotions. The Lottery may participate in a Multi-State Lottery game-related promotion adopted by the MUSL board.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1005. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Section repealed by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1006. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Section repealed by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1007. Procedure for Claiming Prizes and Claim Period

A. To claim a promotion prize, a claimant must follow the procedure provided in the Promotion Profile.

B. Promotion details are subject to the terms of the Promotion Profile which may modify or specify the ownership, authentication, validation procedures, or the time period for claiming a prize.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

A. If a dispute between the Lottery and a claimant occurs concerning a promotion ticket or the winning of a promotion prize, the Director is authorized to replace the disputed ticket or promotion prize with a ticket or promotion prize of equivalent value from any current promotion. The decision of the Director is a final, appealable agency action.

B. Upon claim verification and payment of a prize, the Lottery shall be discharged of all liability to the claimant.

C. By accepting a prize, the winner, his or her heirs, or legal representative agrees to indemnify and hold harmless, release, and discharge the Lottery, its employees, directors, and Commissioners from and against loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

5-554. Commission; director; powers and duties; definitions

A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.

B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include provisions relating to the following:

1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.
2. The method of selecting the winning tickets or shares for noncomputerized online games, except that no method may be used that, in whole or in part, depends on the results of a dog race, a horse race or any sporting event.
3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.
4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on such tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.
5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.
6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.
7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include provisions relating to the following:

1. The prices of tickets or shares in lottery games.

2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.
3. The sale of tickets or shares at a discount for promotional purposes.
4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.
5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:
   (a) All drawings shall be open to the public.
   (b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.
   (c) Noncomputerized online game drawings shall be witnessed by an independent observer.
6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.
7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.
8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.

D. Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.

E. The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:
1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.
2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.
3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.

F. Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

G. The commission, in addition to other games authorized by this article, may establish multistate lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multistate lottery games.

H. The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund, except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:

1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.
2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.
3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.

I. The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet.

J. The commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.

K. The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director. The requirements of this subsection apply to tickets and shares printed after July 18, 2000.

L. For the purposes of this section:

1. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.
2. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.
3. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

5-559. Contracts; limitation; restrictions

A. Notwithstanding any other statute, the director may:

1. Directly solicit bids and contract for the design and operation of the lottery or the purchase of lottery equipment, tickets and related materials.
2. Contract to effectuate the purposes of this chapter and the rules adopted pursuant to this chapter.
3. Acquire administrative office facilities and related facilities and equipment for the use of the commission by lease, purchase or lease-purchase.

B. Procurement pursuant to this section shall be performed as prescribed in section 41-2501, subsection G. Bids received under this section may be deemed confidential in whole or in part by the director if required on account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.

C. Any award made by the director pursuant to this section becomes effective and binding on the commission unless it is rejected by the commission at a meeting held within fourteen calendar days after the award is communicated to the members of the commission.

D. A contract awarded or entered into by the director pursuant to this section shall not be assigned by the holder except by specific approval of the director. In all awards of contracts pursuant to this section, the director shall take particular account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

41-2501. Applicability

A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.

B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.

C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.

D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.

E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.

F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.

G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

H. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.

I. Arizona industries for the blind is exempt from this chapter for purchases of finished goods from members of national industries for the blind and for purchases of raw materials for use in the manufacture of products for sale pursuant to section 41-1972. All other procurement shall be as prescribed by this chapter.

J. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.

K. The state transportation board and the director of the department of transportation are exempt from this chapter other than section 41-2586 for the procurement of construction or reconstruction, including engineering services, of transportation facilities or highway facilities and any other services that are directly related to land titles, appraisals, real property acquisition, relocation, property management or building facility design and construction for highway development and that are required pursuant to title 28, chapter 20.

L. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

M. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

N. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

O. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

P. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

Q. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.
2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.

4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

R. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:
1. Mental health services pursuant to section 36-189, subsection B.
2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.
3. Drug and alcohol services pursuant to section 36-141.

S. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

T. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

U. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

V. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1.

W. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

X. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

Y. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

Z. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

AA. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.
2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

BB. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

CC. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:
1. The division does not pay any public monies to an authorized third party.
2. Exclusivity is not granted to an authorized third party.
3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

DD. This section does not exempt third party authorizations pursuant to title 28, chapter 13 from any other applicable law.

EE. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

FF. The cotton research and protection council is exempt from this chapter for procurements.

GG. Expenditures of monies in the Arizona agricultural protection fund established by section 3-3304 are exempt from this chapter.

HH. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

II. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

JJ. This chapter does not apply to the purchase of water, gas or electric utilities.

KK. This chapter does not apply to professional certifications, professional memberships and conference registrations.

LL. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

MM. This chapter does not apply to contracts for credit reporting services.

NN. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503 or 36-554.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

ARIZONA DEPARTMENT OF HEALTH SERVICES (R-16-0902)
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

Amend:	R9-14-601; R9-14-602; R9-14-603; R9-14-605; R9-14-606; R9-14-607; R9-14-608; R9-14-609; R9-14-610; R9-14-611; R9-14-612; R9-14-613; R9-14-614; R9-14-615; R9-14-616; R9-14-617; R9-14-620; R9-14-621; Table 6.1
New Section:	Table 6.2.A; Table 6.2.B; Table 6.2.C; Table 6.2.D; Table 6.2.E; Table 6.3; Table 6.4
Renumber:	Table 1; Table 6.1
Repeal:	Exhibit I; Exhibit II

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-2**

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

FROM: Chris Kleminich, Staff Attorney

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (R-16-0902)**
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

Amend: R9-14-601; R9-14-602; R9-14-603; R9-14-605; R9-14-606; R9-14-607; R9-14-608; R9-14-609; R9-14-610; R9-14-611; R9-14-612; R9-14-613; R9-14-614; R9-14-615; R9-14-616; R9-14-617; R9-14-620; R9-14-621; Table 6.1

New Section: Table 6.2.A; Table 6.2.B; Table 6.2.C; Table 6.2.D; Table 6.2.E; Table 6.3; Table 6.4

Renumber: Table 1; Table 6.1

Repeal: Exhibit I; Exhibit II

The Arizona Department of Health Services (Department) is amending 19 sections, creating seven new tables, renumbering two tables, and repealing two exhibits in A.A.C. Title 9, Chapter 14, Article 6. The article relates to the Department's licensing of environmental laboratories. The rules were last amended on December 5, 2006.

The Department and the Department of Environmental Quality (DEQ) share primacy over Arizona's drinking water supply. Earlier this year, DEQ revised its rules to conform to changes made to 40 CFR Part 141 [National Primary Drinking Water Regulations] and 40 CFR Part 142 [National Primary Drinking Water Regulations Implementation]. The Department is amending its rules to comply with A.R.S. § 36-495.01, which requires the Department to develop rules that are consistent with DEQ's rules and with 40 CFR Parts 141 and 142. The Department is also making changes, in accordance with the five-year-review report approved by the Council on March 1, 2016, that address written criticisms of the rules, update obsolete methodologies and references, and make the rules more clear.

Proposed Action

The following is a non-exhaustive summary of the Department's proposed actions:

- Section 601: Definitions are being modified and clarified.
- Section 602: Two new categories of exemptions from the article are being added.
- Section 603: The license application process is being modified. Notably, subsection (A)(14), requiring application forms to include the name, title, and educational background of each individual authorized to sign final reports for the laboratory, is being removed. The Department has determined that the requirement is overly burdensome.
- Section 605: Subsections (B) and (C) are being amended to allow for greater flexibility in laboratory compliance monitoring.
- Section 606: Clarifying changes are being made.
- Section 607: An internal reference is being updated in subsection (A)(1).
- Section 608: Subsection (F) is being added. The provision would allow the Department to suspend a licensee's authorization to make installment fee payments, and require the licensee to pay all pending fees, if a licensee fails more than twice during the license period to submit an installment payment within seven days after its due date.
- Section 609: Changes to improve clarity and conciseness are being made.
- Section 610: In subsection (B), Key References are being updated. Also, subsection (F), which allows the Department to rescind the approval of an alternate method or method alteration approved by the Department under certain circumstances, is being added.
- Sections 611-614: Updates are being made to reflect citation changes and relevant Key References.
- Sections 615-617: Clarifying changes are being made.
- Section 620: Changes to improve clarity and conciseness are being made.
- Section 621: Clarifying changes are being made.
- Tables and Exhibits, which provide specific information about methodologies, references, and related fees, are being updated in accordance with the actions described above.

Exemption or Request and Approval for Exception from the Moratorium

The Department received an exception from the moratorium on February 11, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Department cites to A.R.S. § 36-132(A)(1) as general authority for the rules, under which the Department must "[p]rotect the health of the people of the state. In addition, A.R.S. § 36-136(F) allows the Department to "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 through 36-495.14 [related to environmental laboratories] as specific authority for the rules.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

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

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

Yes. The Department indicates that it received no written comments on the rulemaking.

As noted in the five-year-review report on the rules, over the course of 2013 and 2014, the Department received three written comments on Section 610 that relate to obsolete references in the rule. The Department is updating each of the references identified as obsolete by the commenters.

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

No. As the preamble notes, only non-substantive technical changes were made to the rules. The final rules are not a substantial change, considered as a whole, from the proposed rules.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Department indicates that it did not review or rely on any study for this rulemaking.

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

No. The Department indicates that the rules are not more stringent than federal law.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. Section 603 relates to the issuance of licenses as authorized in A.R.S. § 36-495.01(D). A general permit is not used, as A.R.S. § 36-495.03(B) requires a license application to relate to a specific location and specific services and tests.

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

The Department is not changing the fees specified in Section 607, and fees are unchanged for methods and parameters that are being retained. For updated methods that are being added to the rules, the fees being put in place are consistent with those already established for similar methods and parameters.

9. Conclusion

The Department requests an effective date of October 1, 2016 for the rules. The Department indicates that this effective date will enable the state to retain primacy in the area of safe drinking water. This analyst recommends approval of the rules.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-2**

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

FROM: GRRC Economic Team

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (R-16-0902)**
Title 9, Chapter 14, Article 6, Licensing of Environmental Laboratories

Amend: R9-14-601; R9-14-602; R9-14-603; R9-14-605; R9-14-606; R9-14-607; R9-14-608; R9-14-609; R9-14-610; R9-14-611; R9-14-612; R9-14-613; R9-14-614; R9-14-615; R9-14-616; R9-14-617; R9-14-620; R9-14-621; Table 6.1

New Section: Table 6.2.A; Table 6.2.B; Table 6.2.C; Table 6.2.D; Table 6.2.E; Table 6.3; Table 6.4

Renumber: Table 1; Table 6.1

Repeal: Exhibit I; Exhibit II

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

In this rulemaking, the Department is proposing to amend most of the rules in Article 6. The rules in Article 6 establish procedures, fees, and time frames involved in licensing environmental laboratories. These environmental laboratories monitor drinking water quality in Arizona. While the Department is charged with regulating environmental laboratories, other water quality regulation is performed by the Department of Environmental Quality (DEQ). DEQ recently revised rules regarding drinking water quality. Currently, the environmental laboratory standards created by the Department are in conflict with DEQ's revised rules. The current rulemaking removes over 60 obsolete water testing methods and adds 257 new methods.

The Department licenses approximately 144 environmental laboratories. 62 of these laboratories are located outside of Arizona. 96 of these laboratories are private firms, and 48 are governmental agencies. Among these environmental laboratories, there is great diversity in terms of size and complexity.

1. **Costs and Benefits for:**

a. The implementing agency:

The Department anticipates that providing additional technical assistance to environmental laboratories will impose some minimal costs. Once the new testing methods become more widespread, these minimal additional costs should subside.

b. Political subdivisions:

Municipal and regional water systems will be impacted by these rules. They will incur minimal costs in the form of adapting to new testing methods; however, these water systems will experience significant benefits by having modernized and clear rules. They will also benefit by regulation through the Department instead of the EPA because the Department has much greater administrative capacity in Arizona.

c. Businesses:

Private environmental laboratories will be impacted in the same manner as political subdivisions listed above.

d. Small businesses:

Small private environmental laboratories will be impacted in the same manner as businesses listed above. Additionally, the Department utilizes a structured fee schedule, so small laboratories will only be required to pay fees necessary to license testing methods that they actually use instead of paying a flat fee for many compliance tests that smaller environmental laboratories may not need.

e. Consumers directly affected by the rulemaking:

These rules directly impact the consumers of drinking water in Arizona. The benefits of safe drinking water are vast, and proper licensing of environmental laboratories is a crucial component of maintaining safe, potable water.

2. Do the probable benefits outweigh the probable costs?

The Department lists the costs and benefits for all stakeholders. The Department will bear some costs in the form of additional resources in order to answer the questions of environmental laboratories regarding the new standards. Environmental laboratories will bear some costs associated with the transition to new compliance testing methods. The Department indicates that

the benefits of these new standards over the long term will easily eclipse any short-term costs associated with the transition period. Additionally, Arizona retaining primacy over potable water regulation is a large benefit to all stakeholders involved.

3. Analysis of methods to reduce the small business impact:

The Department indicates that small businesses have reduced impact under a tiered fee system. This approach allows smaller labs to only pay compliance testing fees for the services that each lab actually uses instead of a flat fee for all laboratories regardless of size. The Department also included older fee methods to permit a more gradual transition to the new fee structure.

4. The probable effect on state revenues:

The Department does not anticipate that the rulemaking will have any impact on state revenues.

5. Analysis of any less intrusive or less costly alternative methods:

The Department states that there are no less costly alternatives for achieving the purpose of this rule. Since failure to amend these rules would surrender Arizona drinking water regulation primacy to the EPA, the costs of inaction greatly outweigh the costs of action.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule’s impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

No empirical or quantitative data were submitted for use in the EIS.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 14, 2016

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: 9 A.A.C. 14, Article 6 Department of Health Services – Laboratories, Licensing of Environmental Laboratories

Dear Ms. Nicole Ong:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council under A.R.S. § 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-104:

1. The close of record:
   The close of record was July 13, 2016. Submission of the rules is within the 120 days allowed for Final Rulemaking.

2. Procedures followed:
   As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on April 1, 2016. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on June 10, 2016. The Department held one oral proceeding on July 13, 2016. The Department received no written comments or oral comments.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
   The rulemaking for 9 A.A.C. 14, Article 6 relates to the five-year-review report approved by the Council on March 1, 2016.

4. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:

The rulemaking does not contain a new fee; however, as part of the rulemaking, some compliance testing methods and their associated fees are being added and others removed. The specific statutory authority authorizing the Department to charge fees is A.R.S. § 36-495.06.

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

6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department is requesting an immediate effective date for this rulemaking of October 1, 2016.

7. A list of all items enclosed:
   a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule; and
   b. Economic, Small Business, and Consumer Impact Statement.

The Department is requesting that the rules be heard at the Council meeting on September 7, 2016.

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

I certify that the Department, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES

LABORATORIES

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-14-601	Amend
	R9-14-602	Amend
	R9-14-603	Amend
	R9-14-605	Amend
	R9-14-606	Amend
	R9-14-607	Amend
	R9-14-608	Amend
	R9-14-609	Amend
	R9-14-610	Amend
	R9-14-611	Amend
	R9-14-612	Amend
	R9-14-613	Amend
	R9-14-614	Amend
	R9-14-615	Amend
	R9-14-616	Amend
	R9-14-617	Amend
	R9-14-620	Amend
	R9-14-621	Amend
	Table 1	Renumber
	Table 6.1	Renumber
	Table 6.1	Amend
	Exhibit I	Repeal
	Exhibit II	Repeal
	Table 6.2.A	New Section
	Table 6.2.B	New Section
	Table 6.2.C	New Section
	Table 6.2.D	New Section

Table 6.2.E	New Section
Table 6.3	New Section
Table 6.4	New Section

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(F)

Implementing statutes: A.R.S. §§ 36-495.01 through 36-495.14

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an effective date of October 1, 2016 under A.R.S. § 41-1032 (A)(1), (2), (3), and (4). These rules protect public health by ensuring the competency of environmental laboratories conducting compliance testing. Having an effective date of October 1, 2016 will enable Arizona to retain primary authority to regulate (primacy) in the area of safe drinking water, as described in paragraph 6, rather than losing primacy and having the regulation of Arizona drinking water come under federal control. The effective date will also provide enough time for the Department and entities regulated under these rules time to prepare to implement the new rules. Since the Department requested an exception from the rulemaking moratorium soon after the Department learned that the Arizona Department of Environmental Quality (ADEQ) had received an exception from the rulemaking moratorium to revise the ADEQ rules related to primacy, the need for an immediate effective date was not created by the Department's delay or inaction.

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: 22 A.A.R. 704, April 1, 2016

Notice of Proposed Rulemaking: 22 A.A.R 1415, June 10, 2016

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

Name: Steven Baker, Office Chief

Address: Arizona Department of Health Services
Division of Public Health Services
Office of Laboratory Licensure and Certification
250 N. 17th Avenue
Phoenix, AZ 85007

Telephone: (602) 364-0735

Fax: (602) 364-0759

E-mail: Steve.Baker@azdhs.gov

or

Name: Robert Lane, Manager
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Ste. 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.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:

Arizona Revised Statutes (A.R.S.) § 36-495.01 requires the Department to license environmental laboratories engaged in compliance testing; establish minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; and develop rules in cooperation with ADEQ that are consistent with A.R.S. Title 49 and rules adopted by ADEQ. The Department adopted rules implementing A.R.S. § 36-495.01 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 14, Article 6. Federal Environmental Protection Agency (EPA) regulations 40 CFR parts 141 and 142 establish national drinking water standards. A state may obtain primacy in the area of safe drinking water under 40 CFR part 142 if the state establishes drinking water regulations that are no less stringent than the regulations in effect under 40 CFR part 141. ADEQ and the Department share primacy over Arizona's drinking water supply, meaning that the rules of both agencies need to be consistent with the federal requirements. Although Arizona currently has primacy, 40 CFR parts 141 and 142 have been changed to be more stringent than Arizona regulations, requiring changes to both ADEQ's rules related to drinking water and the rules in 9 A.A.C. 14, Article 6. ADEQ has recently revised its rules in 18 A.A.C. 4, Article 1 to conform to changes made to 40 CFR parts 141 and 142. In order to retain primacy and comply with A.R.S. § 36-495.01, which requires the Department to develop rules that are consistent with ADEQ's rules, the Department sought and obtained an exception from the rulemaking moratorium established by Executive Order 2016-03 and has revised the rules in 9 A.A.C. 14, Article 6 to be consistent with 40 CFR parts 141 and 142 and the ADEQ rules. The Department is also making changes to address written criticisms of the rules, update obsolete methodologies and references, and make other changes to the rules, as described in the recent five-year-review report for the rules, to reduce the regulatory burden while achieving the same regulatory objective. The amendments conform to rulemaking format and style

requirements of the Governor's Regulatory Review Council (Council) and the Office of the Secretary of State.

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

The Department did not review or rely on any study for this rulemaking.

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

The Department anticipates that cost bearers may include the Department, licensed environmental laboratories, and possibly the general public, if costs incurred by environmental laboratories are passed through to customers. Beneficiaries may include the Department, ADEQ, environmental laboratories, environmental organizations, and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. Under these rules, the Department licenses approximately 144 environmental laboratories, including 62 environmental laboratories that are located out-of-state. Of the 144 licensed environmental laboratories, 96 are private and 48 are governmental agencies.

The Department anticipates that rules changes may cause the Department to incur minimal costs due to additional time being spent providing technical assistance to environmental laboratories on the changes, especially the new methods being added and the obsolete methods being removed. However, having more up-to-date references and methods in the rules may also provide a significant benefit to the Department because these changes make the rules consistent with the EPA requirements for compliance testing, enabling Arizona to retain primacy, and should help to ensure compliance with those requirements. Updating the rules to include the Standard Methods added in R9-14-610 may also result in a moderate cost to the Department for obtaining permission to copy the Standard Methods, estimated to be approximately $3,600. The Department anticipates that the revision of R9-14-602 may cause no additional costs and a minimal benefit to the Department. The Department anticipates that the change to allow the Department to suspend the use of the installment payment plan in R9-14-608 under the

circumstances described in the rule will result in a significant benefit to the Department. Allowing the Department to rescind approval of an alternate method or method alteration approved under R9-14-610(E), which would only be done when the reason the alternate method or method alteration was originally approved no longer exists, may result in a minimal benefit to the Department by helping to ensure compliance with EPA standards, and may cause, at most, a minimal decrease in fee revenue. Removing unnecessary requirements in R9-14-603 and R9-14-615 may result in a minimal benefit for the Department through a reduction in time to review an application or conduct an inspection. The Department anticipates that clarifying requirements in the rules may provide a significant benefit to the Department.

Although ADEQ has recently revised its rules in 18 A.A.C. 4, Article 1 to conform to changes made in 40 CFR parts 141 and 142, the Department's rules in 9 A.A.C. 14, Article 6, are currently in conflict with method and quality assurance requirements in 40 CFR 141 and 142 and the revised ADEQ rules. This puts ADEQ's ability to regulate Arizona's drinking water supply (primacy) in jeopardy. Because this rulemaking will resolve the conflict and enable Arizona to retain primacy, the Department believes that ADEQ will receive a significant benefit from having rules in 9 A.A.C. 14, Article 6, that are consistent with ADEQ rules and federal regulations and a significant benefit from having the flexibility to address local concerns through retaining primacy.

A regional or municipal water system performing in-house compliance testing is required to be licensed as an environmental laboratory. Many other governmental entities and many private facilities are licensed as environmental laboratories. These vary greatly in size and in the complexity of the compliance testing performed. The Department anticipates that being able to use up-to-date methods when testing water supplies may provide a minimal-to-moderate benefit to a regional or municipal water system and may cause minimal additional costs, depending on the parameters tested and the methods currently used. The Department anticipates that being able to use up-to-date methods when performing compliance testing may provide a minimal-to-substantial benefit to a governmental or private environmental laboratory, depending on the parameters tested and the methods currently used, and may cause minimal additional costs. An environmental laboratory, including a regional or municipal water system or an environmental laboratory owned by a governmental entity or a private person, that complies with the requirements in R9-14-602(4) or (5) may receive a minimal-to-moderate benefit from being exempt from the requirement to have every field/satellite site licensed as an environmental laboratory. The Department anticipates that the elimination of unnecessary requirements and having rules that are clearer and easier to understand may provide a significant benefit to an

environmental laboratory. An environmental laboratory may also receive a significant benefit from Arizona retaining primacy since ADEQ and the Department may have more flexibility when addressing issues specific to Arizona. A health care institution, adding chlorine to its water supply to reduce cross-infection rates and increase patient safety and monitoring the effect of the chlorine addition on the water, may receive a minimal-to-moderate benefit from not having to be licensed as an environmental laboratory.

Environmental organizations include organizations representing water/wastewater professionals and the water-treatment industry, as well as consulting firms representing construction projects that impact the environment. The amended rules may provide a significant benefit to an environmental organization in several ways. The updated methods in the new rules meet minimum federal standards, meaning that the data produced are considered to be in compliance with federal requirements and are defensible in court. The new methods also rely on more sophisticated technology; which help ensure that pollutants in the air, wastewater, and other environmental media are adequately assessed and enhance the professionalism of those using them. In addition, the improved clarity of the rules makes the rules easier to use because the requirements are easier to understand.

The general public may receive a significant benefit from having safe water to drink and being assured that pollutants in the air, wastewater, and other environmental media are adequately assessed. It is possible that any costs incurred by regional or municipal water systems may be passed on to the customers of the water systems. The Department anticipates that these additional costs would be, at most, minimal.

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

The Department moved two incorporations by reference into R9-14-610(B), so all incorporations by reference are in one location. In doing so, the Department identified a typographical error in one of the incorporations by reference being moved, Key Reference H, and for which the web-address had changed. Additional web-addresses for EPA methods were also found to have been changed since the Notice of Proposed Rulemaking had been filed. These typographical errors and others identified by Council staff were corrected in the Notice of Final Rulemaking.

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

The Department received no written comments. The Department held an oral proceeding for the proposed rules on July 13, 2016, at which no stakeholders or members of the public attended.

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

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

The rule requires a permit as specified in A.R.S. § 36-495.01. However, A.R.S. § 36-495.03 requires a license application to be for a specific location and for specific services and tests, so a general permit is not used.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Reference materials incorporated by reference are listed in R9-14-610(B).

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 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

Section

R9-14-601. Definitions

R9-14-602. Exemptions from Applicability

R9-14-603. License Application and Process; Transferability

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. Compliance Testing for Drinking Water ~~Compliance Testing~~ Parameters

R9-14-612. Compliance Testing for Wastewater ~~Compliance Testing~~ Parameters

R9-14-613. Compliance Testing for ~~Solid~~ Waste ~~Compliance Testing~~ Parameters

R9-14-614. Compliance Testing for Air and Stack ~~Compliance Testing~~ Parameters

R9-14-615. Quality Assurance

R9-14-616. Operation

R9-14-617. Laboratory Records and Reports

R9-14-620. Changes to a License

R9-14-621. Time-frames

Table ~~1.~~6.1 Time-frames (in days)

Exhibit I. ~~Approved Methods; Method Fees; Instrumentation Fees~~ Repealed

Exhibit II. ~~Alternate Default Limits~~ Repealed

Table 6.2.A. Approved Methods and Method Fees for Drinking Water Parameters

Table 6.2.B. Approved Methods and Method Fees for Wastewater Parameters

Table 6.2.C. Approved Methods and Method Fees for Waste Parameters

Table 6.2.D. Approved Methods and Method Fees for Air and Stack Parameters

Table 6.2.E. Methods Director-Approved under R9-14-610(E) and Method Fees

Table 6.3. Instrumentation Fees

Table 6.4. Alternate Default Limits

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:
   a. ~~an~~ An alternate method approved by the Department under ~~R9-14-610(C)~~ R9-14-610(E), and
   b. ~~an approved method~~ An analytical test procedure or technique currently authorized by the Department that is used with a method alteration approved by the Department under ~~R9-14-610(C)~~ R9-14-610(E).
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.~~41. “Initial Demonstration of Capability” or “IDOC” means a test performed by an analyst, as prescribed by a method, to document the analyst’s ability to perform the method.

~~43.~~42. “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.~~43. “IPC” means instrument performance check.

~~45.~~44. “Key reference” means a document incorporated by reference in R9-14-610(B).

~~46.~~45. “Laboratory inspection” means the Department’s assessment of operations at a laboratory to determine an applicant’s or a licensee’s compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

~~47.~~46. “LCS” means laboratory control sample.

47. “LDO” means Luminescence Measurement of Dissolved Oxygen.

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" or "LOQ" 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.~~56. "LRMS" means low resolution mass spectrometry.

57. "Maximum holding time" means the greatest number of minutes, hours, or days that a sample may be kept between sampling and the beginning of analysis and still be considered a valid sample for compliance testing.

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. "MSRV" means Modified Semisolid Rappaport-Vassiliadis.

~~66.~~67. "NPD" means nitrogen phosphorous detector.

~~67.~~68. "NPDES" means national pollutant discharge elimination system.

69. "NTIS" means the National Technical Information Service, which is part of the U.S. Department of Commerce.

~~68.~~70. "NTU" means nephelometric turbidity units.

~~69.~~71. "ONPG-MUG" means ortho-nitrophenyl-ß-D-galactopyranoside-4-methylumbelliferyl-ß-D-glucuronide.

~~70.~~72. "Owner" means a person that has controlling legal or equitable interest in and authority over a laboratory's operations.

~~71.~~73. "PAH" means polynuclear aromatic hydrocarbon.

~~72.~~74. "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.~~75. "PB" means particle beam.

~~74.~~76. "PCB" means polychlorinated biphenyls.

~~75.~~77. "PCDD" means polychlorinated dibenzodioxins.

~~76.~~78. "PCDF" means polychlorinated dibenzofurans.

~~77.~~79. "PDA" means photodiode array.

~~78.~~80. "PID" means photoionization detection.

~~79.~~81. "POX" means purgeable organic halides.

~~80.~~82. "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.~~83. "Proficiency testing" means a ~~proficiency testing service's determination of~~ mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine 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.~~84. "Proficiency testing service" means an independent ~~service~~ company or other person acceptable to the EPA or, if the EPA has not indicated acceptance of ~~a proficiency testing service~~ an independent company or other person for a parameter, acceptable to the Department based on recognition from a national organization such as the National Environmental Laboratory Accreditation Program that:

a. Is the source for samples with known characteristics for proficiency testing, and

b. Assesses the acceptability of a laboratory analyst's results from the samples with known characteristics during proficiency testing.

~~83.~~85. "Qualified" means explained in documentation.

~~84.~~86. "Quality assurance plan" means documentation that meets the requirements of R9-14-615(B).

~~85.~~87. "Quality control checks" means the steps taken by laboratory analysts to monitor the accuracy and precision of sample analysis.

~~86.~~88. "QCS" means quality control sample.

~~87.~~89. "RDX" means Hexahydro-1,3,5-trinitro-1,3,5-triazine.

~~88.~~90. "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.~~91. “RPD” means relative percent difference.

~~90.~~92. “Ruggedness” means the ability of a method to withstand changes in environmental factors and produce repeatable results.

~~91.~~93. “Sample” means a specimen that is a representative part of a whole or a single item from a group.

~~92.~~94. “Single laboratory” means an individual laboratory facility or multiple laboratory facilities located on contiguous grounds and having the same owner.

~~93.~~95. “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.~~96. “SOUR” means specific oxygen uptake rate.

~~95.~~97. “SPE” means solid-phase extraction.

~~96.~~98. “SPLP” means synthetic precipitation leaching procedure.

~~97.~~99. “Standard operating procedure” means a documented process for carrying on business, analysis, or action, with instructions for performing routine or repetitive tasks.

~~98.~~100. “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 been derived from a different population than the other data points.

~~99.~~101. “TCLP” means toxicity characteristics leaching procedure.

~~100.~~102. “TDS” means total dissolved solids.

~~101.~~103. “TE” means thermal extraction.

~~102.~~104. “TNT” means trinitrotoluene.

~~103.~~105. “TOC” means total organic carbon.

~~104.~~106. “TOX” means total organic halides.

~~105.~~107. “Traceability” means the establishment of an unbroken chain of comparisons to the reference of origin.

~~106.~~108. “TS” means thermospray.

~~107.~~109. “TSS” means total suspended solids.

~~108.~~110. “UV” means ultraviolet.

~~109.~~111. “Valid” means that a license, certificate, or other form of authorization is in full force and effect and not suspended.

~~110.~~112. “VOC” means volatile organic compound.

~~111.~~113. “VOST” means volatile organic sampling train.

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~~.~~;
4. A person that:
   a. Employs methods approved by either ADEQ or the Department; and
   b. Tests compliance samples either:
      i. For turbidity or conductivity at the time of sampling, or
      ii. With a maximum holding time of 15 minutes after sampling; or
5. A laboratory that only performs compliance testing on daily chlorine dioxide or chlorite drinking water samples or ultra-low-range total residual chlorine wastewater samples as long as that laboratory is:
   a. Employing methods approved by either ADEQ or the Department; and
   b. Testing compliance samples immediately at the time of sampling, from which results may be obtained more than 15 minutes after sampling.

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)~~ (B), an application that contains:

1. ~~completed using~~ The following information in a Department-provided ~~form and including~~ format:
   ~~1.~~a. The name of the laboratory;
   ~~2.~~b. The current Arizona license number for the laboratory, if any;
   ~~3.~~c. The current EPA certification number for the laboratory, if any;
   d. Whether the applicant is applying to license:
      i. A single laboratory,
      ii. Multiple laboratories located on contiguous grounds according to subsection (C)(2), or
      ii. One of multiple laboratories under a single license according to subsection (C)(3);

~~4.~~e. The physical and mailing addresses for ~~the~~ each laboratory for which the application is being submitted;

~~5.~~f. The telephone number~~;~~, fax number~~;~~, and e-mail address for the laboratory;

g. The type of laboratory:

i. Governmental;

ii. Company, performing internal work only;

iii. Commercial, for profit; or

iv. Other, with a description of the type of laboratory operation;

~~6.~~h. ~~The~~ For a type of laboratory specified in subsection (A)(1)(g)(ii) through (iv):

i. The name and address of the owner and of each additional person that has an ownership interest in the laboratory; and

~~7.~~ii. For ~~the owner and each additional business organization with an ownership interest in the laboratory~~ each person specified in subsection (A)(1)(h)(i), the name of each officer, principal, and statutory agent;

~~8.~~i. 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.~~j. ~~The license Level for which~~ Whether the applicant is applying for a:

i. Level I license,

ii. Level II license, or

iii. Level III license;

~~11. Whether the applicant is applying to license a single laboratory or multiple laboratories;~~

~~12.~~k. If the applicant is applying to license a mobile laboratory~~, the~~:

i. The vehicle make, vehicle identification number, and Arizona vehicle license number of the mobile laboratory; and

~~13.~~ii. 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.~~l. If the application is for an initial license:

i. 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.~~ii. 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.~~iii. 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;~~, and

iv. A list of the states in which the laboratory is licensed or certified and the corresponding license or certificate number for each state;

m. If the application is for a renewal license, whether the applicant:

i. Is requesting to be licensed for the same parameters as on the current license;

ii. Is using the same instruments and equipment as used under the current license;

iii. Is using the same software as used under the current license; and

iv. Is requesting to make payments in installments, as permitted under R9-14-608, and, if so, an indication of the monthly, bimonthly, or quarterly schedule for the payments;

n. If the information provided according to subsection (A)(1)(m) indicates a change in parameters, instruments or equipment, or software for a renewal license, the changes to the:

i. Parameters on the current license,

ii. Instruments or equipment used under the current license, or

iii. Software used under the current license;

~~18.~~o. 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~~ by e-mail;

p. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and

~~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.~~q. The dated ~~and notarized~~ signature of the laboratory director and:

~~a.~~i. If the owner is an individual, the individual;

~~b.~~ii. If the owner is a corporation, an officer of the corporation;

~~c.~~iii. If the owner is a partnership, one of the partners;

~~d.~~iv. 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.~~v. 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.~~vi. 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.~~vii. If the owner is a business organization type other than those described in subsections ~~(A)(23)(b) through (f)~~ (A)(1)(q)(ii) through (v), an individual who is a member of the business organization~~.~~;

2. A notarized attestation in a Department-provided format, made under oath, and signed by the individuals in subsection (A)(1)(q) stating that:

a. The owner and the laboratory director will comply with all applicable requirements in A.R.S. Title 36, Chapter 4.3 and this Article; and

b. The information and documents provided as part of the application are true and accurate;

3. If the application is 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; and

b. A copy of a current quality assurance plan for the laboratory;

4. If the application is for a renewal license, a copy of a current standard operating procedure, limit of detection, and, if available, proficiency testing report for each new parameter specified according to subsection (A)(1)(n)(i); and

5. Except as provided in subsection (I), 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; money order; or, if the owner is an Arizona state agency, purchase order.

~~**B.** An application may include an agreement between the applicant and the Department that the Department may submit supplemental requests for additional information.~~

~~**C.**~~**B.** 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.**~~**C.** 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.~~D. The Department shall not issue a single laboratory license for multiple laboratories that do not meet the requirements of subsection ~~(D)(2) or (3)~~ (C)(2) or (3).

~~F.~~E. 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.~~F. The Department shall process an application as provided in R9-14-621.

~~H.~~G. 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.~~H. 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.~~I. The Department shall not charge a fee for a license application submitted under subsection ~~(I)~~ (H) 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.

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~~ an initial laboratory inspection and a follow-up annual laboratory inspection before determining ~~whether~~ how often to conduct ~~annual~~ subsequent laboratory inspections, as provided under subsection (C).

C. In determining ~~whether~~ how often to conduct ~~an annual~~ a 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 once 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.

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 corrective action 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~~ may submit an application to obtain a regular initial license ~~shall apply for an initial license~~ according to R9-14-603 at least 30 days before the provisional license expires.

G. The Department shall issue a regular initial license as described in subsection (F) only upon determining that a licensee is in full compliance with the corrective action plan developed according to subsection (A); 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~~ submitting an application for an initial license according to R9-14-603.

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~~ 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3;
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.

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 payment 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 payment 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 payment within seven days after its due date, the Department shall charge a $50 fee for processing the late payment.

F. If a licensee fails more than twice during the license period to submit an installment payment within seven days after the due date of the installment payment, the Department may suspend the licensee's authorization to make installment payments and require the licensee to pay all pending fees.

~~F.~~G. If a licensee fails to submit an installment payment within 30 days after its due date, the Department may initiate action under A.R.S. § 36-495.09.

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.~~

A. At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant shall have at least one laboratory analyst participate in proficiency testing provided by the Department, the EPA, or a proficiency testing service that:

1. Includes 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;
2. Demonstrates the laboratory analyst's proficiency in compliance testing of:
   a. Applicable drinking water parameters in Table 6.2.A, if:
      i. The applicant plans to perform compliance testing of drinking water parameters, or
      ii. The licensee is approved to perform compliance testing of drinking water parameters; and
   b. Applicable parameters other than drinking water parameters, if:
      i. The applicant plans to perform compliance testing of the parameters, or
      ii. The licensee is approved to perform compliance testing of the parameters; and
3. If the licensee or applicant has been issued or has requested a license that includes approval for testing an analyte by different methods, may use the same proficiency testing sample for each method.

~~**E.**~~**B.** To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established ~~by~~ for:

1. ~~For drinking~~ Drinking water inorganic chemistry parameters~~,~~ by the EPA, as provided in 40 CFR 141.23;
2. ~~For drinking~~ Drinking water organic chemistry parameters~~,~~ by the EPA, as provided in 40 CFR 141.24;
3. ~~For lead~~ Lead or copper in drinking water~~,~~ by the EPA, as provided in 40 CFR 141.89;
4. ~~For disinfection~~ Disinfection byproducts in drinking water~~,~~ by the EPA, as provided in 40 CFR 141.131; and
5. ~~For other~~ Other parameters~~,~~ by the EPA or the proficiency testing service.

~~F.~~**C.** 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 maximum holding times ~~required~~ allowed 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.~~**D.** The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

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~~ Tables 6.2.A through 6.2.D 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 (600479020), Methods for Chemical Analysis of Water and Wastes (rev. March 1983), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

A1 Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-94/111 (600R94111), Methods for the Determination of Metals in Environmental Samples: Supplement I (May 1994), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

A2 Environmental Monitoring Systems Laboratory, EPA, Pub. No. EPA/600/R-93/100 (600R93100),

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~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

~~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 Parkway, 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.~~

A3 Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (February 1976), available from Mequon Technology Center, 10520-C North Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.

A4 National Service Center for Environmental Publications (NSCEP), Online EPA Publication Title List available at http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling (800) 490-9198.

Publication numbers for the methods that are listed under this reference are:

1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
2. Method 314.1, Rev 1.0, May 2005, EPA 815-R-05-009
3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016
7. Method 527, Rev 1.0, April 2005, EPA 815-R-05-005
8. Method 531.2, Rev 1.0, September 2001, EPA 815-B-01-002
9. Method 552.3, Rev 1.0, July 2003, EPA 815-B-03-002
10. Method 200.5, Rev 4.2, October 2003, EPA 600-R-06-115
11. Method 332, Rev 1.0, March 2005, EPA 600-R-05-049
12. Method 415.3, Rev 1.1, February2005, EPA 600-R-05-055
13. Method 415.3, Rev 1.2, September 2009, EPA 600-R-09-122
14. Method 521, Version 1.0, September 2004, EPA 600-R-05-054
15. Method 529, Rev 1.0, September 2002, EPA 600-R-05-052
16. Method 535, Rev 1.1, April 2005, EPA 600-R-05-053
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
18. Method 557, Version 1.0, September 2009, EPA 815-B-09-012
19. Method 524.4, May 2013, EPA 815-R-13-002
20. Method 524.3, Version 1.0, June 2009, EPA 815-B-09-009
21. Method 522, Version 1.0, September 2008, EPA 600-R-08-101
22. Method 1613, Rev B, October 1994, EPA 821-B-94-005
23. Method 245.7, Rev 2.0, February 2005, EPA 821-R-05-001
24. Method 1664, Rev B, February 2010, EPA 821-R-10-001
25. Method 1638, April 1995, EPA 821-R-95-031
26. Method OIA-1677 DW, January 2004, EPA 821-R-04-001
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/4-83-043
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 816-R-12-

001

34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-014

35. Method 1605, Aeromonas in Finished Water by MF, October 2001, EPA 821-/R/01/034

36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024

37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030

38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029

39. Method 1623, Cryptosporidium and Giardia, December 2005, EPA 815-R-05-002

40. Method 537, September 2009, EPA/600/R-08/092

41. Method 302.0, September 2009, EPA-815-B-09-014

42. Method 539, November 2010, EPA 815-B-10-001

43. Method 218.7, November 2011, EPA 815-R-11-005

44. Method 334.0. September 2009, EPA 815-B-09-013

A5 EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132(b)(3)(ii).

A6 Lachat Instruments, QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis (rev. 2.1 November 30, 2000), available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218-0204.

A7 Standard Test Methods for Trace Uranium in Water by Pulsed-Laser Phosphorimetry, ASTM D5174-97, 02, available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or through www.astm.org.

B Herman L. Krieger, EPA, Pub. No. EPA-600/4-75-008 (6004755008), Interim Radiochemical Methodology for Drinking Water (March 1976), available ~~from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161~~ at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

C American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (~~19th ed. 1995~~ 22nd edition 2012), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001~~.~~ or at http://www.standardmethods.org,

with the approved method having the same last two digits in the method number as the year in which the method was approved by the Standard Methods Committee, as published for the individual methods in the 22nd edition.

C1 Hach Company, Hach Water Analysis Handbook (~~3rd ed. 1997~~ 5th edition 2008), 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~~ 21st edition 2005), 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.~~

C3 Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD5 and cBOD5, Revision 1.2, October 2011, available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.

C4 Expedited Approval of Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act, August 04, 2014, available at https://www.gpo.gov/fdsys/pkg/FR-2014-06-19/html/2014-14369.htm.

C5 Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Final Rule, May 18, 2012, available at http://www.gpo.gov/fdsys/pkg/FR-2012-05-18/pdf/2012-10210.pdf.

C6 The quality control criteria and the modifications listed in the "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge," March 26, 2007, available at http://www.epa.gov/fedrgstr/EPA-WATER/2007/March/Day-26/w1455.pdf.

C7 ChlordioX Plus "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors," November 2013, available from Palintest Ltd., Jamike Avenue, Suite 100, Erlanger, KY 41018.

C8 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.

D Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-88/039 (600488039), Methods for the Determination of Organic Compounds in Drinking Water (rev. July 1991), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

D1 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-90/020 (600490020), Methods for the Determination of Organic Compounds in Drinking Water: Supplement I (July 1990), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

D2 Environmental Monitoring Systems Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-92/129 (600R92129), Methods for the Determination of Organic Compounds in Drinking Water: Supplement II (August 1992), available at ~~http://nepis.epa.gov/pubtitleord.htm~~

http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

D3 National Exposure Research Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-95/131 (600R95131), Methods for the Determination of Organic Compounds in Drinking Water: Supplement III (August 1995), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

D4 Office of Ground Water and Drinking Water Technical Support Center, EPA, Pub. No. EPA 815-R-05-004 (815R05004), Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance (5th ~~ed.~~ edition January 2005), available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

~~D5 J.W. Munch and W.J. Bashe, EPA, Method 549.2: Determination of Diquat and Paraquat in Drinking Water by Liquid-Solid Extraction and High Performance Liquid Chromatography with Ultraviolet Detection (rev. 1 June 1997), available at http://www.nemi.gov.~~

~~D6 Anne M. Pawlecki-Vonderheide and David J. Munch, EPA, Method 515.3: Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Extraction, Derivatization and Gas Chromatography with Electron Capture Detection (rev. 1 July 1996), available at http://www.nemi.gov.~~

~~D7 M.V. Bassett et al., EPA, Pub. No. EPA 815-B-01-002, Method 531.2: Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Postcolumn Derivatization (rev. 1.0 September 2001), available at http://www.nemi.gov.~~

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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.~~

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~~D13 M.M. Domino et al., EPA, Pub. No. EPA 815-B-03-002, Method 552.3: Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-Liquid Extraction, Derivatization, and Gas Chromatography with Electron Capture Detection (rev. 1.0 July 2003), available at www.epa.gov/safewater/methods/sourcalt.html.~~

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D7 LT2 Enhanced Surface Water Treatment Rule, January 05, 2006; available at http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/regulations.cfm.

D8 Modified Colitag®, ATP D05–0035—''Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water,'' August 28, 2009, available from CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403 or by calling (800) 878–7654.

D9 Stage 2 Disinfectants and Disinfection Byproducts Rule, January 04, 2006, available at https://www.federalregister.gov/articles/2006/01/04/06-3/national-primary-drinking-water-regulations-stage-2-disinfectants-and-disinfection-byproducts-rule.

D10 National Primary Drinking Water Regulations: Ground Water Rule, 11/08/2006; available at https://www.federalregister.gov/articles/2006/11/08/06-8763/national-primary-drinking-water-regulations-ground-water-rule.

D11 Source Water Monitoring Guidance Manual for Public Water Systems for the Final Long Term 2 Enhanced Surface Water Treatment Rule; EPA 815-R06-005 (815R06005), February 2006, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

D12 Analytical Methods Recommended for Drinking Water Monitoring of Secondary Contaminants (PDF), EPA 815-B-14-005 (815B14005), January 2014, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

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E3 "White House Document" Environmental Regulations and Technology-Control of Pathogens and Vector Attraction in Sewage Sludge, EPA 625/R-92/013 (625R92013), revised July 2003, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

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E7 Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821–B–01–009, revision 1.2, August 2001, available from NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by calling (800) 490-9198. EPA Note: A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that

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O 40 CFR Part 50, ~~(July 2006), available at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)~~ Chapter 1, Subchapter C (2015), available at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr50_main_02.tpl.

O1 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air,

Compendium Method IO-3.4, Determination of Metals in Ambient Particulate Matter Using Inductively Coupled Plasma (ICP) Spectroscopy, EPA/625/R-96/010AC (625R96010AC), June 1999, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

O2 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3.5, Determination of Metals in Ambient Particulate Matter Using Inductively Coupled Plasma/Mass Spectrometry (ICP/MS), EPA/625/R-96/010AB (625R96010AB), June 1999, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

O3 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3.1, Selection, Preparation and Extraction, EPA/625/R-96/010AD (625R96010AD), June 1999, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

O4 Determination of Lead in TSP by Inductively Coupled Plasma Mass Spectrometry (ICP-MS) with Heated Ultrasonic Nitric and Hydrochloric Acid Filter Extraction; available from the Bureau of State Laboratory Services, 250 N. 17th Ave., Phoenix, AZ 85007, and at http://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/technical-resources/additional-resources/lead-in-ambient-air-by-icp-ms-eql-0510-191.pdf.

P EPA, Pub. No. EPA/600/4-84/013, USEPA Manual of Methods for Virology (rev. June 2001), Chapters ~~1-12 and 14-16~~ 1 through 16 available at ~~www.epa.gov/nerlcwww/about.htm and Chapter 13 available at http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

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P2 G. Shay Fout et al., EPA, Pub. No. EPA/600/R-95/178 (600R95178), ICR Microbial Laboratory Manual (April 1996), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

P3 Charles P. Gerba, University of Arizona, U of A 2000: ~~Ascaris lumbricoides~~ *Ascaris lumbricoides* in Water (1999), available from the University of Arizona, Microbial Analytical Laboratory, Building No. 90, Rm. 406, Tucson, AZ 85721.

~~P4 EPA, Pub. No. EPA 815-R-05-001, Method 1622: Cryptosporidium in Water by~~

~~Filtration/IMS/FA (December 2005), available at http://www.epa.gov/microbes/, modified to require flow cytometer-counted spiking suspensions for MS samples and ongoing precision and recovery samples.~~

~~P5~~ ~~EPA, Pub. No. EPA 815-R-05-002, Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA (December 2005), available at http://www.epa.gov/microbes/, modified to require flow cytometer-counted spiking suspensions for MS samples and ongoing precision and recovery samples.~~

Q 40 CFR Part 60 ~~app. A~~ Chapter I, Subchapter C, Part 60 (~~July 2006~~ January 2008), available at ~~http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)~~ http://www.ecfr.gov/cgi-bin/text-idx?SID=059c1fa5bb66be2b9393d76638c87a0c&node=pt40.8.60&rgn=div5.

Q1 EPA Performance Specification PS-12B: Analysis of Vapor Phase Mercury Emissions from Stationary Sources Using a Sorbent Trap Monitoring System, available at http://www.epa.gov/ttnemc01/perfspec/ps-12B.pdf.

R Office of Air Quality, ADEQ, Arizona Testing Manual for Air Pollutant Emissions (rev. F March 1992), available from the Office of Air Quality, ADEQ, 1110 W. Washington St., Phoenix, AZ 85007 and at http://www.azdeq.gov/environ/air/compliance/download/manual.pdf.

S 40 CFR Part 61 apps. B and C (~~July 2006~~ January 2008), available at ~~http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)~~ http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr61_main_02.tpl.

S1 EPA, Pub. No. EPA/625/R-96/010b (625R96010b), Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air (2nd ~~ed.~~ edition January 1999), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

U Environmental Measurements Laboratory, U.S. Department of Energy, Pub. No. HASL-300, EML Procedures Manual, Vol. I (28th ~~ed.~~ edition February 1997), available from ~~National Technical Information Service~~ NTIS, 5285 ~~Prt.~~ Port Royal Rd., Springfield, VA 22161.

V Eastern Environmental Radiation Facility, EPA, Pub. No. EPA 520/5-84-006 (520584006), Eastern Environmental Radiation Facility Radiochemistry Procedures Manual (~~2nd prtg. 1988~~ December 1987), available ~~from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161~~ at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

W Environmental Monitoring and Support Laboratory Las Vegas, EPA, Pub. No. EMSL-LV-0539-17 (EMSLLV053917), Radiochemical Analytical Procedures for Analysis of Environmental Samples (March 1979), available ~~from National Technical Information Service, 5285 Prt. Royal~~

~~Rd., Springfield, VA 22161~~ at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

X Office of Ground Water and Drinking Water, EPA, Pub. No. EPA/600/4-91/016 (600491016), Test Methods for ~~Escherichia Coli~~ *Escherichia coli* in Drinking Water: EC Medium with Mug Tube Procedure, Nutrient Agar with Mug Membrane Filter Procedure (July 1991), available at ~~http://nepis.epa.gov/pubtitleord.htm~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

Y ~~Office of Water, EPA, Pub. No. EPA-821-R-99-013, Method OIA-1677: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry (August 1999), available at http://www.epa.gov/waterscience/methods/cyanide/~~ Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010, available from ALPKEM, a Division of OI Analytical, 151 Graham Road, College Station, TX 77845 or by calling (979) 690-1711.

~~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.~~

Z IDEXX Colilert*-18 and Quanti-Tray* Test Method for the Detection of Fecal Coliforms in Wastewater, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.

~~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~~.

~~Z2~~ ~~EPA, Pub. No. EPA 821/R-93-010-A, Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume I (rev. 1 August 1993), available from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161.~~

Z1 EPA Method 1681, July 2006, EPA-821-R-06-013, Fecal Coliform in Sewage Sludge (Biosolids) by Multiple Tube Fermentation using A-1 Medium, available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

~~Z3~~Z2 EPA, Pub. No. EPA-821-R-02-013 (821R02013), Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (4th ~~ed.~~ edition October 2002), available at ~~www.epa.gov/ost/wet/disk3/~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html

or by calling (800) 490-9198.

~~Z4~~Z3 IDEXX Laboratories, Inc., IDEXX SimPlate TM HPC Method for Heterotrophs in Water (November 2000), available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092.

~~Z5~~Z4 William A. Yanko, EPA, Pub. No. EPA/600/1-87/014 (600187014), Occurrence of Pathogens in Distribution and Marketing Municipal Sludges (1987), available ~~from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161~~ at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

~~Z6 ASTM, Standard Test Methods for Determining Sediment Concentration in Water Samples (reapproved 2002), available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959.~~

~~Z7 CEM Corporation, Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals (April 1992), available from CEM Corporation, P.O. Box 200, Matthews, NC 28106-0200.~~

~~Z8 EPA, Pub. No. EPA-821-R-02-024, Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium) (September 2002), available at http://www.epa.gov/safewater/methods/pdfs/met1604.pdf.~~

~~Z9 Lachat Instruments, QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis (rev. 2.1 November 30, 2000), available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218.~~

Z5 CPI International Colitag® Product as a Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations, August 2001, available from CPI International, 5580 Skylane Blvd, Santa Rosa, CA 95403, at http://www.cpiinternational.com, or by calling 1-800-878-7654.

Z6 m-ColiBlue 24 Test, Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue 24 Broth, Method No. 10029, Revision 2, August 17, 1999, available at Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389 or by calling 1-800-227-4224.

Z7 Colisure Test, IDEXX Laboratories Inc., February 28, 1994, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.

Z8 Presence/Absence for Coliforms and *E. coli* in Water, Charm Sciences, Inc., December 21, 1997, available at 659 Andover Street, Lawrence, MA 01843, 987-687-9200, http://www.charm.com.

~~Z10~~Z9 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK01 (Block Digestion, Steam Distillation, Titrimetric Detection) (rev. December 22, 1994), available from OI

Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

~~Z11~~Z10 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~~Z11 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~~Z12 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.~~ edition October 2002), available ~~at www.epa.gov/waterscience/WET/disk2/~~ http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

Z13 Lozarchak, J. 2001, "Short-term Chronic Toxicity Tests on *Daphnia magna* (Survival and Growth Tests)", USEPA, available from the Department at 250 N. 17th Ave, Phoenix, AZ 85007, and at http://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/technical-resources/additional-resources/lazorchak-toxicity-method.pdf.

Z14 ReadyCult Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters, Version 1.1, January 2007, available from EM Science, EMD Millipore, 290 Concord Road, Billerica, MA 01821, at http://www.emdmillipore.com, or by calling 781-533-6000.

Z15 Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters, Version 1.0, November 2000, available from EM Science, EMD Millipore, 290 Concord Road, Billerica, MA 01821, at http://www.emdmillipore.com, or by calling 781-533-6000.

C. If an approved method is not available for a particular parameter, or a ~~different~~ method or method alteration that is not an approved method 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 or a person exempt under R9-14-602(4) or (5) may request approval of an alternate method or method alteration by submitting to the Department~~.~~:

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~~ the following information:

   a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) 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. 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~~ to be used because an approved method is not available for a particular parameter, the following information:

a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) 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.~~3. 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.~~**D.** 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.~~**E.** The Department may approve an alternate method or method alteration if the Department determines:

~~a.~~1. One of the following:

~~i.~~a. 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.~~b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and

~~b.~~2. 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.

F. The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:

1. For an alternate method or method alteration requested under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or

2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

R9-14-611. Compliance Testing for Drinking Water ~~Compliance Testing~~ Parameters

A. A licensee for a laboratory at which compliance testing for drinking water ~~compliance testing~~ parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:

1. ~~The~~ Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key ~~Reference~~ References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;

2. Each sample for Arizona drinking water ~~sample for Arizona~~ parameter compliance testing is analyzed:

a. ~~using~~ Using an approved method:

~~a.~~i. Listed ~~under Exhibit I, Table 1, Section A,~~ in Table 6.2.A ~~Drinking Water Parameters~~; or

~~b.~~ii. Approved by the Department for compliance testing for drinking water ~~compliance testing~~ parameters under ~~R9-14-610(C)~~ R9-14-610(E); and

b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and

3. If the licensee ~~desires to be licensed~~ requests approval to perform testing for vinyl chloride, the licensee also obtains ~~licensure~~ approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-(21).

B. If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, D13, or D14, as applicable.

R9-14-612. Compliance Testing for Wastewater ~~Compliance Testing~~ Parameters

A licensee for a laboratory at which ~~wastewater~~ compliance testing for wastewater parameters is performed shall ensure that:

1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and

2. ~~each wastewater~~ Each sample for Arizona wastewater parameter compliance testing is analyzed:

a. ~~using~~ Using an approved method:

~~1.~~i. Listed ~~under Exhibit I, Table 1, Section B,~~ in Table 6.2.B ~~Wastewater Parameters~~; or

~~2.~~ii. Approved by the Department for wastewater parameter compliance testing under ~~R9-14-610(C)~~ R9-14-610(E); and

b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

R9-14-613. Compliance Testing for ~~Solid~~ Waste ~~Compliance Testing~~ Parameters

A. A licensee for a laboratory at which ~~solid waste~~ compliance testing for waste parameters 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,~~ in Table 6.2.C ~~Solid Waste Parameters~~; or

2. Approved by the Department-for ~~solid~~ waste compliance testing under ~~R9-14-610(C)~~ R9-14-610(E).

B. A licensee for a laboratory at which ~~solid waste~~ compliance testing for waste parameters 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~~ Key Reference F14; 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~~ or
   c. Method 5000.

C. A licensee for a laboratory at which ~~solid waste~~ compliance testing for waste parameters 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~~ or
2. ~~Method 7000A~~ Methods 7000B and 7010.

D. A licensee for a laboratory at which ~~solid waste~~ compliance testing for waste parameters is performed using a method from Key Reference F shall comply with Chapters 1 through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

R9-14-614. Compliance Testing for Air and Stack ~~Compliance Testing~~ Parameters

A licensee for a laboratory at which ~~air or stack~~ compliance testing for air or stack parameters 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,~~ in Table 6.2.D ~~Air and Stack Parameters~~; or
2. Approved by the Department for ~~air or stack~~ compliance testing for air or stack parameters under ~~R9-14-610(C)~~ R9-14-610(E).

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)~~ (C)(8), and are scientifically valid and defensible.

B. A licensee or applicant shall ~~have~~ establish, 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~~ lines 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 allowed;
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, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
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 of 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 and document the use of the reagents;
3. Maintain and require each analyst to comply with a complete and current standard operating procedure that meets the requirements 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. A description of all procedures to be followed when the method is performed;
   - ~~c.~~b. A list of the concentrations for calibration standards, check standards, and spikes;
   - ~~d.~~c. Requirements for instrumental conditions and set up;
   - ~~e.~~d. A requirement for frequency of calibration;
   - ~~f.~~e. ~~Calculations for the quantitation of~~ The quantitative methods to be used to calculate the final concentration of an analyte in samples, ~~with the actual sample dilution~~ including any factors used in the calculations and the calibration algorithm used~~, which reflect the procedures followed~~; and
   - ~~g.~~f. 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/~~ Key Reference H;

~~8.~~ ~~Maintain all compliance testing equipment in proper operating condition;~~

~~9.~~8. 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~~ Table 6.4; 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.~~9. Discard or segregate all expired standards or reagents;

~~11.~~10. Maintain a record showing the traceability of reagents; and

~~12.~~11. 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 documents:

1. ~~Documents that~~ 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~~ 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~~ the Department determines that the:

1. ~~That the approved~~ Approved method has been performed at the laboratory;
2. ~~That the analytical~~ Analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
3. ~~That the license~~ Licensee 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~~ Except as provided in subsection (I), 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~~.

I. A licensee or applicant may satisfy the components required in subsections (C)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

R9-14-616. Operation

A licensee shall ensure that:

1. A compliance testing sample accepted at the licensee's laboratory is analyzed at:
   a. ~~At the~~ The licensee's laboratory,
   b. ~~At another~~ Another laboratory licensed under this Article, or
   c. ~~At a~~ A laboratory ~~exempted~~ exempt 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~~ for 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.

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 a laboratory's 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~~ the 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; and
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.

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~~ 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3, 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~~ submit up to three requests for deletion of parameters ~~at no charge three times~~ during a license period at no charge, but shall pay $17 per ~~parameter~~ request for ~~the fourth and~~ each subsequent request for deletion of parameters submitted ~~requested~~ during ~~a~~ the license period.

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~~ 6.1.

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~~ 6.1 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~~ 6.1 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)~~ R9-14-610(E); 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.

Table ~~1.~~6.1. 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~~ Due to an Approved Method Not Being Available	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

EXHIBIT I. ~~**APPROVED METHODS; METHOD FEES; INSTRUMENTATION FEES**~~ **Repealed**

~~**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~~	~~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~~	~~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 Semisolid 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~~

EXHIBIT II. ~~ALTERNATE DEFAULT LIMITS~~ Repealed

~~**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%.~~

Table 6.2.A. Approved Methods and Method Fees for Drinking Water Parameters

1. Microbiology of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aero monas	A4.35	1605	$228
Coliforms, Fecal	C	9221E (2006)	$228
		9222D (2006)	$228
Coliforms, Total and *E. coli*, by Colilert (ONPG-MUG)	C and Z	9223B (2004) and IDEXX	$152
Coliforms, Total, and *E.* coli, by Colisure	C2 and Z7	9223B (2004) and IDEXX	$152
Coliforms, Total, by Membrane Filtration	C	9222B (2006)	$228
		9222C (2006)	$228
Coliforms, Total and *E. coli*, by Membrane Filtration	A4.36	1604	$228
Coliforms,Total, and *E. coli* by Colitag	C and Z5	9223B (2004) and CPI	$152
Coliforms,Total, and *E. coli* by Modified Colitag	C and D8	9223B (2004) and Modified Colitag	$152

Coliforms,Total, and *E. coli* by E.colite	C and Z8	9223B (2004) and Charm Sciences, Inc.	$152
Coliforms,Total, and *E. coli* by m-ColiBlue24 Test	C and Z6	9222H (2006) and Hach 10029	$228
Coliforms,Total, and *E. coli* by Readycult Coliforms 100 Presence/Absence	C and Z14	19223B (2004) and EM Science	$152
Coliforms,Total, and *E. coli* by MF using Chromocult Coliform Agar	C and Z15	9223B (2004) and EM Science	$152
Coliforms, Total, by Multiple Tube Fermentation	C	9221B and C (2006)	$228
Coliforms, Total, by Presence/Absence	C	9221D (2006)	$228
Escherichia coli	C	9222G (2006)	$228
	X	Tube Procedure	$228
		Membrane Filter Procedure	$228
Cryptosporidium	A4.32	1622	$381
Giardia and *Cryptosporidium*	A4.39	1623	$381
	A4.33	1623.1	$381
Heterotrophic Plate Count	C	9215B (2004)	$152
	Z3	SimPlate	$152
Heterotrophic Plate Count (For Bottled Water Only)	C	9215D (2004)	$152
Microscopic Particulate Analysis	P1	910/9-92-029	$228
Viruses	P2	600/R-95/178	$381
Coliphage	A4.37	1601	$228
	A4.38	1602	$228
2. Inorganic Chemistry and Physical Properties of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alkalinity	C	2320B (2011)	$19
Asbestos	A4.30	100.1 (9/83)	$503
	A4.31	100.2 (6/94)	$503
Bromate	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A5	300.1 (1.0)	$26
		321.8 (1.0)	$152
	A4.41	302.0 (1.0)	$26

Bromide	A2	300.0 (2.1)	$26
	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A5	300.1 (1.0)	$26
Calcium	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Ca B (2011)	$76
Carbon, Dissolved Organic	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5310B (2011)	$39
		5310C (2011)	$39
		5310D (2011)	$39
Carbon, Total Organic	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5310B (2011)	$39
		5310C (2011)	$39
		5310D (2011)	$39
Chloride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-Cl B (2011)	$39
		4500-Cl D (2011)	$39
		4110B (2011)	$26
Chloramine	C	4500-Cl F (2011)	$39
		4500-Cl G (2011)	$76
Chlorate	A5	300.1 (1.0)	$26
Chlorine, Total Residual and Free	A4.44	334.0 (9/2000)	$39
	C	4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
		4500-Cl F (2011)	$39
		4500-Cl G (2011)	$39

		4500-Cl H (2011)	$39
		4500-Cl I (2011)	$39
Chlorine Dioxide	A4.4	327.0 (1.1)	$76
	C	4500-ClO_2 E (2011)	$39
	C7	ChlordioX Plus	$79
Chlorite	A2	300.0 (2.1)	$26
	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A4.4	327.0 (1.1)	$76
	A5	300.1 (1.0)	$26
	C	4500-ClO_2 E (2011)	$39
	C7	ChlordioX Plus	$79
Color	C	2120B (2011)	$32
Corrosivity	C	2330B (2010)	$39
Cyanide	A2	335.4 (1.0)	$76
	A6	QuikChem 10-204-00-1-X (2.1)	$76
	C	4500-CN B (2011)	$7
		4500-CN C (2011)	$13
		4500-CN E (2011)	$76
		4500-CN F (2011)	$76
	E7	Kelada-01	$76
Cyanide, Available/Amenable	A4.26	OIA-1677 DW	$76
	C	4500-CN G (2011)	$76
	I	D6888-04	$76
Fluoride	A2	300.0 (2.1)	$26
	A3	380-75WE (2/76)	$39
	A5	300.1 (1.0)	$26
	C	4500-F B (2011)	$39
		4500-F C (2011)	$26
		4500-F D (2011)	$39
		4500-F E (2011)	$39

		4110B (2011)	$26
Hardness	A1	200.7 (4.4), Sum of Ca and Mg as their carbonates	$10
	C	2340 B (2011), Sum of Ca and Mg as their carbonates	$10
		2340 C (2011)	$39
Magnesium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Mg B (1997)	$76
Methylene Blue Active Substances	C	5540 C (2011)	$39
Nitrate	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_3 D (2011)	$39
		4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4110B (2011)	$26
Nitrite	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_2 B (2011)	$76
		4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4110B (2011)	$26
Odor	C	2150B (2011)	$32
Orthophosphate	A2	300.0 (2.1)	$26
		365.1 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-P E (2011)	$76
		4500-P F (2011)	$76

		4110B (2011)	$26
Ozone	C	4500-O_3 B (2011)	$39
Perchlorate	A4.2	314.1 (1.0)	$76
	A4.5	331.0 (1.0)	$76
	A4.11	332.0 (1.0)	$76
	A5	314.0 (1.0)	$76
pH (Hydrogen Ion)	A	150.1	$39
		150.2	$39
	C	4500-H B (2011)	$39
Residue, Filterable (TDS)	C	2540C (2011)	$39
Sediment Concentration	I	D 3977-97	$13
Silica	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	4500-SiO_2 C (2011)	$76
		4500-SiO_2 D (2011)	$76
		4500-SiO_2 E (2011)	$76
Sodium	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
Specific Conductance	C	2510B (2011)	$39
Sulfate	A2	300.0 (2.1)	$26
		375.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-SO_4 C (2011)	$76
		4500-SO_4 D (2011)	$76
		4500-SO_4 E (2011)	$76
		4500-SO_4 F (2011)	$76
		4110B (2011)	$26
Temperature, Degrees Celsius	C	2550 (2010)	$13
Turbidity, Nephelometric (NTU)	A2	180.1 (2.0)	$39
	C	2130B (2011)	$39

UV-Absorption at 254 nm	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5910B (2011)	$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 (2004)	$7
Microwave Assisted Digestion	C	3030K (2004)	$7
Nitric Acid	C	3030E (2004)	$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	$7
Preliminary Filtration	C	3030B (2004)	$7

b. Methods to Analyze Metals in Drinking Water

Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Antimony	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Arsenic	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Barium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26

	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Beryllium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Cadmium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Chromium, Hexavalent by IC	A4.43	218.7 (1.0)	$116
Chromium, Total	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Cobalt	A1	200.8 (5.4)	$26
Copper	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Iron	A1	200.7 (4.4)	$10
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Lead	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26

Manganese	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	C	3111B (2011)	$26
		3113B (2010)	$26
Mercury	A	245.2	$52
	A1	245.1 (3.0)	$52
		200.8 (5.4)	$26
	C	3112B (2011)	$52
Molybdenum	A1	200.8 (5.4)	$26
Nickel	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Selenium	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Silver	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Strontium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	C	3500-Sr B (2011)	$26
		3500-Sr C (2011)	$20
		3500-Sr D (2011)	$26
Thallium	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
Uranium	A1	200.8 (5.4)	$26

	C	7500 U-C (2011)	$206
	I	D3972-97, 02	$206
		D5174-97, 02	$206
Vanadium	A1	200.8 (5.4)	$26
Zinc	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$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	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	A4.19	524.4	$152
	D3	524.2 (4.1)	$152
VOCs by GC: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane	A4.20	524.3 (1.0)	$152

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 Dibromochloropropane Ethylenedibromide			
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
1, 4-Dioxane by GC/MS	A4.21	522	$152
Carbamates by HPLC/Post Column: Carbofuran Oxamyl	A4.8	531.2 (1.0)	$116
	D3	531.1 (3.1)	$116
Chlorinated Acids and Dalapon by GC-ECD: 2,4-D Dalapon Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	A4.6	515.4 (1.0)	$116
	A5	515.3 (1.0)	$116
	D	515.1 (4.0)	$116
Chlorinated Acids By GC-ECD 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D3	515.2 (1.1)	$116
Haloacetic Acids, Bromate and Dalapon By IC-ESI-MS/MS	A4.18	557 (1.0)	$152
Perfluorinated Compounds by LC/MS/MS	A4.40	537 (1.1)	$152
Hormones by LC/MS/MS	A4.42	539	$152
PAHs By HPLC/UV/FL: Benzo(a)pyrene	D1	550 (7/90)	$116
		550.1 (7/90)	$116
Haloacetic Acids and Dalapon by GC-ECD: Dalapon Monochloracetic Acid	D2	552.1 (1.0)	$116

Dichloracetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid HAA5	D3	552.2 (1.0)	$116
Haloacetic Acids: Monochloroacetic Acid Dichloroacetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid Dalapon HAA5	A4.9	552.3 (1.0)	$116
Disinfection Byproducts by Micro Liquid-Liquid Extraction/GC-ECD	C8	6251B (1994)	$116
Chlorinated Acids By HPLC/PDA/UV: 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D2	555 (1.0)	$116
1,4 Dioxane by GC/MS	A4.21	522 (1.0)	$152
Dioxin	A4.22	1613 Rev B (10/94)	$258
Diquat	A5	549.2 (1.0)	$116
Endothall	D2	548.1 (1.0)	$116
Glyphosate	D1	547 (7/90)	$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	A4.20	524.3 (1.0)	$26
	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	A4.8	531.2 (1.0)	$26
	D3	531.1 (3.1)	$26

Chlorinated Acids and Dalapon by GC-ECD	A4.6	515.4 (1.0)	$26
	A5	515.3 (1.0)	$26
	D	515.1 (4.0)	$26
Chlorinated Acids By GC-ECD	D3	515.2 (1.1)	$26
PAHs By HPLC/UV/FL	D1	550 (7/90)	$26
		550.1 (7/90)	$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	A4.22	1613 Rev B (10/94)	$65
Paraquat	A5	549.2 (1.0)	$26
Benzidines and Nitrogen Compounds	D2	553 (1.1)	$116
Carbonyl Compounds	D2	554 (1.0)	$116
Phenols	A5	528 (1.0)	$152
Phenylurea Compounds	A5	532 (1.0)	$116
Selected Semivolatiles	A5	526 (1.0)	$152
Pesticides and Flame Retardants by GCMS	A4.7	527 (1.0)	$152
Explosives and Related Compounds	A4.15	529 (1.0)	$152
Acetanilide Degradation Products	A4.16	535 (1.1)	$194
Acetanilide Parent Compound	D3	525.2 (2.0)	$26
Nitrosamines by MS/MS	A4.14	521 (1.0)	$194
5. Radiochemistry of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Cesium	B	p. 4	$206
	C	7500-Cs B (2011)	$206
		7120 (2011)	$206
	J	R-1110-76	$206
		R-1111-76	$206
	L	901	$206
		901.1	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Gamma Emitters	C	7500-Cs B (2011)	$206
		7500-I B (2011)	$206

		7120 (2011)	$206
	L	901.1	$206
		901.0	$206
		902.0	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Gross Alpha	B	EPA 00-02	$206
	C	7110C (2011)	$206
	L	900.0	$206
	V	00-01	$206
		00-02	$206
Gross Alpha and Beta	B	p. 1	$206
	C	7110B (2011)	$206
	J	R-1120-76	$206
	L	900.0	$206
	V	00-01	$206
	W	p. 1	$206
Iodine	B	p. 6, p. 9	$206
	C	7120 (2011)	$206
		7500-I B (2011)	$206
		7500-I C (2011)	$206
		7500-I D (2011)	$206
	L	901.1	$206
		902.0	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Radium 226	B	p. 13, p. 16	$206
	C	7500-Ra B (2011)	$206
		7500-Ra C (2011)	$206
	L	903.0	$206
		903.1	$206
	U	Ra-04	$206
		Ra-05	$206
	V	EPA Ra-03	$206
		EPA Ra-04	$206

	W	p. 19	$206
Radium 228	B	p. 24	$206
	C	7500-Ra D (2011)	$206
	L	904.0	$206
	V	Ra-05	$206
	W	p. 19	$206
Strontium	B	p. 29	$206
	C	7500-Sr B (2011)	$206
	J	R-1160-76	$206
	L	905.0	$206
	U	Sr-01	$206
		Sr-02	$206
	V	Sr-04	$206
	W	p. 65	$206
Tritium	B	p. 34	$206
	C	7500-^{3}H B (2011)	$206
	J	R-1171-76	$206
	L	906.0	$206
	V	H-02	$206
	W	p.87	$206
Uranium	A1	200.8 (5.4)	$26
	A7	D5174-97, 02	$206
	C	7500-U B (2011)	$206
		7500-U C (2011)	$206
	J	R-1180-76	$206
		R-1181-76	$206
		R-1182-76	$206
	L	908.0	$206
		908.1	$206
	U	U-02	$206
		U-04	$206
	V	00-07	$206
	W	p. 33	$206

Table 6.2.B. Approved Methods and Method Fees for Wastewater Parameters

1. Microbiology of Wastewater and Sewage Sludge			
Description	**Reference**	**Method/s**	**Fee Per Method**
Ascaris lumbricoides	C8	10550	$228
	P3	UofA2000	$228
Coliforms, Fecal, number per 100 ml or number per gram dry weight, by Membrane Filter	C	9222D (2006)	$228
Coliforms, Fecal, by Multiple Tube Fermentation (may be used for sewage sludge), number per 100 ml by MPN	C	9221C, E (2006)	$228
Coliforms, Total, by Membrane Filter	C	9222B (2006)	$228
Coliforms, Total, by Multiple Tube Fermentation	C	9221B (2006)	$228
Control of pathogens and vectors in sewage	E3	625/R-92/013	$76
Cryptosporidium	A4.32	1622	$381
Cryptosporidium and *Giardia*	A4.39	1623	$381
	C	9711B (2011)	$381
	P2	600/R-95/178	$381
E. coli, number per 100 ml, MPN multiple tube	C	9222B (2006)	$228
E. coli, number per 100 ml, MPN multiple tube/multiple well	C	9223B (2004)	$228
E. coli by m-ColiBlue	C1 and Z6	Hach 10029	$228
Enterococci, number per 100 ml MF	C	9230C (2007)	$228
Escherichia coli by Colilert MPN, in conjunction with SM 9221B and 9221C	C	9223B (2004)	$152
Escherichia coli in conjunction with SM 9221B and 9221C	C	9221F (2006)	$152
Entamoeba histolytica	C	9711C (2011)	$228
Enteric viruses	I	D4994-89	$381
Enteric viruses in sewage sludge	E3	EPA 625/R-92/103	$381
Fecal Coliforms by Colilert-18 (APP and Reuse only)	C	9020B (2005)/9223B (2004)	$152
Fecal Coliforms by Colilert-18 (NPDES-ATP Permits only)	C	9020B (2005)/9223B (2004)	$152
Fecal Coliforms in sewage sludge by MTF	Z1	EPA 1681	$228
Helminth Ova in sludge	Z4	600/1-87-014	$381
Salmonella in sludge MPN	E5	9260D (1988)	$228
Salmonella in Sewage Sludge (Biosolids) by Modified MSRV	A4.34	1682	$228
Streptococcus, Fecal, by Membrane Filter	C	9230C (2007)	$194
Streptococcus, Fecal, by Multiple Tube Fermentation	C	9230B (2007)	$194
Viruses	C	9510 (2011)	$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**
Acid Mine Drainage	A4.27	1627	$303
Acidity	C	2310B (2011)	$39
Alkalinity, Total	A	310.2 (1974)	$19
	C	2320B (2011)	$19
Ammonia	A2	350.1 (2.0)	$39
	C	4500-NH_3 B (2011)	$39
		4500-NH_3 C (2011)	$39
		4500-NH_3 D (2011)	$39
		4500-NH_3 E (2011)	$39
		4500-NH_3 G (2011)	$39
	C1	Hach 10205	$39
Ammonia in sludge only	E5	4500-NH3B&C (1990)	$39
Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand	C	5210B (2011)	$152
	C3	Hach 10360	$152
Boron	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	4500-B B (2011)	$76
Bromide	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
Calcium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Ca B (2011)	$39
Carbon, Total Organic (TOC)	C	5310 B (2011)	$39
		5310 C (2011)	$39
		5310D (2011)	$39
Chemical Oxygen Demand	A	410.3 (1978)	$39
	A2	410.4 (2.0)	$76

	C	5220 B (2011)	$39
		5220 C (2011)	$39
		5220 D (2011)	$76
	C1	Hach 8000	$39
Chloride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-Cl B (2011)	$39
		4500-Cl C (2011)	$39
		4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
Chlorine, Total Residual	C	4500-Cl B (2011)	$39
		4500-Cl C (2011)	$39
		4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
		4500-Cl F (2011)	$39
		4500-Cl G (2011)	$39
	C1	Hach 10014	$39
Color	C	2120 B (2011)	$32
Cyanide, Available	C	4500-CN G (2011)	$76
	E7	Kelada-01	$76
	Y	OIA-1677-09 (8/99)	$76
Cyanide, Free	Y	OIA-1677-09 (8/99)	$76
Cyanide, Total	A2	335.4 (1.0)	$76
	A6	QuickChem 10-204-00-1-X (2.1)	$76
	C	Combination of 4500-CN B (2011) and 4500-CN C (2011), followed by 4500-CN D (2011), 4500-CN E (2011), or 4500-CN F (2011)	$89
	E7	Kelada-01	$76
Fluoride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-F B (2011)	$39
		4500-F C (2011)	$39
		4500-F D (2011)	$39
		4500-F E (2011)	$39

Hardness	A	130.1 (1976)	$10
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	2340B (2011)	$39
		2340C (2011)	$39
Kjeldahl, Total Nitrogen	A	351.1 (1978)	$76
	A2	351.2 (2.0)	$76
	C	Combination of 4500-NH_3 B (2011) and either 4500-N_{org} B (2011) or 4500-N_{org} C (2011)	$115
		4500-NH_3 C (2011)	$39
		4500-NH_3 D (2011)	$39
		4500-NH_3 E (2011)	$39
		4500-NH_3 F (2011)	$39
		4500-NH_3 G (2011)	$39
		4500-NH_3 H (2011)	$39
	Z9	PAI-DK01 (12/94)	$76
	Z10	PAI-DK02 (12/94)	$76
	Z11	PAI-DK03 (12/94)	$76
Methylene Blue Active Substances	C	5540C (2011)	$39
Nitrate (as N)	A	352.1 (1971)	$76
	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	3500-NO_3 D (2011)	$39
Nitrate-Nitrite (as N)	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4500-NO_3 H (2011)	$76
Nitrite (as N)	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_2 B (2011)	$76
		4500-NO_3 E (2011)	$76

		4500-NO_3 F (2011)	$76
Oil and Grease and Total Petroleum Hydrocarbons	A4.24	1664 Rev B	$76
	C	5520B (2011)	$76
Orthophosphate	A	365.3 (2.0)	$76
	A2	300.0 (2.1)	$26
		365.1 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-P E (2011)	$76
		4500-P F (2011)	$76
Oxygen-consumption Rate (SOUR)	C	2710B (2011)	$39
Oxygen, Dissolved	C	4500-O B (2011)	$26
		4500-O C (2011)	$26
		4500-O D (2011)	$26
		4500-O E (2011)	$26
		4500-O F (2011)	$26
		4500-O G (2011)	$26
	C1	1002-8-2009	$26
	C3	Hach 10360	$26
pH (Hydrogen Ion)	A	150.2	$39
	C	4500-H B (2011)	$39
Phenols	A	420.1 (1978)	$116
	A2	420.4 (1.0)	$116
	C	5530 B (2010)	$116
		5530 D (2010)	$116
Phosphorus, Total	A	365.3 (1978)	$76
		365.4 (1974)	$76
	A1	200.7 (4.4)	$10
	A2	365.1 (2.0)	$76
	C	4500-P B (2011)	$76
		4500-P E (2011)	$76
		4500-P F (2011)	$76
		4500-P G (2011)	$76
		4500-P H (2011)	$76
Potassium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26

	C	3111B (2011)	$26
		3500-K B (2011)	$26
Residue, Filterable (TDS)	C	2540C (2011)	$39
	E8	I-1750-85	$39
Residue, Nonfilterable (TSS)	C	2540D (2011)	$39
Residue, Settleable Solids	C	2540F (2011)	$39
Residue, Total	C	2540B (2011)	$39
Residue, Volatile	A	160.4 (1971)	$39
	C	2540E (2011)	$39
Silica, Dissolved	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	4500-SiO_2 B (2011)	$76
		4500-SiO_2 C (2011)	$76
		4500-SiO_2 E (2011)	$76
		4500-SiO_2 F (2011)	$76
Sodium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3500-Na B (2011)	$26
		3500-Na D (2011)	$26
		3111B (2011)	$26
Sodium Azide	C	4110C (2011)	$76
Specific Conductance	A	120.1 (1982)	$39
	C	2510B (2011)	$39
Sulfate	A2	300.0 (2.1)	$26
		375.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-SO_4 C (2011)	$76
		4500-SO_4 D (2011)	$76
		4500-SO_4 E (2011)	$76
		4500-SO_4 F (2011)	$76
		4500-SO_4 G (2011)	$76
Sulfide (includes total and soluble)	C	4500-S^{2-} B (2011)	$39
		4500-S^{2-} D (2011)	$76

		4500-S^{2-} F (2011)	$39
		4500-S^{2-} G (2011)	$39
	C1	Hach 8131	$39
Sulfite	C	4500-SO_3 B (2011)	$76
Temperature, Degrees Celsius	C	2550B (2010)	$13
Total, Fixed and Volatile Solids in Solid and Semisolid Samples in Sludge	C	2540G (2011)	$39
Turbidity, NTU	A2	180.1 (2.0)	$39
	C	2130B (2011)	$39
3. Metals in Wastewater			
a. Sample Preparation for Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Extractable Metals	C	3030C (2004)	$7
Digestion for Metals	C	3030D (2004)	$7
Microwave Digestion	E6	CEM Microwave Digestion	$7
Nitric Acid	C	3030E (2004)	$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	$7
Preliminary Filtration	C	3030B (2004)	$7
b. Methods to Analyze Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3111D (2011)	$26
Antimony	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26

	C	3111B (2011)	$26
		3113B (2010)	$26
Arsenic	A	206.5 (1978)	$39
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3500-As B (2011)	$76
Barium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Beryllium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3111E (2011)	$26
		3113B (2010)	$26
Cadmium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cd D (2011)	$76
Chromium (VI) Hexavalent	A1	218.6 (3.3)	$26
	C	3500-Cr B (2011)	$39
		3111C (2011)	$26
Chromium, Total	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26

		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cr B (2011)	$76
Cobalt	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Copper	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cu B (2011)	$76
		3500-Cu C (2011)	$76
Gold	A	231.2 (1978)	$26
	A1	200.8 (5.4)	$26
	C	3111B (2011)	$26
Iridium	A	235.2 (1978)	$26
	C	3111B (2011)	$26
Iron	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26

		3500-Fe B (2011)	$76
Lead	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Pb B (2011)	$76
Lithium	A1	200.7 (4.4)	$10
Magnesium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
Manganese	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
		3500-Mn B (2011)	$76
Mercury	A	245.2 (1974)	$52
	A1	200.7 (4.4)	$10
		245.1 (3.0)	$52
	A4.17	1631E	$152
	A4.23	245.7 (2.0)	$15
	C	3112B (2011)	$52
Molybdenum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Nickel	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26

		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Osmium	A	252.2 (1978)	$26
	C	3111D (2011)	$26
Palladium	A	253.2 (1978)	$26
	C	3111B (2011)	$26
Platinum	A	255.2 (1978)	$26
	C	3111B (2011)	$26
Rhodium	A	265.2 (1978)	$26
	C	3111B (2011)	$26
Ruthenium	A	267.2 (1978)	$26
	C	3111B (2011)	$26
Selenium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Silver	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Strontium	A1	200.7 (4.4)	$10
	C	3111B (2011)	$26
		3500-Sr B (2011)	$26
		3500-Sr C (2011)	$20
		3500-Sr D (2011)	$26
Thallium	A	279.2 (1978)	$26

	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
Tin	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Titanium	A	283.2 (1978)	$26
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	C	3111D (2011)	$26
Vanadium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3500-V B (2011)	$76
Zinc	A	289.2 (1978)	$26
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3500 Zn B (2011)	$76
4. Aquatic Toxicity Bioassay of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Toxicity, Acute	M1	EPA/600/4-90/027F	$194
	Z12	821-R-02-012	$194
Toxicity, Chronic	N1	EPA/600/4-91/002	$194

	Z2	821-R-02-013	$194
	Z13	Lozarchak, J. 2001	$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	$152
Phenols	E	604	$116
Benzidines	E	605	$116
Phthalate ester	E	606	$116
Nitrosamines	E	607	$116
Organochlorine Pesticides and PCBs	E	608	$152
	E2	608.1	$152
		608.2	$152
	E4	608 (3M)	$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
Chlorinated Herbicides	E2	615	$116
Organohalide Pesticides and PCB	E2	617	$116
Triazine Pesticides	E2	619	$116
Thiophosphate Pesticides	E2	622.1	$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
Carbamate and Urea Compounds	E2	632	$116
Tetra- through Octa-Chlorinated Dioxins and Furans	A4.22	1613 Rev B (10/94)	$258
VOCs by Isotope Dilution GC/MS	E	1624B	$152
Semivolatile Organic Compounds by Isotope Dilution GC/MS	E	1625B	$152
Organophosphorus Pesticides	E1	1657	$116

	E2	614	$116
		614.1	$116
		622	$116
VOCs Specific to the Pharmaceutical Manufacturing Industry by Isotope Dilution GC/MS	K1	1666 (A)	$152
Herbicides	C	6640B (2006)	$116
Ethylene Glycol	K	BLS-188	$152
6. Radiochemistry of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alpha-Total pCi per liter	C	7110B (2011)	$206
	L	900.0	$206
Alpha Counting Error, pCi per liter	C	7110B (2011)	$206
Beta-Total pCi per liter	C	7110B (2011)	$206
	L	900.0	$206
Beta Counting Error, pCi	C	7110B (2011)	$206
Radium, Total pCi per liter	C	7500-Ra B (2011)	$206
	L	903.0	$206
Radium	C	7500-Ra C (2011)	$206
	L	903.1	$206

Table 6.2.C. Approved Methods and Method Fees for Waste Parameters

1. Microbiology of 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. Sample Preparation for Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Digestion of Water	F	3005A	$7
Alkaline Digestion for Hex Chome	F	3060A	$7
Bomb Preparation Method for Solid Waste	F	5050	$7
EP for Oily Wastes	F	1330A	$76
EP Toxicity	F	1310B	$76
Microwave Assisted Digestions	F	3015A	$7

		3051A	$7
		3052	$7
		3546	$7
Multiple EP	F	1320	$152
Oils, Greases, and Waxes	F	3040A	$7
Oils	F	3031	$7
Sediments, Sludges, and Soils	F	3050B	$7
SPLP	F	1312	$303
TCLP	F	1311	$303
Total Metals	F	3010A	$7
		3020A	$7
Total Recoverable in Water	F	3005A	$7
3. Inorganic Chemistry and Metals of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Ammonia	A	350.3	$39
Antimony	F	6010C	$10
		6020A	$26
		7062	$76
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Arsenic	F	6010C	$10
		6020A	$26
		7010	$26
		7061A	$76
		7062	$76
		7063	$76
	F and F13	6010D	$10

		6020B	$26
Barium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Beryllium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Boron	F	6010C	$10
	F and F13	6010D	$10
Bromide	F	9056A	$26
		9211	$39
Cadmium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Calcium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Cation-Exchange Capacity of Soils	F	9080	$34
		9081	$34
Chloride	F	9056A	$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	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Cobalt	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Compatibility Test for Wastes and Membrane Liners	F	9090A	$152
Copper	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Corrosive to Steel	F	1110A	$63
Corrosivity pH Determination	F	9040C	$63
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
Ignitability of Solids	F	1030	$32
Flash Point by Pensky Martems Cup	F	1010A	$32
Flash Point by Set-a Flash	F	1020B	$32
Fluoride	F	9056A	$26
		9214	$39
Iron	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Kjeldahl Total, Nitrogen	A	351.4	$76
Lead	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Liquid Release Test Procedure	F	9096	$39
Lithium	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Magnesium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Manganese	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26

Mercury	F	6010C	$10
		6020A	$26
		7470A	$52
		7471B	$52
		7472	$152
		7473	$152
		7474	$152
	F and F13	6010D	$10
		6020B	$26
Molybdenum	F	6010C	$10
		7000B	$26
		7010	$26
	F and F13	6010D	$10
Nickel	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Nitrate	F	9210A	$39
		9056A	$26
Nitrite	F	9056A	$26
		9216	$39
Oil and Grease and Petroleum Hydrocarbons	A4.24	1664B	$76
O-Phosphate-P	F	9056A	$26
Osmium	F	7000B	$26
Paint Filter Liquids Test	F	9095B	$19
Perchlorate	A5	314.0	$76
	F	6850	$152
pH (Hydrogen Ion)	F	9041A	$39
		9045D	$39
Phosphorus	F	6010C	$10
	F and F13	6010D	$10
Phosphorus, Total	A	365.3	$76

Potassium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Saturated Hydraulic and Leachate Conductivity and Intrinsic Permeability	F	9100	$152
Selenium	F	6010C	$10
		6020A	$26
		7010	$26
		7741A	$26
		7742	$76
	F and F13	6010D	$10
		6020B	$26
Silica	F	6010C	$10
	F and F13	6010D	$10
Silver	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Sodium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Sodium Azide	C	4110C (2011)	$76
Specific Conductance	F	9050A	$39
Strontium	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Sulfate	F	9035	$76
		9036	$76
		9038	$76

		9056A	$26
Sulfides	F	9030B	$76
		9031	$76
		9034	$76
		9215	$76
Thallium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Tin	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Titanium	F	6010C	$10
Vanadium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Water	F	9000	$32
		9001	$32
White Phosphorus by GC	F	7580	$116
Zinc	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
4. Organics Procedures in 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	3535A	$13
Soxhlet Extraction	F	3540C	$13
Automated Soxhlet Extraction	F	3541	$13
Pressurized Fluid Extraction	F	3545A	$13
Ultrasonic Extraction	F	3550C	$13
Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons	F	3560	$13
Supercritical Fluid Extraction of PAHs	F	3561	$13
SFE of PCBs and Organochlorine Pesticides	F	3562	$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	3620C	$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 Solids for VOCs	F	3815	$76
Hexadecane Extraction and Screening for Purgeable Organincs	F	3820	$76
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

Screening Environmental Samples for Planar Organic Compounds	F	4425	$76
Triazine Herbicides by Quantitative Immunoassay	F	4670	$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	8041A	$116
Phthalate Esters by GC/ECD	F	8061A	$116
Nitrosamines by GC	F	8070A	$116
Organochlorine Pesticides by GC	F	8081B	$152
Elemental Quantitation by GC/AED	F	8085	$116
PCBs by GC	F	8082A	$152
Nitroaromatics and Cyclic Ketones by GC	F	8091	$116
Explosives by GC	F	8095	$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	8141B	$152
Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzylation Derivatization	F	8151A	$152
VOCs by GC/MS, including n-Hexane	F	8260B	$152
	F12 and F13	8260C/8000D	$152

VOCs by VD/GC/MS	F	8261	$152
Semivolatile Organic Compounds by GC/MS	F	8270C	$152
	F and F13	8270D/8000D	$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	8280B	$258
PCDDs and PCDFs by HRGC/HRMS	F	8290A	$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	8318A	$116
Solvent-Extractable Nonvolatile Compounds by HPLC/TS/MS or UV Detection	F	8321B	$152
Solvent Extractable Nonvolatile Compounds by HPLC/PB/MS	F	8325	$152
Nitroaromatics and Nitramines by HPLC	F	8330A	$116
Nitroaromatics, Nitramines, and Nitrate Esters	F11	8330B	$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
Screening for RDX/MDX in Soil	F	8510	$76
Colorimetric Screening Method for TNT in Soil	F	8515	$76
Screening for Total VOH in Water	F	8535	$76
PCP by UV Colorimetry	F	8540	$108
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
Screening for TRPH in Soil	F	9074	$76
Screening for PCBs in Soil	F	9078	$76
Screening for PCBs in Oil	F	9079	$76
PCBs in Waste Oil	A4.28	600/4-81-045	$152
5. Bulk Asbestos Analysis of Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Bulk Asbestos Analysis	A4.29	Bulk Asbestos	$228
	G	9002	$228
	G1 and A4.29	Bulk Asbestos	$228
Fiber Counting	G	7400	$228
		7402	$228
6. Radiochemistry of 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

Table 6.2.D. Approved Methods and Method Fees for 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
Lead	O	Appendix G	$393
Nitrogen Dioxide	O	Appendix F	$393
Ozone	O	Appendix D	$393
Particulate Matter	O	Appendix B	$393
		Appendix J	$393
		Appendix L	$393
		Appendix O	$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 3C	$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
Mercury, Total Vapor Phase	Q1	PS-12B	$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 20	$393
Non-methane Organic Compounds	Q	Method 25C	$393
Particulate Emissions by Asphalt Processing and Roofing	Q	Method 5A	$152
Particulate Emissions by Fiberglass Insulation Plants	Q	Method 5E	$152
Particulate Emissions of Nonsulfates	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 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
		Method 19	$393
		Method 20	$393
Sulfur Dioxide Removal and SO2/NO Emission Rates	Q	Method 19	$152
Sulfuric Acid Mist	Q	Method 8	$393
Vapor Tightness, Gasoline Delivery Tank	Q	Method 27	$393
Volatile Matter Density, Solids and Water from Surface Coatings	Q	Method 24	$393
		Method 24A	$393
Volatile Matter and Density of Printing Inks	Q	Method 24A	$393
VOCs	Q	Method 21	$393
	S1	TO-3	$152
		TO-14A	$152
		TO-15	$152
VOCs in Vapor	F1	8260B AZ (Vapor) (0.0)	$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 in the Presence of 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

5. Determination of Metals in Ambient Particulate Matter

Description	Reference	Method/s	Fee Per Method
Digestion of Ambient Matter	O3	IO-3.1	$7
Aluminum	O1	IO-3.4	$10
	O2	IO-3.5	$26
Antimony	O1	IO-3.4	$10
	O2	IO-3.5	$26
Arsenic	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Barium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Beryllium	O1	IO-3.4	$10

	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Bismuth	O1	IO-3.4	$10
Cadmium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Calcium	O1	IO-3.4	$10
Cesium	O1	IO-3.4	$10
Chromium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Cobalt	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Copper	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Germanium	O1	IO-3.4	$10
Gold	O1	IO-3.4	$10
Indium	O1	IO-3.4	$10
Iron	O1	IO-3.4	$10
Lanthanum	O1	IO-3.4	$10
Lead	O1	IO-3.4	$10
	O2	IO-3.5	$26
	O4	EQL-0510-191	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Lithium	O1	IO-3.4	$10
Magnesium	O1	IO-3.4	$10

Manganese	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Mercury	O1	IO-3.4	$10
	Q	Method 29 – CVAA	$52
Molybdenum	O1	IO-3.4	$10
	O2	IO-3.5	$26
Nickel	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Niobium	O1	IO-3.4	$10
Palladium	O1	IO-3.4	$10
Phosphorus	O1	IO-3.4	$10
	Q	Method 29 – ICP	$10
Platinum	O1	IO-3.4	$10
Potassium	O1	IO-3.4	$10
Rhenium	O1	IO-3.4	$10
Rhodium	O1	IO-3.4	$10
Ruthenium	O1	IO-3.4	$10
Samarium	O1	IO-3.4	$10
Selenium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Silicon	O1	IO-3.4	$10
Silver	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Sodium	O1	IO-3.4	$10
Strontium	O1	IO-3.4	$10
Tantalum	O1	IO-3.4	$10
Tellurium	O1	IO-3.4	$10

Thallium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Thorium	O2	IO-3.5	$26
Tin	O1	IO-3.4	$10
Titanium	O1	IO-3.4	$10
Tungsten	O1	IO-3.4	$10
Uranium	O2	IO-3.5	$26
Vanadium	O1	IO-3.4	$10
	O2	IO-3.5	$26
Ytrrium	O1	IO-3.4	$10
Zinc	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Zirconium	O1	IO-3.4	$10

Table 6.2.E. Methods Director-Approved under R9-14-610(E) and Method Fees

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 6.3. 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

Table 6.4. Alternate Default Limits

QUALITY CONTROL PARAMETERS WITHOUT ACCEPTANCE CRITERIA SPECIFIED IN THE METHOD	DEFAULT LIMITS
Matrix Spike/LFM (processed or non-processed)	LCS/LFB
Matrix Spike/LCS for 8000 methods	±30%.
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%
Methods that do not specify the LOQ/MRL	± 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%
500, 600, 1600, and 8000 series methods that do not specify surrogates or acceptance limits for surrogates	70-130%.
500, 600, 1600, and 8000 series methods that do not specify internal standards or acceptance limits for internal standards	70-130%.
Methods that do not list a precision measurement	20% RPD

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALH SERVICES
ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALH SERVICES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-495.01 requires the Department to license environmental laboratories engaged in compliance testing; establish minimum standards of proficiency, methodology, quality assurance, operation, and safety for environmental laboratories; and develop rules in cooperation with the Arizona Department of Environmental Quality (ADEQ) that are consistent with A.R.S. Title 49 and rules adopted by ADEQ. The Department adopted rules implementing A.R.S. § 36-495.01 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 14, Article 6. ADEQ has recently revised its rules in 18 A.A.C. 4, Article 1 to conform to changes made to federal Environmental Protection Agency (EPA) regulations in 40 Code of Federal Regulations (CFR) parts 141 and 142. Therefore, the Department is revising the rules in 9 A.A.C. 14, Article 6 to be consistent with the ADEQ rules. Since ADEQ and the Department share responsibility for enforcing 40 CFR parts 141 and 142, this will enable Arizona to retain primary authority to regulate (primacy) over Arizona's drinking water supply, under 40 CFR part 142. The Department is also making changes to address issues identified in the recent five-year-review report of the rules, approved by the Governor's Regulatory Review Council in March 2016. The new rules address written criticisms of the rules, update obsolete methodologies and references, and make other changes to the rules to reduce the regulatory burden while achieving the same regulatory objective. Without the rule changes, Arizona could lose primacy, causing Arizona's drinking water to be regulated by the EPA; the rules would continue to include obsolete methods that may be more burdensome and less accurate; and the regulated community would continue to contend with rules that are ineffective or unclear.

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

a. Cost bearers

- The Department
- Environmental laboratories (both public and private)

b. Beneficiaries

- The Department
- ADEQ

- Environmental laboratories (both public and private)
- Environmental organizations
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by ADEQ's rules changes. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Providing technical assistance about the new rules	None-to-minimal	None
	Having more up-to-date references and methods in the rules	Moderate	Significant
	Exempting from licensing two additional categories of laboratories	None	Minimal
	Allowing the Department to suspend the use of the installment payment plan for failure to submit payments as required	None	Significant
	Allowing the Department to rescind approval of an alternate method or method alteration	None-to-minimal	Minimal
	Eliminating unnecessary requirements	None	None-to-minimal
	Being able to retain primacy for Arizona's drinking water supply	None	Significant
	Having rules to follow that are clearer and easier to understand	None	Significant
ADEQ	Having rules that are consistent with ADEQ rules and other requirements	None	Significant
	Being able to retain primacy for Arizona's drinking water supply	None	Significant

Regional and municipal water systems licensed as environmental laboratories	Being able to use up-to-date methods when testing water supplies	None-to-minimal	Minimal-to-moderate
	Being exempt from the requirement to have every field site licensed as an environmental laboratory	None	Minimal-to-moderate
	Eliminating unnecessary requirements and having clearer rules	None	Significant
	Having Arizona retain primacy	None	Significant
Governmental environmental laboratories	Being able to use up-to-date methods when performing compliance testing	None-to-moderate	None-to-substantial
	Exempting from licensing two additional categories of laboratories	None	Minimal-to-moderate
	Allowing the Department to rescind approval of an alternate method or method alteration	Minimal	None
	Eliminating unnecessary requirements and having clearer rules	None	Significant
	Having Arizona retain primacy	None	Significant
B. Privately Owned Businesses			
Private environmental laboratories	Being able to use up-to-date methods when performing compliance testing	None-to-moderate	None-to-substantial
	Exempting from licensing two additional categories of laboratories	None	Minimal-to-moderate
	Allowing the Department to rescind approval of an alternate method or method alteration	Minimal	None
	Eliminating unnecessary requirements and having clearer rules	None	Significant
	Having Arizona retain primacy	None	Significant
	For out-of-state or multi-state environmental laboratories, having less variation in requirements	None	Significant
Health care institutions testing for chlorine added to their water supplies	Being exempt from the requirement to be licensed as an environmental laboratory	None	Minimal-to-moderate
Environmental organizations, including consulting firms	Having up-to-date methods in the rules	None	Significant
	Being assured that pollutants in the air, wastewater, and other environmental media are adequately assessed	None	Significant
	Having rules to follow that are clearer and easier to understand	None	Significant

C. Consumers			
General public	Being assured that the water they drink is safe	None	Significant
	Being assured that pollutants in the air, wastewater, and other environmental media are adequately assessed	None	Significant
	Costs to environmental laboratories passed on to consumers	None-to-minimal	None

- **The Department**

  Under the rules in 9 A.A.C. 14, Article 6, the Department licenses approximately 144 environmental laboratories, including 62 environmental laboratories that are located out-of-state. Of the 144 licensed environmental laboratories, 96 are private and 48 are governmental agencies. These environmental laboratories vary greatly in size (as measured by the volume of compliance testing performed) and in complexity (as measured by the number of methods used, the number and sophistication of the instrumentation used for compliance testing, and the number of parameters for which the environmental laboratory has been approved).

  The Department has structured the environmental laboratory licensing fees to take into account the variability in size and complexity of environmental laboratories. The fee an environmental laboratory pays for licensing is based largely on the parameters for which the environmental laboratory plans to perform compliance testing and the methods/ instrumentation chosen by the environmental laboratory for performing the compliance testing. This rulemaking is not changing the fees specified in R9-14-607(A)(2) through (4), R9-14-608(E), R9-14-610(C), R9-14-620(E), or Exhibit I, Table 2; nor is the rulemaking changing the fees for methods/parameters in the current rules that are being retained. However, the rulemaking does include the updating of methods that may be used for compliance testing and the addition of fees associated with these new methods, consistent with the fees in the current rules for similar methods/parameters. Obsolete methods and their associated fees are being removed. Over 257 new methods are being added, and over 60 methods removed.

  In developing these rules, the Department formed an Environmental Laboratories Rulemaking Work Group (Work Group) composed of a representative from ADEQ and individuals representing the Water Association, Pima County, municipal water systems, Salt River Project, private commercial environmental laboratories, small businesses, and an environmental consulting firm to review and provide input on the draft revisions for this

rulemaking, especially what newer methods to include and what methods in the current rules should be removed as obsolete. The Work Group met on February 11, 2016. During this meeting and through subsequent communication, the Department and the Work Group were able to reach consensus on the contents of the revised draft rules. On March 17, 2016, the Environmental Laboratory Advisory Committee (ELAC), composed of representatives of environmental organizations, municipal water systems, public and private environmental laboratories, an environmental consulting firm, a company providing environmental remediation action, the Multiple Agency Laboratory Association, and others, reviewed the revised draft rules, recommended a few additional changes, and unanimously recommended that the Department go forward with the revised draft rules. The ELAC, along with the rest of the regulated community, continued to have an opportunity to provide input on drafts throughout the rulemaking process.

The Department anticipates that rules changes may cause the Department to incur minimal costs due to additional time being spent providing technical assistance to environmental laboratories on the changes, especially the new methods being added and the obsolete methods being removed. However, having more up-to-date references and methods in the rules may also provide a significant benefit to the Department because these changes make the rules consistent with the EPA requirements for compliance testing, enabling Arizona to retain primacy, and should help to ensure compliance with those requirements. The Department may also benefit through no longer having to explain why the newer methods are not in rule and not having to go through the process of reviewing requests made under R9-14-610(C) to have the newer methods as "director-approved." Because the Department is leaving in rule some older methods, to allow for a more gradual transition to the newer methods to reduce the impact on small businesses, the Department may receive increased revenue if an environmental laboratory decides to pay fees for both the older and newer methods for a parameter. The Department cannot estimate how often this may happen or the extent to which the Department's revenue may be affected. Updating the rules to include the Standard Methods added in R9-14-610 may also result in a moderate cost to the Department for obtaining permission to copy the Standard Methods, estimated to be approximately $3,600.

The revised R9-14-602 adds new categories of exemptions, as allowed under A.R.S. § 36-495.02(B). The first category is a person that tests compliance samples for turbidity or conductivity at the time of sampling. Another is a person that performs compliance sample testing on daily chlorine dioxide or chlorite drinking water samples or ultra-low-range total

residual chlorine wastewater samples. For example, a hospital may add chlorine dioxide to its water supply to reduce cross-infection rates and increase patient safety and would test the water supply to monitor these chlorine levels. A municipal wastewater laboratory may perform ultra-low chlorine testing of the water supply at specific satellite sites away from the licensed environmental laboratory. As stated in the 2015 five-year-review-report for these rules, the Department provides training and technical assistance to the personnel of hospitals that add chlorine dioxide to their water supplies and of municipal wastewater laboratories that perform ultra-low chlorine testing at satellite sites, but the Department does not currently enforce licensing requirements for these entities. The Department anticipates that the revision of R9-14-602 may cause no additional costs and a minimal benefit to the Department from not having to answer questions from such entities and explain the Department's rationale for not licensing these persons.

The new rules allow the Department to suspend the use of the installment payment plan in R9-14-608 if a licensee fails more than twice during the license period to submit an installment payment within seven days after the due date of the installment payment. The Department anticipates that this change will result in a significant benefit to the Department due to the fact that the Department currently spends a great deal of time tracking down licensees who are abusing the installment payment plan. Allowing the Department to rescind approval of an alternate method or method alteration approved under R9-14-610(E), which would only be done when the reason the alternate method or method alteration was originally approved no longer exists, may result in a minimal benefit to the Department by helping to ensure compliance with EPA standards, and may cause, at most, a minimal decrease in fee revenue.

Several unnecessary requirements are being removed from the rules as part of this rulemaking. The requirement in R9-14-603(A) for an applicant to provide the name, title, and educational background of each individual authorized to sign final reports for the laboratory is being removed since the Department holds the licensee responsible for any laboratory final report. Requirements in R9-14-615(C) are being removed since they are redundant with other requirements. The Department believes these changes may result in a minimal benefit for the Department through a reduction in time to review an application or conduct an inspection. The Department also believes that the new rules are clearer and easier to understand, and anticipates that clearer, more understandable rules may provide a significant benefit through the Department having to spend less time answering questions about the rules.

- **ADEQ**

  The Safe Drinking Water Act gives EPA the responsibility for establishing national drinking water standards to protect the health of individuals who obtain their drinking water through public water systems. A state may obtain primacy in the area of safe drinking water under 40 CFR part 142 if the state establishes drinking water regulations that are no less stringent than the national primary drinking water regulations in effect under 40 CFR part 141. If a state does not obtain primacy, the EPA would be responsible for regulating the state's drinking water supply. One of the requirements for primacy is that the state establish and maintain a state program for the certification of laboratories conducting analytical measurements of drinking water contaminants according to the requirements of the state's primary drinking water regulations. Because the Department (not ADEQ) has statutory authority to license environmental laboratories that perform compliance testing, ADEQ and the Department share primacy for ensuring safe drinking water in Arizona.

  According to A.R.S. § 49-353(A)(2)(a), ADEQ is required to develop rules that meet the "requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142." ADEQ has adopted these rules in 18 A.A.C. 4, Article 1, and has recently revised these rules to incorporate by reference the 2014 version of 40 CFR 141 and 142. The Department's rules in 9 A.A.C. 14, Article 6, are currently in conflict with method and quality assurance requirements in the 2014 version of 40 CFR 141 and 142 and the revised ADEQ rules. With this rulemaking, the Department is revising the rules in 9 A.A.C. 14, Article 6, to resolve the conflict and, since the Department shares primacy with ADEQ, enable Arizona to retain primacy. The Department believes that ADEQ will receive a significant benefit from having rules in 9 A.A.C. 14, Article 6, that are consistent with ADEQ rules and federal regulations and a significant benefit from retaining primacy and having the flexibility to address local concerns about Arizona's drinking water supply.

- **Regional and municipal water systems licensed as environmental laboratories**

  Any municipality supplying potable water to its residents is required to perform compliance testing to ensure the safety of its water supply. Some municipalities perform compliance testing in-house, while others contract for compliance testing. A municipal water system performing in-house compliance testing is required to be licensed as an environmental laboratory and to comply with the rules in 9 A.A.C. 14, Article 6. Similarly a regional water

system, such as Salt River Project, is required to be licensed as an environmental laboratory and to comply with these rules.

The Department anticipates that being able to use up-to-date methods when testing water supplies may provide a minimal-to-moderate benefit to a regional or municipal water system and may cause, at most, minimal additional costs, depending on the parameters tested and the methods currently used. A regional or municipal water system may perform ultra-low chlorine compliance testing of the water supply at specific satellite site locations throughout the water supply and, according to the current rules, could have to pay almost $1,900 for the licensure of each of these locations. The Department believes that the city of Phoenix would have to license at least five sites if the current requirements were being enforced. Therefore, a regional or municipal water system may receive a minimal-to-moderate benefit from being exempt from the requirement to have every field/satellite site licensed as an environmental laboratory. The Department anticipates that the elimination of unnecessary requirements and having rules that are clearer and easier to understand may provide a significant benefit to a regional or municipal water system. A regional or municipal water system may also receive a significant benefit from Arizona retaining primacy, allowing ADEQ and the Department the flexibility to address issues specific to Arizona.

- **Governmental environmental laboratories and private environmental laboratories**
  Some governmental environmental laboratories perform in-house compliance testing for drinking water parameters or test these and other parameters for other public entities. A wide array of public entities are licensed as environmental laboratories. These include the Arizona Department of Game and Fish, state parks, national parks in Arizona, military bases in Arizona or military laboratories performing compliance testing for Arizona military bases, the Federal Bureau of Reclamation, cities and counties, power plants, and an out-of-state city that dumps wastewater sludge in Arizona for use in composting. These environmental laboratories range in size from a very small facility operated by a municipality that is licensed for only one method to a facility operated by the city of Phoenix, which performs compliance testing using a variety of methods for drinking water, wastewater, and waste parameters.

  Private environmental laboratories also vary greatly in volume of samples tested and in the complexity of the compliance testing performed. They include laboratories that perform, under contract, compliance testing of drinking water for municipal water systems; large-scale, multi-state, environmental laboratories that perform compliance testing for a wide variety of drinking water, wastewater, waste, or air and stack parameters; and

everything in between. Mining companies, bottled water companies, a private water company, a children's camp, a large dairy business, and a small, private, housing development that supplies drinking water to its residents are all represented in a list of Arizona's licensed environmental laboratories. They also include companies that perform environmental remediation activities, which include the removal of pollution or contaminants from soil, groundwater, sediment, or surface water, since these companies must assess the extent of the pollution or contamination and monitor the effectiveness of their efforts, and recycling companies that accept waste.

The newer methods being added to the rules allow an environmental laboratory more flexibility in compliance testing, since older methods are often very proscriptive, and the newer technology may be easier to use and maintain. The newer methods also produce data that is considered to be in compliance with federal standards and are defensible in court. The Department anticipates that being able to use up-to-date methods when performing compliance testing may provide a none-to-substantial benefit to a governmental or private environmental laboratory, depending on the parameters tested and the methods currently used, and may cause none-to-moderate additional costs.

The Department also believes that the addition of two categories of laboratories that are exempt from licensing may provide a minimal-to-moderate benefit to a governmental or private environmental laboratory that performs only tests described in R9-14-602(4) or (5). A governmental or private environmental laboratory may also receive a significant benefit from Arizona retaining primacy, allowing ADEQ and the Department the flexibility to address issues specific to Arizona. The Department believes that allowing the Department to rescind approval of an alternate method or method alteration may cause to a governmental or private environmental laboratory using the alternate method or method alteration for compliance testing to incur a minimal cost from having to switch to another method. The Department anticipates that the elimination of unnecessary requirements and having rules that are clearer and easier to understand may provide a significant benefit to a governmental or private environmental laboratory. The Department anticipates that an out-of-state or a multi-state environmental laboratory will receive a significant additional benefit through having less variation in the requirements in the new rules compared with requirements imposed by regulation in other states or countries since the new rules now comply with EPA requirements.

- **Health care institutions testing for chlorine added to their water supplies**

Healthcare-associated infections (HAI) are those spread to a susceptible patient from another patient, the staff, or the environment of a health care institution or that appear during the patient's stay in the health care institution. The Centers for Disease Control and Prevention reports that, in 2002, the number of HAIs in U.S. hospitals was 1.7 million, resulting in almost 99,000 deaths. Since then, efforts have been made to reduce the risk of a patient acquiring an HAI. These efforts have been effective in reducing the number of HAIs in hospitals, as reported in the the HAI Prevalence Survey for 2011, which states that approximately 722,000 HAIs occurred, resulting in an estimated 75,000 deaths. One of the mechanisms used to reduce the spread of HAIs is for a health care institution, such as a hospital, to increase the chlorination of the hospital's water supply. The Department is aware of five health care institutions, including hospitals and cancer centers, adding chlorine dioxide to the internal water supply to reduce cross-infection rates and increase patient safety. However, a hospital or other health care institution adding to the chlorination of the water supply would need to monitor the amount of chlorite, chlorine dioxide, and free chlorine in the water to avoid toxicity while achieving the intended result. Although not presently being licensed by the Department, under the current rules each of these health care institutions should be licensed as an environmental laboratory, at a cost as high as $1,900. Therefore, the new rules may provide a minimal-to-moderate benefit to a health care institution increasing the chlorination of the health care institution's water supply.

- **Environmental organizations**

  Environmental organizations include the Arizona Water Association, Rural Water Association of Arizona, Arizona Water Quality Association, and Arizona Hydrological Society. These organizations represent water/wastewater professionals and the water-treatment industry. Their interests include preserving and improving Arizona's water environment, promoting high standards for technical and professional expertise, and providing a professional forum for the exchange of information and ideas. Environmental organizations also include consulting firms representing construction projects that impact the environment. These groups may be impacted by the new rules in several ways. The updated methods in the new rules meet minimum federal standards, meaning that the data produced are considered to be in compliance with federal requirements and are defensible in court. The new methods also rely on more sophisticated technology; which help ensure that pollutants in the air, wastewater, and other environmental media are adequately assessed and enhance the professionalism of those using them. In addition, the improved clarity of the rules makes the rules easier to use because the requirements are easier to understand. The Department

anticipates that these changes to the rules may provide a significant benefit to environmental organizations.

- **General public**

  As mentioned previously, the updated methods in the new rules meet minimum federal standards, meaning that the data produced are considered to be in compliance with federal requirements. The methods also include more quality assurance requirements. The general public may receive a significant benefit from having safe water to drink and being assured that pollutants in the air, wastewater, and other environmental media are adequately assessed. It is possible that any costs incurred by regional or municipal water systems may be passed on to the customers of the water systems. The Department anticipates that these additional costs would be, at most, minimal.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include small environmental laboratories or small environmental organizations.

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

Anticipated costs for complying with the rules are described under paragraph 3.

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

The Department has already included in the rules a tiered fee system and the ability of small businesses to pay fees through installment payments. While updating some methods, the Department has also left in some older methods to allow for a more gradual transition to the newer methods to further reduce the impact on small businesses.

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

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

Since the rulemaking does not include any adjustments to fees, the Department does not expect the rules to affect state revenues.

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

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

Not applicable

Department of Health Services – Laboratories
TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

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 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).

R914604. 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.

Department of Health Services – Laboratories

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).

R914605. 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.

Department of Health Services – Laboratories

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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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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F4 EPA, Method 3570: Microscale Solvent Extraction (MSE) (rev. 0 November 2002), available at http://www.epa.gov/epaoswer/hazwaste/test/new-meth.htm.

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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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V Eastern Environmental Radiation Facility, EPA, Pub. No. EPA 520/5-84-006, Eastern Environmental Radiation Facility Radiochemistry Procedures Manual (2nd prtg. 1988), available from National Technical Information Service, 5285 Prt. Royal Rd., Springfield, VA 22161.

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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).

R914611. 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).

R914613. 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).

R914614. 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).

R914615. 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 chainofcustody 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).

R914616. 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).

R914617. 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).

R914618. 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. OutofState 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, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-620. 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

Department of Health Services – Laboratories
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	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	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 Semisolid 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

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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).

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. Powers and duties of director; compensation of personnel

A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.
6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.
B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be

competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product

manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food 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. Licensure program; rules

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. Exemptions

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.

F-3

INDUSTRIAL COMMISSION OF ARIZONA (R-16-0903)
Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01

Amend: R20-5-715

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: August 19, 2016

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA (R-16-0903)**
Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01

Amend: R20-5-715

The purpose of the Industrial Commission of Arizona (Commission) is to "promote the health, safety and welfare of employees." Laws 2006, Ch. 15, § 3. The Commission is amending one rule in A.A.C. Title 20, Chapter 5. Section 715 relates to aggregate and specific excess insurance policies. The rule has not been amended since its adoption on September 9, 1998.

This rulemaking relates to self-insurance pools, which are one of the mechanisms by which employers may secure workers' compensation to employees in Arizona. A.R.S. § 23-961.01(A), established in 1997, allows "[t]wo or more employers, each of whom are engaged in similar industries…to establish a workers' compensation pool to provide for the direct payment and administration of workers' compensation claims…." Alternative methods for employers to secure workers compensation are 1) acquire insurance from an Arizona-licensed carrier, or 2) obtain authorization from the Commission to self-insure.

Section 715 establishes excess coverage and retention requirements for self-insurance pools. The maximum permissible retention amounts are currently set at $250,000 for specific retention[1], and 110% of collected premiums for aggregate retention[2]. The minimum aggregate insurance coverage limit is set at $5,000,000.

[1] As the Commission notes on Page 3 of the Preamble, specific retention relates to insurance coverage purchased from an insurer who will be liable for the payment of any amount of a particular workers' compensation claim in excess of a retained predetermined amount (the specific retention) paid directly by the self-insurance pool.
[2] As the Commission notes on Page 3 of the Preamble, aggregate retention relates to insurance coverage purchased from an insurer who will be liable for the payment of any amount of the aggregate of all a pool's workers' compensation claims in excess of a retained predetermined amount (the aggregate retention) paid directly by the self-insurance pool.

Currently, no self-insurance pools are in operation in Arizona. The Commission indicates that the excess insurance requirements of Section 715(D) have become an impediment to the formation of such pools, as the required products are either unavailable in the insurance market or are cost prohibitive.

Proposed Action

The Commission is amending the rule to allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. Changes to the rule include:

- In lieu of a maximum specific retention amount of $250,000, the Commission is proposing a range of specific retention amounts from $100,000 to $1,250,000.
- The Commission will have authority to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention. The Commission indicates that this approval process is consistent with the process intended in A.R.S. §§ 23-961(A)(2) and 23-961.01(B).
- In lieu of a maximum aggregate retention amount of 110% of collected premiums, the Commission is proposing a maximum aggregate retention amount of 150% of collected premiums.
- In lieu of a minimum aggregate excess coverage limit of $5,000,000, the Commission is proposing a minimum coverage amount of $1,000,000.

Exemption or Request and Approval for Exception from the Moratorium

The Commission received an exception from the moratorium on January 4, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Commission cites to A.R.S. § 23-107(A)(1) as general authority for the rule, under which the Commission has full power, jurisdiction and authority to "[f]ormulate and adopt rules and regulations for effecting the purposes of this article [Title 23, Labor, Chapter 1, Industrial Commission, Article 1, In General]."

The Commission cites to A.R.S. § 23-961.01(F) as specific authority for the rule, under which the Commission must "adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter [Title 23, Labor, Chapter 6, Workers' Compensation]."

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rule is generally clear, concise, and understandable.

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

Yes. The Commission indicates that it received no written comments on the rulemaking.

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

No. As the preamble notes, two non-substantive technical changes were made to subsection (D)(1)(a). The final rule is not a substantial change, considered as a whole, from the proposed rule.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Commission indicates that it did not review or rely on any study for this rulemaking.

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

No. The Commission indicates that no federal laws relate to this rulemaking.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. The rule does not require a permit or license.

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

No. The rule does not establish a new fee or contain a fee increase.

9. Conclusion

The Commission requests an immediate effective date for the rule, citing A.R.S. § 41-1032(A)(5), under which an immediate effective date can be granted for the adoption of a rule that is less stringent than the current rule, and that does not have an impact on public health and safety or the public participation process. This analyst recommends approval of the rule.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: F-3**

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

FROM: GRRC Economic Team

DATE: August 19, 2016

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA (R-16-0903)**
Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01

Amend: R20-5-715

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

The proposed amendments submitted by the Commission will allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In 1998, when R20-5-715 was implemented, the excess insurance required by the rule was widely available in the insurance market at competitive prices. Today, however, Arizona employers have been effectively excluded from forming self-insurance pools because the required excess insurance products are either unavailable in the insurance market or are cost prohibitive. The current excess insurance requirements of R20-5-715(D) complicate the formation of workers' compensation self-insurance pools. The proposed amendments reduce the stringency of these requirements by increasing permissible retention amounts, and by decreasing the required amount of aggregate insurance coverage.

The Commission has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees (FTEs) necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The Commission is the state agency directly affected by the proposed rulemaking and will incur the minimal cost of implementing it.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Businesses:

Businesses who may participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance.

d. Small businesses:

Small businesses who may participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance.

e. Consumers directly affected by the rulemaking:

There are no private persons or consumers directly affected by the rulemaking.

2. <u>Do the probable benefits outweigh the probable costs?</u>

Based on the information provided, the Commission indicates that the benefit from the proposed amendments outweigh the costs. The rulemaking primarily makes self-insurance pools a viable alternative for securing workers' compensation.

3. <u>Analysis of methods to reduce the small business impact:</u>

An analysis was not submitted because the Commission estimated that there will be no economic impact to small businesses.

In the event a small business chooses not to participate in a self-insurance pool, the business will not be impacted by the proposed amendments. In the event a small business chooses to participate in a self-insurance pool, the business will benefit as a result of the proposed amendments. Because the proposed amendments will not negatively impact small businesses, the Commission has not considered methods to reduce the impact of the proposed amendments on small businesses.

4. <u>The probable effect on state revenues:</u>

The proposed rulemaking will have no effect on state revenues.

5. <u>Analysis of any less intrusive or less costly alternative methods:</u>

No less intrusive or less costly alternative method was considered.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Commission indicates that no outside data or studies were used in the development of the proposed rules.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

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JAMES ASHLEY, DIRECTOR

July 15, 2016

Nicole Ong, Esq.
Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 7
Self-insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01
(Amendment of R20-5-715, Aggregate and Specific Excess Insurance Policies)

Dear Ms. Ong:

On behalf of the Industrial Commission of Arizona (Commission), I request that the Governor's Regulatory Review Council (Council) approve amendments to R20-5-715 relating to Aggregate and Specific Excess Insurance Policies. Pursuant to R1-6-201(A)(1), the Commission provides the following information regarding the rule:

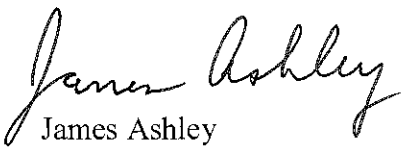
a. Close of record date: April 12, 2016
b. The rulemaking activity does not relate to a five-year-review report. The Commission is undertaking the rulemaking to reduce the regulatory burden currently imposed by R20-5-715(D) while continuing to achieve the regulatory objectives of A.R.S. § 23-961.01.
c. The rule amendments do not establish a new fee.
d. The rule amendments do not contain a fee increase.
e. The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(5).
f. The Commission did not rely on a study for justification of the rule amendments.
g. The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement the rule amendments.
h. The following documents are included for the Council's review:

Request for Approval of Rulemaking
Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
Oral Proceeding Memorandum

General and Specific Statutes Authorizing rulemaking

Thank you for your consideration of these rule amendments. Should you have any questions regarding the rule, please contact Jason Porter, Chief Counsel, at 602-542-5781.

Sincerely,



James Ashley
Director

SJC/kh
Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Article, Part, or Section Affected	**Rulemaking Action**
R20-5-715	Amend

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

Authorizing statutes: A.R.S. §§ 23-107(A)(1); 23-961.01(B)

Implementing statute: A.R.S. § 23-961.01(F)

3. The effective date of the rule:

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):

The Industrial Commission of Arizona (Commission) requests an immediate effective date under A.R.S. § 41-1032(A)(5) ("To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on public health, safety, welfare or environment, or that does not affect the public involvement and public participation process."). The current excess insurance requirements of R20-5-715(D) are an impediment to the formation of workers' compensation self-insurance pools, defeating the purpose of A.R.S. § 23-961.01. The proposed amendments reduce the stringency of these requirements by increasing permissible retention amounts and by decreasing the required amount of aggregate insurance coverage. The proposed amendments do not impact public health, safety, welfare or environment. Although the amendments to R20-5-715(D) loosen the excess insurance requirements, the changes should not impact the availability or effectiveness of workers' compensation for injured workers. Self-insurance pools established under A.R.S. § 23-961.01 remain subject to the Commission's approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). As such, self-insurance pools will continue to be required to meet rigid financial and loss control standards to demonstrate a "financial ability to pay [workers'] compensation . . . in the amount and manner and when due as provided in [A.R.S. Title 23, Chapter 6, Workers' Compensation]." The amendments should also have no effect

on public involvement or the public participation process.

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: 22 A.A.R. 239, February 12, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 416, March 4, 2016

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

Name:	Scott J. Cooley, Attorney
Address:	Industrial Commission of Arizona
	800 West Washington Street, Suite 303
	Phoenix, Arizona 85007
Telephone:	602-542-5781
Fax:	602-542-6783
E-mail:	scott.cooley@azica.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:

Until 1997, Arizona law mandated that employers "secure workers' compensation to their employees" by either: (1) acquiring insurance from a carrier licensed to write workers' compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. *See* A.R.S. § 23-961(A). In 1997, the Arizona Legislature added "self-insurance pools" as a third mechanism for securing workers' compensation. *See* A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers' compensation pool to provide for the direct payment and administration of workers' compensation claims.

A.R.S. § 23-961.01(F) directs the Commission to "adopt rules necessary for safeguarding the solvency of [self-insurance] pools and guaranteeing that injured workers receive benefits required under [A.R.S. Title 23, Chapter 6, Workers' Compensation]." The rules "shall include, at a minimum, matters pertaining to [among other things] . . . specific

and aggregate excess insurance . . . necessary for participation in and administration of the workers' compensation system." A.R.S. § 23-961.01(F).

"Specific excess insurance," in this context, refers to insurance coverage purchased from an insurer who will be liable for the payment of any amount of a particular workers' compensation claim in excess of a retained predetermined amount (the specific retention) paid directly by the self-insurance pool. Once a pool has paid the specific retention for a particular claim, the specific excess insurer would be obligated to pay all remaining amounts due on that claim (with no upper limit). Specific excess insurance mitigates a pool's risk resulting from any particular claim.

"Aggregate excess insurance," in this context, refers to coverage purchased from an insurer who will be liable for the payment of any amount of the aggregate of all a pool's workers' compensation claims in excess of a retained predetermined amount (the aggregate retention) paid directly by the pool. Once the pool has paid the aggregate retention amount, the aggregate excess insurer would be obligated to pay all remaining claim liabilities on all claims (subject to policy limits). Aggregate excess insurance mitigates a pool's overall risk from all claims.

In 1998, following the enactment of A.R.S. § 23-961.01, the Commission adopted rules (Title 20, Chapter 5, Article 7) to implement the new legislation, including a rule (R20-5-715(D)) which established excess coverage and retention requirements for self-insurance pools. Specifically, the maximum permissible retention amounts were set at $250,000 (specific retention) and "110% of collected premiums" (for aggregate retention). The minimum aggregate insurance coverage limit was set at $5,000,000.

In 1998, when R20-5-715 was implemented, the excess insurance required by the rule was widely available in the insurance market at competitive prices. Today, however, Arizona employers have been effectively precluded from forming self-insurance pools because the required excess insurance products are either unavailable in the insurance market or are cost prohibitive. This is evidenced by the fact that no self-insurance pools under A.R.S. § 23-961.01 are currently in operation in Arizona. In short, the excess insurance requirements of R20-5-715(D) have become an impediment to the formation of self-insurance pools, frustrating the intent of A.R.S. § 23-961.01. The Commission seeks to remove these impediments by amending the rule to reflect present economic realities within the excess insurance industry.

The proposed amendments will allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In lieu of a maximum specific retention amount of $250,000, the proposed amendments authorize a range of specific retention amounts from $100,000 up to $1,250,000. In lieu of a maximum aggregate retention amount of "110% of collected premiums," the proposed amendments authorize a maximum aggregate retention amount of "150% of collected premiums." And in lieu of a minimum aggregate excess coverage limit of $5,000,000, the proposed amendment authorizes a minimum coverage amount of $1,000,000. Finally, the proposed amendments give the Commission flexibility to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Each of these proposed amendments seeks to ease the regulatory burden on employers who may be interested in forming self-insurance pools by authorizing excess insurance products that are more accessible in the current insurance market and that are not cost prohibitive.

The proposed amendments are designed to make self-insurance pools a viable and cost-effective option for employers to provide workers' compensation to their employees. The proposed amendments will promote the statutory objectives of A.R.S. § 23-961.01(F), while continuing to ensure that self-insurance pools are financially able to provide for the payment and administration of workers' compensation claims.

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 Commission has not reviewed or relied on a study for 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:

EMPLOYERS and EMPLOYEES: The proposed amendments ease the regulatory burden on employers who participate in self-insurance pools by authorizing excess insurance products

that are cost-effective and more accessible in the current insurance market. Arizona employers, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments. In addition, incentivizing the use of self-insurance pools will likely lead to increased workplace safety and a reduction in industrial injuries.

INSURERS: As a result of the proposed rulemaking, Arizona employers may elect to participate in a self-insurance pool in lieu of purchasing workers' compensation insurance under A.R.S. § 23-961(A)(1). This shift would result in a decrease in sales of workers' compensation insurance policies and an increase in sales of specific and aggregate excess insurance policies. Although some impact on the insurance industry is expected, the Commission does not believe the impact of the proposed amendments will be significant for any particular insurance carrier.

SPECIAL FUND: The proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the Special Fund would benefit because workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

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

Two non-substantive changes were made to subsection (D)(1)(a) of the proposed amended rule. The word "Maximum" was deleted because the proposed amendments replace the maximum permissible specific retention with an authorized range of specific retention amounts, thereby rendering the word "Maximum" superfluous. Second, due to the deletion of the word "Maximum," which began the sentence, the word "retention" was capitalized.

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

No oral or written comments were submitted on this rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council

review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

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 amended rule does not require a permit.

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

The subject of the rulemaking, *i.e.*, retention and policy amounts for specific and aggregate excess insurance for a self-insurance pool under A.R.S. § 23-916.01, is a matter of state law. The Commission is not aware of any applicable federal law.

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

No

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

None

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 rule follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

R20-5-715. Aggregate and Specific Excess Insurance Policies

ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

R20-5-715. Aggregate and Specific Excess Insurance Policies

A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.

B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.

C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.

D. Policy and Retention Amounts.

1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
   a. ~~Maximum retention~~ Retention for specific excess insurance shall not be less than $100,000 nor exceed ~~$250,000~~$1,250,000 without advance written approval by the Commission. Specific excess insurance shall be provided to the statutory limit; and
   b. Maximum retention of aggregate excess insurance shall not exceed ~~110~~150% of collected premiums. Total aggregate insurance coverage shall not be less than ~~$5,000,000~~$1,000,000.
2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

RULE 715. AGGREGATE AND SPECIFIC INSURANCE POLICIES

1. Identification of the rulemaking:

Until 1997, Arizona law mandated that employers "secure workers' compensation to their employees" by either: (1) acquiring insurance from a carrier licensed to write workers' compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. *See* A.R.S. § 23-961(A). In 1997, the Arizona Legislature added "self-insurance pools" as a third mechanism for securing workers' compensation. *See* A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers' compensation pool to provide for the direct payment and administration of workers' compensation claims.

A.R.S. § 23-961.01(F) directs the Commission to "adopt rules necessary for safeguarding the solvency of [self-insurance] pools and guaranteeing that injured workers receive benefits required under [A.R.S. Title 23, Chapter 6, Workers' Compensation]." The rules "shall include, at a minimum, matters pertaining to [among other things] . . . specific and aggregate excess insurance . . . necessary for participation in and administration of the workers' compensation system." A.R.S. § 23-961.01(F).

"Specific excess insurance," in this context, refers to insurance coverage purchased from an insurer who will be liable for the payment of any amount of a particular workers' compensation claim in excess of a retained predetermined amount (the specific retention) paid directly by the self-insurance pool. Once a pool has paid the specific retention for a particular claim, the specific excess insurer would be obligated to pay all remaining amounts due on that claim (with no upper limit). Specific excess insurance mitigates a pool's risk resulting from any particular claim.

"Aggregate excess insurance," in this context, refers to coverage purchased from an insurer who will be liable for the payment of any amount of the aggregate of all a pool's workers'

compensation claims in excess of a retained predetermined amount (the aggregate retention) paid directly by the pool. Once the pool has paid the aggregate retention amount, the aggregate excess insurer would be obligated to pay all remaining claim liabilities on all claims (subject to policy limits). Aggregate excess insurance mitigates a pool's overall risk from all claims.

In 1998, following the enactment of A.R.S. § 23-961.01, the Commission adopted rules (Title 20, Chapter 5, Article 7) to implement the new legislation, including a rule (R20-5-715(D)) which established excess coverage and retention requirements for self-insurance pools. Specifically, the maximum permissible retention amounts were set at $250,000 (specific retention) and "110% of collected premiums" (for aggregate retention). The minimum aggregate insurance coverage limit was set at $5,000,000.

In 1998, when R20-5-715 was implemented, the excess insurance required by the rule was widely available in the insurance market at competitive prices. Today, however, Arizona employers have been effectively precluded from forming self-insurance pools because the required excess insurance products are either unavailable in the insurance market or are cost prohibitive. This is evidenced by the fact that no self-insurance pools under A.R.S. § 23-961.01 are currently in operation in Arizona. In short, the excess insurance requirements of R20-5-715(D) have become an impediment to the formation of self-insurance pools, frustrating the intent of A.R.S. § 23-961.01. The Commission seeks to remove these impediments by amending the rule to reflect present economic realities within the excess insurance industry.

The proposed amendments will allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In lieu of a maximum specific retention amount of $250,000, the proposed amendments authorize a range of specific retention amounts from $100,000 up to $1,250,000. In lieu of a maximum aggregate retention amount of "110% of collected premiums," the proposed amendments authorize a maximum aggregate retention amount of "150% of collected premiums." And in lieu of a minimum aggregate excess coverage limit of $5,000,000, the proposed amendment authorizes a minimum coverage amount of $1,000,000. Finally, the proposed amendments give the Commission flexibility to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Each of these proposed amendments seeks to ease the regulatory burden on employers who may be interested in

forming self-insurance pools by authorizing excess insurance products that are more accessible in the current insurance market and that are not cost prohibitive.

The proposed amendments are designed to make self-insurance pools a viable and cost-effective option for employers to provide workers' compensation to their employees. The proposed amendments will promote the statutory objectives of A.R.S. § 23-961.01(F), while continuing to ensure that self-insurance pools are financially able to provide for the payment and administration of workers' compensation claims.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

EMPLOYERS and EMPLOYEES: Arizona employers that participate in self-insurance pools under A.R.S. § 23-961.01 are the primary entities who will directly benefit from the proposed rulemaking. The proposed amendments ease the regulatory burden on employers who participate in self-insurance pools by authorizing excess insurance products that are cost-effective and more accessible in the current insurance market. The Commission anticipates that the proposed amendments will eliminate certain barriers to participating in self-insurance pools and, in effect, make self-insurance pools a viable option for some employers for securing workers' compensation. Arizona employers, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance.

In addition, incentivizing the use of self-insurance pools will indirectly benefit Arizona employers and employees. Similar to individual employers who self-insure, the Commission anticipates that employers who join self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. Consequently, increasing in the number of self-insurance pools will likely increase workplace safety and reduce the number of industrial injuries. Increased use of self-insurance pools will result in more-educated employers, more manageable workers' compensation programs, and an overall reduction in costs.

INSURERS: As a result of the proposed rulemaking, Arizona employers may elect to participate in a self-insurance pool in lieu of purchasing workers' compensation insurance under A.R.S. § 23-961(A)(1). A shift from workers' compensation insurance to self-insurance pools would result in a decrease in sales of workers' compensation insurance policies and an increase in sales of specific and aggregate excess insurance policies. Although some impact on the insurance

industry is expected, the Commission does not believe the impact of the proposed amendments will be significant for any particular insurance carrier.

SPECIAL FUND: The proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the Special Fund would benefit because workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

3. A cost benefit analysis of the following:

(a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission is the only state agency directly affected by the proposed rulemaking. In the event the proposed amendments increase the use of self-insurance pools, the Commission will be required to evaluate an increased number of pools pursuant to the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Furthermore, the Commission may be asked to approve deviations from the authorized specific excess insurance retention range, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). The Commission, however, does not anticipate that any new full-time employees will be necessary perform these administrative responsibilities.

Additionally, the proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking:

The Commission does not anticipate that the amended rule will impact political subdivisions. Workers' compensation pools for public agencies are governed by A.R.S. § 11-952.01 and Title 20, Chapter 5, Article 2 of the Arizona Administrative Code.

(c) Costs and benefits to businesses directly affected by the rulemaking:

As discussed above, the proposed amendments ease the regulatory burden on all employers who participate in self-insurance pools under A.R.S. § 23-961.01. Arizona businesses, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance. The Commission anticipates that the proposed amendments will make self-insurance pools a viable alternative for some employers for securing workers' compensation.

Moreover, the Commission anticipates that employers who join self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. As a result, an increase in the number of self-insurance pools will likely increase workplace safety and reduce the overall number of industrial injuries. Increased use of self-insurance pools will result in more-educated employers, more manageable workers' compensation programs, and an overall reduction in costs.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The Commission does not anticipate that the proposed amendments will impact employment in public agencies or political subdivisions. Workers' compensation pools for public agencies are governed by A.R.S. § 11-952.01 and Title 20, Chapter 5, Article 2 of the Arizona Administrative Code.

The Commission anticipates that the impact on private employment will be insignificant. Financial savings generated as a result of the proposed amendments for employers that elect to participate in a self-insurance pool could result in increases in private employment if employers redirect the savings towards employment.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

Any small business that qualifies as an employer under A.R.S. § 23-902 and elects to participate in a self-insurance pool under A.R.S. § 23-961.01 would be subject to the proposed amendments.

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

No administrative or other costs are directly associated with the proposed amendments. Although administrative and other costs are involved in forming a workers' compensation self-insurance pool and acquiring necessary excess insurance, those costs are attributable to the statutory and regulatory requirements of A.R.S. § 23-961.01 and Title 20, Chapter 5, Article 7 of the Arizona Administrative Code. The proposed amendments are intended to reduce costs associated with obtaining necessary excess insurance.

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

In the event a small business chooses not to participate in a self-insurance pool, the business will not be impacted by the proposed amendments. In the event a small business chooses to participate in a self-insurance pool, the business will benefit as a result of the proposed amendments. Because the proposed amendments will not negatively impact small businesses, the Commission has not considered methods to reduce the impact of the proposed amendments on small businesses.

(d) Probable cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

The Commission does not anticipate that private persons or consumers will be directly affected by the proposed amendments. At most, the Commission anticipates that employers who participate in self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. As a result, an increase in the number of self-insurance pools should lead to improvements in workplace safety and reduce the number of industrial injuries, thereby benefiting Arizona employees.

6. Probable effect on state revenues:

The Commission does not anticipate the proposed amendments will have any impact on state revenues.

7. Less intrusive or less costly alternative methods considered:

The Commission believes that the proposed amendments are the least intrusive and least costly method of making self-insurance pools under A.R.S. § 23-961.01 a more viable option for securing workers' compensation. The Commission did not consider alternative methods.

8. Data on which the rule is based:

No studies were performed to provide a basis for these rules and, therefore, no original empirical data exists. The Commission has explained the impact of the proposed amendments in qualitative terms.

R20-5-715. Aggregate and Specific Excess Insurance Policies

A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.

B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.

C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.

D. Policy and Retention Amounts.

1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
   a. Maximum retention for specific excess insurance shall not exceed $250,000. Specific excess insurance shall be provided to the statutory limit; and
   b. Maximum retention of aggregate excess insurance shall not exceed 110% of collected premiums. Total aggregate insurance coverage shall not be less than $5,000,000.
2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

23-961.01. Self-insurance pools

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.
2. Through the joint formation of a nonprofit corporation.
3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43.

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0103)

Title 2, Chapter 7, Article 1, General Provisions; Article 2, Procurement Organization; Article 3, Source Selection and Contract Formation; Article 4, Specifications; Article 5, Procurement of Construction and Specified Professional Services; Article 6, Contract Clauses; Article 7, Cost Principles; Article 9, Legal and Contractual Remedies; Article 10, Intergovernmental Procurement

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0103)**
Title 2, Chapter 7, Article 1, General Provisions; Article 2, Procurement Organization; Article 3, Source Selection and Contract Formation; Article 4, Specifications; Article 5, Procurement of Construction and Specified Professional Services; Article 6, Contract Clauses; Article 7, Cost Principles; Article 9, Legal and Contractual Remedies; Article 10, Intergovernmental Procurement

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This five-year-review report from the Arizona Department of Administration (Department) covers 137 rules in A.A.C. Title 2, Chapter 7, related to the State Procurement Office (SPO). SPO, a division of the Department, is the central procurement authority for the State of Arizona.

Article Contents

SPO's most recent rulemaking became effective in February 2015. The oldest rules covered in this report are from April 2006.

- Article 1, related to general provisions, contains three rules.
- Article 2, related to procurement organization, contains nine rules.
- Article 3, related to source selection and contract formation, is divided into seven parts. Part A, related to general provisions, contains one rule. Part B, related to competitive sealed bidding, contains 16 rules. Part C, related to competitive sealed proposals, contains 18 rules. Part D, related to procurements not exceeding the amount prescribed in A.R.S. § 41-2535, contains four rules. Part E, related to limited competition for procurements exceeding the amount prescribed in A.R.S. § 41-2535, contains three rules. Part F, related to the competitive selection process for services of clergy, physicians, dentists, legal counsel, or certified public accountants, contains ten rules. Part G, related to other source selection, contains five rules.
- Article 4, related to specifications, contains four rules.
- Article 5, related to procurement of construction and specified professional services, contains 11 rules.

- Article 6, related to contract clauses, contains eight rules.
- Article 7, related to cost principles, contains five rules.
- Article 9, related to legal and contractual remedies, is divided into four parts. Part A, related to protest of solicitations and contract awards, contains 12 rules. Part B, related to contract claims, contains five rules. Part C, related to debarments and suspensions, contains 11 rules. Part D, related to hearing procedures, contains two rules.
- Article 10, related to intergovernmental procurement, contains ten rules.

Proposed Action

The Department indicates that it is seeking stakeholder input on potential modifications to the definition of "procurement file" in Section 101(37). In addition, to comply with A.R.S. § 41-2612(2), the Department plans to develop rules that address "[v]endor performance and evaluation of past performance." Also, the Department intends to make clarifying changes to C309. Furthermore, the Department plans to amend Section A912 to changing the term "contested cases" to "appealable agency actions." The Department expects to submit a rulemaking to the Council in December 2017.

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 during the process of completing its February 2015 rulemaking, it received two written comments and four comments during an oral proceeding. Staff would note that, when it voted to approve the rulemaking, the Council was aware of the comments and the Department's responses. The written comments focused on proposed amendments to three sections:

- Section 101, definition of "procurement file": Comments related to the documents to be included in the file. The Department responded by removing the proposed changes to allow for further stakeholder discussion.

- Section A910, informal settlement conference: Comments related to conflicts of interests and the mandatory nature of the proposed settlement conference. The Department responded by modifying language to address the concerns.
- Section 1003, cooperative purchasing: The Department indicates that comments supported adoption of the rule to facilitate the use of cooperative purchasing by state agencies. There was concern, however, about creating a clear link between any new cooperative contracts and existing state contracts. In addition, comments expressed that the State Procurement Administrator should maintain responsibility in selecting the use of cooperative contracts available to an agency. The Department disagreed with those comments, that the rule delegates such authority to an agency's Chief Procurement Officer.

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

Yes. The Department cites to both general and specific authority for the rules. As general authority, the Department cites to A.R.S. § 41-2511(A), under which the Department "may adopt rules, consistent with this chapter [Title 41, Chapter 23, Arizona Procurement Code], governing the procurement and management of all materials, services and construction to be procured by this state and the disposal of materials." As specific authority, the Department cites to the entire Arizona Procurement Code.

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

Yes. The Department indicates that the rules are consistent with statutes and other rules.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates that it enforces the rules 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 101: The definition for "procurement file" should be revised.
- Section C309: In subsection (2)(a), "Resolicit for new offers" should be replaced with "Resolicit for new offers without canceling the solicitation under R2-7-C308". In subsection (2)(b), "Cancel the procurement" should be replaced with "Cancel the procurement under R2-7-C308".
- Section C316: The rule will be more clear, concise, and understandable once the Department develops rules, in compliance with A.R.S. § 41-2612(2), that address "[v]endor performance and evaluation of past performance."
- Section A912: The term "appealable agency actions" should be used instead of "contested cases."

8. Stringency of the Rules:

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

No. No federal laws directly correspond to the rules.

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

Not applicable.

9. For rules adopted after July 29, 2010:

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

The Department indicates that the rules do not 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 that in its 2011 report, changes to improve clarity were proposed to a number of rules. The Department completed the proposed actions in a rulemaking that became effective on January 7, 2013.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, to address issues identified in this report, the Department expects to submit a rulemaking to the Council in December 2017. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-1**

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

FROM: GRRC Economic Team

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0103)**
Title 2, Chapter 7, Article 1, General Provisions; Article 2, Procurement Organization; Article 3, Source Selection and Contract Formation; Article 4, Specifications; Article 5, Procurement of Construction and Specified Professional Services; Article 6, Contract Clauses; Article 7, Cost Principles; Article 9, Legal and Contractual Remedies; Article 10, Intergovernmental Procurement

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

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

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules in Articles 1 through 5 and Articles 7 through 10 contained in the five-year-review report.

SPO serves as the central procurement authority for the State of Arizona for more than 120 state agencies, boards, and commissions. The Department believes the economic impact has been as predicted for the rules.

There were no new costs to implementing agencies with the most recent rulemakings, as the revisions were primarily administrative in nature. The rules offer greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use for government agencies and suppliers, and increased access to procurement opportunities and information.

As of the last rulemaking, the annual total spent for state procurement contracts was approximately $ 4 billion. Of that amount, the percentage of limited and non-competitive procurements was 5% or $ 231 million. The percentage of purchases from existing state contracts was 52%. Additionally, the percentage of vendor submitted responses to solicitations has an additional increase of approximately 28% from the previous fiscal year.

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 impose the least burden and costs to persons regulated by the rules.

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, 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

October 28, 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 7 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 the procurement and management of all materials, services and construction to be procured by this state.

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 Barbara Corella, ADOA State Procurement Administrator at (602) 542-9136. 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,

Craig C. Brown
Director

cc: Barbara Corella, State Procurement Administrator

ADOA-SPO

State Procurement Office

FIVE-YEAR-REVIEW REPORT

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE

OCTOBER 2015

FIVE-YEAR REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 41-2511 authorizes the Director to adopt rules governing the procurement and management of all materials, services and construction to be procured by this state and the disposal of materials.

Arizona Administrative Code (A.A.C.) Title 2, Chapter 7, adopted effective April 3, 1985 and include Article 1, Sections R2-7-101 through 104; Article 2, Sections R2-7-201 through R2-7-203; Article 3, Sections R2-7-301 through R2-7-334, R2-7-336 through R2-7-370; Article 4, Sections R2-7-401 through R2-7-405, R2-7-407 through R2-7-411; Article 5, Sections R2-7-501, R2-7-503 through R2-7-515; Article 7, Section R2-7-701; Article 8, Sections R2-7-801 through R2-7-810; Article 9, Sections R2-7-901 through R2-7-937; Article 10, Sections R2-7-1001 through R2-7-1008, inclusive.

The Department conducted a five-year review of the rules that was approved by GRRC Council on April 3, 2001. The five-year review approved by Council during that time concluded that a course of action was needed for the rules. Following the five-year review, the Department undertook a lengthy and comprehensive rulemaking that included all stakeholders who wanted to participate in this process. This rulemaking was a complete overhaul of the procurement section that resulted in greater organization, understanding and clarity of the procurement rules for both the private and public sectors. Council approved the amendments for final rulemaking on February 7, 2006. The approved rules were published in the Register on March 31, 2006 and adopted effective April 8, 2006.

The Department conducted another five-year review of the rules that was approved by GRRC Council on February 1, 2011. The five-year review was approved by Council with a no action recommendation. The Department prepared rulemaking to address issues identified in the five-year review as well as other changes to improve processes. Council approved the Notice of Final Rulemaking on November 6, 2012. The approved rules were published in the Register on November 30, 2012 and adopted effective January 7, 2013.

In September 2013, the Department issued a Notice of Rulemaking Docket Opening to address recent statutory changes made by Laws 2013, Ch. 190 (HB2599). Discussions were held with all stakeholders who wanted to participate in the process. This rulemaking process included modifications to increase goals set forth for small business purchase and further defined the actions available for cooperative purchasing. Other changes were made to improve processes and increase efficiency and transparency in public procurement. Council approved the amendments for final rulemaking on December 2, 2014. The approved rules were published in the Register on December 19, 2014 and adopted effective February 2, 2015.

During this Five-Year Rules review, the Department plans to conduct future discussions with interested stakeholders to modify the definition of "procurement file" in R2-7-101(37). In addition, the Department plans to develop rules in compliance with A.R.S. § 41-2612(2), vendor performance and evaluation of past performance. The Department also discovered some minor, non-substantive issues with the rules concerning clarity, conciseness, and understandability and will be addressed in a future rulemaking.

INFORMATION IDENTICAL FOR ALL RULES

1. Authorization of rule by existing statute

General authority: A.R.S. §41-2511(A)

Specific authority: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2517, 41-2531 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2583, 41-2585 through 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662, and 41-2671 through 41-2673

3. Analysis of effectiveness in achieving the objective

The rules have effectively allowed the Department to administer the procurement code for more than 120 state agencies, boards and commissions. The rules offer greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use for government agencies and suppliers, and increased access to procurement opportunities and information.

4. Analysis of consistency with referenced state and federal statutes and rules

A.R.S. §41-2511 authorizes the Director to adopt rules consistent with this chapter, governing the procurement and management of all materials, services and construction procured by this state and the disposal of materials. The rules in Articles 1 through 7 and 9 through 13 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The Department is currently enforcing the rules. Under A.R.S. § 41-2511, the State Procurement Office (SPO) has served as the central procurement authority for state agencies, boards and commissions. In this role, SPO administers the enforcement of the Arizona Procurement Code, applicable Executive Orders and SPO policies and procedures for approximately 120 state agencies, boards and commissions.

The State Procurement Office (SPO) is entrusted with the responsibility of delegating procurement authority and monitoring procurement compliance of state governmental units. Because of Laws 2013, Ch. 190 (HB2599, procurement reform), SPO has modified several agencies' procurement delegation so that all agency procurement delegations fall within three designations: $10,000, $100,000 or unlimited. When considering procurement authority delegation dollar limits and other restrictions, SPO reviews the agency's procurement history and future needs, as well as an agency's procurement training and experience.

Furthermore, as part of procurement reform, SPO implemented a robust compliance review program. In the past two years, the SPO compliance unit developed a new compliance review program, conducted procurement performance reviews of seven state agencies and reviewed agency control self-assessments of 12 state agencies. Finding and recommendations have been issued to appropriate agencies to ensure their compliance with State procurement laws.

7. <u>Summary of the written criticisms of the rule received within the last five years</u>

The Department was contacted by two law firms with written comments regarding an earlier rulemaking. Additionally, an oral proceeding was held and four individuals offered comments on the proposed rulemaking. Comments focused on proposed rule changes in three sections:

- R2-7-101, Definition of "procurement file"

  Comments regarding the procurement file related to the documents to be included in the file, The Department's response was to remove the proposed changes to the definition to allow for further stakeholder discussion.

- R2-7-A910, Informal settlement conference

Comments on the conflict of interest and the mandatory nature of the proposed settlement conference concerned the stakeholders. The Department modified the informal settlement conference language to address the concerns.

- R2-7-1003, Cooperative purchasing

  Although the written comments supported the adoption of the rule to facilitate the use of cooperative purchasing by state agencies, the concern was to create a clear link between any new cooperative contracts and existing state contracts. Written comments also expressed concern that the State Procurement Administrator maintains the responsibility in selecting the use of cooperative contracts available to an agency, as well as other grammatical changes.

  The Department modified the proposed language to include the grammatical changes. The Department did not accept the proposal that the State Procurement Administrator maintain the authority in review and selection of cooperative contracts. The rule delegates the authority to the agency Chief Procurement Officer.

8. <u>Analysis of estimated economic, small business, and consumer impact comparison</u>

The last rule changes became effective on February 2, 2015, which included an economic, small business and consumer impact statement. The parties affected by the last rulemaking included state government officials and managers, state government procurement employees, suppliers including small businesses and non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties and school districts.

The benefits of the rulemaking were greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small businesses, improved understanding and ease of use of rules for government agencies and suppliers, and more open access to procurement opportunities and information.

There were no new costs to implementing agencies, as the revisions were primarily administrative in nature. The changes were communicated through the State Procurement Office's website in addition to email to agency procurement officials. Benefits included updated procurement practices for state government in addition to clarity in the rules that govern agency procurement practices. No new employees were required to implement and enforce the rules.

Small businesses subject to the rulemaking, including suppliers and minority and women-owned businesses, benefited from more open access to contracting opportunities with the state. In addition, the changes provided increased direct access to small dollar purchasing opportunities.

9. Summary of business competitiveness analysis of the rules

None

10. Status of the completion of action indicated in the previous five-year review report

In the Department's 2011 five-year review the department identified minor, non-substantive changes to the rules to improve clarity. The Department prepared a rulemaking to address the changes. The agency received no written comments regarding the rulemaking. Council approved the amendments for final rulemaking on November 6, 2012. The approved rules were published in the Register on November 30, 2012 and adopted effective January 7, 2013.

12. Analysis of stringency compared to federal laws

There is no corresponding federal law that is applicable. The rules are promulgated under state law.

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

The rules were adopted before July 29, 2010, and do not require the issuance of a regulatory permit or license.

14. Proposed course of action

The Department will continue to work with agency customers to ensure that the rules not only meet the objectives of the Department, but also consider the needs of agencies, boards and commissions of the state to procure materials needed for these entities to carry out their agency missions.

The Department plans to continue discussions with interested stakeholders to review and potentially modify the definition of "procurement file" in R2-7-101(37). In addition, the Department plans to develop rules in compliance with A.R.S. § 41-2612(2), vendor performance and evaluation of past performance. The Department and SPO will ensure the procurement process is competitive and fair for all vendors doing business with the state.

In addition, the Department plans to further clarify R2-7-C309(2)(a) by changing "Resolicit for new offers" to "Resolicit for new offers without canceling the solicitation under R2-7-C308." R2-7-C309(2)(b) will be changed from "Cancel the procurement" to "Cancel the procurement under R2-7-C308." Also, the Department plans to amend R2-7-A912 to clarify further by changing "contested cases" to "appealable agency actions."

The Department will continue to review the rules while closely monitoring state and federal legislation and Executive Orders and expects to submit a rules package in December of 2017.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 1. GENERAL PROVISIONS

R2-7-101 Definitions

2. <u>Objective</u>

The objective of the rule is to define terms used throughout this chapter relating to procurement.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the rule could be improved upon if the definition for "procurement file" were revised and any definition referencing another title and chapter were consistent with the expressed definition in that chapter. The Department continues to meet with interested stakeholders on a new definition for "procurement file" and will continue to refine the definitions within its rules for consistency.

11. <u>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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-102 Written Determinations

2. <u>Objective</u>

The objective of the rule is to stipulate what a chief procurement officer shall do if a written determination is required and the record keeping requirements for that.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-103 Confidential Information

2. <u>Objective</u>

The objective of the rule is to outline the protocol for a Chief Procurement Officer in determining whether or not specific information is confidential in nature.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 2. PROCUREMENT ORGANIZATION

R2-7-201 State Procurement Administrator: Duties and Qualifications

2. <u>Objective</u>

The objective of the rule is to allow the director to hire a State Procurement Administrator with the appropriate qualifications and outlines the duties of the State Procurement Administrator.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-202 Delegation of Procurement Authority to State Governmental Units

2. <u>Objective</u>

The objective of the rule is to allow the State Procurement Administrator to delegate procurement authority to Chief Procurement Officers in governmental units and includes outlined criteria for doing so.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-203 Agency Chief Procurement Officer

2. <u>Objective</u>

The objective of the rule is to allow the agency Chief Procurement Officer to further delegate procurement authority within the purchasing agency.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-204 State Employee or Public Officer Use of State Contracts

2. <u>Objective</u>

The objective of the rule is to stipulate that state employees or public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-205 Procurement Requests by Purchasing Agencies

2. <u>Objective</u>

The objective of the rule is to stipulate that a purchasing agency must submit a purchasing request in writing to the procurement officer if the purchase is necessary.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-206 Authorized Procurement Officers

2. <u>Objective</u>

The objective of the rule is to state that a procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer and in accordance with this chapter.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-207 Resolution of Intra-agency Procurement Disputes

2. <u>Objective</u>

The objective of the rule is to require the State Procurement Administrator to resolve all disputes between a purchasing agency and its Chief Procurement Officer.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-208 Authorization of Electronic Transactions

2. <u>Objective</u>

The objective of the rule is to allow the use of electronic transactions, but allows discretion in limiting the use of them based on consideration of what is in the best interest of the state.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-209 Prospective Suppliers List

2. <u>Objective</u>

The objective of the rule is to compile and maintain a prospective suppliers list, but also allows the State Procurement Administrator to remove suppliers from the list.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

R2-7-301 – R2-7-370 Repealed

PART A. GENERAL PROVISIONS

R2-7-A301 Source Selection Method: Determination Factors

2. <u>Objective</u>

The objective of the rule is to stipulate the source selection method and the determination factors to follow in awarding a contract.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART B. COMPETITIVE SEALED BIDDING

R2-7-B301 Solicitation

2. <u>Objective</u>

The objective of the rule is to outline the process and guidelines in issuing a solicitation for bids.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B302 Pre-offer Conferences

2. Objective

The objective of the rule is to conduct one or more pre-offer conferences and outlines the guidelines for conducting a conference.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B303 Solicitation Amendment

2. Objective

The objective of the rule is to issue a solicitation amendment and includes the responsibilities for both the agency Chief Procurement Officer and the offeror for this process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B304 Modification or Withdrawal of Offer Before Offer Due Date and Time

2. <u>Objective</u>

The objective of the rule is to allow the offeror to modify or withdraw its offer in writing before the offer due date and time and requires the agency Chief Procurement Officer to record this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B305 Cancellation of a Solicitation Before Offer Due Date and Time

2. <u>Objective</u>

The objective of the rule is to allow for the cancellation a solicitation before the offer due date and time if in the best interest of the state and provides additional guidelines for the agency Chief Procurement Officer for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B306 Receipt, Opening, and Recording of Offers

2. <u>Objective</u>

The objective of the rule is to prescribe the process for receipt, opening, and recording of offers.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B307 Late Offers, Modifications, Withdrawals

2. <u>Objective</u>

The objective of the rule is to outline the process for late offers, modifications and withdrawals.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B308 Cancellation of Solicitation After Receipt of Offers and Before Award

2. <u>Objective</u>

The objective of the rule is to allow for cancellation of a solicitation after the offer due date and time if in the best interest of the state and in addition, provides guidelines for an agency Chief Procurement Officer on this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B309 One Offer Received

2. <u>Objective</u>

The objective of the rule is to provide discretionary guidelines in awarding or rejecting the one offer that is received in response to a solicitation.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B310 Offer Mistakes Discovered After Offer Opening and Before Award

2. Objective

The objective of the rule is to provide guidelines and procedures to follow in the event a mistake is discovered after offer opening and before award.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B311 Extension of Offer Acceptance Period

2. Objective

The objective of the rule is to outline the procedures to extend the offer acceptance period and describes the responsibilities of the offeror in this process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B312 Bid Evaluation

2. <u>Objective</u>

The objective of the rule is to provide direction when evaluating offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B313 Responsibility Determinations

2. <u>Objective</u>

The objective of the rule is to determine before an award whether an offeror is responsible or nonresponsible and outlines the factors for making the determination.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B314 Contract Award

2. <u>Objective</u>

The objective of the rule is to provide the procedures to follow after awarding a contract.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B315 Mistakes Discovered After Award

2. <u>Objective</u>

The objective of the rule is to describe the procedures when mistakes are discovered after the award of a contract and outlines the responsibilities of the offeror in this process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B316 Multistep Sealed Bidding

2. <u>Objective</u>

The objective of the rule is to describe the procedures when using multistep sealed bidding and provides the guidelines for this procurement action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART C. COMPETITIVE SEALED PROPOSALS

R2-7-C301 Solicitation

2. <u>Objective</u>

The objective of the rule is to outline the process and guidelines when issuing a solicitation for competitive sealed proposal.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C302 Pre-offer Conferences

2. <u>Objective</u>

The objective of the rule is to allow for one or more pre-offer conferences and outlines the guidelines for conducting a conference in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C303 Solicitation Amendment

2. <u>Objective</u>

The objective of the rule is to allow for a solicitation amendment and includes the responsibilities for both the agency Chief Procurement Officer and the offeror in a competitive sealed bidding process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C304 Modification or Withdrawal of Offer Before Offer Due Date and Time

2. <u>Objective</u>

The objective of the rule is to allow the Offeror to modify or withdraw its offer in writing before the offer due date and time and requires the agency Chief Procurement Officer to record this action within a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C305 Cancellation of Solicitation Before Offer Due Date and Time

2. <u>Objective</u>

The objective of the rule is to allow a solicitation to be canceled before the offer due date and time if in the best interest of the state and provides additional guidelines on the agency Chief Procurement Officer for a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C306 Receipt, Opening, and Recording of Offers

2. <u>Objective</u>

The objective of the rule is to prescribe the process for receipt, opening, and recording of offers by the agency Chief Procurement Officer during a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C307 Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

2. <u>Objective</u>

The objective of the rule is to outline the process an agency Chief Procurement Officer must follow for late offers, modifications and withdrawals in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C308 Cancellation of Solicitation After Offer Opening and Before Award

2. <u>Objective</u>

The objective of the rule is to allow for cancellation of a solicitation after offer due date and time if in the best interest of the state and in addition, provides guidelines for an agency Chief Procurement Officer in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C309 Only One Offer Received

2. <u>Objective</u>

The objective of the rule is to provides discretionary guidelines in awarding or rejecting the one offer that is received in response to a solicitation in a competitive sealed proposal process.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the rule could be improved upon if the rule were revised:

(2)(a): Remove "Resolicit for new offers" and replace with "Resolicit for new offers without canceling the solicitation under R2-7-C308"

(2)(b): Remove "Cancel the procurement; or" and replace with "Cancel the procurement under R2-7-C308"

11. <u>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</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C310 Extension of Offer Acceptance Period

2. Objective

The objective of the rule is to provides guidelines and procedures in the event a mistake is discovered after offer and before award in a competitive sealed proposal process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C311 Determination of Non Susceptible for Award

2. Objective

The objective of the rule is to outline procedures to extend the offer acceptance period and describes the responsibilities of the offeror in a competitive sealed proposal process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C312 Responsibility Determinations

2. <u>Objective</u>

The objective of the rule is to provide direction when evaluating offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation and describes the procedures for the agency Chief Procurement Officer in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C313 Clarification of Offers

2. <u>Objective</u>

The objective of the rule is to request clarifications from offerors and outlines the procedures for an agency Chief Procurement Officer in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C314 Negotiations with Responsible Offerors and Revisions of Offers

2. <u>Objective</u>

The objective of the rule is to establish procedures and schedules for conducting negotiations and prescribes the process for that.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C315 Offer Revisions and Best and Final Offers

2. <u>Objective</u>

The objective of the rule is to request written proposal revisions and requires written best and final offers from any offeror with whom negotiations have been conducted and provides guidelines should a mistake be discovered relevant to the award determination.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C316 Evaluation of Offers

2. <u>Objective</u>

The objective of the rule is to describe the guidelines an agency Chief Procurement Officer can conduct in evaluating offers based on the evaluation criteria contained in the request for proposals.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the Department plans to develop rules in compliance with A.R.S. § 41-2612(2), vendor performance and evaluation of past performance.

11. <u>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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C317 Contract Award

2. <u>Objective</u>

The objective of the rule is to provide procedures to follow after awarding a contract in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C318 Mistakes Discovered After Award

2. <u>Objective</u>

The objective of the rule is to describe the procedures when mistakes are discovered after the award of a contract and outlines the responsibilities of the offeror in a competitive sealed proposal process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-D301 Applicability

2. <u>Objective</u>

The objective of the rule is to allows an agency Chief Procurement Officer to issue a request for quotation under R2-7-D302 for purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, and outlines criteria that would disallow this action.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-D302 Solicitation – Request for Quotation

2. Objective

The objective of the rule is to request a quotation for purchases that exceed $10,000 but that are less than the amounts specified in A.R.S. § 41-2535 and stipulates what criteria the agency Chief Procurement Officer shall include in the solicitation.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-D303 Contract Award

2. Objective

The objective of the rule is to provide procedures after awarding a contract for procurements not exceeding the amount prescribed in A.R.S. § 41-2535.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-D304 Purchases of $10,000 and Less

2. <u>Objective</u>

The objective of the rule is to use reasonable judgment in awarding contracts of $10,000 and less that are advantageous to the state.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-E301 Sole Source Procurements

2. <u>Objective</u>

The objective of the rule is to define the term "sole-source procurement" to mean a material or service procured without competition and lists the conditions for sole source procurements.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-E302 Emergency Procurements

2. Objective

The objective of the rule is to define the term "*emergency*" to mean any condition creating an immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods and outlines the procedures for such an action.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-E303 Competition Impracticable Procurements

2. Objective

The objective of the rule is to define the term "*competition impracticable*" to mean a procurement requirement exists which makes compliance with A.R.S. §§ 41-2535, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS

R2-7-F301 Statement of Qualifications

2. Objective

The objective of the rule is to request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form and describes the criteria for what limited information can be included in this action.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F302 Solicitation

2. Objective

The objective of the rule is to mandates that the agency procurement officer shall comply with Part D of this Article for procurements not exceeding the amount prescribed in A.R.S. § 41-2536 and prescribes guidelines the procurement officer must follow for

procurements exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized in A.R.S. §§ 41-2536 or 41-2537.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F303 Solicitation Amendment

2. <u>Objective</u>

The objective of the rule is to issue a solicitation amendment and outlines the procedures for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F304 Cancellation of Solicitation

2. <u>Objective</u>

The objective of the rule is to cancel a solicitation at any time before an award based on the best interest of the state and outlines the procedures for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F305 Receipt, Opening, and Recording of Offers

2. <u>Objective</u>

The objective of the rule is to prescribe the responsibilities in receipt, opening, and recording of offers for each solicitation.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F306 Timely and Late Modifications or Withdrawals of Offer

2. <u>Objective</u>

The objective of the rule is to outline the process to follow for timely and late modifications or withdrawals and the conditions for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F307 Late Offers

2. <u>Objective</u>

The objective of the rule is to reject an offer received after the specified offer due date and time when a specified offer due date and time has been identified in the solicitation.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F308 Negotiations with Offers

2. <u>Objective</u>

The objective of the rule is to conduct negotiations with any or none of the offerors and prescribes the guidelines for this action.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F309 Contract Award

2. Objective

The objective of the rule is to award the contract to the offeror best qualified based on evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable and includes criteria that the procurement officer must follow in making an award.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-F310 Mistakes Discovered After Award

2. Objective

The objective of the rule is to describe procedures to follow when mistakes are discovered after the award of a contract and outlines the responsibilities of the offeror in requesting in writing correction or withdrawal in of an offer.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART G. OTHER SOURCE SELECTION

R2-7-G301 Request for Information

2. Objective

The objective of the rule is to issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes and lists the stipulations for this action.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-G302 Demonstration Projects

2. Objective

The objective of the rule is to mandate that an agency Chief Procurement Officer must submit a written request to the State Procurement Administrator to award a contract for a demonstration project and prescribes the criteria that the written request must contain.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

11. <u>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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-G303 Unsolicited Proposals

2. <u>Objective</u>

The objective of the rule is to describe what an unsolicited proposal is and the procedures for an offeror to submit this type of proposal.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-G304 General Services Administration Contracts

2. <u>Objective</u>

The objective of the rule is to purchase products or services using General Services Administration (GSA) schedules or contracts and outlines the conditions for doing this.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-G305 Public-Private Partnership Contracts

2. Objective

The objective of the rule is to state what a public-private partnership contract is as referenced in this Article and outlines the guidelines that the agency Chief Procurement Officer must follow in submitting this request.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 4. SPECIFICATIONS

R2-7-401 Preparation of Specifications

2. Objective

The objective of the rule is to stipulate that state government units are permitted to prepare and utilize specifications only as authorized by the State Procurement Administrator under R2-7-202 and outline the guidelines for this process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-402 Utilization of Specifications

2. **Objective**

The objective of the rule is to outline the use of specifications and must seek approval from the State Procurement Administrator for proprietary or restrictive specifications.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-403 Determination for Use of Brand Name Type Specifications

2. **Objective**

The objective of the rule is to authorize the use of a brand name only specification and outlines the guidelines an agency Chief Procurement Officer must follow.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-404 Conflict of Interest

2. Objective

The objective of the rule is to state that no person preparing or assisting in the preparation of a solicitation or scope of work may receive any direct benefit from those specifications or scope of work.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-405 – R2-7-411 Repealed

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

R2-7-501 Procurement of Specified Professional and Construction Services

2. Objective

The objective of the rule is to prescribe that an agency Chief Procurement Officer shall procure specified professional services as defined in A.R.S. §§ 41-2578, 41-2579, or 41-2581 and outlines the procedures for this process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-502 Compliance with the Department

2. <u>Objective</u>

The objective of the rule is to require a purchasing agency to comply with the procurement requirements of the Department as mandated by A.R.S. § 41-790 et seq.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-503 Procurement of Construction Using Alternate Project Delivery Method

2. <u>Objective</u>

The objective of the rule is to allow for use of an alternate project delivery method if it is determined to be in the best interest of the state and outlines the factors for justifying this process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-504 Notice

2. <u>Objective</u>

The objective of the rule is to provide a copy of a solicitation for specified professional services or construction services to any person requesting a copy and provides guidelines for agency procurement officers to follow based on procurement amounts.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-505 Selection Committee

2. <u>Objective</u>

The objective of the rule is to appoint a selection committee when required under A.R.S. §§ 41-2578, 41-2579, or 41-2581 and provides guidelines for agency procurement officers to follow on procurement amounts.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-506 Bid Security

2. <u>Objective</u>

The objective of the rule is to require bid security requirements of A.R.S. § 41-2573 in the solicitation and provides specific guidelines to follow for this process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-507 Offer Mistakes Discovered After Offer Opening and Before Award

2. <u>Objective</u>

The objective of the rule is to provide guidelines and procedures for both the agency chief procurement officer and the offeror to follow in the event a mistake is discovered after offer and before award.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-508 Performance and Payment Bonds

2. Objective

The objective of the rule is to ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R. S. Title 20, Chapter 2, Article 1 and in a format prescribed in A.R.S. § 41-2574. The rule also stipulates that the contractor shall show proof of the bond when requested by the agency Chief Procurement Officer.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-509 Conditions for Use of Substitute Security in Lieu of Retention

2. Objective

The objective of the rule is to allow a substitute security rather than contract payment retention and outlines the conditions that the contractor must adhere to for this action.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

11. <u>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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-510 The Form of Substitute Security in Lieu of Retention

2. <u>Objective</u>

The objective of the rule is to accept a substitute security from a contractor if the conditions identified under R2-7-506 are met and lists the options that allow this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-511 Individual Job Order Contracting

2. <u>Objective</u>

The objective of the rule is to award individual job order contracts and prescribes guidelines for this action.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-512 – R2-7-515 Repealed

ARTICLE 6. CONTRACT CLAUSES

R2-7-601 Contract Clauses

2. Objective

The objective of the rule is to include all contract clauses in solicitations and contracts necessary to ensure the state's interests are addressed.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-602 Assignment of Rights and Duties

2. Objective

The objective of the rule is to state that a contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency Chief Procurement Officer.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-603 Change of Name

2. **Objective**

The objective of the rule is to amend the name of a contractor holding a state contract and stipulates the guidelines for this action.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-604 Contract Change Orders and Amendments

2. **Objective**

The objective of the rule is to provide guidelines in conducting contract change orders and amendments.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-605 Multi-term Contracts

2. Objective

The objective of the rule is to outline the conditions and guidelines for an agency Chief Procurement Officer to solicit and award multi-term contracts.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-606 Terms and Conditions

2. Objective

The objective of the rule is to publish terms and conditions for use in solicitations and contracts.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-607 Mandatory Statewide Contracts

2. <u>Objective</u>

The objective of the rule is to require mandatory use of statewide contracts for all state governmental units.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-608 Multiple Source Contracts

2. <u>Objective</u>

The objective of the rule is to limit the award of contracts to the least number of suppliers necessary to meet the requirements of the state.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 7. COST PRINCIPLES

R2-7-701 Cost principles

2. <u>Objective</u>

The objective of the rule is to set forth that the cost principles in the Code of Federal Regulations, 48 CFR 31 (September 2001) must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-702 Determination of Fair and Reasonable Price

2. <u>Objective</u>

The objective of the rule is to prescribe guidelines and conditions to follow in determination of fair and reasonable price for contracts and contract modifications.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-703 Submission and Certification of Cost or Pricing Data

2. <u>Objective</u>

The objective of the rule is to prescribe the requirements for the offeror or contractor in submission and certification of cost or pricing data.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-704 Refusal to Submit Cost or Pricing Data

2. <u>Objective</u>

The objective of the rule is to describe the penalties for an offeror or contractor who refuses to submit cost or pricing data as required by an agency Chief Procurement Officer.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-705 Defective Cost or Pricing Data

2. <u>Objective</u>

The objective of the rule is to provide guidelines to follow in the event defective cost or pricing data is found.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 8. TRANSFERRED

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

R2-7-901 – R2-7-937 Repealed

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A901 Protest of Solicitations and Contract Awards

2. <u>Objective</u>

The objective of the rule is to outline procedures and guidelines for any interested party to protest solicitations or contract awards.

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 rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to</u>

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

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A902 Stay of Procurements During the Protest

2. Objective

The objective of the rule is to outline procedures to follow for stay of procurements during the protest of a solicitation or contract award.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A903 Resolution of Solicitation and Contract Award Protests

2. Objective

The objective of the rule is to resolve a protest and provides the guidelines to be followed for the resolution of solicitation and contract award protests.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A904 Remedies by the Agency Chief Procurement Officer

2. <u>Objective</u>

The objective of the rule is to offer an appropriate remedy and provide the conditions the agency Chief Procurement Officer must follow in conducting this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A905 Appeals to the Director

2. <u>Objective</u>

The objective of the rule is to allow any interested party to appeal the decision of an agency Chief Procurement Officer and outlines the timeframe and procedures for this process.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A906 Notice of Appeal to the Director

2. <u>Objective</u>

The objective of the rule is to promptly provide notice of the appeal to all offerors and furnish copies as required by R2-7-101.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A907 Stay of Procurement During Appeal to Director

2. <u>Objective</u>

The objective of the rule is to prescribe the process for a stay of procurement during an appeal to the Director.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A908 Agency Report

2. <u>Objective</u>

The objective of the rule is to outline guidelines and process in filing a complete agency report on the appeal with the Director.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A909 Remedies by the Director

2. <u>Objective</u>

The objective of the rule is to implement remedies on an appeal.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A910 Informal Settlement Conference

2. <u>Objective</u>

The objective of the rule is to hold an informal settlement conference prior to a final administrative decision.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A911 Dismissal Before Hearing

2. <u>Objective</u>

The objective of the rule is to dismiss an appeal before a hearing based on specific criteria outlined and requires the Director to properly notify interested parties on this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-A912 Hearing

2. <u>Objective</u>

The objective of the rule is to resolve appeals of solicitation or contract award decisions as appealable agency actions under A.R.S. § 41-1092.07.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. However, the rule could be improved upon if the rule were revised to use the term "appealable agency actions" instead of "contested cases."

11. <u>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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART B. CONTRACT CLAIMS

R2-7-B901 Controversies Involving Contract Claims Against the State

2. <u>Objective</u>

The objective of the rule is to allow a claimant to file a contract claim and prescribe the procedures for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B902 Agency Chief Procurement Officer's Decision

2. <u>Objective</u>

The objective of the rule is to prescribe procedures to follow in the event a claim cannot be resolved.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B903 Issuance of a Timely Decision

2. <u>Objective</u>

The objective of the rule is to require a timely decision on a contract claim.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B904 Appeals and Reports to the Director

2. <u>Objective</u>

The objective of the rule is to allow a claimant to appeal to the Director and prescribes the procedures for both the claimant and the Director for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-B905 Controversies Involving State Claims Against the Contractor

2. <u>Objective</u>

The objective of the rule is to prescribe procedures to follow in the event a claim cannot be resolved with a contractor.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART C. DEBARMENTS AND SUSPENSIONS

R2-7-C901 Authority to Debar or Suspend

22. <u>Objective</u>

The objective of the rule is to authorize the Director to debar or suspend a person from participating in state procurement.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C902 Initiation of Debarment

2. <u>Objective</u>

The objective of the rule is to prescribe the steps the Director must follow for the initiation of a debarment.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C903 Period of Debarment

2. <u>Objective</u>

The objective of the rule is to outline the period of debarment that the Director must follow for specific circumstances.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C904 Notice of Debarment and Hearing

2. <u>Objective</u>

The objective of the rule is to prescribe the notification procedures that the Director must conduct for a debarment and hearing.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C905 Imputed Knowledge

2. <u>Objective</u>

The objective of the rule is to stipulate the actions the Director can follow for imputed knowledge regarding a debarment.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C906 Reinstatement

2. <u>Objective</u>

The objective of the rule is to reinstate or rescind a debarment at any time and outlines the process for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C907 Limited Participation

2. <u>Objective</u>

The objective of the rule is to allow a debarred person to participate on a limited basis with state procurement during the debarment period.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C908 Suspension

2. <u>Objective</u>

The objective of the rule is to suspend a person from receiving any award and outlines the criteria the Director must follow in this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C909 Period and Scope of Suspension

2. <u>Objective</u>

The objective of the rule is to prescribe the period and scope of suspension by the Director.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C910 Notice, Hearing, Determination, and Appeal

2. <u>Objective</u>

The objective of the rule is to outline the process on notice, hearing, determination, and appeal for the person suspended.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-C911 Master List

2. <u>Objective</u>

The objective of the rule is to maintain a master list of debarments and prescribe the items that must be included in this list.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

PART D. HEARING PROCEDURES

R2-7-D901 Hearings

2. <u>Objective</u>

The objective of the rule is to refer a qualified hearing to the Office of Administrative Hearings.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-D902 Rehearing of Director's Decision

2. <u>Objective</u>

The objective of the rule is to allow any person or an agency Chief Procurement Officer to file a written request for a rehearing to the Director.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

R2-7-1001 Approval to Enter into a Cooperative Purchasing Agreement

2. <u>Objective</u>

The objective of the rule is to seek approval to enter into a cooperative purchasing agreement.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1002 Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer

2. <u>Objective</u>

The objective of the rule is to prescribe the conditions to follow in order to enter into a cooperative purchasing agreement.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1003 Purchasing From a Cooperative Contract

2. <u>Objective</u>

The objective of the rule is to prescribe the conditions to follow to purchase from a cooperative contract.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1004 Establishment of a Committee as Required by A.R.S. § 41-2636

2. <u>Objective</u>

The objective of the rule is to establish a committee and outlines the make-up of the committee, meeting requirements to be certified as a non-profit agency for disabled individuals.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1005 Certification as Non-Profit Agency for Disabled Individuals

2. <u>Objective</u>

The objective of the rule is to require a non-profit agency for disabled individuals to seek written approval from the committee to be certified as such.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1006 Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

2. Objective

The objective of the rule is to require a non-profit agency for disabled individuals to apply for approval and prescribes what information must be included on the application to be considered.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1007 Approval of Specific Materials or Services for Set-aside Use

2. Objective

The objective of the rule is to require ACI (Arizona Correctional Industries), AIB (Arizona Industries for the Blind), and CNAID (Certified Non-Profit Agency that Serves Individuals with Disabilities) to submit specific information that is requested for approval of specific materials or services for set-aside use.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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 rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1008 Contract Awards Directed by the Committee

2. <u>Objective</u>

The objective of the rule is to enter into a contract as directed by the committee and prescribes the criteria for contracts to be renewed.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1009 Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

2. <u>Objective</u>

The objective of the rule is to stipulate that competition is not required by statute to enter into a contract for a material or service that is offered from a set-aside agency and also sets a time limit on the contract award.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

R2-7-1010 Set-aside Application Dispute Process

2. <u>Objective</u>

The objective of the rule is to allow any interested party to dispute any committee decision and outlines the process for this action.

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 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</u>

The rule imposes the least burden on stakeholders necessary to achieve the rule's objectives.

ARTICLE 11. RESERVED

ARTICLE 12. RESERVED

ARTICLE 13. REPEALED

R2-7-1301 Repealed

A COPY OF THE RULES BEING REVIEWED

A.A.C. Title 2, Chapter 7

Arizona Department of Administration

State Procurement Office

Articles 1-13

R2-7-101. Definitions

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and this Chapter.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
9. "Bid" means an offer in response to solicitation.
10. "Bidder" means "offeror" as defined in R2-7-101(34).
11. "Brand name or equivalent specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. "Clergy" includes the same persons described in A.R.S. §32-3271(A)(3).
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.

16. “Cost data” means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. “Cost-plus-a-percentage-of-cost contract” means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. “Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. “Debarment” means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. “Defective data” means data that is inaccurate, incomplete, or outdated.
21. “Dentist” means a person licensed under A.R.S. Title 32, Chapter 11.
22. “Descriptive literature” means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. “Eligible procurement unit” means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41-2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. “Filed” means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
25. “Finished goods” means units of a manufactured product awaiting sale.
26. “Force account” as used in A.R.S. § 41-2572, means work performed by the state’s regularly employed personnel.
27. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
28. “In writing” has the same meaning as “written” or “writing” in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
29. “Interested party” means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
30. “Legal counsel” means a person licensed as an attorney by the Arizona Supreme Court.
31. “May” means something is permissive.

32. “Negotiation” means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
33. “Offer” means a response to a solicitation.
34. “Offeror” means a person who responds to a solicitation.
35. “Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
36. “Price data” means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
37. “Procurement file” means the official records file of the director whether located in the office of the director or at a public procurement unit. The procurement file shall include (electronic or paper) the following:
    a. List of notified vendors,
    b. Final solicitation,
    c. Solicitation amendments,
    d. Bids and offers,
    e. Offer revisions and best and final offers,
    f. Discussions,
    g. Clarifications,
    h. Final evaluation reports, and
    i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
38. “Procurement request” means the document that initiates a procurement.
39. “Proposal” means an offer submitted in response to a solicitation.
40. “Prospective offeror” means a person that expresses an interest in a specific solicitation.
41. “Raw materials” means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
42. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
43. “Shall” means something is mandatory.
44. “Small business” means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than $4 million for the last complete fiscal year.

45. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
46. “Source selection method” means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
47. “State procurement administrator” means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator’s authorized designee. A different title may be used for this position.
48. “State procurement office” means an office that acts under the authority delegated to the state procurement administrator.
49. “Suspension” means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
50. “Trade secret” means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.\

R2-7-102. Written Determinations

A. If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.
B. The agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.
C. A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

R2-7-103. Confidential Information

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
    1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;

2. The designated information is not confidential; or
3. Additional information is required before a final confidentiality determination can be made.

D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.

E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
   1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or
   2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

R2-7-201. State Procurement Administrator: Duties and Qualifications

A. The director shall hire a state procurement administrator with executive and organizational skills and relevant, recent experience in public procurement.

B. The state procurement administrator shall:
   1. Administer the procurement of materials, services, and construction needed by the state;
   2. Establish procurement policy and procedure;
   3. Establish procurement training standards;
   4. Designate if an Arizona state contract is mandatory;
   5. Delegate procurement authority under R2-7-202; and
   6. Monitor compliance of state governmental units with state procurement laws.

C. The state procurement administrator shall maintain a record of each contract awarded under A.R.S. §§ 41-2536 (sole source procurement) and 41-2537 (emergency procurement) that exceeds the amount prescribed in A.R.S. § 41-2535(A). The record shall be maintained for a minimum of five years. The state procurement administrator shall ensure that the record is available for public inspection and contains all of the following:
   1. Each contractor's name;
   2. The estimated amount of each contract; and
   3. A description of the item or service procured.

R2-7-202. Delegation of Procurement Authority to State Governmental Units

A. The state procurement administrator shall delegate procurement authority to a state governmental unit based upon the following criteria:
   1. The procurement expertise, knowledge, experience, and performance of the state governmental unit's agency chief procurement officer, as identified by the state governmental unit; and
   2. The impact of the delegation on procurement efficiency and effectiveness.

B. The state procurement administrator shall delegate procurement authority in a written document that specifies all of the following:
   1. The agency chief procurement officer,
   2. The specific authority delegated,
   3. Any limits or restrictions upon the delegated authority,
   4. Whether the authority may be further delegated, and
   5. The duration of the delegation.
C. The head of a purchasing agency shall immediately report any significant change regarding the criteria considered under subsection (A) to the state procurement administrator.
D. A purchasing agency shall exercise delegated authority according to A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
E. An agency chief procurement officer shall submit to the state procurement administrator any procurement that exceeds the agency's delegated authority.
F. The state procurement administrator may revoke, suspend, or modify delegated authority for failure to comply with A.R.S. Title 41, Chapter 23 or A.A.C. Title 2, Chapter 7, or a significant change regarding the criteria considered under subsection (A).
G. The state procurement administrator retains all authorities and duties delegated to an agency chief procurement officer at a state governmental unit.

R2-7-203. Agency Chief Procurement Officer

A. An agency chief procurement officer may further delegate procurement authority within the purchasing agency, within the limits specified by the state procurement administrator.
B. The agency chief procurement officer shall notify the state procurement administrator in writing of employees who have delegated procurement authority.

R2-7-204. State Employee or Public Officer Use of State Contracts

State employees and public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state unless authorized in writing by the director. The determination shall state how the purchase will further the interests of the state.

R2-7-205. Procurement Requests by Purchasing Agencies

If a purchasing agency determines that a procurement is necessary, the purchasing agency shall submit a procurement request, in writing, to the procurement officer. The procurement request shall be submitted in a manner expressly approved by the agency chief procurement officer.

R2-7-206. Authorized Procurement Officers

A procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer in accordance with this Chapter.

R2-7-207. Resolution of Intra-agency Procurement Disputes

Procurement disputes between a purchasing agency and its agency chief procurement officer shall be resolved by the state procurement administrator.

R2-7-208. Authorization of Electronic Transactions

A. An electronic media transaction, involving an electronic record or electronic signature, is authorized if the transaction is consistent with state law.

B. The state procurement administrator may limit the use of electronic transactions, based on consideration of the best interest of the state.

R2-7-209. Prospective Suppliers List

A. The state procurement administrator shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the state procurement office.

B. The state procurement administrator may remove suppliers from the prospective suppliers list if a notice sent to the supplier is returned. The state procurement administrator shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

R2-7-A301. Source Selection Method: Determination Factors

A. A state governmental unit shall use any existing Arizona state contract designated as mandatory to satisfy requirements for those materials and services covered by such contracts.

B. If a state governmental unit believes that an Arizona state contract, designated as mandatory, does not satisfy its requirements, the state governmental unit may only procure the material or service from another source with the written approval of the state procurement administrator and in conformance with the applicable source selection method.

C. The agency chief procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent the Arizona Procurement Code.

D. The agency chief procurement officer shall not award a contract or incur an obligation on behalf of the state unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the agency chief procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

R2-7-B301. Solicitation

A. An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.

B. An agency chief procurement officer shall:

   1. Advertise the procurement in accordance with A.R.S. § 41-2533(C); and
   2. At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.

C. An agency chief procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:

(a) Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;

(b) The deadline date for requesting a substitution or exception to the solicitation;

(c) The manner by which the offeror is required to acknowledge amendments;

(d) The minimum required information in the offer;

(e) The specific requirements for designating trade secrets and other proprietary information as confidential;

(f) Any specific responsibility criteria;

(g) Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;

(h) Any evaluation criteria;

(i) A statement of where documents incorporated by reference are available for inspection and copying;

(j) A statement that the agency may cancel the solicitation or reject an offer in whole or in part;

(k) Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;

(l) Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;

(m) That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

(n) Any bid security required;

(o) The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

(p) Any designation of the specific bid items and amounts to be recorded at offer opening; and

(q) Any other offer submission requirements;

2. Specifications, including:

(a) Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

(b) If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation

shall state that products substantially equivalent to the brands designated qualify for consideration; and

(c) Any other specification requirements;

3. Terms and Conditions, including:

(a) Whether the contract will include an option for extension; and

(b) Any other contract terms and conditions.

R2-7-B302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be a reasonably sufficient time prior to the offer due date and time. Statements made during a pre-offer conference are not amendments to the solicitation.

R2-7-B303. Solicitation Amendment

A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:

1. Make changes in the solicitation;
2. Correct defects or ambiguities;
3. Provide additional information or instructions; or
4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.

B. If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.

B. The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.

B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

R2-7-B306. Receipt, Opening, and Recording of Offers

A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.

C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-B307. Late Offers, Modifications, Withdrawals

A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.

B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
   1. The document is received before the contract award at the location designated in the solicitation; and
   2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.

C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
   1. If the document is hand delivered, refuse to accept delivery; or
   2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

B. The agency chief procurement officer shall notify offerors of the cancellation in writing.

C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-103.

D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

R2-7-B309. One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
    a. The price submitted is fair and reasonable under R2-7-702,
    b. The offer is responsive, and
    c. The offeror is responsible, or
2. Reject the offer and:
    a. Resolicit for new offers,
    b. Cancel the procurement, or
    c. Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
    1. Confirm that no mistake was made and assert that the offer stands as submitted; or
    2. Acknowledge that a mistake was made, and include all of the following in a written response:
        a. Explanation of the mistake and any other relevant information;
        b. A request for correction including the corrected offer or a request for withdrawal; and
        c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
    1. Explanation of the mistake and any other relevant information;
    2. A request for correction including the corrected offer or a request for withdrawal; and
    3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.

D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R2-7-B311. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, an agency chief procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.

B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The agency chief procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

R2-7-B312. Bid Evaluation

A. An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation.

B. An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers for the procurement of materials or services identified in A.R.S. § 41-2554.

C. An agency chief procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The agency chief procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.

D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the agency chief procurement officer shall make the award by drawing lots. If time permits, the agency chief procurement officer shall provide the offerors involved an opportunity to attend the drawing. The agency chief procurement officer shall ensure that the drawing is witnessed by at least one person other than the agency chief procurement officer.

R2-7-B313. Responsibility Determinations

A. The agency chief procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.

B. The agency chief procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the state;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets the responsibility criteria specified in the solicitation.

C. If the agency chief procurement officer determines an offeror is nonresponsible, the agency chief procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The agency chief procurement officer shall file a copy of the determination in the procurement file.

D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-B314. Contract Award

A. An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

B. The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.

C. The agency chief procurement officer shall notify all offerors of an award.

D. After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.

E. Within 3 days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-B315. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
   1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
   2. Cancel all or part of the award; or
   3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, within 120 days from the date of award, based on the considerations of fair competition and the best interest of the state.

R2-7-B316. Multistep Sealed Bidding

A. Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procurement officer shall issue an invitation to submit technical offers that contains all of the following information:
   1. Notice that the procurement is conducted in two phases. In phase one unpriced technical offers are considered and selected. In phase two there is competitive bidding by offerors whose offers were selected in phase one;
   2. The best description of the material or service solicited;
   3. The requirements for each technical offer, such as drawings and descriptive literature;
   4. The criteria for evaluating each technical offer;
   5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
   6. A statement that negotiations may be held regarding the unpriced technical offer.

B. An agency chief procurement officer may conduct a pre-offer conference within a reasonably sufficient time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offers. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

C. An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

D. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.

E. Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.

F. An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.

G. After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.

H. At any time during phase one, an offeror may withdraw an offer.

I. Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 through R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.

J. An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

R2-7-C301. Solicitation

A. An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.

B. The agency chief procurement officer shall:

   1. Advertise in accordance with A.R.S. § 41-2534(C); and
   2. At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.

C. The agency chief procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
    a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
    b. The deadline date for requesting a substitution or exception to the solicitation;
    c. The manner by which the offeror is required to acknowledge amendments;
    d. The minimum information required in the offer;
    e. The specific requirements for designating trade secrets and other proprietary information as confidential;
    f. Any specific responsibility or susceptibility criteria;
    g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
    h. Evaluation factors and the relative order of importance;
    i. A statement of where documents incorporated by reference are available for inspection and copying;
    j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
    k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
    l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
    m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
    n. Any offer security required;
    o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
    p. Any cost or pricing data required;
    q. The type of contract to be used;
    r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
    s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
    a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and

c. Any other specification requirements specific to the solicitation.

3. Terms and Conditions, including:

a. Whether the contract is to include an extension option; and

b. Any other contract terms and conditions.

R2-7-C302. Pre-offer Conferences

An agency chief procurement officer may conduct may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

R2-7-C303. Solicitation Amendment

A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:

1. Make changes in the solicitation;
2. Correct defects or ambiguities;
3. Provide additional information or instructions; or
4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.

B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.

B. The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.

B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation unless the offeror requests the offer be returned.

R2-7-C306. Receipt, Opening, and Recording of Offers

A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.

C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.

B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
   1. The document is received before contract award at the location designated in the solicitation; and
   2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.

C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
   1. If the document is hand delivered, refuse to accept the delivery; or
   2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

B. The agency chief procurement officer shall notify offerors of the cancellation in writing.

C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-103.

D. In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

R2-7-C309. Only One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
    a. The price submitted is fair and reasonable pursuant to R2-7-702; and
    b. The offeror is responsive; and
    c. The offeror is responsible; or
2. Reject the offer and:
    a. Resolicit for new offers;
    b. Cancel the procurement; or
    c. Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-C310. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.

B. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

R2-7-C311. Determination of Not Susceptible for Award

A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
    1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
    2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or

3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.

B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

R2-7-C312. Responsibility Determinations

A. An agency chief procurement officer shall determine, at any time during the evaluation period and before award, that an offeror is responsible or nonresponsible.

B. The agency chief procurement officer may consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, including subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the state;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets any responsibility criteria specified in the solicitation.

C. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is nonresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.

D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).

E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-C313. Clarification of Offers

A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.

B. The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.

C. The agency chief procurement officer shall retain any clarifications in the procurement file.

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the agency chief procurement officer shall confirm the negotiations in writing and provide to the offeror.

C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.

D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.

E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.

F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the agency chief procurement officer.

R2-7-C315. Offer Revisions and Best and Final Offers

A. An agency chief procurement officer may request written revisions to an offer. The agency chief procurement officer shall include in the written request:
   1. The date, time, and place for submission of offer revisions; and
   2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.

B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
   1. The date, time, and place for submission of best and final offer; and
   2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.

C. The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.

D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
   1. Confirm that no mistake was made and assert that the offer stands as submitted; or
   2. Acknowledge that a mistake was made, and include the following in a written response:
      a. Explanation of the mistake and any other relevant information,

b. A request for correction including the corrected offer or a request for withdrawal, and
c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

E. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

F. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the best and final offer, the agency chief procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

R2-7-C316. Evaluation of Offers

A. An agency chief procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.

B. An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The agency chief procurement officer may:
1. Accept or reject the findings of the evaluation committee,
2. Request additional information from the evaluation committee, or
3. Replace the evaluation committee.

C. The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R2-7-C317. Contract Award

A. An agency chief procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

B. The agency chief procurement officer shall notify all offerors of an award.

C. After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.

D. Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-C318. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
   1. Allow correction of the mistake;
   2. Cancel all or part of the award; or
   3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

R2-7-D301. Applicability

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, the agency chief procurement officer shall issue a request for quotation under R2-7-D302 unless any of the following apply:

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set-aside organization as established in Article 10;
3. The purchase is not expected to exceed $10,000.00;
4. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

R2-7-D302. Solicitation - Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed $10,000 but less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:
   1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
   2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

3. The minimum information that the offer shall contain;
4. Any evaluation factors;
5. Whether negotiations may be held;
6. Any contract options including renewal or extension;
7. The uniform terms and conditions by text or reference; and
8. Any other terms, conditions, or instructions specific to the procurement.

B. The agency chief procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.

C. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:
   1. The purchase has been unsuccessfully competed under Subsection (B) of this Section, including failure to obtain fair and reasonable prices;
   2. The agency chief procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list; or
   3. The agency chief procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

R2-7-D303. Contract Award

A. If only one responsive offer is received, the agency chief procurement officer shall determine if the price is fair and reasonable, and in the best interest of the state to award a contract and place the determination in the procurement file. If time permits, the agency chief procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.

B. The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to R2-7-D302(C), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.

C. The agency chief procurement officer shall place the written basis for the award in the procurement file.

D. The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

R2-7-D304. Purchases of $10,000 and Less

The agency chief procurement officer shall use reasonable judgment in awarding contracts of $10,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations.

R2-7-E301. Sole Source Procurements

A. For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
   1. There is only a single source for the material or service, or
   2. No reasonable alternative source exists.

B. This Section applies to only sole source procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535.

C. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:
   1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
   2. The name of the proposed supplier,
   3. The duration and estimated total dollar value of the proposed procurement,
   4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702, and
   5. A description of efforts made to seek other sources.

D. The state procurement administrator shall send notice to registered vendors on the electronic system to invite comments on the sole-source request for three working days. Following this period, the state procurement administrator shall either:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

E. If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.

F. The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

R2-7-E302. Emergency Procurements

A. For the purposes of Section, the term "emergency" means any condition creating an immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person.

B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The agency chief procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.

C. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit the written request for, or notification of, the emergency procurement to the state procurement administrator. The request shall include the following information:

1. A description of the procurement need and the reason for the emergency;
2. The name of the supplier;
3. The duration and estimated total dollar value of the procurement; and
4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702.

D. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an emergency procurement. The state procurement administrator shall either:

1. Issue written approval, with any conditions or restrictions;
2. Request additional information from the agency chief procurement officer; or
3. Deny the request.

E. An employee acting within the authority of a using agency may proceed with an emergency procurement without approval from the state procurement administrator if the emergency necessitates immediate response and it is impracticable to contact the state procurement administrator. The agency chief procurement officer shall submit a written confirmation of the emergency procurement to the state procurement administrator within five working days of the emergency.

F. A using agency making an emergency procurement shall limit the procurement to such actions necessary to address the emergency.

G. A using agency making an emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the state.

H. The agency chief procurement officer shall keep a record of all emergency procurements pursuant to A.R.S. § 41-2551.

R2-7-E303. Competition Impracticable Procurements

A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.

B. An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement

administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.

C. The agency chief procurement officer shall submit a written request for approval containing the following:
   1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
   2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
   3. An explanation of why the proposed procurement process is advantageous to the state; and
   4. The scope, duration, and estimated total dollar value of the procurement need.

D. The state procurement administrator shall:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

E. Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.

F. The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

R2-7-F301. Statement of Qualifications

A. The agency chief procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:
   1. Technical education and training;
   2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
   3. Any other relevant information requested by the purchasing agency.

B. Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.

C. The agency chief procurement officer may, in lieu of subsection (A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

R2-7-F302. Solicitation

A. For procurements not exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized under A.R.S. § 41-2536, the agency chief procurement officer shall comply with Part D of this Article.

B. For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall follow the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:

1. The agency chief procurement officer shall issue a request for proposal providing adequate notice based on the circumstances.
2. The agency chief procurement officer shall provide notice to prospective suppliers registered at the state procurement office for the specific service and, if R2-7-F301 has been implemented, to persons who have submitted statements of qualifications for the particular services solicited, or both.
3. The agency chief procurement officer shall include the following in the solicitation:
   a. A specific offer due date and time, or that offers will be accepted on an open and continuous basis. If offers are accepted on an open and continuous basis, the designated, continuous day and time in which offers will be opened;
   b. The location where offers will be received;
   c. The offer acceptance period;
   d. The manner by which the offeror is required to acknowledge amendments;
   e. A description of the services needed;
   f. The type of qualifications, experience, licensing, or other information required;
   g. The minimum information in the offer;
   h. Any evaluation criteria;
   i. Any applicable contract terms and conditions;
   j. A statement that negotiations may be conducted to determine the offeror's qualifications for further consideration;
   k. Any cost or pricing data required;
   l. The type of contract to be used;
   m. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
   n. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices; and
   o. A statement of whether the services shall be retained for a stated or ongoing period of time and whether the contract is to include any option for renewal or extension.

R2-7-F303. Solicitation Amendment

A. The agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:

1. Make changes in the solicitation;
2. Correct defects or ambiguities;
3. Provide additional information or instructions; or

4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.

B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-F304. Cancellation of Solicitation

A. Based on the best interest of the state, the agency chief procurement officer may cancel a solicitation at any time before award.

B. Based on the best interest of the state, the agency chief procurement officer may cancel an open and continuous solicitation at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.

C. The agency chief procurement officer shall notify offerors of the cancellation in writing.

D. The agency chief procurement officer shall return any offers received to the offerors.

R2-7-F305. Receipt, Opening, and Recording of Offers

A. The agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.

C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

D. Except for the information identified in R2-7-C306(C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-F306. Timely and Late Modifications or Withdrawals of Offer

A. An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the agency chief procurement officer before the designated offer due date and time or the designated, continuous offer due day and time.

B. An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and before contract award by submitting a written request to the agency chief procurement officer.

C. If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the agency chief procurement officer shall determine the modification or withdrawal as late. The agency chief procurement officer shall reject a late modification or withdrawal unless:
   1. The document is received before the contract award; and
   2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.
D. Upon receiving a late modification or withdrawal, the procurement officer shall:
   1. If the document is hand delivered, refuse to accept delivery; or
   2. If the document is not hand delivered, record the time and date of receipt, and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
E. The agency chief procurement officer shall document a refusal under (D)(1) and place this document or a copy of the notice required in (D)(2) in the procurement file.

R2-7-F307. Late Offers

A. If a specific offer due date and time has been identified in the solicitation, the agency chief procurement officer shall reject any offer received after the specified offer due date and time.
   1. It was transmitted through an eProcurement system designated in the solicitation, and the offer has a submitted status in the system prior to the offer due date and time; or
   2. There is evidence to establish that the hand-delivered offer was received before contract award at the location designated in the solicitation and would have been received by the offer due date and time but for the failure of state personnel directly serving the purchasing agency.
B. Upon receiving a late offer, the agency chief procurement officer shall:
   1. If the document is hand delivered, refuse to accept the delivery; or
   2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
C. The agency chief procurement officer shall document a late offer in the procurement file; with as much information as available.
D. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the agency chief procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

R2-7-F308. Negotiations with Offerors

A. The agency chief procurement officer may conduct negotiations with any or none of the offerors.

B. The agency chief procurement officer may conduct negotiations to improve offers in such areas as cost, price, specifications, performance, or terms and conditions, and to achieve best value for the state.

C. The agency chief procurement officer shall document the results of negotiations in writing by requesting a best and final offer as defined in R2-7-C315.

D. The agency chief procurement officer shall ensure that negotiations do not disclose any information derived from other offers.

R2-7-F309. Contract Award

A. The agency chief procurement officer shall award the contract to the offeror best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The agency chief procurement officer shall not award a contract based solely on price.

B. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

C. The agency chief procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applicable.

D. Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-F310. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
   1. Allow correction of the mistake;
   2. Cancel all or part of the award; or
   3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, based on whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

R2-7-G301. Request for Information

An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the state procurement administrator.
3. There is no required format to be used for requests for information.

R2-7-G302. Demonstration Projects

A. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract for a demonstration project. The written request shall contain the following:
   1. Name of the agency or agencies;
   2. Name of the contractor;
   3. Description of the project, including unique and innovative features of the project;
   4. Statement and explanation that the project is in best interest of the state;
   5. Duration of the project; and
   6. Proposed contract terms and conditions.

B. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a demonstration project. The state procurement administrator shall either:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

C. Demonstration projects shall be provided by the contractor at no cost, and the state shall not be obligated to purchase or lease the services or materials from the contractor.

D. The agency chief procurement officer may submit a written request to the state procurement administrator to purchase or lease from the demonstration contractor. The written request shall be submitted within 12 months after the demonstration project begins or within 12 months after the demonstration project ends and contain the following:
   1. Name of the agency or agencies;
   2. Name of the contractor;
   3. Description of the project, including unique and innovative features of the project;
   4. Statement and explanation that lease or purchase is in best interest of the state;
   5. Cost to the state;
   6. Duration of the proposed contract; and
   7. Proposed contract terms and conditions.

E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with purchasing or leasing from the demonstration contractor. The state procurement administrator shall:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.
F. The term of the contract resulting from a demonstration project shall not exceed two years.

R2-7-G303. Unsolicited Proposals

A. An unsolicited proposal shall be a proposal that is submitted at the initiative of the offeror, and not in response to a solicitation.
B. An unsolicited proposal shall be submitted in writing and in sufficient detail for the agency chief procurement officer to understand the proposal.
C. An unsolicited proposal shall not be an advance offer to a known state requirement.
D. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract resulting from an unsolicited proposal. The written request shall contain the following:
   1. Name of the agency or agencies;
   2. Name of the contractor;
   3. Description of the project, including unique and innovative features of the project;
   4. Statement and explanation that project is in best interest of the state;
   5. Duration of the project; and
   6. Proposed contract terms and conditions.
E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an unsolicited proposal. The state procurement administrator shall:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

R2-7-G304. General Services Administration Contracts

A. An agency chief procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
   1. Use of the GSA contract or schedule is cost effective and in the best interest of the state;
   2. Price is equal to or less than the contractor's current GSA price;
   3. Price is fair and reasonable;
   4. Contractor is willing to offer GSA pricing and terms to the state;
   5. Comparable products or services are not available under a state or agency contract;
   6. Comparable products or services are not restricted under a set-aside contract; and
   7. Contractor accepts required state contract terms and conditions.

B. An agency chief procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the state. The determination shall contain the following:
   1. Name of the contractor;
   2. GSA contract or schedule number;
   3. Procurement description;
   4. Analysis of price, quality, and other relevant factors; and
   5. Statement that the price is fair and reasonable.

R2-7-G305. Public-Private Partnership Contracts

A. As referenced in this Article, a public-private partnership contract is a government contract and not a partnership. The government shall not jointly own or share property with the contractor and the government shall not be responsible for the contractor's liabilities.

B. An agency chief procurement officer shall submit a written request to the state procurement administrator to enter into a public-private partnership contract. The written request shall contain the following:
   1. Name of the agency or agencies;
   2. Name of the contractor;
   3. Description of the public-private partnership, including obligations of the agency and the contractor;
   4. Statement and explanation that the project is in best interest of the state;
   5. Proposed contract price and assessment of the proposed value;
   6. Description of the proposed performance measurement criteria and methods;
   7. Duration of the project; and
   8. Proposed contract terms and conditions.

C. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a public-private partnership. The state procurement administrator shall either:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

D. If the request is approved, the contract shall be awarded in accordance with A.R.S. §§ 41-2533, 41-2534, 41-2535, 41-2536, or 41-2537.

E. The using agency is responsible for obtaining all necessary approvals, including approvals from the Government Information Technology Agency and Joint Legislative Budget Committee, before entering into a public-private partnership contract.

R2-7-401. Preparation of Specifications

A. State governmental units may prepare and utilize specifications only under the authority delegated by the state procurement administrator under R2-7-202.

B. An agency chief procurement officer delegated the authority to prepare and utilize specifications shall comply with the requirements of A.R.S. § 41-2561 through A.R.S. § 41-2568 and ensure specifications used support maximum practical competition.

C. The agency chief procurement officer may contract for the preparation of specifications with persons other than state personnel.

D. Notwithstanding the provisions of this Section, the state procurement administrator retains the authority to prepare, issue, revise, and monitor all specifications and plans.

E. If a mandatory specification has been designated by the state procurement administrator for a particular material, service, or construction item, it shall be used unless the state procurement administrator makes a written determination that its use is not advantageous to the state and that another specification may be used.

R2-7-402. Utilization of Specifications

The agency chief procurement officer may use any type of specification that describes the procurement requirement and promotes competition, except that the agency chief procurement officer shall not use proprietary or restrictive specifications without the prior written approval of the state procurement administrator.

R2-7-403. Determination for Use of Brand Name Type Specifications

A. The state procurement administrator may authorize the use of a brand name only specification if the state procurement administrator makes a written determination that only the identified brand name item will satisfy the state's needs.

B. The agency chief procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practical competition.

C. The agency chief procurement officer may use a brand name or equivalent specification when the agency chief procurement officer determines this type of specification is in the best interest of the state.

R2-7-404. Conflict of Interest

A. No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.

B. The state procurement administrator may waive the restriction set forth in subsection (A) of this Section if the state procurement administrator determines in writing that the rule’s application would not be in the state’s best interest. The determination shall state the specific reasons that the restriction in subsection (A) of this Section has been waived.

R2-7-501. Procurement of Specified Professional and Construction Services

A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578 41-2579 and 41-2581 in the following manner:

   1. Through existing state contracts if available;

2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41- 2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;
3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.

B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;
3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
4. May procure construction in accordance with A.R.S. § 41-2536 or 41-2537 or 2581.

C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
1. Through existing state contracts if available;
2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
3. May procure construction in accordance with A.R.S. § 41-2536, 41-2537, or 41-2581.

R2-7-502. Compliance with the Department

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et seq.

R2-7-503. Procurement of Construction Using Alternate Project Delivery Method

The agency chief procurement officer may use an alternate project delivery method if it is in the best interest of the state pursuant to A.R.S. § 41-2578 and 41-2579, based on the following factors:
1. Cost and cost control method,
2. Value engineering,
3. Market conditions,
4. Schedule,
5. Required specialized expertise,
6. Technical complexity of the project, or
7. Project management.

R2-7-504. Notice

A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.

B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. § 41-2536 or 41-2537.

C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
   1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
   2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least 14 days before the offer due date.

R2-7-505. Selection Committee

A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578, 41-2579, or 41-2581.
B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578, 41-2579, or 41-2581.

R2-7-506. Bid Security

A. The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.
B. If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.
C. The offeror shall submit bid security in one of the following forms:
   1. An annual or one-time surety bond executed solely by a surety company authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1, and in a format prescribed by A.R.S. § 41-2573 and this Section; or
   2. A certified or cashier check.
D. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
   1. Only one offer is received and there is not sufficient time to re-solicit;
   2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or greater than the difference between the apparent low offer and the next higher acceptable offer; or
   3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.

E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

R2-7-507. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
   1. Confirm that no mistake was made and assert that the offer stands as submitted; or
   2. Acknowledge that a mistake was made, and include all of the following in a written response:
      a. Explanation of the mistake and any other relevant information;
      b. A request for correction including the corrected offer or a request for withdrawal; and
      c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.

D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.

F. If the offeror fails to act under subsection (A), the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R2-7-508. Performance and Payment Bonds

A. The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety

business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.

B. The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

R2-7-509. Conditions for Use of Substitute Security in Lieu of Retention

A contractor may submit substitute security to replace contract payment retention if:

1. The contractor requests the use of substitute security before the first progress payment;
2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
3. The interest earned on the security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and
4. The contractor ensures that the date of maturity of the security is after the estimated contract completion date, but no later than one year after the estimated contract completion date.

R2-7-510. The Form of Substitute Security in Lieu of Retention

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

1. An assignment of a time certificate of deposit by a financial institution licensed by this state;
2. Share certificates of a financial institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
   a. The United States;
   b. The state; or
   c. Counties, municipalities, and school districts within this state.

R2-7-511. Individual Job Order Contracting

A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost $1,000,000 or less.

B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost $250,000 or less, provided that:

1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.

C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than $250,000 or less than or equal to $1,000,000, provided that:
   1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
   2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
D. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
E. The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding $1,000,000 only with authorization from the state procurement administrator.
F. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.
G. Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator.

R2-7-601. Contract Clauses

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

R2-7-602. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

R2-7-603. Change of Name

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

R2-7-604. Contract Change Orders and Amendments

A. The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.

C. The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

R2-7-605. Multi-term Contracts

A. The agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A), if a written approval from the state procurement administrator is issued prior to the offer due date and time.

B. The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:

1. The time period requested for the contract;
2. Documentation that the estimated requirements are reasonable and continuing;
3. Documentation to demonstrate why more frequent competition is not practicable and that such a contract will serve the best interests of the state.

C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R2-7-606. Terms and Conditions

A. The state procurement administrator may publish uniform terms and conditions for use in solicitations and contracts issued by a state governmental unit.

B. Prior to offer due date and time, the state procurement administrator may authorize an agency chief procurement officer to make changes to uniform terms and conditions.

C. After offer due date and time, an agency chief procurement officer may negotiate the uniform terms and conditions, as appropriate.

R2-7-607. Mandatory Statewide Contracts

State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered under such contracts, unless authorized by the state procurement administrator.

R2-7-608. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the state or the cooperative procurement members, unless authorized by the state procurement administrator.

R2-7-701. Cost Principles

The cost principles set forth in the Code of Federal Regulations, 48 CFR 31, (September 2001) shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract

provisions that provide for the reimbursement of costs. This document is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

R2-7-702. Determination of Fair and Reasonable Price

A. For contracts or contract modifications that exceed $100,000, the agency chief procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
   1. The contract or modification is based on adequate price competition;
   2. Price is supported by an established catalog or market prices;
   3. Price is set by law or rule; or
   4. Price is supported by relevant, historical price data.

B. The agency chief procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
   1. The agency chief procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
   2. The agency chief procurement officer determines in writing that it is in the best interest of the state regardless of the amount of the contract or contract modification.

C. The agency chief procurement officer shall submit a request to the state procurement administrator to waive the requirement for submission of cost or pricing data to the state procurement administrator if the proposed contract or contract modification exceeds $100,000. The request shall be in writing and state the reasons for the waiver.

D. The state procurement administrator shall either:
   1. Issue written approval of the request for waiver;
   2. Request additional information from the agency chief procurement officer upon which to base a decision; or
   3. Deny the request.

R2-7-703. Submission and Certification of Cost or Pricing Data

A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the agency chief procurement officer.

B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.

C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief as of a date mutually determined with the agency chief procurement officer.

R2-7-704. Refusal to Submit Cost or Pricing Data

A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the agency chief procurement officer may reject the offer.

B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the agency chief procurement officer may:
   1. Reject the contract modification; or
   2. Set the amount of the contract modification subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

R2-7-705. Defective Cost or Pricing Data

A. The agency chief procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
B. The agency chief procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under Article 9 of this Chapter. The price, as adjusted by the agency chief procurement officer, shall remain in effect until any claim is settled or resolved under Article 9 of this Chapter.

R2-7-A901. Protest of Solicitations and Contract Awards

A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
B. The interested party shall file the protest in writing with the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
   1. The name, address and telephone number of the interested party;
   2. The signature of the interested party or the interested party's representative;
   3. Identification of the purchasing agency and the solicitation or contract number;
   4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
   5. The form of relief requested.
C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
E. The interested party may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the interested party being unable to submit the protest within the 10 days. The agency chief procurement officer

shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.

F. If the interested party shows good cause, the agency chief procurement officer may consider a protest that is not timely filed.

G. The agency chief procurement officer shall immediately give notice of a protest to all offerors.

R2-7-A902. Stay of Procurements During the Protest

A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the agency chief procurement officer shall make a written determination to either:
   1. Proceed with the award or contract performance, or
   2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.

B. The agency chief procurement officer shall provide the interested party, state procurement administrator, and other interested parties with a copy of the written determination.

C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. Determination of the stay decision shall be issued no later than the time of issuance of a procurement officer's decision in accordance with R2-7-A903.

D. Should the stay request be denied by the agency chief procurement officer the protestant may request a procurement stay from the state procurement administrator. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the agency chief procurement officer.

R2-7-A903. Resolution of Solicitation and Contract Award Protests

The agency chief procurement officer has the authority to resolve a protest.

A. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from receipt of the decision.

B. The agency chief procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the director.

C. The agency chief procurement officer may submit a written request to the director for an extension of the time limit for decisions under subsection (B). The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The director shall notify the agency chief procurement officer, the interested party, and the state procurement administrator in

writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

D. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-A904. Remedies by the Agency Chief Procurement Officer

A. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
   1. The seriousness of the procurement deficiency;
   2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
   3. The good faith of the parties;
   4. The extent of performance;
   5. The costs to the state;
   6. The urgency of the procurement;
   7. The impact on the agency's mission; and
   8. Other relevant issues.

C. An agency chief procurement officer may implement any of the following appropriate remedies:
   1. Decline to exercise an option to renew under the contract;
   2. Terminate the contract;
   3. Amend the solicitation;
   4. Issue a new solicitation;
   5. Award a contract consistent with procurement statutes and regulations; or
   6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

R2-7-A905. Appeals to the Director

A. An interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the director within 30 days after the date the decision is received or deemed received under R2-7-A903. The interested party shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.

B. The interested party shall file the appeal in writing and shall include the following information:
   1. The information prescribed in R2-7-A901(B) including the identification of confidential information under R2-7-103;
   2. A copy of the decision of the agency chief procurement officer; and

3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.

C. The director may consider any appeal that is not filed timely if:
   1. The interested party shows good cause; or
   2. The director finds there is good cause.

R2-7-A906. Notice of Appeal to the Director

A. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.

B. The director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R2-7-103.

R2-7-A907. Stay of Procurement During Appeal to Director

A. If a stay is issued under R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.

B. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the interested party's appeal, the director may stay the procurement if the director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

R2-7-A908. Agency Report

A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
   1. The appeal;
   2. The offer submitted by the interested party;
   3. The offer of the firm that is being considered for award;
   4. The solicitation, including the specifications or portions relevant to the appeal;
   5. The abstract of offers or relevant portions;
   6. Any other documents that are relevant to the protest; and
   7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

B. The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator,

and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.

C. The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.

D. The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

R2-7-A909. Remedies by the Director

If the director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the director shall implement remedies as provided in R2-7-A904 or R2-7-A910.

R2-7-A910. Informal Settlement Conference

In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The agency chief procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing. Should any interested party choose not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision. Further, in making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

R2-7-A911. Dismissal Before Hearing

A. The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
   1. The appeal does not state a valid basis for protest;
   2. The appeal is untimely as prescribed under R2-7-A905; or
   3. The appeal attempts to raise issues not raised in the protest.

B. The Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

R2-7-A912. Hearing

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

R2-7-B901. Controversies Involving Contract Claims Against the State

A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. The claim shall include the following:
   1. The name, address, and telephone number of the claimant;
   2. The signature of the claimant or claimant's representative;
   3. Identification of the purchasing agency and the solicitation or contract number;
   4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
   5. The form and dollar amount of the relief requested.

B. The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

R2-7-B902. Agency Chief Procurement Officer's Decision

A. If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
   1. A description of the claim;
   2. A reference to the pertinent contract provision;
   3. A statement of the factual areas of agreement or disagreement;

4. A statement of the agency chief procurement officer's decision, with supporting rationale;
5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-B904. Appeals and Reports to the Director

A. The claimant may appeal the final decision of the agency chief procurement officer to the director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
B. The claimant shall file the appeal in writing and shall include the following:
   1. A copy of the decision of the agency chief procurement officer;
   2. A statement of the factual areas of agreement or disagreement; and
   3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
C. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
D. The director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

R2-7-B905. Controversies Involving State Claims Against the Contractor

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the director for resolution under A.R.S. § 41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

R2-7-C901. Authority to Debar or Suspend

The director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. § 41-2613.

R2-7-C902. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the director shall investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may propose debarment under R2-7-C904.

R2-7-C903. Period of Debarment

A. The director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.

B. If debarment is based solely upon debarment by another governmental agency, the director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

R2-7-C904. Notice of Debarment and Hearing

A. If debarment is proposed, the director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.

B. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the director's notice of proposed debarment.

C. The hearing shall be conducted as a contested case under A.R.S. §§ 41-1092.07 and 41-2613.

R2-7-C905. Imputed Knowledge

A. The director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

B. The director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

R2-7-C906. Reinstatement

A. The director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.

B. Any debarred person may request reinstatement by submitting a petition to the director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

C. The director may require a hearing on the request for reinstatement.

D. The director shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.

E. Reinstatement decisions by the director are not subject to administrative review.

R2-7-C907. Limited Participation

The director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

R2-7-C908. Suspension

A. If the director determines that reasonable grounds for debarment exist, the director may suspend a person from receiving any award under R2-7-C910.

B. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under R2-7-C905.

C. The director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

R2-7-C909. Period and Scope of Suspension

Unless otherwise agreed to by the parties, the director shall not implement a period of suspension of more than 35 days without satisfying the notice requirements of R2-7-C910.

R2-7-C910. Notice, Hearing, Determination, and Appeal

A. The director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

B. The notice of suspension shall state:

   1. The basis for suspension;
   2. The period, including dates, of the suspension;
   3. That offers received from the person will not be considered; and
   4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the director within 30 days after receipt of the notice.

C. Within 30 days receipt of the notice of suspension, the suspended party may file a written request for hearing with the director. The appeal shall include the following information:

   1. A copy of the decision of the director; and
   2. The precise factual or legal error in the decision from which the appeal is taken.

D. The suspension shall be resolved as an appealable agency action under A.R.S. §§ 41-1092.03 and 41-2613.

R2-7-C911. Master List

A. The director shall maintain a master list of debarments, suspensions, and voluntary exclusions under this Article.

B. The master list shall show at a minimum, the following information:

   1. The names and vendor numbers of those persons whom the state has debarred or suspended under this Article;
   2. The statutory authority for the action;
   3. The period of debarment or suspension, including the expiration date;
   4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
   5. A separate section listing persons voluntarily excluded from participation in state contracts.

R2-7-D901. Hearings

If a hearing is required or permitted under this Chapter, the director shall refer the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. The director may also direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.

R2-7-D902. Rehearing of Director's Decision

A. Any person, including an agency chief procurement officer, who is aggrieved by the director's decision may file a written request for rehearing of the decision under A.R.S. § 41-1092.09.

B. The director, within the time for filing a request for rehearing under this rule, may upon the director's own initiative, order a rehearing for any reason for which a rehearing may have been granted on request of a party.

R2-7-1001. Approval to Enter into a Cooperative Purchasing Agreement

A. Agency chief procurement officers may use Arizona state contracts without a cooperative purchasing agreement.

B. Agency chief procurement officers shall submit a written request to the state procurement administrator before participating in a cooperative purchasing agreement with another public procurement unit or group of public procurement units. The written request for approval shall specify the manner which the administering public procurement unit complies with A.R.S. § 41-2634.

C. The state procurement administrator shall either:

   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the state government unit; or
   3. Deny the request.

R2-7-1002. Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer

A. An agency chief procurement officer shall ensure that any cooperative purchasing agreement administered for use by other eligible procurement units under A.R.S. § 41-2632 provides that:

   1. Payment for materials or services and inspection and acceptance of materials or services are the responsibility of the using eligible procurement unit;
   2. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise rights or remedies;
   3. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of that unit. The state, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy;
   4. The eligible procurement unit shall not use an Arizona state contract as a method for obtaining additional concessions or reduced prices for similar material or services; and

5. An agency chief procurement officer may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract.

B. The state procurement administrator may authorize a state governmental unit to establish an Arizona state contract which may be used by designated eligible procurement units.

R2-7-1003. Purchasing from a Cooperative Contract

A. The agency chief procurement officer shall not procure materials, services, professional services, construction or construction services from any cooperative contracts available under an existing Arizona state contract, unless authorized by the state procurement administrator.

B. If it is in the best interest of the state and at the discretion of the agency chief procurement officer, a cooperative contract may be used if the following criteria, at a minimum, are met:

1. The cooperative contract was awarded through the competitive process and documentation is available to substantiate the award, including:
   a. Bidder's list,
   b. Solicitation included evaluation factors,
   c. Multiple offers received,
   d. Bid tabulation and evaluation offers, and
   e. Basis for cooperative contract award with established evaluation factors.
2. Cost analysis to determine price is fair and reasonable as prescribed by R2-7-702;
3. Review of cooperative contract terms and conditions; and
4. Vendor's willingness to extend cooperative contract to the state.

C. Purchases under a cooperative contract as permitted by this subsection shall not, in the aggregate, exceed 25% of the initial value, or estimated value for term contracts, of the cooperative contract or $500,000, whichever is lesser, unless the state procurement administrator determines in writing that the purchase is in the best interest to the state and the price is determined fair and reasonable pursuant to R2-7-702.

R2-7-1004. Establishment of a Committee as Required by A.R.S. § 41-2636

A. The director shall appoint a committee as required by A.R.S. § 41-2636.

B. The committee shall be comprised of at least seven members, including the committee chair, representing:

1. Arizona Correctional Industries ("ACI");
2. Arizona Industries for the Blind ("AIB");
3. Certified nonprofit agency that serves individuals with disabilities (CNAID) as defined in A.R.S. § 41-2636(G);
4. Other public procurement units.

C. The state procurement administrator or the state procurement administrator's designee shall chair the committee.

D. The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.

E. The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. § 41-2636(F).

R2-7-1005. Certification as Non-Profit Agency for Disabled Individuals

A. A non-profit organization may request written approval from the committee for certified status as a non-profit agency for disabled individuals for the purpose of being eligible for set-aside contracts by submitting information that satisfies the criteria identified in A.R.S. § 41-2636(A) and 41-2636(G).

B. The committee shall review the information submitted and respond to the requestor in writing by:

1. Approving the request for certification;
2. Denying the request for certification; or
3. Requesting more information.

R2-7-1006. Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

A. A non-profit organization requesting certification by the committee as a non-profit agency for disabled individuals shall submit the following written information to the State Procurement Office, attention of the committee chair:

1. Name of organization, address, contact name, and contact information;
2. Description of the non-profit activity center;
3. Evidence of the organization's non-profit status;
4. A statement that the business is operated in accordance with A.R.S. § 41-2636(G);
5. A statement of Occupational Safety and Health Administration compliance; and
6. The signature and title of the responsible party within the applicant's organization.

B. The committee shall review the submitted application at the next scheduled committee meeting and may do any of the following:

1. Approve the organization as a certified non-profit agency for disabled individuals;
2. Table the application and request additional information; or
3. Decline the application.

R2-7-1007. Approval of Specific Materials or Services for Set-aside Use

A. ACI, AIB, and CNAID shall submit the information to the committee to request approval of the material or service for mandatory set-aside use. The applicant shall also include the following information:

1. A description of the specific material or service;
2. The pricing offered;
3. Documentation that the pricing offered is fair market pricing; and
4. Information regarding availability.

B. The committee shall evaluate each offered material or service to determine:

1. The existence and extent of a need within state governmental units for the material or service;
2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
3. Whether the offered price for the material or service is reasonable.

C. The committee may:
1. Approve the requested material or service for use as a mandatory set-aside contract;
2. Establish a sub-committee to study and make a recommendation on the request;
3. Request additional information;
4. Deny the request; or
5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. § 41-2636(E).

R2-7-1008. Contract Awards Directed by the Committee

A. The State Procurement Office or the agency chief procurement officer designated by the state procurement administrator shall enter into a contract as directed by the committee. Such contracts shall not exceed five years, including any renewal options.

B. Contracts may be renewed as follows:
1. For mandatory state contracts, if the State Procurement Office makes an initial determination that the criteria set forth in R2-7-1007(B) are no longer being met, it shall refer the matter to the committee for a final determination.
2. The committee may:
   a. Approve the contract renewal;
   b. Establish a sub-committee to study and make a recommendation on contract renewal;
   c. Request additional information;
   d. Deny the contract renewal; or
   e. Take other action as may be appropriate.

C. The State Procurement Office or agency chief procurement officer designated by the state procurement administrator shall take action as directed by the committee.

R2-7-1009. Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

A. Competition is not required under A.R.S. § 41-2636(D) to enter into a contract for a material or service that is offered from a set-aside agency, but may be used at the discretion of the agency chief procurement officer or local public procurement unit. If competition is used, an agency chief procurement officer may either:
1. Seek competition only from applicable set-aside agencies; or
2. Seek competition under A.R.S. §§ 41-2533, 41-2534, or 2535.

B. Contracts awarded under this Section, shall not exceed five years, including any renewal options.

R2-7-1010. Set-aside Application Dispute Process

A. Any interested party may dispute any committee decision.

B. An interested party shall submit the dispute of a committee decision to the committee chair in writing and shall include:

   1. Name, address, and telephone number of the person submitting the dispute;
   2. Signature of the person or the person's representative;
   3. Identification of the set-aside application disputed;
   4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
   5. The form of relief requested.

C. A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submits the dispute knows or should have known the basis of the dispute.

D. The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.

E. The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submits the dispute may proceed as if the dispute has been denied.

F. An appeal of the decision of the committee chair shall be made to the director under R2-7-A905, substituting “committee chair” for “agency procurement officer.”

A COPY OF THE GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULES

A.A.C. Title 2, Chapter 7
Arizona Department of Administration
State Procurement Office
Articles 1-13

A.R.S. § 41-2511. Authority of the director

A. Except as otherwise provided in this chapter, the director may adopt rules, consistent with this chapter, governing the procurement and management of all materials, services and construction to be procured by this state and the disposal of materials.

B. The director shall serve as the central procurement officer of this state.

C. Except as otherwise provided in this chapter, the director shall, in accordance with rules adopted under this chapter:

1. Procure or supervise the procurement of all materials, services and construction needed by this state.

2. Establish guidelines for the management of all inventories of materials belonging to this state.

3. Sell, trade or otherwise dispose of surplus materials belonging to this state.

4. Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.

5. Establish and maintain programs to ensure procurement compliance with this chapter and applicable rules.

6. Establish and maintain a mandatory procurement training and certification program to ensure consistency in procurement practices for those authorized to perform procurement functions under this chapter.

7. Employ staff as necessary to perform the duties prescribed in this chapter.

8. Establish procurement offices as the director determines necessary to maintain an effective and efficient program of procurement administration.

9. Provide consultation to state agency management in all aspects of procurement to increase efficiency and economy in state agencies by improving the methods of procurement with full recognition of the requirements and needs of management.

10. Enter into agreements with any state government unit or political subdivision of this state or agency of a political subdivision of this state to furnish procurement administration services and facilities of the department. Unless monies have been appropriated by the legislature for this purpose, any agreement shall provide for reimbursement to this state of the actual cost of the services and facilities furnished, as determined by the director.

11. Enter into agreements with the attorney general for dedicated legal resources to support any state governmental unit in procurement legal matters, including negotiations, protests and appeals.

A.R.S. § 41-2501. Applicability

A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.

B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section A.R.S. § 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.

C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.

D. Notwithstanding any other law, sections A.R.S. § 41-2517 and A.R.S. § 41-2546 apply to any agency as defined in section A.R.S. § 41-1001, including the office of the governor.

E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.

F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.

G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

H. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.

I. Arizona industries for the blind is exempt from this chapter for purchases of finished goods from members of national industries for the blind and for purchases of raw materials for use in the manufacture of products for sale pursuant to section A.R.S. § 41-1972. All other procurement shall be as prescribed by this chapter.

J. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section A.R.S. § 41-1622. All other procurement shall be as prescribed by this chapter.

K. The state transportation board and the director of the department of transportation are exempt from this chapter other than section A.R.S. § 41-2586 for the procurement of construction or reconstruction, including engineering services, of transportation facilities or highway facilities and any other services that are directly related to land titles, appraisals, real property acquisition, relocation, property management or building facility design and construction for highway development and that are required pursuant to title 28, chapter 20.

L. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

M. The secretary of state is exempt from this chapter for contracts entered into pursuant to section A.R.S. § 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

N. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

O. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

P. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

Q. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.

2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).

3. For services pursuant to title 36, chapter 29, article 2.

4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

R. The department of health services may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.

2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.

3. Drug and alcohol services pursuant to section 36-141.

4. Domestic violence services pursuant to title 36, chapter 30, article 1.

S. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

T. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

U. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1.

V. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

W. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

X. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

Y. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

Z. Notwithstanding section A.R.S. § 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.

2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

AA. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules

adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

BB. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.

2. Exclusivity is not granted to an authorized third party.

3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

CC. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

DD. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

EE. The cotton research and protection council is exempt from this chapter for procurements.

FF. Expenditures of monies in the Arizona agricultural protection fund established by section 3-3304 are exempt from this chapter.

GG. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

HH. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

II. This chapter does not apply to the purchase of water, gas or electric utilities.

JJ. This chapter does not apply to professional certifications, professional memberships and conference registrations.

KK. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

LL. This chapter does not apply to contracts for credit reporting services.

MM. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.

2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

A.R.S. § 41-2502. Determinations
Written determinations required by this chapter shall be retained in the appropriate official records file of the director.

A.R.S. § 41-2503. Definitions
In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

3. "Change order" means a written order that is signed by a procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.

4. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.

(b) Does not include:

(i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

(ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.

5. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

(c) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

7. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.

8. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

9. "Contractor" means any person who has a contract with a state governmental unit.

10. "Data" means documented information, regardless of form or characteristic.

11. "Department" means the department of administration.

12. "Design-bid-build" means a project delivery method in which:

(a) There is a sequential award of two separate contracts.

(b) The first contract is for design services.

(c) The second contract is for construction.

(d) Design and construction of the project are in sequential phases.

(e) Finance services, maintenance services and operations services are not included.

13. "Design-build" means a project delivery method in which:

(a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the purchasing agency may elect separate contracts for preconstruction services and

design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(b) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

14. "Design professional" means an individual or firm that is registered by the state board of technical registration pursuant to title 32, chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.

15. "Design requirements":

(a) Means at a minimum the purchasing agency's written description of the project or service to be procured, including:

(i) The required features, functions, characteristics, qualities and properties.

(ii) The anticipated schedule, including start, duration and completion.

(iii) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

(b) May include:

(i) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to section 32-121.

(ii) Additional design information or documents that the purchasing agency elects to include.

16. "Design services" means architect services, engineer services or landscape architect services.

17. "Designee" means a duly authorized representative of the director.

18. "Director" means the director of the department of administration.

19. "Employee" means an individual drawing a salary from a state governmental unit, whether elected or not, and any noncompensated individual performing personal services for any state governmental unit.

20. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.

21. "Finance services" means financing for a construction services project.

22. "General services administration contract" means contracts awarded by the United States government general services administration.

23. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.

24. "Job-order-contracting" means a project delivery method in which:

(a) The contract is a requirements contract for indefinite quantities of construction.

(b) The construction to be performed is specified in job orders issued during the contract.

(c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

25. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.

26. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

27. "Materials":

(a) Means all property, including equipment, supplies, printing, insurance and leases of property.

(b) Does not include land, a permanent interest in land or real property or leasing space.

28. "Operations services" means routine operation of existing facilities, structures, buildings or real property.

29. "Owner" means a state purchasing agency or state governmental unit.

30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.

31. "Preconstruction services" means services and other activities during the design phase.

32. "Procurement":

(a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.

(b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection

and solicitation of sources, preparation and award of contract, and all phases of contract administration.

33. "Procurement officer":

(a) Means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.

(b) Includes an authorized representative acting within the limits of the authorized representative's authority.

34. "Purchasing agency" means any state governmental unit that is authorized by this chapter or rules adopted pursuant to this chapter, or by way of delegation from the director, to enter into contracts.

35. "Services":

(a) Means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance.

(b) Does not include employment agreements or collective bargaining agreements.

36. "Significant procurement role":

(a) Means any role that includes any of the following duties:

(i) Participating in the development of a procurement.

(ii) Participating in the development of an evaluation tool.

(iii) Approving a procurement or an evaluation tool.

(iv) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.

(v) Serving as a technical advisor or an evaluator who evaluates a procurement.

(vi) Recommending or selecting a vendor that will provide materials, services or construction to this state.

(vii) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

(b) Does not include making decisions on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the agency as applied to the project, services, goods or materials.

37. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

38. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a state governmental unit.

39. "Using agency" means any state governmental unit that uses any materials, services or construction procured under this chapter.

A.R.S. § 41-2504. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

A.R.S. § 41-2512. Delegation of authority or functions by the director

The director may delegate authority or specific procurement functions to any state governmental unit.

A.R.S. § 41-2513. Authority to contract for certain services

A. For the purpose of procuring the services of clergy, certified public accountants, legal counsel pursuant to section A.R.S. § 41-192, subsection D, physicians or dentists as defined by the laws of this state, any state governmental unit may act as a purchasing agency and contract on its own behalf for such services, subject to this chapter and rules adopted by the director.

B. In accordance with the provisions of section A.R.S. § 41-192, subsection D and notwithstanding any contrary statute, no contract for the services of legal counsel may be awarded without the approval of the attorney general.

C. The auditor general shall approve state agency contracting for financial and compliance auditing services except if specific statutory authority is otherwise provided. The auditor general shall ensure that such contract audits are conducted in accordance with generally accepted governmental auditing standards. An audit shall not be accepted until it has been approved by the auditor general.

D. The department may approve all information technology purchases exceeding twenty-five thousand dollars for a budget unit as defined in section A.R.S. § 41-3501. Purchases shall not be artificially divided to avoid review.

E. Payment for any services, including those services described in subsections A, B and C of this section, procured under this chapter shall not be made unless pursuant to a fully approved written contract.

A.R.S. § 41-2514. State procurement rules

A. The director may adopt and issue rules pursuant to chapter 6 of this title to carry out the purposes of this chapter.

B. Except by mutual consent of the parties to the contract, no rule promulgated under this chapter may change any commitment, right or obligation of this state or of a contractor under a contract in existence on the effective date of the rule.

A.R.S. § 41-2515. Collection of data concerning public procurement

All using agencies shall furnish such reports as the director may require concerning usage, needs and stocks on hand, and the director may prescribe forms and procurement systems for use by the using agencies in requisitioning, ordering and reporting of materials, services and construction.

A.R.S. § 41-2516. Procurement advisory groups or evaluation committees
A. The director may appoint advisory groups or evaluation committees to assist with respect to specifications, solicitation evaluations or procurement in specific areas and with respect to any other matters within the authority of the director.

B. Members of advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

A.R.S. § 41-2517. Procurement officers and procurement employees; violation; classification; exception
A. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with a person or firm lobbying or potentially responding to the solicitation beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant procurement role in the particular procurement.

B. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from any person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.

C. It is unlawful for a person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and

ending at the time of contract award. It is unlawful for the successful offeror or offerors and their lobbyists to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.

D. The director of the department of administration may waive any or all of the waiting period required pursuant to subsections A, B and C of this section in excess of twenty-four months for a procurement officer or an employee with a significant procurement role if the period of time that follows the signature of the nondisclosure agreement exceeds twenty-four months. A procurement officer or an employee seeking a waiver shall make a written request to the officer's or employee's state governmental unit director, and the director of the state governmental unit shall forward the request with a written recommendation to the director of the department of administration. The director of the department of administration shall provide a written decision and justification within fifteen business days after the receipt of the complete request. The director of the department of administration may not approve waiver requests for matters still in evaluation or within six months following the contract award. If the requesting party is the director or a deputy director of a state governmental unit, the request for a waiver and all written materials, including a director recommendation, must be forwarded to the governor for a final decision, except that the director may not make any recommendation or determination on the director's own request.

E. In response to a written request from an employee seeking clarification on whether the employee has played a significant role in a procurement, the director shall issue a determination in writing within fifteen days after receiving the request. The director may make a determination in writing that this section and section A.R.S. § 41-753, subsection D do not apply if a particular solicitation, sole source procurement or competition impracticable procurement has been canceled or is associated with the privatization of existing state services that would result in the elimination of the position in state service of an employee with a significant procurement role. The director may delegate the authority to make determinations pursuant to this subsection to a director of a state agency. An agency director or agency deputy director may request a determination from the office of the governor regarding whether the agency director or agency deputy director played a significant role in a particular procurement for the purposes of the one-year employment restriction, and the office of the governor shall make a determination within thirty days after the receipt of the written request.

F. It is unlawful for a procurement officer or an employee who was previously employed by a person or firm responding to a solicitation to serve in a significant procurement role for a period of one year following the person's previous employment.

G. Beginning October 1, 2014, if an agency uses a qualified vendor list of persons or entities that are eligible to be selected to design, develop, implement or construct any form of project associated with the list, any procurement officer who was assigned to work evaluating or approving the vendor list or any employee having a significant procurement role in developing the vendor list shall not accept an offer of

employment from or have employment discussions with a vendor on the list within one year after the initial publication of the list or accept an offer of employment from or have employment discussions with a newly added vendor within one year after the vendor is added to the original list. If a vendor from an approved list of qualified vendors is awarded a contract that is associated with the list, a procurement officer involved in selecting the vendor or an employee having a significant procurement role in selecting the vendor shall not accept an offer of employment from or have employment discussions with that vendor within one year after that vendor is awarded the contract.

H. On signature of a nondisclosure agreement pertaining to a particular solicitation, or at the time of a request for a sole source or competition impracticable procurement, a procurement officer or an employee having a significant role in the procurement shall provide written disclosure of any financial interest the officer or employee, or the spouse of the officer or employee, may hold.

I. A person who knowingly violates this section is guilty of a class 2 misdemeanor. On conviction the person is ineligible for appointment to or employment in a position in the state personnel system for a period of five years and, if the person is an employee of this state at the time of conviction, is subject to suspension for not less than ninety days or dismissal.

J. This section does not apply to a procurement officer or employee who in good faith relies on a determination issued by the director pursuant to subsection D of this section that the procurement officer or employee has not had a significant procurement role.

A.R.S. § 41-2531. Definitions
In this article, unless the context otherwise requires:

1. "Bidder prequalification" means determining in accordance with rules adopted pursuant to this chapter that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.

2. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this chapter, and paid a fee, if provided for in the contract.

3. "Demonstration project" means a project in which a vendor supplies a service or material to this state for which the state does not pay but for which this state may be obligated to provide routine support such as utility cost and operating personnel.

4. "Established catalogue price" means the price included in a catalogue, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer, distributor or contractor.

(b) Is either published or otherwise available for inspection by customers.

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

5. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in section A.R.S. § 41-2533.

6. "Multistep sealed bidding" means a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by this state and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

7. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

8. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.

9. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.

10. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.

11. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty per cent recovered wastepaper with ten per cent of that being post-consumer material.

12. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.

13. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in section A.R.S. § 41-2534.

14. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

15. "Responsive bidder" means a person who submits a bid which conforms in all material respects to the invitation for bids.

16. "Unsolicited proposal" means a written proposal that is submitted on the initiative of the offeror for the purposes of obtaining a contract with this state and that is not in response to a formal or informal request from this state.

17. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

A.R.S. § 41-2532. Methods of source selection
Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding as provided in section A.R.S. § 41-2533 or as provided in sections A.R.S. § 41-2534 through A.R.S. § 41-2538 and sections A.R.S. § 41-2554, A.R.S. § 41-2558, A.R.S. § 41-2559, A.R.S. § 41-2572, A.R.S. § 41-2578, A.R.S. § 41-2579, A.R.S. § 41-2581 and A.R.S. § 41-2636.

A.R.S. § 41-2533. Competitive sealed bidding
A. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section A.R.S. § 41-2532.

B. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

C. Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the director. The notice may include publication one or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in sections A.R.S. § 41-2513, A.R.S. § 41-2578, A.R.S. § 41-2579 and A.R.S. § 41-2581, the notice shall include publication in a single newspaper or in multiple newspapers within this state. The publication shall be not less than two weeks before bid opening and shall be circulated within the affected governmental jurisdiction. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.

D. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by rule, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by rule. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the state concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with rules adopted by the director.

E. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, as prescribed in rules adopted by the director. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that are not set forth in the invitation for bids.

F. The correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted in accordance with rules adopted by the director. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of this state or fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of

bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the director.

G. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder. If all bids for a construction project exceed available monies as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such monies by more than five per cent, the director may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.

H. The multistep sealed bidding method may be used if it is not practicable to initially prepare a definitive purchase description that is suitable to permit an award based on competitive sealed bidding. An invitation for bids may be issued requesting the submission of technical offers to be followed by an invitation for bids limited to those bidders whose offers are determined to be technically acceptable under the criteria set forth in the first solicitation, except that the multistep sealed bidding method may not be used for construction contracts.

I. If the price of a recycled paper product that conforms to specifications is within five per cent of a low bid product that is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled product. The director may adopt rules requiring a five per cent preference for other products made from recycled materials.

A.R.S. § 41-2534. Competitive sealed proposals

A. A contract for materials or services may be entered into by competitive sealed proposals. This section does not apply to procurement of construction, construction services or specified professional services pursuant to section A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581. Construction services shall be procured pursuant to section A.R.S. § 41-2537, A.R.S. § 41-2578 or A.R.S. § 41-2579.

B. Proposals shall be solicited through a request for proposals.

C. Adequate public notice of the request for proposals shall be given in the same manner as provided in section A.R.S. § 41-2533.

D. Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror shall be recorded in accordance with rules adopted by the director. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after contract award. To the extent the offeror designates and the state concurs, trade secrets or other proprietary data contained in the offer documents shall remain confidential in accordance with rules adopted by the director.

E. The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.

F. As provided in the request for proposals, and under rules adopted by the director, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of the solicitation requirements and to permit revision of offers. Offerors shall be accorded fair treatment with respect to any opportunity for discussion. Revisions may be permitted after submission and before award. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be reasonably susceptible to being selected for award shall be invited to submit a best and final offer. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to this state taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal. The contract file shall contain the basis on which the award is made.

A.R.S. § 41-2535. Procurements not exceeding a prescribed amount; small businesses; simplified construction procurement program

A. Any procurement that does not exceed the aggregate dollar amount of one hundred thousand dollars may be made in accordance with rules adopted by the director, except that the procurements shall be made with such competition as is practicable under the circumstances.

B. Any procurement that does not exceed the aggregate dollar amount of less than one hundred thousand dollars shall be restricted, if practicable, to small businesses as defined in rules adopted by the director. The procurement officer shall rotate the small business solicited to compete for any procurement of less than one hundred thousand dollars. If it is impracticable to restrict a particular procurement to small businesses, the procurement officer shall make a determination setting forth the reasons and place it in the contract file.

C. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the source selection procedures required by section A.R.S. § 41-2533 or A.R.S. § 41-2534 or be artificially combined to circumvent this section.

D. A procurement involving construction not exceeding one hundred thousand dollars may be made pursuant to rules adopted by the director in accordance with this section that shall be known as the simplified construction procurement program. At a minimum the rules shall require that:

1. A list be maintained of persons who desire to receive solicitations to bid on construction projects to which additions shall be permitted throughout the year.

2. The list of persons be available for public inspection.

3. Agreements for construction be on forms approved by the director.

4. All information submitted by bidders pursuant to this section be confidential according to section A.R.S. § 41-2533, subsection D.

5. All bids for construction be opened at a public opening.

6. All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.

7. Competition for construction projects under the simplified construction procurement program be encouraged to the maximum extent possible.

A.R.S. § 41-2536. Sole source procurement
A contract may be awarded for a material, service or construction item without competition if the director determines in writing that there is only one source for the required material, service or construction item. The director may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination of the basis for the sole source procurement shall be included in the contract file.

A.R.S. § 41-2537. Emergency procurements
Notwithstanding any other provision of this chapter, the director may make or authorize others to make emergency procurements if there exists a threat to public health, welfare or safety or if a situation exists which makes compliance with section A.R.S. § 41-2533, A.R.S. § 41-2534, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581 impracticable, unnecessary or contrary to the public interest as defined in rules adopted by the director, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

A.R.S. § 41-2538. Competitive selection procedures for certain professional services
A. The services specified in section A.R.S. § 41-2513 shall be procured in accordance with this section, except as authorized under section A.R.S. § 41-2535, A.R.S. § 41-2536 or A.R.S. § 41-2537.

B. Persons engaged in providing the types of services specified in section A.R.S. § 41-2513 may submit statements of qualifications and expressions of interest in providing such types of services. The director may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

C. Adequate notice of the need for such services shall be given by the purchasing agency through a request for proposals. The request for proposals shall describe the services required and list the type of information and data required of each offeror.

D. The head of the purchasing agency or a designee of such officer may conduct discussions with any offerors who submit a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

E. The award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the

evaluation factors set forth in the request for proposals and after a written determination that the compensation is fair and reasonable. Selection may be made pursuant to the provisions of this section without requiring priced proposals, but if price is included in proposals submitted, no contract may be awarded solely on the basis of price.

A.R.S. § 41-2539. Cancellation of invitation for bids or requests for proposals
An invitation for bids, a request for proposals or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interests of this state. The reasons for the cancellation or rejection shall be made part of the contract file.

A.R.S. § 41-2540. Responsibility of bidders and offerors
A. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules adopted by the director. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

B. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the director or the purchasing agency without prior written consent by the bidder or offeror except to law enforcement agencies.

A.R.S. § 41-2541. Prequalification of contractors
Prospective contractors may be prequalified for particular types of materials, services and construction. Prospective contractors have a continuing duty to provide the director with information on any material change affecting the basis of prequalification. Solicitation mailing lists of potential contractors shall include the prequalified contractors.

A.R.S. § 41-2542. Bid and contract security
The director may require, in accordance with rules adopted by the director, the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the director shall consider the nature of the performance and the need for future protection to this state. The requirement for security must be included in the invitation for bids or request for proposals.

A.R.S. § 41-2543. Cost or pricing data
A. The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, except as provided in subsection C, submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date before the date of either:

1. The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, if the total contract price is expected to exceed an amount established by department rules.

2. The pricing of any change order or contract modification which is expected to exceed an amount established by department rules.

B. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to this state shall be adjusted to exclude any significant amounts by which this state finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by this state may include profit or fee.

C. The requirements of this section need not be applied to contracts if any of the following applies:

1. The contract price is based on adequate price competition.

2. The contract price is based on established catalogue prices or market prices.

3. Contract prices are set by law or rule.

4. It is determined in writing in accordance with rules adopted by the director that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.

A.R.S. § 41-2544. Types of contracts
Subject to the limitations of this section, any type of contract that will promote the best interests of this state may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

A.R.S. § 41-2546. Multiterm contracts
A. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years and a contract for job-order-contracting construction services may also be entered into for a period of time up to five years, as deemed to be in the best interest of this state, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Notwithstanding any other law, a contract, including contracts not otherwise subject to this chapter, may be entered into for materials or services for a period of time exceeding five years if, under rules adopted pursuant to this chapter, the director determines in writing that such a contract would be advantageous to this state. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

B. Before the use of a multiterm contract, it shall be determined in writing that:

1. Estimated requirements cover the period of the contract and are reasonable and continuing.

2. Such a contract will serve the best interests of this state by encouraging effective competition or otherwise promoting economies in state procurement.

C. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor may only be reimbursed for the reasonable value of any

nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes.

A.R.S. § 41-2547. Right to inspect plant
The state may at reasonable times inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by this state.

A.R.S. § 41-2548. Right to audit records
A. The state may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in section A.R.S. § 41-2543 to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after the completion of the contract pursuant to section 35-214.

B. The state is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after the completion of the prime contract pursuant to section 35-214 and by the subcontractor for a period of five years after the completion of the subcontract pursuant to section 35-214.

A.R.S. § 41-2549. Reporting of anticompetitive practices
If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the director and the attorney general. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the director.

A.R.S. § 41-2550. Retention of procurement records
All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Arizona state library, archives and public records.

A.R.S. § 41-2551. Record of procurement actions
A. The director shall maintain a record listing all contracts in excess of an amount to be determined by regulation made under section A.R.S. § 41-2536 or A.R.S. § 41-2537 for a minimum of five years. The record shall contain:

1. Each contractor's name.

2. The amount and type of each contract.

3. A listing of the materials, services or construction procured under each contract.

B. The record shall be available for public inspection.

A.R.S. § 41-2552. Change order

A change order exceeding an amount or percentage established by regulation may be executed only after the director determines in writing that the change order is advantageous to this state.

A.R.S. § 41-2554. Procurement of earth moving, material handling, road maintenance and construction equipment; definitions

A. Notwithstanding the criteria for contract award prescribed in section A.R.S. § 41-2533, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids, which shall include as price evaluation criteria the total life cycle cost including residual value of the earth moving, material handling, road maintenance and construction equipment and such other additional evaluation factors set forth in the invitation for bids. No factors or criteria may be used in the evaluation of bids for earth moving, material handling, road maintenance and construction equipment, other than those specified in the invitation for bid. Additional evaluation factors shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section A.R.S. § 41-2533.

B. Notwithstanding the criteria for contract award prescribed in section A.R.S. § 41-2534, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state. The evaluation factors set forth in the request for proposals shall include the total life cycle cost including residual value of each proposal and such other additional evaluation factors set forth in the request for proposals. No factors or criteria may be used in the evaluation of proposals for earth moving, material handling, road maintenance and construction equipment, other than those specified in the request for proposal. Additional evaluation factors set forth in the request for proposal shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section A.R.S. § 41-2534.

C. The minimum unit list price for earth moving, material handling, road maintenance and construction equipment shall be adjusted annually by the consumer price index, United States average.

D. As used in this section:

1. "Earth moving, material handling, road maintenance, and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer's minimum unit list price of fifty thousand dollars or more and a minimum expected life cycle of three years.

2. "Outright purchase" means the initial cost to the state for the earth moving, material handling, road maintenance, and construction equipment, including all vendor charges and financing costs.

3. "Residual value" means the guaranteed minimum market value of the earth moving, material handling, road maintenance and construction equipment at the end of the life cycle of the earth moving, material handling, road maintenance and construction equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.

4. "Total life cycle cost" means total state costs and financing costs through the life cycle of the earth moving, material handling, road maintenance and construction equipment being purchased less residual value.

5. "Total state costs" means cost to the state for the earth moving, material handling, road maintenance and construction equipment including repair costs, present value of monies, vendor charges, and all other identifiable state costs that may be incurred.

6. "Vendor charges" means costs of all vendor support, materials, transportation and all other identifiable costs associated with the vendor's proposal or bid.

7. "Vendor support" means services provided by the vendor for items such as consulting, education and training.

A.R.S. § 41-2555. Request for information
The procurement officer may issue a request for information to obtain data about services or materials available to meet a specific need. Adequate public notice as specified in section A.R.S. § 41-2533 shall be provided.

A.R.S. § 41-2556. Demonstration projects
A. A demonstration project may be undertaken if the director determines in writing that the project is innovative and unique. This state shall not be obligated to pay the contractor, or to procure or lease the services or materials supplied by the contractor. However, on the written request and justification by the agency and written determination by the director that it is in the best interest of this state, this state may pay the contractor for the demonstration project. The contract term shall not exceed two years. A request and written determination of the basis for the contract award shall be included in the contract file.

B. A contract to procure or lease services or materials previously supplied during a demonstration project shall be conducted under this article.

C. Except as otherwise provided by law, a contractor for a demonstration project shall not be precluded from participating as a bidder or offeror in a procurement for the services or materials supplied during a demonstration project.

A.R.S. § 41-2557. Unsolicited proposals
A contract may be awarded based on an unsolicited proposal only if the director determines in writing that the conditions of either section A.R.S. § 41-2536 or A.R.S. § 41-2537 exist. The determination shall include all of the following:

1. The proposal is innovative and unique.

2. The proposal is not available without restriction from another source and does not closely resemble a similar product which is either available or pending in the industry.

3. The technical office of the purchasing agency receiving the proposal has sufficiently supported its recommendations with facts and circumstances that preclude competition.

4. The procurement officer has approved in writing the award of a contract based on the unsolicited proposal.

A.R.S. § 41-2558. General services administration contracts
Notwithstanding sections A.R.S. § 41-2533 and A.R.S. § 41-2534, the director or the director's designee may evaluate general services administration contracts for materials and services. The director or the director's designee may authorize a purchasing agency to make purchases under a contract approved by the director or the director's designee without complying with the requirements prescribed in section A.R.S. § 41-2533 or A.R.S. § 41-2534 if the director or the director's designee determines all of the following apply:

1. The price is equal to or less than the contractor's current federal supply contract price.

2. The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms and conditions.

3. The purchase order adequately identifies the federal supply contract on which the order is based.

4. It is cost-effective and in the best interests of this state.

A.R.S. § 41-2559. Public-private partnership contracts
A. The director may enter into public-private partnership contracts to finance the technology needs of the purchasing agency. The funding for services under a public-private partnership contract entered into pursuant to this section shall be contingent on and computed according to established performance standards and shall be attributable to the successful implementation of the technology program for the period specified in the contract. The director may issue requests for information and requests for proposals to solicit private partners that are interested in providing programs under a contract entered into pursuant to this section.

B. Each request for proposals issued pursuant to this section shall require each private partner to propose specific performance improvements and measurement approaches to be used to measure the value delivered by the vendor technology solution. The director shall include an assessment of the proposed value of the vendor technology solution in its evaluation criteria to select the best value solution for the purchasing agency.

C. A contract entered into between the director and an automated systems vendor shall provide for payment of fees on a contractually specific amount based on the achievement of measured performance improvements that are mutually agreed to by the contractor and the director and monies for payment of these fees are not subject

to legislative appropriation. The following are subject to review and approval by the director:

1. The terms of contracts entered into pursuant to this section relating to the measurement of the performance improvement attributable to the vendor technology program.

2. Payment of fees based on the achievement of the established performance measures.

D. Before a public-private partnership contract is awarded pursuant to this section, the joint legislative budget committee staff shall be consulted with regard to the potential fiscal impact of the contract to the state. If the joint legislative budget committee staff finds a significant negative fiscal impact to the state, the staff shall report its findings to the joint legislative budget committee.

A.R.S. § 41-2561. Definition
As used in this article, "specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

A.R.S. § 41-2562. Duties of the director
A. The director shall establish guidelines governing the preparation, maintenance and content of specifications for materials, services and construction required by this state. The director shall prepare, issue, revise, maintain and monitor the use of specifications for materials, services and construction required by this state.

B. Notwithstanding the provisions of section A.R.S. § 41-2501, all procurement solicitations for volatile organic compound containing commodities shall include a request for substitute commodities with lower or no volatile organic content. Substitute products shall not have increased toxicity compared to the original commodity.

A.R.S. § 41-2563. Exempted services
Specifications for services procured under section A.R.S. § 41-2513 may be prepared by a purchasing agency in accordance with this article and rules adopted under this article.

A.R.S. § 41-2564. Relationship with using agencies
The director may obtain advice and assistance from using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and use its own specifications.

A.R.S. § 41-2565. Maximum practicable competition
All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this state's needs and shall not be unduly restrictive.

A.R.S. § 41-2566. Specifications prepared by architects and engineers
All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes

intended and encourage competition in satisfying this state's needs and shall not be unduly restrictive.

A.R.S. § 41-2567. Specifications for energy consumptive material
In conjunction with the governor's office of energy policy, the director shall establish specifications based on considerations of energy conservation for the procurement of selected energy consumptive material.

A.R.S. § 41-2568. Specifications for recycled materials
To the extent practicable, specifications shall emphasize functional or performance criteria which do not discriminate against the use of recycled materials.

A.R.S. § 41-2571. Definitions
In this article, unless the context otherwise requires:

1. "Architect services", "engineer services", "land surveying services", "assayer services", "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in title 32, chapter 1, article 1.

2. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

3. "Design professional service contract" means a written agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility or development or other improvement to land.

4. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or employees or subconsultants of the design professional.

5. "Subconsultant" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.

A.R.S. § 41-2572. Construction by state employees; construction by inmates of public institution
A. A building, structure, addition or alteration of a public facility may be constructed by employees or force account, if the cost does not exceed twenty thousand dollars.

B. A building, structure, addition or alteration at a public institution may be constructed by inmates if such work is determined to be advantageous to this state.

A.R.S. § 41-2573. Bid security
A. As a guarantee that the contractor will enter into a contract, bid security is required for all construction procured pursuant to section A.R.S. § 41-2533 and all

construction services procured pursuant to section A.R.S. § 41-2578, subsection F or section A.R.S. § 41-2579, subsection F if the purchasing agency estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract, will be more than the amount established by section A.R.S. § 41-2535, subsection D. Bid security shall be a certified check, cashier's check or surety bond.

B. Bid security shall be submitted in the following amounts:

1. For design-bid-build construction services, ten per cent of the contractor's bid.

2. For design-build construction services awarded by competitive sealed proposals pursuant to section A.R.S. § 41-2578, subsection F, ten per cent of the purchasing agency's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services, design services, preconstruction services or any other related services included in the contract.

3. For job-order-contracting construction services awarded by competitive sealed proposals pursuant to section A.R.S. § 41-2578, subsection F or section A.R.S. § 41-2579, subsection F, the amount prescribed by the purchasing agency in the request for proposals, but not more than ten per cent of the purchasing agency's reasonably estimated budget for construction that the purchasing agency believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract.

C. Nothing in this section prevents a state governmental unit from requiring such bid security in relation to any construction contract. The surety bond shall be executed and furnished as required by title 34, chapter 2 or chapter 6, as applicable, and the conditions and provisions of the surety bond regarding the surety's obligations shall follow the form required by section 34-201 or 34-608, as applicable.

D. If the invitation for bids or request for proposals requires security, noncompliance requires that the bid be rejected unless, pursuant to rules, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

E. After the bids or proposals are opened, they are irrevocable for the period specified in the invitation for bids or request for proposals, except as provided in section A.R.S. § 41-2533, subsection F, section A.R.S. § 41-2578, subsection F and section A.R.S. § 41-2579, subsection F. If a bidder is permitted to withdraw its bid before award, no action may be had against the bidder or the bid security.

A.R.S. § 41-2574. Contract performance and payment bonds

A. The following bonds or security is required and is binding on the parties to the contract if the value of a construction award exceeds the amount established by section A.R.S. § 41-2535:

1. A performance bond that is executed and furnished as required under title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to one hundred per cent of the price specified in the contract conditioned on the faithful performance

of the contract in accordance with the plans, specifications and conditions of the contract, except that:

(a) For job-order-contracting construction services, the performance bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the purchasing agency, and, if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the purchasing agency's reasonable estimate of the amount of construction that the purchasing agency believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.

(b) For construction-manager-at-risk construction services and design-build construction services, the amount of the performance bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services and other related services included in the contract. This bond is solely for the protection of this state. The conditions and provisions of the performance bond regarding the surety's obligations shall follow the form required under section 34-222, subsection G or section 34-610, subsection G, as applicable.

2. A payment bond that is executed and furnished as required by title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to one hundred per cent of the price specified in the contract for the protection of all persons supplying labor or material to the contractor or its subcontractors for the performance of the construction provided for in the contract, except that:

(a) For job-order-contracting construction services, the payment bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the purchasing agency, and, if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the purchasing agency's reasonable estimate of the amount of construction that the purchasing agency believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.

(b) For construction-manager-at-risk construction services and design-build construction services, the amount of the payment bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract. The conditions and provisions of the payment bond regarding the surety's obligations shall follow the form required under section 34-222, subsection F or section 34-610, subsection F, as applicable.

B. For design-bid-build construction, the bonds prescribed in subsection A of this section shall be provided on and at the same time as execution of the construction contract. For construction-manager-at-risk, design-build and job-order-contracting

construction services, the bonds prescribed in subsection A of this section shall be provided only on and at the same time as execution of a contract or an amendment to a contract that commits the contractor to provide construction for a fixed price, guaranteed maximum price or other fixed amount within a designated time frame.

C. If the prime contract or specifications require any persons supplying labor or materials in the prosecution of the work to furnish payment or performance bonds, these bonds shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the provisions of any other statute, the bonds shall not be executed by an individual surety or sureties, even if the requirements of section 7-101 are satisfied.

A.R.S. § 41-2576. Contract payment retention; partial payment

A. Ten per cent of all construction contract payments shall be retained by this state as insurance of proper performance of the contract or, at the option of the contractor, a substitute security may be provided by the contractor in an authorized form pursuant to rules adopted by the director. The contractor is entitled to all interest from any such substitute security.

B. When the contract is fifty per cent completed, one-half of the amount retained or securities substituted pursuant to this section shall be paid to the contractor upon the contractor's request provided the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty per cent completed, no more than five per cent of the amount of any subsequent progress payments made under the contract shall be retained providing the contractor is making satisfactory progress on the project, except that if at any time the state determines satisfactory progress is not being made ten per cent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.

C. Any retention shall be paid or substitute security shall be returned to the contractor within sixty days after final completion and acceptance of work under the contract. Retention of payments by a purchasing agency longer than sixty days after final completion and acceptance requires a specific written finding by the purchasing agency of the reasons justifying the delay in payment. No purchasing agency may retain any monies after sixty days which are in excess of the amount necessary to pay the expenses the purchasing agency reasonably expects to incur in order to pay or discharge the expenses determined by the finding justifying the retention of monies.

D. This state shall not accept any substitute security unless accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the state governmental unit or the contractor in relationship to the security assigned. In any instance in which this state accepts substitute security as provided in this section, any subcontractor undertaking to perform any part of the contract is entitled to provide such security to the contractor.

E. Notwithstanding anything to the contrary in this section or in any other law:

1. There shall be no retention for job-order-contracting construction services contracts and the purchasing agency may elect to have no retention for construction-manager-at-risk and design-build construction services contracts.

2. This section applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

A.R.S. § 41-2577. Progress payments

A. Progress payments may be made by this state to the contractor on the basis of a duly certified and approved estimate of the work performed during a preceding period of time as set by rule, except that a percentage of all estimates shall be retained as provided in section A.R.S. § 41-2576. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the owner on submission to any person designated by the owner for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this section shall be deemed approved and certified after seven days from the date of submission unless before that time the owner or owner's agent prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract or design professional service contract. The owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract or design professional service contract on which the price is stated separately in the contract or design professional service contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to section A.R.S. § 41-2576. No contract for construction or design professional services may materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this section.

B. The contractor shall pay to the contractor's subcontractors, design professionals or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor, design professional or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor, subcontractor or design professional on account of the work performed by the contractor's or subcontractor's subcontractors or design professionals, to the extent of each such subcontractor's or design professional's interest therein, except that no contract for construction may materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this section. These payments to subcontractors, design professionals or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor, subcontractor or design professional of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. The subcontractor, design professional or material supplier shall notify the registrar of contractors and the purchasing agency in writing of any payment less than the amount or percentage approved for the class or item of work or design professional services as set forth in this section.

C. A subcontractor or design professional may notify the purchasing agency in writing requesting that the subcontractor or design professional be notified by the purchasing agency in writing within five days from payment of each progress payment made to the contractor. The subcontractor's or design professional's request remains in effect for the duration of the subcontractor's or design professional's work on the project.

D. Nothing in this chapter prevents the contractor or subcontractor, at the time of application and certification to the owner or contractor, from withholding such application and certification to the owner or contractor for payment to the subcontractor, design professional or material supplier for unsatisfactory job progress, defective construction work or design professional services or materials not remedied, disputed work or materials, third-party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor or design professional to make timely payments for labor, equipment and materials or design professional services, damage to the contractor or another subcontractor or design professional, reasonable evidence that the subcontract or design professional service contract cannot be completed for the unpaid balance of the subcontract or design professional service contract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.

E. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one percent per month or a fraction of the month on such unpaid balance as may be due.

F. If any periodic or final payment to a subcontractor or design professional is delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the contractor's or subcontractor's subcontractor, design professional or material supplier interest, beginning on the eighth day, at the rate of one percent per calendar month or a fraction of a calendar month on such unpaid balance as may be due.

G. Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services contract for construction and in a contract for design services and does not apply to amounts payable in a contract for preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

A.R.S. § 41-2578. Procurement of specified professional and construction services; definition

A. Except as authorized by sections A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537 and A.R.S. § 41-2581, a single contract for architect services, assayer services, construction-manager-at-risk construction services, design-build construction services, engineer services, job-order-contracting construction services, geologist services, landscape architect services and land surveying services shall be procured as provided in this section.

B. This state shall provide notice, in accordance with rules, of each procurement of a single contract for professional services or construction services specified in this section and shall award the single contract on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to procedures prescribed in this section.

C. In the procurement of a single contract for professional services or construction services pursuant to this section:

1. The following requirements apply:

(a) The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or under subsection D of this section, including the selection of persons or firms to be interviewed, the selection of persons or firms to be on the final list, in determining the order of preference of persons or firms on the final list or for any other purpose in the selection process.

(b) In determining the persons or firms to participate in any interviews and in determining the persons and firms to be on the final list and their order on the final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by the purchasing agency for that purpose as provided in this subsection. No other factors or criteria may be used in the evaluation, determinations and other actions.

(c) A purchasing agency is limited to one contract in each procurement under this section. Alternatively:

(i) For construction-manager-at-risk construction services, a purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(ii) For design-build construction services, a purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(iii) For professional services, a purchasing agency may enter into multiple contracts for different phases of a single project.

(d) All construction-manager-at-risk construction services or design-build construction services included in a procurement under this section shall be limited to construction services to be performed at a single location, a common location or, if the construction services are all for a similar purpose, multiple locations. For construction-manager-at-risk construction services and design-build construction services to be performed at multiple locations:

(i) At the time the request for qualifications is issued, the purchasing agency must intend to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.

(ii) The request for qualifications must include the information described in paragraph 2, subdivision (g) of this subsection.

(e) If the purchasing agency enters into the first contract for preconstruction services, construction services or professional services as the result of the procurement, the procurement under this section ends. After execution of that first contract the purchasing agency may not use the procurement or the existing final list

in the procurement as the basis for entering into a contract with any other person or firm that participated in the procurement.

(f) Notwithstanding any other provision of this section specifying the number of persons or firms to be interviewed, the number of persons or firms to be on a final list or any other numerical specification in this section:

(i) If a smaller number of persons or firms respond to the request for qualifications or if one or more persons or firms drop out of the procurement so that there is a smaller number of persons or firms participating in the procurement, the purchasing agency, as the purchasing agency determines necessary or appropriate, may elect to proceed with the procurement with the participating persons or firms if there are at least two participating responsive and responsible persons or firms. Alternatively, the purchasing agency may elect to terminate the procurement.

(ii) As to a request for qualifications for professional services or construction services to be negotiated pursuant to subsection E of this section only, if only one responsive and responsible person or firm responds to the request for qualifications or if one or more persons or firms drop out of the procurement so that only one responsive and responsible person or firm remains in the procurement, the director may elect to proceed with the procurement with only one person or firm if the director determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on the final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of the state, the selection committee may replace that person or firm on the final list with another person or firm that submitted qualifications in the procurement and that is selected by the selection committee as the next most qualified.

2. The purchasing agency shall issue a request for qualifications for each procurement and give adequate public notice of the request for qualifications in the same manner as provided in section A.R.S. § 41-2533. The request for qualifications shall:

(a) State that one contract may or will be awarded, describe the services to be performed under the contract and state that one person or firm may or will be awarded the contract.

(b) In a procurement of a contract to be negotiated under subsection E of this section, state that there will be a single final list of at least three and not more than five persons or firms. In a procurement in which the contract will be awarded under subsection F of this section, state that there will be a single final list and that the number of persons or firms on the final list will be three.

(c) As prescribed below, state the selection criteria and relative weight of the selection criteria to be used by the selection committee, except that for construction services one of the criteria shall be the person's or firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan. All selection criteria under this subsection shall be factors that demonstrate competence and qualifications for the type of professional services or construction services included in the procurement. If:

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

(ii) Interviews will not be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on the final list and in determining their order on the final list.

(d) If the purchasing agency will hold interviews as part of the selection process, state that interviews will be held and that the interviews will be with at least three and no more than five persons or firms.

(e) For procurements of construction services, include either:

(i) A requirement that each person or firm submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

(ii) A subcontractor selection plan adopted by the purchasing agency that applies to the person or firm that is selected to perform the construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person or firm must submit a description of the procedures it proposes to use to implement the purchasing agency's subcontractor selection plan.

(f) Include a description of the publicly available location of the purchasing agency's protest policy and procedures or, if the purchasing agency does not have a protest policy and procedures, a statement that the protest policy and procedures referred to in subsection J of this section apply to any protests in connection with the procurement.

(g) In a procurement of construction-manager-at-risk construction services or design-build construction services to be performed at multiple locations, include:

(i) A brief description of the construction services to be performed at each location.

(ii) The estimated budget for the construction services to be performed at each location.

(iii) A schedule for the construction services to be performed at each location that shows the purchasing agency's intent to commence all construction at each location

within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.

3. The director or head of a purchasing agency shall initiate an appropriately qualified selection committee for each request for qualifications in accordance with rules adopted by the director. The director or head of a purchasing agency shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the purchasing agency or a purchasing agency representative appointed by the purchasing agency. If procuring professional services, the purchasing agency shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of construction services shall not have more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to section 32-121. These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the purchasing agency for performing this service, but the purchasing agency may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a contractor under a contract awarded under the procurement or provide any professional services, construction, construction services, materials or other services under the contract. The selection committee and the purchasing agency shall do the following:

(a) If interviews are specified in the request for qualifications:

(i) The selection committee shall determine the person or firms to be interviewed by evaluating the statements of qualifications and performance data that are submitted in response to the purchasing agency's request for qualifications based only on the selection criteria and relative weight of the selection criteria stated in the request for qualifications to be used to determine the persons or firms to be interviewed.

(ii) If the selection criteria and relative weight of the selection criteria to be used by the selection committee to select the persons or firms on the final list and to determine their order on the final list are not included in the request for qualifications, before the interviews are held the purchasing agency shall distribute to the persons or firms to be interviewed the selection criteria and relative weight of the selection criteria to be used to select the persons or firms on the final list and to determine their order on the final list. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons or firms to be interviewed.

(iii) The selection committee shall conduct interviews with at least three but not more than five persons or firms as specified in the request for qualifications regarding the professional services or construction services and the relative methods of approach for furnishing the required professional services or construction services.

(b) Based only on the selection criteria and relative weight of the selection criteria specified as provided in this subsection for selection of the persons or firms on the final list and their order on the final list, the selection committee shall select the persons or firms for the final list and, in the case of a final list for a contract that will

be negotiated under subsection E of this section, rank the three persons or firms on the final list in order of preference.

(c) If the contract will be negotiated under subsection E of this section, before or at the same time as the purchasing agency notifies the highest ranking person or firm on the final list that it is the highest ranking person or firm, the purchasing agency shall send actual notice to each of the following that it is not the highest person or firm on the final list or that another person or firm is the highest ranking person or firm on the final list:

(i) If interviews were held, the other persons and firms interviewed.

(ii) If interviews were not held, the other persons and firms that made submittals.

(d) If the contract will be awarded under subsection F of this section, before or at the same time as the purchasing agency notifies the persons or firms on the final list that they are on the final list, the purchasing agency shall send actual notice to each of the following persons or firms that they are not on the final list or that other persons or firms are on the final list:

(i) If interviews were held, the other persons or firms interviewed.

(ii) If interviews were not held, the other persons or firms that made submittals.

D. The director shall award the single contract under the procurement as provided in subsection E or F of this section.

E. The procurement officer shall conduct negotiations with persons or firms on the final list as follows:

1. The procurement is for a single contract for construction services or professional services, and there is one final list.

2. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to the procurement officer. In making this decision, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services or construction services to be rendered.

3. The procurement officer shall enter into negotiations with the highest qualified person or firm on the final list.

4. If the procurement officer is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.

5. If, in a procurement under this section, the procurement officer terminates negotiations with a person or firm on the final list and commences negotiations with another person or firm on the final list, the procurement officer shall not in that

procurement recommence negotiations or enter into a contract for the construction services or professional services covered by the final list with any person or firm on the final list with whom the procurement officer has terminated negotiations.

F. As an alternative to subsection E of this section, the procurement officer may award a single contract for design-build construction services or job-order-contracting construction services as follows:

1. The procurement officer shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.

2. The procurement officer shall issue a request for proposals to the persons or firms on the final list developed pursuant to subsection C of this section.

3. The request for proposals shall include:

(a) The purchasing agency's project schedule and project final budget for design and construction or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the contract will be awarded to the person or firm whose proposal receives the highest number of points under a scoring method.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method may include:

(i) For design-build construction services only, demonstrated compliance with the design requirements.

(ii) Offeror qualifications.

(iii) Offeror financial capacity.

(iv) Compliance with the purchasing agency's project schedule.

(v) For design-build construction services only, if the request for proposals specifies that the purchasing agency will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the purchasing agency's budget as prescribed in the request for proposals.

(vi) For design-build construction services if the request for proposals does not contain the specifications prescribed in item (v) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.

(vii) An offeror quality management plan.

(viii) Other evaluation factors that demonstrate competence and qualifications for the type of construction services in the request for proposals as determined by the purchasing agency, if any.

(d) For design-build construction services only, the design requirements.

(e) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

(f) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(g) If the purchasing agency conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the purchasing agency determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the purchasing agency before those discussions are held.

5. If determined by the purchasing agency and included by the purchasing agency in the request for proposals, the selection committee shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.

7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The procurement officer shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation. Before or at the same time as the purchasing agency notifies the winning offeror that it has won, the purchasing agency shall send actual notice to each other offeror either that the offeror has not won or that another offeror has won.

10. The contract or contracts file shall contain the basis on which the award is made, including at a minimum the information and documents required under subsection G of this section.

11. For design-build construction services only, the procurement officer shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the purchasing agency's project final budget for design and construction, as prescribed in the request for proposals, but not less than two-tenths of one per cent of the project final budget for design and construction to each final list offeror who provides a responsive, but unsuccessful, proposal. If the procurement officer does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the purchasing agency's project final budget for design and construction as included in the request for proposals. The procurement officer shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the procurement officer may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the offerors. Notwithstanding the other provisions of this paragraph, an offeror may elect to waive the stipulated fee. If an offeror elects to waive the stipulated fee, the purchasing agency may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the purchasing agency from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

G. At a minimum, the purchasing agency shall retain the following for each procurement under this section:

1. For each request for qualifications procurement process under subsection C of this section:

(a) If interviews were not held:

(i) The submittal of the person or firm listed first on the final list and, if different, the submittal of the person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of

individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(b) If interviews were held:

(i) All submittals of the person or firm listed first on the final list and, if different, all submittals of the person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that was interviewed and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that was interviewed and that support the final overall rankings and scores of the persons or firms that were interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(vi) A list of the selection criteria and relative weight of the selection criteria used to select the persons or firms for the short list to be interviewed.

(vii) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score in the selection of the persons or firms to be on the short list to be interviewed.

(viii) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications in the selection of the persons or firms to be on the short list to be interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for the individual selection committee members or any other form as determined by the purchasing agency.

2. For each request for proposals procurement process under subsection F of this section:

(a) The entire proposal submitted by the person or firm that received the highest score in the scoring method in the request for proposals and, if different, the entire proposal submitted by the person or firm with which the purchasing agency enters into a contract.

(b) The description of the scoring method, the list of factors in the scoring method and the number of points allocated to each factor, all as included in the request for proposals.

(c) A list that contains the name of each offeror that submitted a proposal and that shows the offeror's final overall score.

(d) A document or documents that show the final score on each factor in the scoring method in the request for proposals of each offeror that submitted a proposal and that support the final overall scores of the offerors that submitted proposals. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

H. Information relating to each procurement under this section shall be made available to the public as follows:

1. Notwithstanding title 39, chapter 1, article 2, until the purchasing agency awards a contract or terminates the procurement, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the purchasing agency in response to the request for qualifications pursuant to subsection C of this section or contained in proposals submitted pursuant to subsection F of this section shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing submitters and offerors during the selection process.

2. After the purchasing agency awards the contract or terminates the procurement, the purchasing agency shall make available to the public pursuant to title 39, chapter 1, article 2 at a minimum all of the items that the purchasing agency is required to retain under subsection G of this section, except the proposals submitted in response to a request for proposals under subsection F of this section and the document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section.

3. The proposals submitted under subsection F of this section shall not be made available to the public until after the purchasing agency has entered into a contract or terminated the procurement. At a minimum the proposals submitted under subsection F of this section that the purchasing agency is required to retain under subsection G of this section shall be made available to the public after the purchasing agency has entered into a contract or terminated the procurement.

4. To the extent that the offeror designates and the purchasing agency concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

5. The document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section are available to the extent provided in title 39, chapter 1, article 2.

I. A purchasing agency may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all submissions of qualifications or proposals or determine not to enter into a contract as specified in the solicitation if it is in the best interest of the purchasing agency. The purchasing agency shall make the reasons for cancellation, rejection or determination not to enter into a contract part of the contract file.

J. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

A.R.S. § 41-2579. Procurement of multiple contacts for certain job-order-contracting construction services and certain professional services; definition

A. Except as authorized in this section and in sections A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537 and A.R.S. § 41-2581, a purchasing agency shall not procure in a single procurement multiple contracts for construction services or professional services. In a procurement under this section, there is a single procurement process for all of the multiple contracts included in the procurement. A purchasing agency may procure under this section:

1. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms.

2. Multiple contracts for professional services to be awarded to separate persons or firms or to be awarded to a single person or firm as specified in the request for qualifications.

B. A purchasing agency shall provide notice of each procurement under this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to the procedures prescribed in this section.

C. In a procurement pursuant to this section:

1. The following requirements apply:

(a) The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or under subsection D of this section, including the selection of persons or firms to be interviewed, the selection of persons or firms to be on a final list, in determining the order of preference of persons or firms on a final list or for any other purpose in the selection process.

(b) In determining the persons or firms to participate in any interviews and in determining the persons and firms to be on a final list and their order on a final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by the purchasing agency for that purpose as provided in this subsection. No other factors or criteria may be used in the evaluation, determinations and other actions.

(c) If the purchasing agency enters into the number of multiple contracts being procured for job-order-contracting construction services or professional services, a procurement under this section ends. After that time the purchasing agency may not

use the procurement or any existing final list in the procurement as the basis for entering into a replacement contract with any other person or firm that participated in the procurement.

(d) Notwithstanding any other provision of this section specifying the number of persons or firms to be interviewed, the number of persons or firms to be on a final list or any other numerical specification in this section:

(i) If a smaller number of persons or firms respond to the request for qualifications or if one or more persons or firms drop out of the procurement so that there is a smaller number of persons or firms participating in the procurement, the purchasing agency, as the purchasing agency determines necessary or appropriate, may elect to proceed with the procurement with the participating persons or firms if there are at least two participating responsive and responsible persons or firms. Alternatively, the purchasing agency may elect to terminate the procurement.

(ii) As to a request for qualifications for professional services or job-order-contracting construction services to be negotiated pursuant to subsection E of this section only, if only one responsive and responsible person or firm responds to the request for qualifications or if one or more persons or firms drop out of the procurement so that only one responsive and responsible person or firm remains in the procurement, the director may elect to proceed with the procurement with only one person or firm if the director determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on a final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of this state, the selection committee may replace that person or firm on the final list with another person or firm that submitted qualifications in the procurement and that is selected by the selection committee as the next most qualified.

2. The purchasing agency shall issue a request for qualifications for each procurement and give adequate public notice of the request for qualifications in the same manner as provided in section A.R.S. § 41-2533. The publication shall include the fact that multiple contracts may or will be awarded, shall state the number of contracts that may or will be awarded and shall describe the professional services or job-order-contracting construction services to be performed under each contract. The request for qualifications shall:

(a) State the following information about the contracts that may or will be awarded:

(i) If the request for qualifications is for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms, that multiple contracts for similar job-order-contracting construction services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts and that each of the multiple contracts will be awarded to a separate person or firm.

(ii) If the request for qualifications is for multiple contracts for professional services, that multiple contracts for professional services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of

the multiple contracts and either that each of the multiple contracts will be awarded to a separate person or firm or that all of the multiple contracts will be awarded to the same person or firm.

(b) State as to final lists:

(i) In a procurement of multiple contracts for professional services to be awarded to a single person or firm, that there will be a single final list of at least three and not more than five persons or firms.

(ii) In a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or in a procurement for multiple contracts for similar professional services to be awarded to separate persons or firms, that there will be a single final list and the number of persons or firms on the final list, which shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the purchasing agency and that is not more than five.

(iii) In a procurement for multiple contracts for different professional services to be awarded to separate persons or firms, that there will be a separate final list for each type of professional services and that the number of persons or firms on each final list will be the number of contracts that may or will be awarded for each type of professional services and a number that is determined by the purchasing agency and that is not more than five.

(c) As prescribed below, state the selection criteria and relative weight of the selection criteria to be used by the selection committee, except that in a procurement for multiple contracts for job-order-contracting construction services to be awarded to separate persons or firms one of the criteria shall be the person's or firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan. All selection criteria under this subsection shall be factors that demonstrate competence and qualifications for the type of professional services or job-order-contracting construction services included in the procurement. If:

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on each final list and in determining their order on each final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

(ii) Interviews will not be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on each final list and in determining their order on each final list.

(d) If the purchasing agency will hold interviews as part of the selection process:

(i) In a procurement of multiple contracts for professional services to be awarded to the same person or firm, state that interviews will be held and that the interviews will be with at least three but not more than five persons or firms.

(ii) In a procurement of multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or in a procurement of multiple contracts for similar professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency and shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the purchasing agency and that is not more than five.

(iii) In a procurement of multiple contracts for different professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency, shall be at least three times the number of contracts that may or will be awarded and shall not be more than five times the number of contracts that may or will be awarded.

(e) For procurements of multiple contracts for job-order-contracting construction services to be awarded to separate persons or firms, include either:

(i) A requirement that each person or firm submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

(ii) A subcontractor selection plan adopted by the purchasing agency that applies to the person or firm that is selected to perform the job-order-contracting construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person or firm must submit a description of the procedures it proposes to use to implement the purchasing agency's subcontractor selection plan.

(f) Include a description of the publicly available location of the purchasing agency's protest policy and procedures or, if the purchasing agency does not have a protest policy and procedures, a statement that the protest policy and procedures referred to in subsection J of this section apply to any protests in connection with the procurement.

3. The director or head of the purchasing agency shall initiate an appropriately qualified selection committee for each request for qualifications. The director or head of the purchasing agency shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the purchasing agency or a purchasing agency representative appointed by the purchasing agency. The same selection committee shall function as to all of the multiple contracts included in the procurement. If the purchasing agency is procuring multiple contracts for professional services, the purchasing agency shall determine the number and qualifications of the selection

committee members. A selection committee for the procurement of multiple contracts for job-order-contracting construction services shall have not more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or engineer registered pursuant to section 32-121. These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers serving on a selection committee are not entitled to receive compensation from the purchasing agency for performing this service, but the purchasing agency may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a contractor under a contract awarded under the procurement or provide any professional services, construction, construction services, materials or other services under the contract. The selection committee and the purchasing agency shall do the following:

(a) If interviews are specified in the request for qualifications:

(i) The selection committee shall determine the persons or firms to be interviewed by evaluating the statements of qualifications and performance data that are submitted in response to the purchasing agency's request for qualifications based only on the selection criteria and relative weight of the selection criteria stated in the request for qualifications to be used to determine the persons or firms to be interviewed.

(ii) If the selection criteria and relative weight of the selection criteria to be used by the selection committee to select the persons or firms on a final list and to determine their order on a final list are not included in the request for qualifications, before the interviews are held the purchasing agency shall distribute to the persons or firms to be interviewed the selection criteria and relative weight of the selection criteria to be used to select the persons or firms on each final list and to determine their order on each final list. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons or firms to be interviewed.

(iii) The selection committee shall conduct interviews with the number of persons or firms to be interviewed as stated in the request for qualifications regarding the professional services or job-order-contracting construction services and the relative methods of approach for furnishing the required professional services or job-order-contracting construction services.

(b) Based only on the selection criteria and relative weight of the selection criteria specified as provided in this subsection for selection of the persons or firms on each final list and their order on each final list, the selection committee shall select the persons or firms for each final list and in the case of a final list or final lists for multiple contracts that will be negotiated under subsection E of this section, rank the persons or firms on each final list in order of preference. If the procurement is for multiple contracts for different professional services to be awarded to separate persons or firms, there is a separate final list for each type of professional services, and if a person or firm submitted qualifications for more than one type of professional services, the person or firm may be on more than one final list.

(c) If the contract will be awarded under subsection E of this section, before or at the same time as the purchasing agency notifies the persons or firms on each final list

that they are on that final list, the purchasing agency shall send actual notice to the following persons or firms that they are not on that final list:

(i) If interviews were held, the other persons and firms interviewed for that final list.

(ii) If interviews were not held, the other persons and firms that made submittals for that final list.

(d) If the contract will be awarded under subsection F of this section, before or at the same time as the purchasing agency notifies the persons or firms on the final list that they are on the final list, the purchasing agency shall send actual notice to each of the following persons or firms that they are not on the final list or that other persons or firms are on the final list:

(i) If interviews were held, the other persons or firms interviewed.

(ii) If interviews were not held, the other persons or firms that made submittals.

D. The purchasing agency shall award multiple contracts specified in the request for qualifications as provided in subsection E or F of this section.

E. The procurement officer shall conduct negotiations with persons or firms on the final list or final lists. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this decision, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services or job-order-contracting construction services to be rendered. If in a procurement under this section the procurement officer terminates negotiations with a person or firm on a final list and commences negotiations with another person or firm on that final list, the procurement officer shall not in that procurement recommence negotiations or enter into a contract for the job-order-contracting construction services or professional services covered by that final list with any person or firm on that final list with whom the procurement officer has terminated negotiations. If the procurement is for:

1. Multiple contracts for professional services to be awarded to a single person or firm, there is one final list and the procurement officer shall enter into negotiations with the highest qualified person or firm on the final list. If the procurement officer is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the procurement officer determines to be fair and reasonable, the procurement officer shall then undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.

2. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or for multiple contracts for similar professional services to be awarded to separate persons or firms, there is one final list and the procurement officer shall enter into separate negotiations for contracts with the number of the highest qualified persons or firms on the final list equal to the number of contracts to be awarded. If the procurement officer is not able to negotiate a satisfactory contract with a person or firm with whom the procurement officer has commenced negotiations, the procurement officer shall formally terminate

negotiations with that person or firm. The procurement officer shall then undertake negotiations for a contract with the next most qualified person or firm on the final list with whom the procurement officer is not then negotiating and with whom the procurement officer has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons or firms on the final list.

3. Multiple contracts for different professional services to be awarded to separate persons or firms, there is a separate final list for each type of professional services and the procurement officer shall enter into separate negotiations for contracts with the number of the highest qualified persons or firms on the final list equal to the number of contracts to be awarded. If the procurement officer is not able to negotiate a satisfactory contract with a person or firm with whom the procurement officer has commenced negotiations, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations for a contract with the next most qualified person or firm on the final list with whom the procurement officer is not then negotiating and with whom the procurement officer has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons or firms on the final list.

F. As an alternative to subsection E of this section, the purchasing agency may award multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms as follows:

1. The purchasing agency shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.

2. The purchasing agency shall issue a request for proposals to the persons or firms on the final list developed pursuant to subsection C of this section.

3. The request for proposals shall include:

(a) The purchasing agency's project schedule and project final budget for design and construction or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the multiple contracts will be awarded to a specified number of offerors whose proposals receive the highest number of points under a scoring method. The specified number of offerors will be the number of contracts included in the procurement.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method may include:

(i) Offeror qualifications.

(ii) Offeror financial capacity.

(iii) Compliance with the purchasing agency's project schedule.

(iv) The price or life cycle price for procurements that include maintenance services, operations services or finance services.

(v) An offeror quality management plan.

(vi) Other evaluation factors that demonstrate competence and qualifications for the job-order-contracting construction services in the request for proposals as determined by the purchasing agency, if any.

(d) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals.

(e) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(f) If the purchasing agency conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the purchasing agency determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the purchasing agency before those discussions are held.

5. If determined by the purchasing agency and included by the purchasing agency in the request for proposals, the selection committee shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the purchasing agency. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall separately submit the offeror's final technical proposal and its price proposal.

7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The purchasing agency shall award the multiple contracts to the responsive and responsible offerors whose proposals receive the highest scores under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation. Before or at the same time as the purchasing agency notifies the winning offerors that they have won, the purchasing agency shall give actual notice to each other offeror either that the offeror has not won or that other offerors have won.

10. The contracts file shall contain the basis on which the award is made, including at a minimum the information and documents required under subsection G of this section.

G. If the procurement has multiple final lists under subsection C of this section or multiple requests for proposals under subsection F of this section, the purchasing agency shall retain the items in paragraphs 1 and 2 of this subsection, as applicable, for each final list and each request for proposals procurement process. At a minimum, the purchasing agency shall retain the following for each procurement under this section:

1. As to each final list under each request for qualifications procurement process under subsection C of this section:

(a) If interviews were not held:

(i) The submittal of the person or firm listed first on the final list and all submittals of each person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(b) If interviews were held:

(i) All submittals of the person or firm listed first on the final list and all submittals of each person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that was interviewed and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that was interviewed and that support the final overall rankings and scores of the persons or firms that were interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(vi) A list of the selection criteria and relative weight of the selection criteria used to select the persons or firms for the short list to be interviewed.

(vii) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score in the selection of the persons or firms to be on the short list to be interviewed.

(viii) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications in the selection of the persons or firms to be on the short list to be interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for the individual selection committee members or any other form as determined by the purchasing agency.

2. For each request for proposals procurement process under subsection F of this section:

(a) The entire proposal submitted by the person or firm that received the highest score in the scoring method in the request for proposals and the entire proposal submitted by each person or firm with which the purchasing agency enters into a contract.

(b) The description of the scoring method, the list of factors in the scoring method and the number of points allocated to each factor, all as included in the request for proposals.

(c) A list that contains the name of each offeror that submitted a proposal and that shows the offeror's final overall score.

(d) A document or documents that show the final score on each factor in the scoring method in the request for proposals of each offeror that submitted a proposal and that support the final overall scores of the offerors that submitted proposals. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

H. Information relating to each procurement under this section shall be made available to the public as follows:

1. Notwithstanding title 39, chapter 1, article 2, until contract award by a purchasing agency of all of the multiple contracts in the procurement or termination of the procurement by the purchasing agency, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public and all other information received by the purchasing agency in response to the request for qualifications under subsection C of this section or contained in proposals submitted under subsection F of this section shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing submitters and offerors during the selection process.

2. After the purchasing agency awards all of the multiple contracts in the procurement or terminates the procurement, the purchasing agency shall make available to the public pursuant to title 39, chapter 1, article 2 at a minimum all of the items that the purchasing agency is required to retain under subsection G of this section, except the proposals submitted in response to a request for proposals under subsection F of this section and the document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v), and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section.

3. The proposals submitted under subsection F of this section shall not be made available to the public until after the purchasing agency has entered into a contract for all of the multiple contracts in the procurement or the purchasing agency has terminated the procurement. At a minimum the proposals submitted under subsection F of this section that the purchasing agency is required to retain under subsection G of this section shall be made available to the public after the purchasing agency has entered into a contract for all of the contracts in the procurement or the purchasing agency has terminated the procurement.

4. To the extent that the offeror designates and the purchasing agency concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

5. The document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section are available to the extent provided in title 39, chapter 1, article 2.

I. The purchasing agency may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all submittals or proposals or determine not to enter into one or more of the multiple contracts as specified in the solicitation if the purchasing agency determines in its absolute and sole discretion that the action is in the best interest of this state. The purchasing agency shall make the reasons for cancellation, rejection or determination not to enter into contracts part of the contract file.

J. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

A.R.S. § 41-2580. Requirements applicable to construction services and professional services and to contracts for construction services and professional services; definition

A. The requirements prescribed in this section apply to each contract entered into as the result of a procurement of construction services or professional services under section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581 and to the professional services and construction services included in each procurement under section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581.

B. If a procurement under section A.R.S. § 41-2578 is for construction-manager-at-risk construction services or design-build construction services to be contracted pursuant to section A.R.S. § 41-2578, subsection E or if a procurement under section A.R.S. § 41-2535, A.R.S. § 41-2536 or A.R.S. § 41-2537 is for construction-manager-at-risk construction services or design-build construction services, the purchasing agency shall enter into a written contract with the contractor for preconstruction services under which the purchasing agency shall pay the contractor a fee for preconstruction services in an amount agreed by the purchasing agency and the contractor, and the purchasing agency shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the purchasing agency has entered into the written contract for preconstruction services and a preconstruction services fee.

C. If a contract for construction services is entered into as the result of a procurement under section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578 or A.R.S. § 41-2579, construction shall not commence until the purchasing agency and contractor agree in writing on either a fixed price that the purchasing agency will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

D. A contract for professional services entered into as the result of a procurement under section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581 shall have a term not exceeding five years after the date of contract award by the purchasing agency of the first contract under the procurement, except that the contract may continue in effect after the five year term for professional services on projects on which the rendering of professional services commences within the five year term.

E. Notwithstanding any other law:

1. The contractor for design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to title 32, chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.

2. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services shall be licensed to perform construction pursuant to title 32, chapter 10.

F. For job-order-contracting construction services only:

1. The maximum dollar amount of an individual job order shall be one million dollars or such higher or lower amount prescribed by the purchasing agency in an action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted by the purchasing agency as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order-contracting construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

(a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:

(i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

(ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

(b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

G. Notwithstanding any contrary provision of this section or this title, a purchasing agency shall not:

1. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

2. Contract with itself, with another purchasing agency, with this state or with any other governmental unit of this state or the federal government for the purchasing agency to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

H. The prohibitions prescribed in subsection G of this section do not prohibit a purchasing agency from providing construction for itself as provided by law.

I. The purchasing agency shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

J. The following provisions apply to all construction services procured under section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578 or A.R.S. § 41-2579:

1. The contractor performing the construction services is permitted to self-perform part of the construction work, if and to the extent agreed in writing by the purchasing agency and the contractor. The purchasing agency may use methods other than competitive bidding to assure itself that the price the purchasing agency pays to the contractor for self-performed work is fair and reasonable. Permitted methods to evaluate fairness and reasonableness of the price of self-performed work include evaluation of the contractor's proposed scope of work and price for self-performed work by an estimator who is hired and paid by the purchasing agency, who is independent of the contractor and who may be an employee of the purchasing agency. Although the purchasing agency may elect to so require, nothing in this title or any other law shall be construed or interpreted to require the purchasing agency to require a contractor desiring to self-perform part of the construction work to competitively bid that part of the construction work against other contractors in a bid competition.

2. The following requirements apply to the construction work to be performed by subcontractors and do not apply to construction work that the purchasing agency and the contractor agree in writing will be self-performed by the contractor:

(a) The person or firm selected to perform the construction services shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualifications and price selection may be a single-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.

(b) The purchasing agency shall include in each contract:

(i) If the purchasing agency included its subcontractor selection plan in the request for qualifications, the purchasing agency's subcontractor selection plan and the procedures to implement the purchasing agency's subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications to the procedures as the purchasing agency and the selected person or firm agree.

(ii) If the purchasing agency did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications as the purchasing agency and the selected person or firm agree.

(c) In making the selection of subcontractors, the person or firm selected to perform the construction services shall use the subcontractor selection plan and any procedures included in its contract.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

A.R.S. § 41-2581. Procurement of certain professional services

A. A purchasing agency may procure under this section a single contract or multiple contracts for professional services if the contract is for professional services by an architect or architect firm and the contract amount is two hundred fifty thousand dollars or less or if the contract is for professional services by a person or firm other than an architect and the contract amount is five hundred thousand dollars or less. For such procurements, the director shall encourage persons or firms engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience.

B. The director or head of the purchasing agency shall initiate an appropriately qualified selection committee for each procurement, which may include one contract or multiple contracts, pursuant to rules adopted by the director or purchasing agency. The amount of each contract in a single procurement under this section shall not exceed the dollar amount limits in subsection A. The selection committee shall evaluate current statements of qualifications and experience on file with the director or purchasing agency, together with those that may be submitted by other persons or firms regarding the procurement. If possible and practicable, the selection committee shall conduct interviews regarding the procurement and the relative methods of furnishing the required services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, one or more final lists of the persons or firms deemed to be the most qualified to provide the services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only. The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this section, including the selection of the persons or firms to be interviewed, the selection of the persons and firms to be on a final list, in determining the order of preference of persons and firms on a final list or for any other purpose in the selection process. If the procurement is for:

1. A single contract or if the procurement is for multiple contracts to be awarded to a single person or firm, there shall be one final list of three persons or firms.

2. Multiple contracts for different professional services to be awarded to separate persons or firms, there shall be a separate final list of three persons or firms for each contract.

3. Multiple contracts for the same professional services to be awarded to separate persons or firms, there shall be one final list and the number of persons or firms on

the final list shall be the number of contracts plus another number that is determined by the purchasing agency and that is not more than five.

C. After each final list is selected pursuant to subsection B, the procurement officer shall enter into negotiations with the highest qualified person or firm on each final list or, in the case of a single final list for multiple contracts for the same professional services to be awarded to separate persons or firms, the purchasing agency shall enter into negotiations with a number of the highest qualified persons or firms on the final list equal to the number of contracts that may or will be awarded. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this determination, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. If the procurement officer is unable to negotiate a satisfactory contract with a person or firm with which the purchasing agency is negotiating at a price and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If the procurement officer terminates negotiations with a person or firm on a final list and commences negotiations with another person or firm on the final list, the procurement officer shall not in that procurement recommence negotiations or enter into the single contract or multiple contracts for the professional services covered by that final list with any person or firm on that final list with whom the procurement officer has terminated negotiations.

D. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

A.R.S. § 41-2582. Project delivery methods for design and construction services
A. A purchasing agency may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:

1. Design-bid-build.

2. Construction-manager-at-risk.

3. Design-build.

4. Job-order-contracting.

B. For the design-bid-build project delivery method, the director shall procure:

1. Design services pursuant to section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581.

2. Construction by competitive sealed bidding, except as otherwise provided in section A.R.S. § 41-2532.

C. The director shall procure construction services under the construction-manager-at-risk, design-build and job-order-contracting project delivery methods pursuant to section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578 or A.R.S. § 41-2579.

D. The director shall procure design services relating to a construction-manager-at-risk construction services project pursuant to section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581.

E. For job-order-contracting construction services projects, if the director does not include design services in the job-order-contracting construction services contract, the director shall procure any design services relating to job-order-contracting construction services projects under the contract pursuant to section A.R.S. § 41-2535, A.R.S. § 41-2536, A.R.S. § 41-2537, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581.

A.R.S. § 41-2583. Construction contracts; design professional service contracts; void provisions
A provision, covenant, clause or understanding in, collateral to or affecting a construction contract or design professional service contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against this state's public policy and is void and unenforceable.

A.R.S. § 41-2585. Contract clauses
A. The director may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.

B. The director may modify clauses for inclusion in any particular state contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.

C. All contract clauses shall be consistent with the provisions of this chapter and the regulations issued pursuant to this chapter.

A.R.S. § 41-2586. State preemption; indemnity agreements in construction and design professional services contracts void; definitions
A. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

B. The regulation and use of indemnity agreements in construction and design professional services contracts are of statewide concern. The regulation of indemnity agreements in construction and design professional services contracts pursuant to this section and their use are not subject to further regulation by a county, city, town or other political subdivision of this state.

C. If a design professional provides work, services, studies, planning, surveys or other preparatory work in connection with a public building or improvement, the state purchasing agency, state governmental unit or property owner may require that the design professional services contract or subcontract require the design professional to indemnify and hold harmless the state purchasing agency, state governmental unit or property owner, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional or other persons employed or used by such design professional in the performance of the contract or subcontract. A design professional services subcontract entered into in connection with a public building or improvement may also require any design professional to indemnify and hold harmless the purchasing agency, state governmental unit, or property owner and the indemnified design professional who executed the subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional, or persons employed or used by the indemnifying design professional in connection with the subcontract. Nothing in this section shall prohibit the requirement of insurance coverage that complies with this section, including the designation of the state, state purchasing agency, state governmental unit or property owner as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy provided in connection with a construction contract or subcontract or design professional services contract or subcontract.

D. A covenant, clause or understanding in, collateral to or affecting a design professional services subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

E. Except as provided in subsection C of this section, a design professional services contract or subcontract entered into in connection with a public building or improvement shall not require that a design professional defend, indemnify, insure or hold harmless the state purchasing agency, state governmental unit or property owner or its employees, officers, directors, agents, contractors or subcontractors from any liability, damage, loss, claim, action or proceeding, and any contract provision that is not permitted by subsection C of this section is against the public policy of this state and is void.

F. Notwithstanding subsection A of this section, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and that, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.

G. If any provision or condition contained in this section conflicts with any provision of a contract between the state or a political subdivision of the state and the federal government, such provision of this section in conflict shall not apply to any construction contract or subcontract, or design professional services contract or

subcontract to the extent such conflict exists, but all provisions of this section with which there is no such conflict, shall apply.

H. For the purposes of this section:

1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.

2. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or any person employed by the design professional.

3. "Design professional service contract or subcontract" means a written or oral agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.

4. "Other person employed or used" means a subcontractor to a contractor or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with a construction contract or subcontract or design professional service contract or subcontract subject to this section.

A.R.S. § 41-2591. Cost principles rules
The director shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

A.R.S. § 41-2601. Definitions
In this article, unless the context otherwise requires:

1. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using agency in possession of the materials.

2. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.

3. "Surplus materials" means any materials that no longer have any use to this state or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.

A.R.S. § 41-2602. Material management rules
The director shall adopt rules governing:

1. The management of materials during their entire life cycle.

2. The acquisition and distribution of federal surplus materials.

3. The sale, lease or disposal of surplus materials by public auction, competitive sealed bidding or other appropriate method designated by rule.

4. The purchase of any such materials by an employee of the owning or disposing agency.

5. The transfer of excess and surplus materials.

6. The trade-in of excess or surplus materials.

A.R.S. § 41-2603. Surplus material program
The department may acquire surplus materials from the United States government and may distribute surplus materials as may be usable and necessary for public purposes to a state governmental unit or a political subdivision.

A.R.S. § 41-2604. Authority for transfer of material
Notwithstanding any law to the contrary, the governing board, or in case there is none, the executive head of any state governmental unit, political subdivision or nonprofit institution determined to be eligible to receive surplus materials, may confer on any officer or employee thereof continuing authority to secure the transfer to it of surplus materials and to obligate its monies to the extent necessary to comply with the laws and conditions of such transfers. The director shall adopt rules establishing guidelines for use in determining eligibility.

A.R.S. § 41-2605. Fees and charges
The department shall make proper charges and assess proper fees for the acquisition, receipt, warehousing, rehabilitation, delivery, distribution or transfer of excess and surplus materials. Such fees and charges shall be fair and equitable and shall be based on services performed, including acquisition, receipt, warehousing, rehabilitation, delivery, distribution or transfer. A reasonable charge shall be made for maintenance and repair services.

A.R.S. § 41-2606. Surplus materials revolving funds
A. The state surplus materials revolving fund is established. All monies coming into the department derived from state surplus materials fees and charges shall be placed in the state surplus materials revolving fund. All uncommitted monies in the state surplus materials revolving fund in excess of one hundred thousand dollars at the close of any fiscal year revert to the state general fund.

B. The federal surplus materials revolving fund is established. All monies coming into the department derived from federal surplus materials shall be placed in the federal surplus materials revolving fund. All uncommitted monies in the federal surplus materials revolving fund in excess of fifty thousand dollars at the close of any fiscal year shall be returned to agencies and institutions through discounted service and handling charges to eligible donees in the following fiscal year until the surplus is depleted.

C. Monies in the funds shall be available, subject to legislative appropriation, for the purpose of carrying out the provisions of this article.

A.R.S. § 41-2607. Allocation of proceeds from sales, transfers or disposal of surplus materials
Unless otherwise provided by law, the director shall adopt rules for the allocation of proceeds from the sale, transfer, lease or disposal of excess and surplus materials.

A.R.S. § 41-2611. Rules of procedure
A. The director may adopt rules of procedure providing for the expeditious administrative review of all contract claims or controversies both before the purchasing agency and through an appeal heard before the director in accordance with chapter 6, article 10 of this title.

B. For the purposes of an expeditious administrative process, the director shall render a decision on an appeal to the director within forty-two days after the date the agency report or comments on the agency report, if applicable, are filed with the director. On agreement of all interested parties, the director may be granted an additional fourteen days to issue a decision. If the director fails to issue a decision within the time period prescribed in this subsection, the director shall refer the appeal to a hearing in accordance with chapter 6, article 10 of this title.

A.R.S. § 41-2612. Subject of rules
The rules adopted by the director pursuant to section A.R.S. § 41-2611 shall address at least the following subjects:

1. Protested solicitations and awards.

2. Vendor performance and evaluation of past performance.

3. Suspension or debarment of contractors.

4. Breach of contract controversies and contract claims.

A.R.S. § 41-2613. Debarment and suspension of contractors
A. The director shall adopt rules providing for the suspension and debarment of any person from consideration for award of contracts pursuant to this chapter. If there are reasonable grounds for debarment the rules of the director may provide for the suspension of any person for not to exceed six months. A debarment shall not exceed three years.

B. The causes for debarment or suspension include the following:

1. Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving

stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor.

3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.

4. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:

(a) Knowingly fails without good cause to perform in accordance with the specification or within the time limit provided in the contract.

(b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

5. Any other cause deemed to affect responsibility as a state contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in rules of the director.

C. A written determination to debar or suspend shall be issued pursuant to the rules of the director which shall:

1. State the reasons for the action taken.

2. Inform any debarred or suspended person involved of the right to administrative review as provided in this article.

D. A copy of the decision under subsection C shall be mailed or otherwise furnished to any debarred or suspended person and to any intervening party.

A.R.S. § 41-2614. Judicial review
Except as provided in section A.R.S. § 41-1092.08, subsection H, any final decision of the director under this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6 by any party to the proceeding before the director, and the complaint seeking review shall be filed with the superior court in Maricopa county and served on the director and the purchasing agency.

A.R.S. § 41-2615. Exclusive remedy
Notwithstanding any law to the contrary, including title 12, chapter 7, article 2 and title 12, chapter 21, this article and the rules adopted under this article shall provide the exclusive procedure for asserting a claim against this state or any agency of this state arising in relation to any procurement conducted under this chapter.

A.R.S. § 41-2616. Violation; classification; liability; civil penalty; enforcement authority
A. A person who contracts for or purchases any material, services, construction or construction services in a manner contrary to the requirements of this chapter, the rules adopted pursuant to this chapter, the rules adopted by the state board of education pursuant to section 15-213 or rules adopted by the Arizona board of regents, the Arizona lottery commission or the judicial branch pursuant to section A.R.S. § 41-2501 is personally liable for the recovery of all public monies paid plus

twenty per cent of such amount and legal interest from the date of payment and all costs and damages arising out of the violation.

B. A person who intentionally or knowingly contracts for or purchases any material, services, construction or construction services pursuant to a scheme or artifice to avoid the requirements of this chapter, rules adopted pursuant to this chapter, rules adopted by the state board of education pursuant to section 15-213 or rules adopted by the state board of regents, the state lottery commission or the judicial branch pursuant to section A.R.S. § 41-2501 is guilty of a class 4 felony.

C. A person who serves on an evaluation committee for a procurement shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of a competing vendor related to the particular procurement during the course of evaluation of bids or proposals, except those contacts specifically authorized by section A.R.S. § 41-2534, A.R.S. § 41-2537, A.R.S. § 41-2538, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581. The person shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of a competing vendor and any contact with a representative of a competing vendor during evaluation of bids or proposals except those contacts specifically authorized by section A.R.S. § 41-2534, A.R.S. § 41-2537, A.R.S. § 41-2538, A.R.S. § 41-2578, A.R.S. § 41-2579 or A.R.S. § 41-2581. A person who serves on an evaluation committee and who fails to disclose contact with a representative of a competing vendor or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but not more than ten thousand dollars.

D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

A.R.S. § 41-2617. Contracts for procurement of construction; delay; recovery of damages by contractor
A contract for the procurement of construction shall include a provision which provides for negotiations between the state governmental unit and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the state governmental unit is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract. This section shall not be construed to void any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.

A.R.S. § 41-2631. Definitions
In this article, unless the context otherwise requires:

1. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

2. "External procurement activity" means any buying organization not located in this state that would qualify as a public procurement unit.

3. "Local public procurement unit" means any political subdivision, any agency, board, department or other instrumentality of such political subdivision and any

nonprofit corporation created solely for the purpose of administering a cooperative purchase under this article.

4. "Nonprofit corporation" means any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in section A.R.S. § 41-2636.

5. "Public procurement unit" means either a local public procurement unit, the department, any other state or an agency of the United States.

A.R.S. § 41-2632. Cooperative purchasing authorized; definitions
A. Any public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction or construction services with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. The cooperative purchasing may include joint or multiparty contracts between public procurement units and open-ended public procurement unit contracts that shall be available to local public procurement units. A nonprofit corporation may enter into an agreement pursuant to this section if one or more of the parties involved is a public procurement unit. An agreement entered into as provided in this article is exempt from section 11-952, subsection D. Parties under a cooperative purchasing agreement may:

1. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services or construction.

2. Cooperatively use materials or services.

3. Commonly use or share warehousing facilities, capital equipment and other facilities.

4. Provide personnel, except that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

5. On request, make available to other public procurement units informational, technical or other services or software that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational, technical or other services or software has the right to request reimbursement for the reasonable and necessary costs of providing these services or software.

6. Pursuant to the rules for cooperative purchasing adopted by the director, purchase materials, services, professional services, construction or construction services under the terms of a contract between a vendor and a public procurement unit or an external procurement activity without complying with the requirements of sections A.R.S. § 41-2533, A.R.S. § 41-2534 and A.R.S. § 41-2535.

B. The school facilities board or school districts, or both, may enter into an agreement with a public procurement unit pursuant to this section for the purpose of procuring materials and services needed to correct deficiencies in school facilities.

C. The activities described in this section do not limit what parties may do under a cooperative purchasing agreement.

D. A nonprofit corporation operating as a public procurement unit under this section, on request of the auditor general, shall provide to the auditor general all documentation concerning any cooperative purchasing transaction the public procurement unit administers under this section.

E. A nonprofit corporation operating as a public procurement unit under this section shall comply with all procurement laws applicable to the public procurement unit participating in a cooperative purchasing transaction that the nonprofit corporation administers.

F. This section does not abrogate the responsibility of each public procurement unit to ensure compliance with procurement laws that apply to the particular public procurement, notwithstanding the fact that the cooperative purchase is administered by a nonprofit corporation operating under this section.

G. Any public procurement unit conducting or administering a cooperative purchasing agreement for the procurement of construction services or professional services shall comply with the requirements of section 34-603 or A.R.S. § 41-2578.

H. For the purposes of this section:

1. "Construction services" has the same meaning prescribed in section A.R.S. § 41-2503.

2. "Professional services" has the same meaning prescribed in section A.R.S. § 41-2578.

A.R.S. § 41-2633. Use of payments received by a supplying public procurement unit
All payments received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit to defray the cost of the cooperative program.

A.R.S. § 41-2634. Public procurement units in compliance with chapter requirements
If the public procurement unit administering a cooperative purchase complies with the requirements of this chapter, any public procurement unit participating in such a purchase is deemed to have complied with this chapter. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

A.R.S. § 41-2635. Contract controversies
A. Under a cooperative purchasing agreement in which this state is a party, controversies arising between an administering public procurement unit and its bidders, offerors or contractors shall be resolved in accordance with article 9 of this chapter.

B. Any local public procurement unit which is not subject to article 9 of this chapter may enter into an agreement with a public procurement unit to establish procedures or use such unit's existing procedures to resolve controversies with contractors, whether or not such controversy arose from a cooperative purchasing agreement.

A.R.S. § 41-2636. Procurement from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries; definitions

A. The director shall appoint a state set-aside committee to determine those materials and services that are provided, manufactured, produced and offered for sale by Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries and that satisfy the requirements of state governmental units and to establish a fair market price for all approved materials and services offered for sale that meet these requirements. Membership shall include the assistant director for rehabilitation services in the department of economic security or the assistant director's designee and a private sector businessperson appointed by the governor who contracts or employs persons with disabilities in the private sector. At each quarterly meeting the director shall report on new procurement requests or renewal of existing procurement requests for state purchases from lists supplied by set-aside providers and that are within the capability of and that can be supplied by the entities that are prescribed in this section. To qualify for set-aside contracts, certified nonprofit agencies must maintain an employment ratio of at least sixty per cent of program employees with significant disabilities.

B. Materials and services from Arizona correctional industries shall be presented to the committee for approval. Office products, vinyl binders and furniture refurbishing services shall be exempt from this article. State governmental units shall purchase office products, vinyl binders and furniture from Arizona correctional industries if each of the following applies:

1. Such materials and services are readily available.

2. Such materials and services are capable of timely delivery.

3. Such materials and services are of equal quality and price for these same materials and services in the private sector.

C. State governmental units shall purchase approved materials and services if such materials and services are readily available.

D. Notwithstanding the requirements of section A.R.S. § 41-2532, state governmental units and local public procurement units may purchase or contract for any products, materials and services directly from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries without competitive bidding if the delivery and quality of the products, materials or services meet the unit's reasonable requirements.

E. All state governmental units shall endeavor to set aside at least one per cent of their new purchases or contracts for any products, materials and services from the entities that are prescribed in subsection D of this section, except for contracts for care and services for clients of the department of child safety, the department of economic security or the department of health services. The department shall communicate with each state governmental unit regarding its responsibility to comply with this subsection. The committee shall meet quarterly to report progress in increasing state governmental purchases or contracts with the entities that are prescribed in subsection D of this section. The committee shall compile quarterly

reports detailing new purchases or contracts that are entered into pursuant to this subsection to the director, each committee member, the governor, the president of the senate and the speaker of the house of representatives.

F. The committee shall meet during the first month of each fiscal year to determine which articles, products or services Arizona correctional industries, certified nonprofit agencies that serve individuals with disabilities and Arizona industries for the blind should continue to manufacture for state use, to advise such agencies and industries of any changes in specifications and to identify new articles or products that should be manufactured or could be eligible for procurement.

G. For the purposes of this section:

1. "Certified nonprofit agency that serves individuals with disabilities" means a nonprofit activity center that serves individuals with significant disabilities and that satisfies all of the following:

(a) Is organized under the laws of this state or another state, is operated in the interest of individuals with disabilities and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual.

(b) Complies with any applicable occupational health and safety standard required by the laws of the United States and this state.

2. "Individuals with disabilities" means an individual who, because of the nature of the individual's disabilities, is not able to fully participate in competitive employment and for whom specialized employment and training are necessary by a qualified nonprofit organization through the department of economic security or the department of health services.

A.R.S. § 41-2637. Compliance with federal requirements
If a procurement involves the expenditure of federal assistance or contract monies, the director shall comply with federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this chapter.

A.R.S. § 41-2661. State agency office paper recycling
A. For purposes of this article, the definitions found in section 49-831 apply to this article.

B. The department shall require that all state governmental units, including universities, establish a program for the recycling of all wastepaper generated by those units including, at a minimum, high grade office paper and corrugated paper. Under the program, each unit shall ensure the separate collection of approximately fifty per cent of the office wastepaper generated by each unit not later than November 1, 1991.

C. The department shall establish procedures for collecting and storing the wastepaper containers to be used in this program.

D. The department shall administer the contracts with buyers of wastepaper.

E. On or before January 31 of each year, the director of the department of administration shall evaluate the amount of wastepaper recycled by state

governmental units and make all necessary modifications to the administration of the program to maximize the amount of wastepaper that is effectively and practicably recycled.

A.R.S. § 41-2662. State agency purchase of recycled materials
A. The purchase of paper or paper products for use by various agencies and departments of state government shall be in accordance with this chapter. If a state agency purchases or causes the purchase of printing on recycled paper pursuant to this section, it shall require the printed material to include a printed statement or symbol which indicates that the document is printed on recycled paper. This subsection does not apply to the purchase of paper containers for food or beverages.

B. Not later than November 1, 1991 and annually thereafter, the director shall report to the governor and the legislature on the following:

1. Methods and results of the purchase of paper and other recycled materials.

2. Findings and recommendations regarding definitions and bid specifications in state procurement contracts.

3. Availability, performance, appropriate uses, markets and price of paper and other recycled material.

4. Potential state agency demand for and feasibility of cooperative purchases with political subdivisions.

5. Appropriate record keeping and reporting mechanisms.

6. Other similar matters of program design and administration.

A.R.S. § 41-2671. Definitions
In this article, unless the context otherwise requires:

1. "Information services" means data processing, telecommunications and office systems technologies and services.

2. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

3. "On-line bidding" means a procurement process in which public agencies receive vendors' bids for goods, services, construction or information services electronically over the internet in a real-time, competitive bidding event.

A.R.S. § 41-2672. On-line bidding
A. If a procurement officer determines that electronic, on-line bidding is more advantageous than other procurement methods provided in this chapter, a procurement officer may use on-line bidding to obtain bids electronically for the purchase of goods, services, construction and information services.

B. An on-line bidding solicitation must designate an opening date and time.

C. The closing date and time for an on-line solicitation may be fixed or remain open depending on the structure of the item being bid on line. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the purchasing agency must begin accepting on-line bids and must continue accepting bids until the bid is officially closed.

D. All on-line bids must be posted electronically and updated on a real-time basis.

E. Purchasing agencies may:

1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation.

2. Prequalify bidders and allow only those bidders who are prequalified to submit bids on line.

F. Purchasing agencies retain their existing authority to determine the criteria that will be used as a basis for making awards.

G. Sections A.R.S. § 41-2533 and A.R.S. § 41-2534 do not apply to solicitations issued pursuant to this section, except that:

1. All bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws that govern bids received through the sealed bid process.

2. All remedies available to purchasing agencies and to bidders through the sealed bid process under this chapter are also available to purchasing agencies and bidders in an on-line bidding process.

A.R.S. § 41-2673. State electronic commerce fund

A. The state electronic commerce fund is established consisting of monies appropriated by the legislature and any gifts, grants or devises for the benefit of the fund. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Monies in the fund shall be used to help finance electronic commerce initiatives by purchasing agencies if other funding mechanisms do not exist or cannot be used. The department shall disburse monies in the fund to purchasing agencies based on agency requests and statewide electronic commerce priorities.

C. If a purchasing agency realizes savings through implementation of its electronic commerce initiative funded by the state electronic commerce fund, the purchasing agency shall repay the fund the amount of monies originally disbursed to the agency plus ten per cent of the agency savings. The purchasing agency may retain the remainder of the savings generated through its electronic commerce initiative.

D. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT (F-16-0505)
Title 4, Chapter 36, Article 2, Arizona State Fire Code; Article 3, International Fire Code Modifications

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-2**

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

FROM: Matthew Rippentrop, Legal Intern

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT (F-16-0505)**
Title 4, Chapter 36, Article 2, Arizona State Fire Code**;** Article 3, International Fire Code Modifications

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This report covers 12 rules relating to Arizona's adoption and modification of the International Fire Code. The rules are under the purview of the Office of the State Fire Marshal (Marshal), which was a division of the Department of Fire, Building and Life Safety (DFBLS) at the time this report was submitted. On August 6, 2016, DFBLS was consolidated into the Arizona Department of Forestry and Fire Management (Department). The Department is charged with maintaining and enforcing the Code by providing training, fire investigations, and public safety education.

Historically, the Fire Safety Committee (Committee) was been ultimately responsible for adoption of the State Fire Code (Code), while the Marshal was charged with enforcing the code. After the 2016 amendments to A.R.S. § 37-1307(C), the Marshal is now tasked with adoption of the Code, and the Committee plays an advisory role.

Year Each Rule was Last Amended or Newly Made

- January 2, 2016: Sections 201, 301, 302, 303, 304, 305, 307, 308, 309, 310, and 311
- August 30, 2008: Section 202
- April 7, 2007: Section 306

Proposed Action

The Department plans to seek an exemption from the rulemaking moratorium to update the fee schedule found in Section 202. The fee schedule is out of date, and should be amended to properly cover the cost of services provided. The Department intends to complete this rulemaking by June 30, 2017.

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 indicates it is in compliance with A.R.S. § 41-1091.

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

   Yes. The Department cites general statutory authority under A.R.S. § 37-1307(C)(1), which provides the "state fire safety committee shall advise the state fire marshal on" the adoption of a state fire code. A.R.S. § 37-1307(C)(2) calls on the Department to adopt by rule a schedule of fees for permits, plan submission, and plan review.

   The Department cites specific statutory authority under A.R.S. §§ 37-1307, 41-2141, 41-2142, 41-2146, 41-2147, 41-2161, 41-2162, 41-2163, 41-2164, 41-2165, 41-2166, 41-2167, 41-2168, 41-2169, 41-2169.01 and 41-2196.

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 no written criticism of the rules during the last five years were received.

4. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Department indicates the rules are enforced as written.

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

   Yes. The Department indicates the rules are consistent with other rules and statutes.

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

Yes. The Department indicates, with the exception of Section 202, all the rules are effective in achieving their objectives. The fee schedule set out in Section 202 is out of date, and should be amended to properly cover the cost of services provided.

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

Yes. The Department indicates the rules are clear, concise, and understandable.

8. **Stringency of the Rules:**

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

No. The rules are not more stringent than corresponding federal law.

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

Not applicable.

9. **For rules adopted after July 29, 2010:**

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

Yes. The rules establish licensing and permit requirements.

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

Yes. The Department indicates the permits required under Section 303 are general permits as they are issued to qualified individuals or entities that conduct activities that are substantially similar in nature.

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

Yes. The Department indicates the previous course of action was completed with the Notice of Final Rulemaking approved by the Council on November 3rd, 2015.

Conclusion

The Department plans to amend the fee schedule found in Section 202 to reflect current costs. With the exception of Section 202 and 306, the Department has amended the rules of both Articles within the last year. 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: September 7, 2016 **AGENDA ITEM: G-2**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT (F-16-0505)**
Title 4, Chapter 36, Article 2, Arizona State Fire Code**;** Article 3, International Fire Code Modifications

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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 2 and 3 rules contained in the five-year-review report.

The rules detail the fees for a construction or operational permit, plan submission, plan review, and re-inspection, as well as establish a minimum statewide standard regarding best practices in fire safety.

The Department's collection rate has differed from its anticipated fee schedule due to a decline in economic activity and a subsequent slowdown in construction. During fiscal year (FY) 2015, the Office of the State Fire Marshal issued 1,215 permits and collected $401,517 in permitting fees, 41 percent less than anticipated. From FY 11-15, the Department's permit total was 8,495.

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

The Department has determined that the rules in Article 2 and 3 impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety. The State Fire Code is designed to reduce hazards to life, property, and public welfare arising from fire, explosions, or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to fire fighters and

emergency responders. The Code establishes minimum requirements that are consistent with nationally recognized good practice.

The fee schedule is applicable to entities engaged in construction of state or county buildings, including schools. These entities are required by statute to submit plans to the Office of the State Fire Marshal for approval, to obtain a permit, and to have their work inspected. The fee schedule is designed simply to recover the costs incurred by the Office in providing the required plan review, permit, and inspection.

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

DOUGLAS A. DUCEY
Governor

DEBRA BLAKE
Interim Director

DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

1110 WEST WASHINGTON, SUITE 100
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OFFICE OF ADMINISTRATION * OFFICE OF MANUFACTURED HOUSING * OFFICE OF STATE FIRE MARSHAL

RECEIVED
MAR 10 2016
GRRC

March 11, 2016

Nicole A. Ong, 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. 36, Articles 2 and 3

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Department of Fire, Building and Life Safety submits for your approval a report on a review of its rules. The Department reviewed all the referenced rules.

As required under A.R.S. § 41-1056(A), the Department 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 Fred Durham at (602) 364-1080. Thank you for your consideration.

Sincerely,

Debra Blake

Debra Blake
Interim Director

DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

STATE FIRE CODE

Five-year-review Report: A.A.C. Title 4, Chapter 36, Articles 2 and 3

March 2016

Five-year-review Report

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

Chapter 36. Department of Fire, Building and Life Safety

INTRODUCTION

Under A.R.S. § 41-2146(C), the State Fire Safety Committee (Committee) is required to adopt, by rule, a State Fire Code. The Committee is also required to adopt a schedule of fees for a permit, plan submission, plan review, or re-inspection related to fire protection. The Office of the State Fire Marshal (Office), which is within the Department of Fire, Building and Life Safety, is charged with maintaining and enforcing the State Fire Code by providing fire training, fire investigations, and public life safety education.

The Committee adopted the 2012 International Fire Code as the state's fire code in a rulemaking that went into effect on January 2, 2016. It adopted the schedule of fees required under A.R.S. § 41-2146(D) in a rulemaking that became effective on August 30, 2008.

Statute that generally authorizes the agency to make rules: A.R.S. § 41-2146(C) and (D)

1. Specific statute authorizing the rule:

   R4-36-201. A.R.S. § 41-2146(C)

   R4-36-202. A.R.S. § 41-2146(D)

   R4-36-301. A.R.S. § 41-2146(C)

   R4-36-302. A.R.S. § 41-2146(C)

   R4-36-303. A.R.S. §§ 41-0173, 41-2146(C), 41-2161, and 41-2163(C)

   R4-36-304. A.R.S. §§ 41-2146(C), 41-2163, and 41-2196

   R4-36-305. A.R.S. § 41-2146(C)

   R4-36-306. A.R.S. § 41-2146(C)

   R4-36-307. A.R.S. § 41-2146(C)

   R4-36-308. A.R.S. § 41-2146(C)

R4-36-309. A.R.S. § 41-2146(C)

R4-36-310. A.R.S. § 41-2146(C)

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

R4-36-201. Incorporation by Reference of the International Fire Code: The objective of the rule is to establish a State Fire Code by incorporating by reference a widely accepted standard fire code. This protects public health and safety by ensuring there is a minimum statewide standard regarding best practices in fire safety.

R4-36-202. Fees: The objective of the rule is to establish a schedule of fees charged by the Office for a construction or operational permit, plan submission, plan review, and re-inspection. This ensures the Office has funds with which to perform the functions necessary to protect public health and safety.

R4-36-301. Definitions: The objective of this rule is to modify definitions in the material incorporated by reference to be consistent with Arizona law. This protects public health and safety by ensuring those responsible for enforcing the State Fire Code understand each other.

R4-36-302. Appendices: The objective of this rule is to identify the appendices of the incorporated material that are part of the State Fire Code. This protects public health and safety by clearly identifying portions of the incorporated materials that are to be enforced in Arizona.

R4-36-303. Permits: The objective of this rule is to establish the time-frame within which the State Fire Marshal will act on an application for a permit and to modify the incorporated material regarding permits. This enables an applicant for a permit to anticipate when the approval process will be completed.

R4-36-304. Inspections and Enforcement: The objective of this rule is to modify the incorporated material regarding inspections and enforcement and cross-reference to A.R.S. § 41-2196, which deals with the State Fire Marshal's enforcement authority. This encourages

compliance with the State Fire Code by providing notice to those who must comply with the Code of the manner in which the Code will be enforced.

R4-36-305. General Precautions Against Fire: The objective of this rule is to modify the incorporated material regarding general precautions against fire. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-306. Emergency Planning and Preparedness: The objective of this rule is to modify the incorporated material regarding emergency planning and preparedness. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-307. Fire Service Features: The objective of this rule is to modify the incorporated material regarding fire service features. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-308. Building Services and Systems: The objective of this rule is to modify the incorporated material regarding building services and systems. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-309. Fire Protection Systems: The objective of this rule is to modify the incorporated material regarding fire protection systems. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-310. Explosives and Fireworks: The objective of this rule is to modify the incorporated material regarding explosives and fireworks. This protects public health and safety by making modifications consistent with Arizona law and needs.

3. <u>Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:</u>
The Committee concluded all the rules, except R4-36-202, are effective in achieving their objectives. Except for R4-36-202 and R4-36-306, the rules were updated in a rulemaking approved by Council on November 3, 2015. The new State Fire Code went into effect on

January 2, 2016. The new State Fire Code, which has support throughout the regulated community, is effective in protecting public health and safety.

The fee schedule in R4-36-202 is out of date. The fees, which have not been increased in more than seven years, do not cover the cost of services provided.

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:
   The rules are consistent with state statutes and other rules. The rules are not more stringent than federal law. There are numerous federal laws relating to some of the same subject matter as the State Fire Code. For example, there are federal laws dealing with hazardous materials, protection of certain categories of individuals, consumer protections, and environmental protection. However, the International Code Council, which developed the International Fire Code, has ensured that the code is consistent with federal law.

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

   As a result of the provisions in A.R.S. §§ 41-2162(A)(2), 41-2163(A)(2), and 41-2166(A), the Office of the State Fire Marshal exercises jurisdiction over fire code matters for less than 15 percent of the state's population. However, even if the Office of the State Fire Marshal does not exercise jurisdiction over an area, the State Fire Code is important because it establishes minimum requirements for the area. The only places for which the State Fire Code does not establish minimum requirements are federal properties and Native American nations. In the areas for which it has jurisdiction, the Office of the State Fire Marshal enforces the State Fire Code by issuing required operational and construction permits and conducting inspections.

6. Clarity, conciseness, and understandability of the rule:
   The rules are clear, concise, and understandable.

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 Committee 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:

2008 rulemaking

The EIS from the 2008 rulemaking is available. The only rules not amended since 2008 are R4-36-202 and R4-36-306. Under A.R.S. § 41-2146(D), the State Fire Safety Committee is required to adopt a schedule of fees for a permit, plan submission, plan review, or re-inspection. Individuals regulated by A.R.S. Title 41, Chapter 16, Article 3, are required to pay the fees established. The goal of establishing the fee schedule was to have the plan review and permit activities of the Office of the State Fire Marshal, which if funded by the state's general fund, performed on a cost-recovery basis. The actual economic impact from the fee schedule differs from that predicted in the 2008 EIS. During the last year, the State Fire Marshal reviewed plans and issued 1,215 permits. This is 32 percent fewer than reported in the 2008 EIS. In 2008, the State Fire Marshal anticipated the fee schedule would generate $683,590 annually. However, in the last year, the State Fire Marshal collected $401,517 in fees, 41 percent less than anticipated. The deviation from the anticipated economic impact of the fee schedule results from the major economic downturn that occurred in 2008 and 2009. The economic downturn was particularly difficult for those involved in construction. As a

result of the reduced number of permits issued and fees collected, the State Fire Marshal has not achieved the goal of performing the permit issuance activities on a cost-recovery basis.

The economic impact of R4-36-306 is minimal. The State Fire Marshal's 2008 amendment of Section 401.1 involved adding the words "…local authorized…" to the description of emergency response responders.

2015 rulemaking

The EIS prepared with the 2015 rulemaking is available. The Office of the State Fire Marshal believes the 2015 update of the State Fire Code has had the minimal economic impact anticipated with the rulemaking was done. This is due, in large part, because most jurisdictions in Arizona had already adopted a fire code more stringent than that adopted by the State Fire Marshal.

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 Department completed the course of action indicated in the Department's 2010 5YRR in the Notice of Final Rulemaking approved by the Council on November 3, 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:

    The State Fire Code is designed to reduce hazards to life, property, and public welfare arising from fire, explosions, or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to fire fighters and emergency responders. The Code establishes minimum requirements that are consistent with nationally recognized good

practice. The Department has determined that the burden of complying with the State Fire Code is necessary to achieve the underlying objective of public safety.

The fee schedule is applicable to entities engaged in construction of state or county buildings, including schools. These entities are required by statute to submit plans to the Office of the State Fire Marshal for approval, to obtain a permit, and to have their work inspected. The fee schedule is designed simply to recover the costs incurred by the Office in providing the required plan review, permit, and inspection. The fees are a cost of doing business that probably is passed to the consumer.

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:
Although there are numerous federal laws relating to some of the same subject matter as the State Fire Code, the International Code Council, which developed the International Fire Code, has ensured that the code is consistent with federal law. There are no federal laws directly applicable to simply incorporating these materials by reference.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
The permits required under R4-36-303 are general permits that comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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:
Because the fees specified in R4-36-202 do not cover the cost of the services provided, the Department intends to seek an exemption from the rulemaking moratorium and update fee schedule. The Department intends to complete this rulemaking by June 30, 2017.

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (2012 Edition), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, and J, which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

R4-36-202. Fees

A. Under the authority provided by A.R.S. § 41-2146(D), the State Fire Safety Committee establishes the following schedule of fees:

1. Plan submission fees:
   a. Each plan submitted: $210, and
   b. Each plan supplement submitted or each re-review of a previously submitted plan: $30;
2. Plan review fees. A separate fee is charged for each system reviewed even if the systems are included in one submitted plan:
   a. New installation of an automatic fire sprinkler system.
      i. Servicing less than 10,000 square feet: $375;
      ii. Servicing between 10,000 and 50,000 square feet: $450;
      iii. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: $450; and
      iv. For each floor level serviced above or below the ground-level floor: $200;
   b. Modification of an existing automatic fire sprinkler system.
      i. System consisting of 1 to 20 sprinkler heads: $75;
      ii. System consisting of 21 to 50 sprinkler heads: $100;
      iii. System consisting of 51 to 100 sprinkler heads: $250;
      iv. System consisting of 101 to 500 sprinkler heads: $300;
      v. For each additional 100 sprinkler heads or portion of 100 sprinkler heads in excess of 500: $100; and
      vi. For each floor level serviced above or below the ground-level floor: $200;

c. New installation or modification of an extinguishing system using clean agent, halon, dry chemical, carbon dioxide, or other extinguishing material:
    i. Servicing up to 5,000 square feet: $200; and
    ii. For each 5,000 square feet or portion of 5,000 square feet serviced in excess of 5,000 square feet: $50;
d. New installation of one automatic hood extinguishing system: $150;
e. Modification of one existing automatic hood extinguishing system: $75;
f. New installation of a fire pump:
    i. For the first fire pump: $250; and
    ii. For each additional fire pump: $150;
g. Modification of one existing fire pump: $100;
h. New installation or modification of underground fire line and hydrants:
    i. System consisting of up to 500 lineal feet: $300; and
    ii. For each 500 lineal feet or portion of 500 lineal feet in excess of 500 lineal feet: $175;
i. New installation of standpipe system:
    i. System consisting of up to four standpipes: $200; and
    ii. For each four standpipes or portion of four standpipes in excess of four: $100;
j. Modification of standpipe system: $50;
k. New installation of a fire alarm system:
    i. Servicing up to 1,000 square feet: $225;
    ii. Servicing between 1,001 and 2,000 square feet: $300;
    iii. Servicing between 2,001 and 10,000 square feet: $450;
    iv. Servicing between 10,001 and 50,000 square feet: $500;
    v. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: $200;
    vi. For each floor level serviced above or below the ground-level floor: $200; and
    vii. For smoke detection throughout serviced area: 50% increase in fee calculated under subsections (A)(2)(k)(i) through (A)(2)(k)(vi); and
l. Modification of a fire alarm system by adding:
    i. One to five fire alarm devices: $100; and
    ii. Six or more fire alarm devices: $150;

3. Permit issuance fees:
    a. Fire protection permit: $30 per system permitted;
    b. Underground liquid fuel storage tank: $164;
    c. Tire storage: $82;

d. Above-ground liquid fuel storage tank: $164;

e. Pyrotechnics: $164;

f. Special-event tent: $164;

g. Hydrogen fuel cell: $164;

h. Fair or trade show: $164;

i. Explosives or blasting storage: $164;

j. Compressed gases: $164;

k. Cryogens: $164; and

l. Liquefied petroleum tank: $164; and

4. Re-inspection fees: If the State Fire Marshal has to conduct a re-inspection because an entity failed to cancel or was not prepared for a previously scheduled inspection or because the site failed the inspection, the State Fire Marshal shall charge a minimum of $164 for the re-inspection. The State Fire Marshal shall increase the minimum re-inspection fee by $82 for each 25 miles or portion of 25 miles in excess of the first 25 miles required to travel to and from the site of the re-inspection.

B. The State Fire Safety Committee shall authorize the State Fire Marshal to refund any fee paid under this Section if:

1. The permit holder applies for a refund on a form furnished by the State Fire Marshal no more than 180 days after the fee is paid; and
2. The State Fire Marshal determines that the fee paid was erroneous.

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

R4-36-301. Definitions

The following terms apply to the State Fire Code established in this Chapter:

1. Wherever the terms “fire chief” or “fire code official” are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal’s designated representative, unless the context otherwise requires.
2. Wherever the terms “fire department” or “department of fire prevention” are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal’s designated representative unless the context otherwise requires.
3. Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:

   Boarding houses (non-transient) with 16 or fewer occupants

Boarding houses (transient) with 10 or fewer occupants

Building that do not contain more than four dwelling units

Care facilities that provide accommodations for five or fewer persons receiving care

Congregate living facilities (non-transient) with 16 or fewer occupants

Congregate living facilities (transient) with 10 or fewer occupants

Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the *International Residential Code*.

R4-36-302. Appendices

The International Fire Code (2012 Edition), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. Incorporated Appendices

Section 101.2.1 The following appendices are adopted as part of this Code:

B: Fire-Flow Requirements for Buildings

C: Fire Hydrant Locations and Distribution

D102.1 or the minimum requirement of the local fire response agency

D107.1 or the minimum requirement of the local building or subdivision authority

E: Hazard Categories

F: Hazard Ranking

G: Cryogenic Fluids – Weight and Volume Equivalents

H. Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

I. Fire Protection Systems—Noncompliant Conditions

J. Building Information Sign

R4-36-303. Permits

A. The following time-frames are established for permits issued under the State Fire Code:

1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.

3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.

B. The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.

C. Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.

D. Section 105.1.2 is modified to read: Types of permits. There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.
2. Construction permits. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

E. Section 105.2.4, the first sentence is modified to read: The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.

F. Section 105.3.1, the first sentence is modified to read: An operational permit shall remain in effect until reissued, renewed, or revoked or for 180 days.

G. Section 105.3.3 is modified to read: Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.

R4-36-304. Inspections and Enforcement

A. Section 108.1 is modified to read: Board of appeals established. To hear and decide appeals of orders, decisions, or other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of appeal with no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.

B. Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.

C. Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.

D. Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.

R4-36-305. General Precautions Against Fire

A. Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.

B. Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.

R4-36-306. Emergency Planning and Preparedness

Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.

R4-36-307. Fire Service Features

A. Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.

B. Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.

R4-36-308. Building Services and Systems

A. Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.

B. Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.

C. Sections 5003.3.1 and 5003.3.1.4 replace "fire code official" with "fire department."

R4-36-309. Fire Protection Systems

Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems.

R4-36-310. Explosives and Fireworks

Section 5601.1.3 is modified to read: Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited.

Exceptions:

1. Storage and handling of fireworks as allowed in Section 5604.
2. Manufacture, assembly and testing of fireworks as allowed in Section 5605.
3. The use of fireworks for fireworks displays as allowed in Section 5608.
4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by A.R.S. Title 36, Chapter 13, Article 1 or local ordinances and regulations, provided the fireworks comply with 16 CFR Parts 1500 and 1507 and 49 CFR Parts 100-185, for consumer fireworks.

R4-36-311. Repealed

41-2141. Department of fire, building and life safety; establishment; purposes; components

A. The department of fire, building and life safety is established to further the public interest of safety and welfare by maintaining and enforcing standards of quality and safety for manufactured homes, mobile homes and factory-built buildings and by reducing hazards to life and property through the maintenance and enforcement of the state fire code by providing fire training, fire investigations and public life safety education as provided for in this chapter.

B. The department of fire, building and life safety has as an additional purpose the protection of the public interest in maintaining the substantial responsibility for interpreting and enforcing the terms of mobile home park rental agreements through its hearing officer functions and has exercised that responsibility for mobile home communities for many years, including interpretation of statutes regulating those common interest communities and the interpretation and enforcement of the otherwise private contracts and rules that govern those communities, even though the communities themselves are not directly licensed by the department. Accordingly, the department of fire, building and life safety performs a similar function for condominiums regulated by title 33, chapter 9 and planned communities regulated by title 33, chapter 16 in that the department, through its hearing officer function, applies and enforces the statutes regulating those common interest communities and the interpretation and enforcement of the otherwise private contracts and rules that govern those communities. Similarly, the department does not directly license those communities. It is also the purpose of the department to establish a procedure to protect the consumer of such products and services, including the owners in condominiums and planned communities as well as the renters in mobile home park communities.

C. The department of fire, building and life safety consists of the board of manufactured housing, the installation standards committee, the state fire safety committee and the director of the department. The director's office consists of the deputy director, the office of manufactured housing, the office of state fire marshal and the office of administration.

D. The attorney general shall act for the department in all legal actions or proceedings and shall advise the department on all questions of law arising out of the administration of this chapter.

41-2142. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.

2. "Act" means the national manufactured home construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and 96-339).

3. "Alteration of units" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or

distributor but prior to the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.

4. "Board" means the board of manufactured housing.

5. "Broker" means any person who, on behalf of another, sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-2178.

6. "Component" means any part, material or appliance which is built-in as an integral part of the unit during the manufacturing process.

7. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a person licensed by the department.

8. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into or the transfer of title. Consummation of sale does not include warranties.

9. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, subassemblies, manufactured homes or mobile homes except as exempted in section 41-2178. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

10. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

11. "Department" means the department of fire, building and life safety.

12. "Director" means the director of the department.

13. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

14. "Factory-built building" means a residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site, except that it does not include a manufactured home, recreational vehicle or mobile home as defined in this section.

15. "HUD" means the United States department of housing and urban development.

16. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

17. "Insignia of approval" means a numbered or serialized label or seal issued by the deputy director of the office of manufactured housing as certification of compliance with this chapter.

18. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.
(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.
(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.
19. "Installation supervision" means that the installer may act as an installer of accessory structures for manufactured homes, mobile homes or residential single family factory-built buildings and may also contract with the purchaser or owner of a unit, or a dealer licensed under this chapter, to arrange for, control and supervise all aspects of the installation of a unit and accessory structures, including retaining and supervising persons whose activities are licensed under this chapter. A licensed installer may not contract with the purchaser or owner of a unit or with a dealer licensed under this chapter, to arrange for, retain and supervise a person who is licensed or regulated by an agency other than the office of manufactured housing, unless the licensed installer is also licensed by the same agency which licenses or regulates the person whom the installer retains and supervises. Installation supervision also includes the installer's right, if authorized by the purchaser, owner or dealer, to seek and obtain recourse, remedies or relief against all persons whose activities are supervised. If requested by a licensed installer or an applicant for an installer's license, and approved by the deputy director pursuant to sections 41-2175 and 41-2176, an installer may obtain a license that includes installation supervision.
20. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.
21. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.
22. "Listing agreement" means a document which contains the name and address of the seller, a description of the unit to be listed and the terms which include the period of time that the agreement is in force, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.
23. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.
24. "Manufactured home" means a structure built in accordance with the act.
25. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.
26. "Mobile home" means a structure built prior to June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities except recreational vehicles and factory-built buildings.
27. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.
28. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

29. "Reconstruction of a unit" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.
30. "Recreational vehicle" means a vehicular type unit which is:
(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold for camping.
(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.
(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.
(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 119.5 of the American national standards institute code.
(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.
31. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.
32. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.
33. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.
34. "Statutory agent" means an adult person who has been a bona fide resident of this state for at least three years and has agreed to act as agent for a licensee.
35. "Subassembly" means a prefabricated wall, floor, ceiling, roof or similar combination of components.
36. "Title transfer" means a true copy of the application for title transfer which is stamped or validated by the appropriate government agency.
37. "Unit" means a manufactured home, mobile home, factory-built building, subassembly or accessory structures.
38. "Unit safety" means the performance of a unit in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such unit, or any unreasonable risk of death or injury to the user or to the public if such accidents occur.

39. "Used unit" means any unit which is regulated by this chapter and which has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit which was titled in the name of such purchaser.
40. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

41-2146. State fire safety committee; members; terms; powers and duties; compensation
A. A state fire safety committee is established consisting of nine members who are appointed for three year terms by the governor pursuant to section 38-211. The governor may remove any member from the committee for incompetency, improper conduct, disability or neglect of duty. Membership on the committee is as follows:
1. Two members, not from the same municipality, each of whom is a fire chief or fire marshal of a paid municipal fire department of a city with a population of one hundred thousand persons or more.
2. One member who is a fire chief of a paid municipal fire department of a town with a population of less than one hundred thousand persons.
3. One member who is a fire chief in a fire district of an unincorporated area in a county with a population of less than five hundred thousand persons.
4. One member who is a member of the Arizona fire chiefs' association.
5. One member who is a registered architect.
6. One member who is a chief building official of a city, town or county.
7. One member who is a member of the public.
8. One member who is a member of the public and who is engaged in the business of distributing, selling or providing liquid petroleum gas to consumers.
B. The state fire safety committee shall annually select from its membership a chairperson for the committee. The committee shall meet on the call of the chairperson or on the request of at least five members.
C. The state fire safety committee shall adopt by rule a state fire code establishing minimum standards for:
1. Safeguarding life and property from fire and fire hazards.
2. Prevention of fires and alleviation of fire hazards.
3. Storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials.
4. Installation, maintenance and use of fire escapes, fire protection equipment, fire alarm systems, smoke detectors and fire extinguishing equipment.
5. The means and adequacy of fire protection and exit in case of fire in places in which numbers of persons work, live or congregate, excluding family dwellings that have fewer than five residential dwelling units.
6. Other matters relating to fire prevention and control that are considered necessary by the committee.
D. The state fire safety committee shall adopt rules and a schedule of fees for a permit, for a plan submission, for plan review and for reinspections that are payable by persons regulated under article 3 of this chapter.
E. The state fire safety committee shall adopt rules for the allocation of monies from the arson detection reward fund established by section 41-2167. The rules

shall be consistent with the purposes set forth in section 41-2167 and shall promote the effective and efficient use of the fund monies.
F. Members of the committee are not eligible to receive compensation for service on the committee but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

Sec. 62. Section 37-1307, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

37-1307. State fire safety committee; members; terms; powers and duties; compensation; fire watch requirements

A. The state fire safety committee is established consisting of nine members who are appointed for three-year terms by the governor pursuant to section 38-211. The governor may remove any member from the committee for incompetency, improper conduct, disability or neglect of duty. Membership on the committee is as follows:

1. Two members, not from the same municipality, each of whom is a fire chief or fire marshal of a paid municipal fire department of a city with a population of one hundred thousand persons or more.

2. One member who is a fire chief of a paid municipal fire department of a town with a population of less than one hundred thousand persons.

3. One member who is a fire chief in a fire district of an unincorporated area in a county with a population of less than five hundred thousand persons.

4. One member who is a member of the Arizona fire chiefs association.

5. One member who is a registered architect.

6. One member who is a chief building official of a city, town or county.

7. One member who is a member of the public.

8. One member who is a member of the public and who is engaged in the business of distributing, selling or providing liquefied petroleum gas to consumers.

B. The state fire safety committee shall annually select from its membership a chairperson for the committee. The committee shall meet on the call of the chairperson or on the request of at least five members.

~~**C. The state fire safety committee shall adopt by rule a state fire code establishing minimum standards for:**~~

~~**1. Safeguarding life and property from fire and fire hazards.**~~

~~**2. Prevention of fires and alleviation of fire hazards.**~~

~~**3. Storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials.**~~

~~**4. Installation, maintenance and use of fire escapes, fire protection equipment, fire alarm systems, smoke detectors and fire extinguishing equipment.**~~

~~**5. The means and adequacy of fire protection and exit in case of fire in places in which numbers of persons work, live or congregate, excluding family dwellings that have fewer than five residential dwelling units.**~~

~~**6. Other matters relating to fire prevention and control that are considered necessary by the committee.**~~

~~**D. The state fire safety committee shall adopt rules and a schedule of fees for a permit, for a plan submission, for plan review and for reinspections that are payable by persons regulated under article 3 of this chapter.**~~

~~**E. The state fire safety committee shall adopt rules for the allocation of monies from the arson detection reward fund established by section 41-2167. The rules shall be consistent with the**~~

~~purposes set forth in section 41-2167 and shall promote the effective and efficient use of the fund monies.~~

C. THE STATE FIRE SAFETY COMMITTEE SHALL ADVISE THE STATE FIRE MARSHAL ON ALL OF THE FOLLOWING:

1. THE ADOPTION OF A STATE FIRE CODE.

2. THE ADOPTION OF A FEE SCHEDULE FOR PERMITS, PLAN SUBMISSIONS, PLAN REVIEWS AND REINSPECTIONS.

3. THE ALLOCATION OF MONIES FROM THE ARSON DETECTION REWARD FUND ESTABLISHED BY SECTION 37-1387.

~~F.~~ D. Members of the committee are not eligible to receive compensation for service on the committee but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

~~G.~~ E. If the state fire safety committee requires the use of a fire watch, an employee who works at the building in which a fire watch is required may serve as the fire watch. A person who is designated as a fire watch shall be equipped with means to contact the local fire department, and the person's only duty shall be to perform constant patrols of the protected premises while keeping watch for fires. The local jurisdiction shall provide the fire watch with printed instructions from the state fire marshal and may provide a free training session before the person's deployment as the fire watch begins. For the purposes of this subsection, "fire watch" means a person who is stationed in a building or in a place relative to a building to observe the building and its openings when the fire protection system for the building is temporarily nonoperational or absent.

41-2147. Director; qualifications; appointment; salary; powers and duties

A. The governor shall appoint a director of the department pursuant to section 38-211. The director shall serve at the pleasure of the governor.

B. The director shall be experienced in administration and the technical knowledge necessary to administer this chapter.

C. The compensation of the director shall be as determined pursuant to section 38-611.

D. The director with the approval of the governor shall appoint a deputy director, a deputy director of the office of manufactured housing, the state fire marshal of the office of fire marshal, the state fire training officer and the fire resource coordinator, all of whom serve at the pleasure of the director and are subject to chapter 4, article 4 of this title. Compensation for the deputy directors and the fire marshal shall be as determined pursuant to section 38-611.

E. The director shall establish and have authority over the functions of the office of manufactured housing, the office of state fire marshal and the office of administration and, subject to chapter 4, article 4 of this title, shall appoint employees necessary to perform the duties of articles 2, 3 and 4 of this chapter.

F. The director shall employ any deputies, investigators and assistants subject to chapter 4, article 4 of this title and shall procure all equipment and records that are necessary to enforce this chapter. With respect to the enforcement of section 41-2194, the director or the director's designees are vested with the authority to issue a citation in accordance with section 13-3903 or to issue a cease and desist order to any violators of this chapter. When the director or the director's designees conduct investigations they may receive criminal history record information from the department of public safety and other law enforcement entities.

G. In order to protect public health, safety and welfare, the director may revoke or suspend a license.

H. The director may issue citations to licensees for alleged violations of this chapter or rules adopted pursuant to this chapter.
I. The director, on the director's motion or on the written request of the licensee, may reduce, at the director's discretion, the amount of any administrative penalty imposed.

41-2161. Office of state fire marshal; purpose; qualifications
To promote public health and safety and to reduce hazards to life, limb and property, the office of state fire marshal is established within the department. The office shall perform its duties by performing inspections and fire investigations, by providing public education and by adopting fire protection codes. The person appointed as state fire marshal shall have extensive experience in the field of fire prevention and fire protection including administrative experience in such capacity.
41-2162. Deputy fire marshals and assistants; appointment; duties; recovery of costs
A. The state fire marshal may, with the approval of the director:
1. Hire deputy fire marshals who shall have knowledge in the field of fire safety and have at least five years' experience in fire safety and hire such other assistants and employees as are necessary to properly discharge the duties imposed on the state fire marshal pursuant to this article.
2. Appoint as assistant fire inspectors any of the fire chiefs of a city, town, county, volunteer fire company or protective district or an employee of a private fire service provider who meets the requirements of this section to act within their area of jurisdiction or area of service or on the recommendation of the fire chief appoint other assistant fire inspectors if needed to function within the jurisdiction.
3. Appoint other assistant fire inspectors who meet the requirements of this section as are necessary in areas that are not under the jurisdiction of a fire chief designated in paragraph 2 who may be employees of this state, the federal government or a private fire service provider.
B. Assistant fire inspectors appointed pursuant to subsection A shall carry out their duties only within the geographic areas assigned by the state fire marshal. When designating assistant fire inspectors and when assigning geographic areas, the state fire marshal shall give a preference to assigning assistant fire inspectors to the service area covered by the municipal or private fire service provider where the assistant fire inspector is employed.
C. Assistant fire inspectors appointed under subsection A, paragraph 2 or 3 are not entitled to receive additional compensation for performing duties under this article, except that an employee of a public or private fire service provider who acts as an assistant fire inspector may charge fees to recover costs incurred in conducting inspections or for the review of plans and inspections of property. Assistant fire inspectors appointed under subsection A, paragraph 2 or 3 or fire inspectors appointed pursuant to subsection E shall have attended fire inspector training by an entity that meets nationally recognized standards and is approved by the state fire marshal.
D. An assistant fire inspector who is appointed pursuant to subsection A may inspect property, issue notices of violation and enforce the jurisdiction's fire code. An assistant fire inspector who is appointed pursuant to subsection A shall report all

actions taken to the state fire marshal in a manner prescribed by the state fire marshal.
E. A city, town or county may appoint a fire inspector from one or more public or private fire service providers who service areas in the city, town or county to inspect property. City, town or county fire inspectors may issue notices of violation and enforce the fire code on behalf of the city, town or county within the respective service area of the public or private fire service provider. A fire inspector shall report all actions taken to the city, town or county manager. A fire inspector who is appointed pursuant to this subsection is not entitled to receive additional compensation for performing duties on behalf of the city, town or county, but may charge fees to recover the costs for review of plans and the inspection of public or private premises.
F. The state fire marshal, deputy fire marshal, assistant fire inspectors or a fire inspector who is appointed pursuant to this section may inspect buildings and premises in response to an emergency call or at the request of the occupant of the public or private property.
G. The amount of the fees charged by a fire inspector or an assistant fire inspector shall be available at the office of the state fire marshal or the city, town or county where the property is located.

41-2163. Powers and duties; arson investigators
A. The state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the fire marshal shall, under the authority and direction of the director:
1. Assist in the enforcement of state laws and ordinances of cities and counties relating to fire prevention and fire protection.
2. Enforce compliance with the fire code adopted by the state fire safety committee throughout the state except in any city having a population of one hundred thousand persons or more that has in effect a nationally recognized fire code, whether modified or unmodified, and that has enacted an ordinance to assume such jurisdiction from the state fire safety committee. Such cities do not have authority that supersedes and are not exempt from the state fire safety committee's established fire code in state or county owned buildings and public schools wherever located throughout the state.
3. Cooperate and coordinate with other state agencies in the administration of the state fire code.
4. Establish a regularly scheduled fire safety inspection program for all state and county owned public buildings and all public and private school buildings wherever located throughout the state, except for private school buildings in cities with a population of one hundred thousand or more persons according to the last decennial census.
5. Inspect as necessary all other occupancies located throughout this state, except family dwellings having fewer than five residential dwelling units and occupancies located in cities with a population of one hundred thousand or more persons according to the last decennial census.

6. At the written request of county or municipal authorities, make and provide to them a written report of the examination made by the state fire marshal of any fire within their jurisdiction.
7. Compile, update as necessary and make available to the public a fully indexed and cross-referenced list of all rules adopted by state agencies and departments and agencies and departments of political subdivisions of this state relating to the control of all hazardous materials as defined in section 28-5201 and all federal regulations relating to the control of hazardous materials as defined in section 28-5201 for which there is no state regulation.
8. Establish and maintain a library of all rules and regulations identified in the index required by paragraph 7 of this subsection and support the regulated industry's request for information through research or referral to the agency adopting the specific rule for technical information or other assistance as circumstances dictate.
9. Administer the arson detection reward fund established by section 41-2167.
B. The state fire marshal and this state are not liable for damages caused by information that is omitted from the rules and federal regulations compiled pursuant to subsection A, paragraph 7 of this section.
C. All plans and specifications for new construction, remodeling, alterations and additions for state, county and public school buildings and grounds shall be submitted to the director for review and approval by the state fire marshal or as authorized to a deputy fire marshal or an assistant fire inspector acting at the direction of the fire marshal before construction. The plans and specifications shall be reviewed and approved or disapproved within sixty days of submission. No construction shall commence until the plans have been approved and a permit has been issued.
D. The state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the state fire marshal may, under the authority and direction of the director:
1. Conduct or participate in investigations of causes, origins and circumstances of fires, including cases of possible arson.
2. Prescribe a uniform system of reporting fires and their causes and effects.
3. Provide and coordinate training in fire fighting and fire prevention and cooperate with educational institutions to provide and further such training.
4. Impound necessary evidence in conjunction with investigations of causes, origins and circumstances of fires, in the event that such evidence might be lost, destroyed or otherwise altered if not so impounded.
5. Employ specialized testing services to evaluate evidence and conditions involved in fire investigations.
6. Designate certain members of the state fire marshal's staff or a deputy fire marshal or an assistant fire inspector as arson investigators.
E. The primary duty of investigators designated pursuant to subsection D, paragraph 6 of this section is the investigation, detection and apprehension of persons who have violated or are suspected of violating any provision of title 13, chapter 17. A person designated as an arson investigator, while engaged in arson investigation in this state, possesses and may exercise law enforcement powers of peace officers of this state. This subsection does not grant any powers of peace officers of this state to arson investigators other than those necessary for the investigation, detection and apprehension authority granted by this subsection. Any

individual designated as an arson investigator shall have law enforcement training under section 41-1822.

41-2164. Inspection; consent; search warrant

A. The fire marshal or a deputy fire marshal or an assistant fire inspector may investigate fire damage and shall carry out periodic inspection programs of buildings and premises to examine or inspect for fire hazards.

B. In carrying out such inspections or investigations the fire marshal or a deputy fire marshal or an assistant fire inspector shall identify himself to the owner or tenant of such building or premises and seek the consent of such owner or tenant to carry out such inspection. If such consent is refused, or it is not possible to reasonably obtain consent, the fire marshal or a deputy fire marshal or an assistant fire inspector shall obtain a search warrant for such building or property in compliance with title 13, chapter 38, article 8.

C. If the fire marshal is assisting a local fire department in an investigation of fire damage, the authority of the local fire department to investigate the fire damage shall be deemed to include the fire marshal or a deputy fire marshal or an assistant fire inspector.

41-2165. School protection; definition

A. The fire marshal or a deputy fire marshal or an assistant fire inspector shall enforce rules and regulations for establishing programs for evacuating school buildings and for instructing all students in public and private schools as to proper methods of fire prevention and control and of the importance thereof. Such rules, regulations and programs shall be transmitted to the department of education for distribution to such schools.

B. For the purposes of this article, "school" means an educational institution of any description, public or private, wherever situated in this state.

41-2166. Construction of article; hazardous materials; electronic filing

A. This article does not prohibit cities subject to this article, towns or volunteer fire districts from enacting ordinances, resolutions, rules or regulations with regard to fire protection or prevention pursuant to other provisions of law or charter, provided such ordinances, resolutions, rules or regulations are equal to or exceed minimum standards imposed pursuant to this article.

B. A facility that is located in a city or town with a population of seventy-five thousand persons or more, in conjunction with the local fire department or fire district, may deliver hazardous materials management plans and hazardous materials inventory statements electronically.

C. Nothing in this section prohibits a local fire department or fire district from requiring electronic filing of hazardous materials management plans and hazardous materials inventory statements.

41-2167. Arson detection reward fund; administration; purpose; receipts and disbursements

A. An arson detection reward fund is established and shall be administered within the guidelines of this section and rules of the office of state fire marshal.

B. The advisory committee on arson prevention established by the office of state fire marshal shall provide rewards of not to exceed ten thousand dollars for information concerning a violation of any provision of title 13, chapter 17 relating to arson. The reward amounts shall be based on the value of the information, the availability of information from other sources and other factors deemed relevant by the committee.

C. The advisory committee is subject to title 38, chapter 3, article 3.1 and title 39, chapter 1, article 2, except that the advisory committee shall not disclose records that:

1. Reveal the identity of a confidential informant.
2. Endanger the life or physical safety of any person.
3. Jeopardize any ongoing criminal investigation.

D. Payment of rewards shall be from available funds consisting of:

1. Fines imposed by a court for an offense set forth in title 13, chapter 17. Notwithstanding the provisions of section 13-811, the municipal, justice or superior court imposing and collecting such fine shall transfer the monies to the appropriate county treasurer who shall transfer the amount to the state treasurer for deposit in the arson detection fund.
2. Monies from forfeiture of bail posted in connection with an offense set forth in title 13, chapter 17. All amounts recovered by the prosecutor on an appropriate order of judgment forfeiting all or part of the amount of the bond shall be transferred to the appropriate county treasurer who shall transfer the amount to the state treasurer for deposit in the arson detection reward fund.
3. Monies received from donations to the fund.
4. Monies appropriated by the legislature for the purposes of this section.

E. Monies may be expended only for payment of rewards and promotion of public awareness of the arson detection reward fund.

F. Balances in the fund remaining at the end of the fiscal year are exempt from section 35-190, relating to lapsing of appropriations.

41-2168. Fire protection systems; definitions

A. All backflow prevention equipment installed on class 1 and class 2 fire protection systems shall comply with state fire code standards.

B. Check valve assemblies installed on class 1 or class 2 fire protection systems as backflow protection equipment pursuant to this section shall be inspected and maintained in accordance with the procedures identified in the national fire protection association publication 25 for water based fire protection systems, 1992 edition, to determine compliance with the minimum design standards established by the state fire code. Inspections of check valve assemblies installed on class 1 or class 2 fire protection systems shall be performed on an annual basis with records of the inspections provided to the local fire department and drinking water provider.

C. Any malfunction or abnormality with a check valve assembly installed on class 1 or class 2 fire protection systems shall be reported within twenty-four hours to the local fire department and drinking water provider.
D. A fire code authority may establish guidelines for the installation of backflow prevention equipment on a class 1 or class 2 fire protection system that exceeds the minimum standards established by the state fire code if the backflow prevention equipment is approved for use on class 1 or class 2 fire protection systems pursuant to section 1.102 of the uniform fire code, 1988 edition.
E. A fire code authority or a drinking water provider may require the installation of backflow prevention equipment on class 1 and class 2 fire protection systems that exceeds the minimum standards established by the state fire code if a special backflow condition is identified. The use of nonpotable pipe in a fire protection system does not by itself constitute a special backflow condition. The drinking water provider shall consult with the fire code authority and provide the fire code authority with an opportunity to comment before installing or requiring the installation of backflow equipment that exceeds the minimum standards established by the state fire code.
F. For purposes of this section:
1. "Class 1 fire protection system" means a fire protection system that is directly connected to a public water main and all sprinkler drains on the fire protection system discharge into the atmosphere, dry wells or other safe outlets. Class 1 fire protection system does not include a system that has a connection with pumps, tanks, reservoirs or other water supplies, or a system that contains antifreeze or other additives.
2. "Class 2 fire protection system" means a class 1 fire protection system with booster pumps installed in the connections from the street mains.
3. "Fire code authority" means the state fire marshal or the state fire marshal's designee, except that for an incorporated city or town with a population of at least one hundred thousand persons according to the most recent United States decennial census that has adopted an ordinance pursuant to section 41-2163, subsection A, fire code authority means the municipal fire chief or the fire chief's designee.
4. "Special backflow condition" means a condition that exists at the site of a class 1 or class 2 fire protection system and that may present a contamination hazard to the domestic water supply, including:
(a) Underground fire protection system lines that are parallel to and within six feet horizontally of sewer lines or other lines carrying toxic materials.
(b) The use, storage or handling of materials on a site by a property owner or occupant that could present a significant health hazard to the domestic water supply.
(c) The presence of unusually complex piping systems.
(d) Water supplied to a site or an area from either:
(i) Two or more services of a water utility.
(ii) Two different water utilities.
(iii) A supplemental water supply.

41-2169. Substitute refrigerants; approval by administrator

A person shall not use, sell or offer to sell a product intended for use as a refrigerant for any motor vehicle, residential, commercial or industrial air conditioning system, refrigerator or other cooling or heating device unless it has been approved for use by the administrator of the United States environmental protection agency or it meets one of the following standards relating to flammability:
1. SAE J639.
2. SAE J1657.
3. ASHRAE standard 34-1992.
4. UL2182.
5. ASTM E681-85.

41-2169.01. Safety standards in fire training
All training provided by the department shall comply with the safety standards prescribed by the national fire protection association and the occupational safety and health administration regulations of this state.

41-2196. State fire marshal cease and desist order; enforcement procedures; violation; civil penalty
A. If the state fire marshal or his deputies have reasonable cause to believe that any person has committed or is committing a violation of article 3 of this chapter, any rule adopted pursuant to article 3 of this chapter or any order issued pursuant to article 3 of this chapter, which does not constitute an immediate and apparent hazard to life or property, the state fire marshal through the deputy director may issue and serve upon the person by certified mail a cease and desist order.
B. If the violation does not constitute an immediate hazard to life or property, the state fire marshal shall grant to the person whom he alleges to be in violation of any rule or order a reasonable period of time, which in no event shall be less than five days from the date of receipt of the notice, to comply with the order.
C. Upon the failure or refusal of a person to comply with a cease and desist order issued by the deputy director pursuant to subsection A, the deputy director may file an action in the superior court in the county in which the violation is alleged to have occurred to enjoin the person from engaging in further acts in violation of the cease and desist order. The court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.
D. If the state fire marshal or the fire marshal's deputies have reasonable cause to believe that any person has committed or is committing a violation of article 3 of this chapter, any rule adopted pursuant to article 3 of this chapter or any order issued pursuant to article 3 of this chapter which constitutes an immediate and apparent hazard to life or property, the state fire marshal through the deputy director may either:
1. Issue and serve by personal service a cease and desist order, which order may require immediate compliance. Upon failure of a person to comply with a cease and desist order issued pursuant to this paragraph, the deputy director shall file an

action in the superior court in the county where the violation occurred to enjoin the person from engaging in further acts in violation of the cease and desist order.
2. File an action in the superior court in the county in which the violation is alleged to have occurred to enjoin a person from engaging in further acts in violation of the rule or order without issuing a cease and desist order.
The court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.

G-3

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0605)
Title 18, Chapter 9, Article 5, Grazing Best Management Practices; Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0605)**
Title 18, Chapter 9, Article 5, Grazing Best Management Practices; Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

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This five-year-review report from the Arizona Department of Environmental Quality (Department) covers 25 rules in A.A.C. Title 18, Chapter 9, related to water pollution control.

Article 5, related to grazing best management practices, contains one rule that relates to the Surface Water Quality General Grazing Permit. The Department indicates that the permit consists of those voluntary best management practices that are the most practical and effective means of reducing or preventing the discharge of pollutants into navigable waters from grazing activities. The rule has not been amended since its adoption in April 2001.

Articles 6 and 7 address the regulation of reclaimed water. A.R.S. § 49-201(32) defines reclaimed water as "water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility." The Department indicates that Article 6, containing three rules, establishes technical criteria for the design and construction of reclaimed water distribution systems. Article 7, containing 21 rules, governs the direct reuse of reclaimed water. With the exception of Section 704, which was amended in 2016, the rules in both articles were last amended in January 2001.

Proposed Action

The Department proposes no action on Article 5. With regard to Articles 6 and 7, the Department indicates that it has initiated the rulemaking process for its reclaimed water rules, including those in A.A.C. Title 18, Chapter 11, Article 3. The Department has received an exception from the moratorium, and is engaging with stakeholders to gather input on key changes. The Department anticipates that all of the rules in Articles 6 and 7 will be amended, and stakeholders concerns listed in this report will be addressed, in a rulemaking to be submitted to the Council by June 2017.

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 following rules could be made more effective:

- Section 701: The statutory citation for "reclaimed water" should be corrected, and should mirror the statutory definition for "gray water".
- Section 707: Subsection (B)(1) should reference the newer North American Industry Classification System (NAICS) for industry identification instead of the Standard Industrial Code.
- Sections 708 and 718: The rules should allow a permittee to amend information on an existing general permit under circumstances other than the end of a calendar year.

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?**

While the Department has not received written criticisms of the rules, it has received comments that address certain aspects of the rules. As noted above, the Department is engaging with stakeholders to address the following issues in its upcoming rulemaking:

- Stakeholders have indicated that the Article 6 rules do not provide detailed criteria for design and construction of reclaimed water distribution systems.
- For Section 602, stakeholders have indicated that the use of purple pipes for fire system use conflicts with national standards that utilize red pipes.
- With regard to Article 7, support has been expressed for the expansion of allowable reclaimed water uses and the development of a general permit for short-term temporary reclaimed water uses.
- For Section 704, permittees have requested that subsection (H), which requires that a permittee place and maintain signage, should contain standardized language for the signage.
- For Sections 708 and 718, permittees have requested the ability to amend a Type 2 or 3 general permit.
- For Section 709, permittees have indicated that a Reclaimed Water General Permit should not have to be renewed 90 days before expiration, as it takes the Department only a few days to renew the permit.

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

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 49-202.01 establishes the Surface Water Quality General Grazing Permit. In addition, under A.R.S. § 49-203(A)(3), the Department must "[a]dopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters." Also, under A.R.S. § 49-203(A)(6), the Department must "[a]dopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water."

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

Yes. The Department indicates that the rules are consistent with statutes and other rules, with the following exceptions:

- Sections 705, 708, 717, 718, and 719: The rules request an applicant's Social Security number, inconsistent with A.R.S. § 44-1373 and federal law. While the Department does not require an applicant's Social Security number, the rule will be amended to eliminate these provisions.
- Section 711: Subsection (C) conflicts with A.R.S. § 49-204 in that it allows for local control of gray water, while the statute prohibits local control of gray water in most circumstances.

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

Yes. With the exception of provisions that are inconsistent with statutes, the Department indicates that it enforces the rules as written.

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

Yes. The Department indicates that the rules are clear, concise, and understandable, with the exception of Section 501, which should be amended to clarify that, similar to other general permits, a permittee is not required to submit any documentation.

8. Stringency of the Rules:

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

No. No federal laws directly correspond to the rules.

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

Not applicable.

9. For rules adopted after July 29, 2010:

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

Not applicable, 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. In 2011, the Department indicated its intention to submit a rulemaking to the Council by June 2012. The Department states that it did not seek an exception to previous iterations of the rulemaking moratorium, as it did not believe that the proposed amendments clearly qualified.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, to address issues identified in this report, the Department expects to submit a rulemaking to the Council in June 2017. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-3**

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

FROM: GRRC Economic Team

DATE: August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0605)**
Title 18, Chapter 9, Article 5, Grazing Best Management Practices; Article 6, Reclaimed Water Conveyances; Article 7, Direct Reuse of Reclaimed Water

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I reviewed the five-year-review report and the 2005 notice of final rulemaking for compliance with A.R.S. § 41-1056 and made the following comments.

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

The materials provided for the five year review of Title 18, Chapter 9, Articles 5, 6 and 7 included the Department's Five-Year Review Report and 2005 Notice of Final Rulemaking.

According to the Notice of Final Rulemaking, the changes to the rules in Chapter 9 were "editorial or conforming and having limited impact". Further, the Notice states that "the minor economic impact of this rulemaking is outweighed by the public benefit". The Department indicates in the five year review that it believes the economic impact has been as predicted in the 2005 Notice of Final Rulemaking. The rules have zero to minimal economic impact.

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

Some of the rules have received criticism due to advancements of science and technology in reclaimed water use since the rulemaking, and due to the need for increased clarification of the rules. The Department anticipates gathering feedback from stakeholders and updating these rules in the future. Even with these considerations, the Department believes the rules still create the least burden and costs to persons affected at this time. As an example, R18-9-501 has minimal impact due to so many businesses already following one of the suggested voluntary best management practices.

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

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

March 31, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Title 18, Chapter 9, Article 5

Dear Ms. Ong:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 9, Article 5 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of the Department's findings, proposed courses of action and reasons, and justifications. I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

April 7, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Five-Year-Review Report: Title 18, Chapter 9, Articles 6 and 7

Dear Ms. Ong:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 9, Articles 6 and 7 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of ADEQ's findings, proposed courses of action and reasons, and justifications. As this Report details, ADEQ has prioritized amending all rules in these Articles, and has begun the rulemaking process.

I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

FIVE-YEAR REVIEW REPORT
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL
ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

Analysis of the Rule

R18-9-501. Surface Water Quality General Grazing Permit

1. Authorization of rules by existing statutes:

   The rule is authorized generally by A.R.S. § 49-203(A)(3), with specific statute authorization from A.R.S. § 49-202.01

2. Objective of the rule:

   The rule establishes a Surface Water Quality General Grazing Permit consisting of voluntary best management practices which have been determined to be the most practical and effective means of reducing or preventing the discharge of pollutants into navigable waters from grazing activities.

3. Effectiveness of the rule in achieving the objectives:

   This rule meets its objective by providing a list of best management practices that are the most practical and effective means of reducing or preventing the discharge of pollutants into navigable waters from grazing activities.

4. Consistency of the rules with state and federal statutes and rules:

   These rule is consistent with state statutes and rules. The Arizona Department of Environmental Quality (ADEQ) uses the following statutes and rules to determine that the rule is consistent: A.R.S. §§ 49-203(A)(3), 49-202.01 and 49-248. No corresponding federal laws apply.

5. Status of Agency enforcement policy regarding the rule:

   The Surface Water Quality General Grazing Permit is enforced through the voluntary actions of persons engaged in grazing livestock, who implement the best management practices. The general permit is issued automatically to persons who implement the best management practices. ADEQ has not requested information from permittees since the rule was promulgated. The rule also serves as guidance to ADEQ when considering awarding grant funding for projects related to non-point source pollution and grazing livestock.

6. Analysis of clarity, conciseness, and understandability:

   The rule could be clearer in communicating that the permittee is not required to submit any documentation, similar to other general permits such as in R18-9-403. However the permit is issued automatically, and ADEQ is not aware of any confusion from the regulated public on this rule. Overall the language is clear, concise, and understandable enough to communicate a list of voluntary best management practices.

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

   ADEQ has not received any written comments on the rules within the past five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   ADEQ promulgated 18 A.A.C. 9, Article 5 in April 2001. At that time, ADEQ believed that proposing voluntary best management practices would allow various strategies to be implemented to help surface waters meet and maintain water quality standards and make long term economic sense for the rancher. Because the terms and conditions of the Surface Water Quality General Grazing Permit are voluntary, ADEQ believed that most people who participate in the program already use one or more of the voluntary best management practices listed in the rule. ADEQ believes that Article 5's impact on the state's economy, small business and consumers has not changed within the last five years.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    ADEQ did not proposed any amendments in the previous Five-Year Review Report, approved by Council on August 2, 2011.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, while still achieving the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal laws apply.

13. Compliance with A.R.S. § 41-1037:

    These rules was promulgated before July 29, 2010. The rule established a general permit.

14. Proposed course of action:

    No amendments are proposed.

FIVE-YEAR REVIEW REPORT

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

ARTICLE 6. RECLAIMED WATER CONVEYANCES

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

Overview

Reclaimed water is defined as "water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility." A.R.S. § 49-201(32). Wastewater from residences and businesses is processed and treated by a wastewater treatment plant to remove solids, and destroy or reduce pollutants and harmful organisms. One of the byproducts from the treatment process is reclaimed water, which is wastewater treated to prescribed standards and which can be used beneficially to offset demands on the potable water supply.

The Arizona Department of Environmental Quality (ADEQ) regulates reclaimed water through four sets of rules:

- Article 6 (Reclaimed Water Conveyances) establishes technical criteria for the design and construction of reclaimed water distribution systems.
- Article 7 (Direct Reuse of Reclaimed Water) governs ADEQ's system for reclaimed water permitting, mainly through general permits for end users.
- Water quality standards are set in 18 A.A.C. 11, Article 3 (Reclaimed Water Quality Standards), which establishes five classes of reclaimed water based on protection of public health and groundwater quality (A+, A, B+, B, and C). Allowable end uses, corresponding with the water quality class designations, are also included in this Article. End uses include crop irrigation, residential and school ground landscape irrigation, toilet and urinal flushing, and recreational impoundments.
- The fourth component of regulation are the rules governing the Aquifer Protection Permits (APP) for sewage treatment in 18 A.A.C. 9, Articles 1 through 4 (collectively - the Aquifer Protection Permit program). A sewage treatment facility is the generator of the reclaimed water, and must be issued an APP in order to discharge wastewater. If the sewage treatment facility will generate reclaimed water for reuse, the APP designates the applicable class of reclaimed water (A+, A, B+, B, or C) and prescribes the monitoring requirements for the facility that ensures that the quality of the reclaimed water for the designated class will always be met.

All the Articles listed above became effective in January 2001, with amendments to the APP rules in 2005. This Five-Year Review Report concerns Articles 6 and 7.

ARTICLE 6. RECLAIMED WATER CONVEYANCES

I. Information That Is Identical for Rules (unless noted differently in the Section-by-Section Analysis of Rules)

1. Authorization of rules by existing statutes:

   A.R.S. § 49-203(A)(6).

2. Objective of the rules:

   These rules consist of a basic set of technical criteria for the design and construction of reclaimed

water distribution systems which:

- Apply to pipeline and open water conveyances transporting reclaimed water from the treatment plant to a reclaimed water blending facility, the point of land application, or end use,
- Prescribe performance standards, and
- Address aspects of pressure and pressure testing, minimum separation distance from water and sewer pipes, pipe identification and marking, and signage.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 44-1373, 49-201, 49-203, 49-204, 49-221(E); 18 A.A.C. Chapter 9, Article 7, and 18 A.A.C. Chapter 11, Article 3. No corresponding federal programs apply to Article 6.

5. Status of Agency enforcement policy regarding the rule:

   The rules prescribe compliance with the criteria, but ADEQ requires no notification of proposed construction, performs no review of design plans, and issues no permit relating to construction activity. ADEQ receives no confirmatory information on the extent to which reclaimed water distribution system projects constructed by utilities comply with the technical criteria in rule.

   Arizona Revised Statutes § 49-261(A) grants ADEQ authority to take enforcement action for a violation of a rule adopted or a condition of a permit issued pursuant to A.R.S. § 49-203(A)(6). ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   Within the last five years, ADEQ has received comments, though not necessarily written criticisms, of these rules. ADEQ recognizes there are opportunities to further improve the 2001 rules after almost 15 years of experience implementing the program and subsequent advances in the science and technology of reclaimed water reuse. One area of comment is that the Article 6 rules do not provide detailed criteria for design and construction of reclaimed water distribution systems. ADEQ is working with stakeholders to examine the issue of how much technical criteria should be included in these rules and how to provide criteria for future advances, to be addressed in a future rulemaking package, as described in item #14.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Under the rules in effect before 2001, an applicant for reclaimed water conveyances was required to submit plans for review and a fee to ADEQ for review and approval under the “Approval to Construct/Approval of Construction” program. In the 2001 rulemaking, ADEQ moved the technical criteria for reclaimed water conveyances to Article 6 and no longer required ADEQ's plan review and approval and associated fee. The 2001 rulemaking reduced costs to persons constructing reclaimed water conveyances by discontinuing a review fee and eliminating potential construction delays due to ADEQ review and approval procedures. ADEQ believes that Article 6’s impact on the state’s economy, small business and consumers has not changed within the last five years.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's

business competitiveness to the impact on businesses in other states:

ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its April 5, 2011 meeting. ADEQ had proposed submitting some amendments to Council by June 2012. Under ADEQ's changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 6.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010 and do not require issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action:

    ADEQ has begun a rulemaking for reclaimed water rules, including the pipeline and water conveyances, permitting requirements, and uses and standards (18 A.A.C. 9, Articles 6 and 7, and 18 A.A.C. 11, Article 3). ADEQ received approval on its request for exception from the rule moratorium and has filed two Notice of Docket Openings (22 A.A.R. 16, January 1, 2016).

    As stakeholder involvement is very important in this rulemaking process, this spring, ADEQ conducted stakeholder meetings around the state to gather input on key changes. ADEQ is forming workgroups of subject matter experts and interested stakeholders to provide guidance and recommendations on main issues. Draft rule changes will be put out for public review and comment before proposing the changes in a Notice of Proposed Rulemaking.

    ADEQ anticipates that every section in 18 A.A.C. 9, Articles 6 and 7, and 18 A.A.C. 11, Article 3 will be amended and written criticisms and concerns listed in this Report will be addressed. As some issues will need more time and study to develop proposed rule language, ADEQ will conduct the rulemakings in phases. ADEQ anticipates submitting a first rulemaking package to Council by June 2017.

II. Section by Section Analysis of Rules

R18-9-601. Definitions

2. Objective of the rules:

   The definition section defines important terms used in Article 6, so that the rules are understandable to the general public, such as words with uncommon meanings and technical terms.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively defines important terms used in the rules.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable.

R18-9-602. Pipeline Conveyances of Reclaimed Water

2. Objective of the rules:

   This rule establishes who is required to comply with Article 6 and provides specific requirements for the construction of pipeline conveyances of reclaimed water.

3. Effectiveness of the rule in achieving the objectives:

   The rule meets its objective in establishing criteria for pipeline conveyances.

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

   As part of compliance assistance discussions with reclaimed water applicants and permittees, ADEQ is aware that using purple pipes for fire system use conflicts with national standards that sprinkler fire-fighting piping systems are red.

R18-9-603. Open Water Conveyance of Reclaimed Water

2. Objective of the rules:

   This rule provides specific requirements for construction, operation and maintenance, and use of open water conveyances of reclaimed water, including signage requirements. The rule also specifies that there shall be no releases of reclaimed water from an open water conveyance unless allowed under federal and state regulations.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes criteria for open water conveyances of reclaimed water.

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 7 (unless noted differently in the Section-by-Section Analysis of Rules)

1. Authorization of rules by existing statutes:

   A.R.S. § 49-203(A)(6)

2. Objective of the rules:

   Article 7 governs ADEQ's system for permitting the direct reused of reclaimed water. Before program revisions and rule changes in 2001, end users of reclaimed water were required to apply for an individual reclaimed water permit. In 2001, ADEQ changed the permitting approach to rely largely on general permits for end users based on the five classes of reclaimed water (A+, A, B+, B, and C) designated in the Reclaimed Water Quality Standards (18 A.A.C. 11, Article 3). The general permits have provisions relating to operation, maintenance, and reporting of volumes of reclaimed water used, although an end user can apply for an individual permit if none of the general permits are applicable.

   Gray water reuse also is regulated by ADEQ under these rules for the direct use of reclaimed water. Gray water is defined in statute as “wastewater that has been collected separately from a sewage flow

and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet." (A.R.S. 49-201(18)). Before 2001, gray water reuse was regulated through individual permits. In 2001, ADEQ replaced the individual permit requirement with two general permits for use of gray water, although an individual permit remains available if none of the general permits are applicable.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 44-1373, 49-201, 49-203, 49-204, 49-221(E); 18 A.A.C. Chapter 9, Article 6, and 18 A.A.C. Chapter 11, Article 3. No corresponding federal programs apply to Article 7.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces these rules in reviewing and determining approval or denial of an application for a general or individual reclaimed water or gray water permit. A.R.S. § 49-261(A) grants ADEQ authority to take enforcement action for a violation of a rule adopted or a condition of a permit issued pursuant to A.R.S. § 49-203(A)(6). ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   Within the last five years, ADEQ has received comments, though not necessarily written criticisms, of these rules, including expanding allowable uses and developing a general permit for temporary, short-term uses of reclaimed water. ADEQ recognizes there are opportunities to further improve the 2001 rules after almost 15 years of experience implementing the program and subsequent advances in the science and technology of reclaimed water reuse. ADEQ is working with stakeholders to address issues in a future rulemaking package, as described in item #14.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Prior to 2001, both sewage treatment plants and end users were required to monitor reclaimed water quality. The 2001 rulemaking simplified the permitting process for the reuse of reclaimed water by establishing general permits in addition to individual permits, and requiring the end user to monitor and report to ADEQ on amounts of usage, but not reclaimed water quality, as this monitoring is required of the sewage treatment facility under the APP. ADEQ anticipated that the 2001 rulemaking would increase efficiency and provide cost-saving benefits to permittees through decreased costs for permit preparation and monitoring and reporting in addition to an overall reduction in application review time. ADEQ believes that the Article 7 rules have been successful in simplifying the permitting process, reducing costs to permittees, and encouraging greater use of reclaimed water, thereby generating resource savings of thousands of acre feet per year of potable water (comprised of groundwater and surface water). There are currently eleven reclaimed water individual permits and 454 reclaimed water general permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its April 5, 2011 meeting. ADEQ had proposed submitting some amendments to Council by June 2012. Under ADEQ's changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 7.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue both individual and general permits as appropriate.

14. Proposed course of action:

    ADEQ has begun a rulemaking for reclaimed water rules, including the pipeline and water conveyances, permitting requirements, and uses and standards (18 A.A.C. 9, Articles 6 and 7, and 18 A.A.C. 11, Article 3). ADEQ received approval on its request for exception from the rule moratorium and has filed two Notice of Docket Openings (22 A.A.R. 16, January 1, 2016).

    As stakeholder involvement is very important in this rulemaking process, this spring, ADEQ conducted stakeholder meetings around the state to gather input on key changes. ADEQ is forming workgroups of subject matter experts and interested stakeholders to provide guidance and recommendations on main issues. Draft rule changes will be put out for public review and comment before proposing the changes in a Notice of Proposed Rulemaking.

    ADEQ anticipates that every section in 18 A.A.C. 9, Articles 6 and 7, and 18 A.A.C. 11, Article 3 will be amended and written criticisms and concerns listed in this Report will be addressed. As some issues will need more time and study to develop proposed rule language, ADEQ will conduct the rulemakings in phases. ADEQ anticipates submitting a first rulemaking package to Council by June 2017, which likely will address corrections and permitting enhancements in Article 7.

II. Section by Section Analysis of Rules

R18-9-701. Definitions

2. Objective of the rules:

   The definition section defines important terms used in Article 7, so that the rules are understandable to the general public, such as words with uncommon meanings and technical terms.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively defines important terms used in the rules. The rule could be more effective by correcting the statutory citation for reclaimed water and mirroring the statutory definition for gray water. Both changes result from 2006 amendments to A.R.S. § 49-201 (Definitions).

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable.

R18-9-702. Applicability and Standards for Reclaimed Water Classes

2. Objective of the rules:

   The rule specifies who is regulated by this Article, lists the reclaimed water classifications that apply, and clarifies that disposal of reclaimed water must meet APP requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes who is required to comply with the Article and the reclaimed water classes that apply. The rule provides a clear statement of the scope of the reclaimed water rules.

5. Status of Agency enforcement policy regarding the rule:

   This rule explains who is regulated by this Article and lists the reclaimed water classifications that apply. The classifications have enforceable criteria.

R18-9-703. Transition of Permits

2. Objective of the rules:

   The rule explains how persons permitted for reuse of reclaimed water prior to 2001 can continue use and how these persons could transition to the new permitting approach.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in transitioning permits issued before 2001 to the existing permitting approach.

5. Status of Agency enforcement policy regarding the rule:

   This rule is enforced when a person who meets the terms of their previously-issued permit decides to apply for a new reclaimed water permit.

R18-9-704. General Requirements

2. Objective of the rules:

   This rule provides the general provisions, including prohibited activities, applicable to this Article.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in providing the general provisions required to comply with this Article.

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

   As part of compliance assistance discussions with reclaimed water applicants and permittees, ADEQ is aware that permittees have requested that subsection (H), which requires that the permittee place and maintain signage, should also contain standardized language for what appears on the signage.

14. Proposed course of action:

   ADEQ recently amended R18-9-704(G) in order to allow incidental runoff of reclaimed water under certain conditions, with an effective date of August 12, 2016.

Table 1. Signage Requirements for Direct Reuse Sites

2. Objective of the Table:

   This table specifies the signage required for each class of reclaimed water that is put to direct reuse.

3. Effectiveness of the rule in achieving the objectives:

   The table effectively specifies the signage required for each class of reclaimed water depending on the direct reuse.

5. Status of Agency enforcement policy regarding the rule:

   The permittee's signature on the Notice of Intent certifies that the permittee agrees to comply with all requirements of Article 3, including specific terms of the applicable Reclaimed Water General Permit.

R18-9-705. Reclaimed Water Individual Permit Application

2. Objective of the rules:

   The rule provides a clear process on how to apply for a Reclaimed Water Individual Permit and specifics for time-frames and public participation. An individual permit is required for any person that cannot meet the requirements of one of the nine general permits that ADEQ has established in rule (R18-9-711 through R18-9-719).

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes the requirements of a Reclaimed Water Individual Permit Application.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (B)(1)(b) requests an applicant's Social Security number, which is inconsistent with A.R.S. § 44-1373 and federal law. Although in practice ADEQ does not require the applicant's Social Security number in its application, the rule will be amended to reflect the current law and eliminate this inconsistent requirement.

R18-9-706. Reclaimed Water Individual Permit General Provisions

2. Objective of the rules:

   The rule provides information governing a Reclaimed Water Individual Permit and specifies how a permit may be continued, amended, transferred, reissued or revoked.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes what information is contained in a Reclaimed Water Individual Permit and the criteria necessary to transfer the permit to another person.

R18-9-707. Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water

2. Objective of the rules:

   The rule specifies that an individual permit is necessary for the reuse of industrial wastewater that contains a component of sewage or is used in processing any crop or substance that may be used as human or animal food. This requirement does not apply to industrial wastewater that is recycled or used in industrial processes, but rather, the permit applies where the industrial wastewater is provided

for a reuse application after use in a normal industrial process.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes what additional information is required to qualify for the permit and lists prohibited activities. The rule clearly identifies the conditions under which industrial wastewater is regulated. The rule could be more effective if subsection (B)(1) referenced the newer North American Industry Classification System (NAICS) for industry identification instead of the Standard Industrial Code.

R18-9-708. Reusing Reclaimed Water Under a General Permit

2. Objective of the rules:

   This rule establishes the basic application and review process for Type 1, 2, and 3 general permits, and more specific provisions for the Type 2 and 3 general permits. This rule allows a person to be authorized to directly reuse reclaimed water under a general permit if the specific requirements specified in the general permit can be met.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in establishing the basic application and review process for general permits. The rule could be more effective if it provided a process for a permittee to amend information on an existing general permit in certain circumstances instead of only at the end of the calendar year. Although it does not involve amending this rule, in 2011 ADEQ established a fee to support its costs in reviewing and processing an amendment to a Type 2 or Type 3 reclaimed water general permit in R18-14-110, Table 7 regarding fees for general permits.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (B)(2)(b) requests an applicant's Social Security number, which is inconsistent with A.R.S. § 44-1373 and federal law. Although in practice ADEQ does not require the applicant's Social Security number in its application, the rule will be amended to reflect the current law and eliminate this inconsistent requirement.

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

   As part of compliance assistance discussions with reclaimed water applicants and permittees, ADEQ is aware that permittees would like to able to amend a Type 2 or 3 general permit.

R18-9-709. Reclaimed Water General Permit Renewal and Transfer

2. Objective of the rules:

   The rule provides the criteria for renewing a Reclaimed Water General Permit and establishes the notification requirements for a general permit transfer.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes the general permit renewal and transfer requirements.

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

   As part of compliance assistance discussions with reclaimed water applicants and permittees, ADEQ is aware that permittees do not want to have to renew a Reclaimed Water General Permit 90 days before the permit expires because it only takes ADEQ a few days to renew the permit.

R18-9-710. Reclaimed Water General Permit Revocation

2. Objective of the rules:

   The rule establishes the process for revoking a general permit.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively details the process which the Director follows when revoking a Reclaimed Water General Permit.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of A.R.S. §§ 41-1092.03 and 41-1092.11 and A.A.C. R18-1-202 in providing notice and an opportunity for a hearing in revoking a general permit under this rule. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water

2. Objective of the rules:

   This rule establishes a Type 1 general permit for gray water systems less than 400 gallons per day for a private residence and defines the sources of the gray water, amount reused, and application methods necessary for compliance. The Type 1 general permit for gray water does not require any notice to ADEQ.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 1 general permit for gray water and the specific requirements necessary for compliance.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (C) conflicts with A.R.S. § 49-204, which was amended in 2006. Subsection (C) allows local control of gray water while A.R.S. § 49-204 prohibits local control of gray water in most circumstances if the gray water use is allowed by an ADEQ permit.

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water

2. Objective of the rules:

   The rule provides the conditions under which a Type 2 Reclaimed Water General Permit for Class A+ reclaimed water is issued and provides the specific citations associated with the Reclaimed Water Quality Standards category for which the rule is based. The rule also specifies the record retention and signage requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 2 Reclaimed Water General Permit for Class A+ reclaimed water, and includes the requirements for the direct reuse of reclaimed water consistent with the Reclaimed Water Quality Standards.

R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water

2. Objective of the rules:

   The rule provides the conditions under which a Type 2 Reclaimed Water General Permit for Class A reclaimed water is issued and provides the specific citations associated with the Reclaimed Water Quality Standards category for which the rule is based. The rule also specifies the reporting requirements, record retention, signage and liner requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 2 Reclaimed Water General Permit for Class A reclaimed water and includes the requirements for the direct reuse of reclaimed water consistent with the Reclaimed Water Quality Standards.

R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water

2. Objective of the rules:

   The rule provides the conditions under which a Type 2 Reclaimed Water General Permit for Class B+ reclaimed water is issued and provides the specific citations associated with the Reclaimed Water Quality Standards category for which the rule is based. The rule also specifies the record retention and signage requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 2 Reclaimed Water General Permit for Class B+ reclaimed water, and includes the requirements for the direct reuse of reclaimed water consistent with the Reclaimed Water Quality Standards.

R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water

2. Objective of the rules:

   The rule provides the conditions under which a Type 2 Reclaimed Water General Permit for Class B reclaimed water is issued and provides the specific citations associated with the Reclaimed Water Quality Standards category for which the rule is based. The rule also specifies the reporting requirements, record retention, signage and liner requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 2 Reclaimed Water General Permit for Class B reclaimed water, and includes the requirements for the direct reuse of reclaimed water consistent with the Reclaimed Water Quality Standards.

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water

2. Objective of the rules:

   The rule provides the conditions under which a Type 2 Reclaimed Water General Permit for Class C reclaimed water is issued and provides the specific citations associated with the Reclaimed Water Quality Standards category for which the rule is based. The rule also specifies the reporting requirements, record retention, signage and liner requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes a Type 2 Reclaimed Water General Permit for Class C reclaimed

water, and includes the requirements for the direct reuse of reclaimed water consistent with the Reclaimed Water Quality Standards.

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility

2. Objective of the rules:

   A reclaimed water blending facility receives reclaimed water of a certain class and improves the water's quality by blending the reclaimed water with water from one or more additional sources. The improved quality of the resultant reclaimed water allows additional or different reuse applications than the original quality would have allowed. This rule establishes the requirements for operating a reclaimed water blending facility and the additional requirements when submitting an application.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively sets the criteria required for operating a reclaimed water blending facility and explains the additional application requirements. ADEQ has not issued or renewed any Type 3 general permits for a Reclaimed Water Blending Facility within the past five years. However, ADEQ has received initial stakeholder comments that the rule should remain but with possible modifications of this general permit.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (B)(2) requests an applicant's Social Security number, which is inconsistent with A.R.S. § 44-1373 and federal law. Although in practice ADEQ does not require the applicant's Social Security number in its application, the rule will be amended to reflect the current law and eliminate this inconsistent requirement.

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent

2. Objective of the rules:

   The rule provides an option for a person or entity to act as a reclaimed water agent for multiple end users of reclaimed water. The end users do not have to separately notify ADEQ to obtain permit coverage, but rather must have contractual agreements with the agent. This rule establishes the requirements for operating as a reclaimed water agent, including reporting requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in that it provides the criteria necessary to operate as a reclaimed water agent by requiring information that identifies the nature and location of each direct reuse site. The rule could be more effective if it provided a process for a permittee to amend information on an existing general permit in certain circumstances instead of only at the end of the calendar year. Although it does not involve amending this rule, in 2011 ADEQ established a fee to support its costs in reviewing and processing an amendment to a Type 2 or Type 3 reclaimed water general permit in R18-14-110, Table 7 regarding fees for general permits.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (C)(2) requests an applicant's Social Security number, which is inconsistent with A.R.S. § 44-1373 and federal law. Although in practice ADEQ does not require the applicant's Social Security number in its application, the rule will be amended to reflect the current law and eliminate this inconsistent requirement.

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

As part of compliance assistance discussions with reclaimed water applicants and permittees, ADEQ is aware that permittees would like to able to amend a Type 2 or 3 general permit.

R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water

2. Objective of the rules:

   This rule establishes a Type 3 general permit for gray water irrigation systems of over 400 but less than 3000 gallons per day. The rule ensures that the design requirements are consistent, where appropriate, in both the Reclaimed Water Permit and Aquifer Protection Permit programs.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in setting the parameters for gray water systems of over 400 but less than 3000 gallons per day.

4. Consistency of the rules with state and federal statutes and rules:

   Subsection (B)(2) requests an applicant's Social Security number, which is inconsistent with A.R.S. § 44-1373 and federal law. Although in practice ADEQ does not require the applicant's Social Security number in its application, the rule will be amended to reflect the current law and eliminate this inconsistent requirement.

R18-9-720. Enforcement and Penalties

2. Objective of the rules:

   The rule establishes which actions and conditions are subject to enforcement actions under the Article.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in specifying determinations of compliance, and that the enforcement and penalties are clearly stated.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the rule in taking determining enforcement actions and penalties.

(5) The estimated operational life of the impoundment;
(6) Location and characteristics of existing and potential drinking water supplies;
(7) Construction material and design of existing impoundment structure; and
(8) Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.

c. The owner or operator shall, within 90 days of the Director's notice, submit either:
i. A report to the Department demonstrating consistency with NRCS guidelines and the acceptable liner performance criteria established in subsection (B)(1)(b); or
ii. Plans and a schedule to upgrade the liner for the impoundment to meet the NRCS guidelines and the acceptable liner performance criteria in subsection (B)(1)(b). The Director may provide additional time for the submittal of the plans and a schedule for upgrade, if the owner or operator demonstrates that technical or financial assistance to develop the plans is needed.

d. Preliminary decision.
i. Within 90 days from the date of receipt, the Director shall review the report or the plans submitted under subsection (B)(2)(c) and provide to the owner or operator a preliminary decision on the submittal.
ii. The owner or operator may, within 30 days of the preliminary decision, submit written comments and supporting information to the Director on the preliminary decision.
iii. The Director shall evaluate any comments on the preliminary decision and supporting information and, within 90 days of receipt of the comments and information, make a final decision.

e. Final decision.
i. If the Director determines that the owner or operator has demonstrated that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b), no additional action is necessary.
ii. If the Director approves the plans and schedules under subsection (B)(2)(c)(ii), the owner or operator shall implement the plans within the time-frame specified in the approved schedule.
iii. If the Director determines that the owner or operator failed to demonstrate that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b) or that the schedule to upgrade the lining is not acceptable, the owner or operator shall upgrade the lining system within a time-frame specified by the Director.
iv. The owner or operator may appeal the Director's decision under A.R.S. Title 41, Chapter 6, Article 10.

3. Notification requirement. The owner or operator of any lined impoundment shall either:
a. Notify the Department of the type of liner that was used to line each impoundment by February 19 of each year following either:
i. The first use of an impoundment not used before November 12, 2005; or
ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or
b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.

Historical Note
Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

A. The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.

B. Notification.
1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:
a. A brief statement of the reason for the decision,
b. The effective revocation date of the general permit coverage, and
c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and
2. If the Director requires a person to obtain an individual permit, the notification shall include:
a. An individual permit application form, and
b. A deadline between 90 and 180 days after receipt of the notification for filing the application.

C. When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:
1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;

3. Implements land treatments to help achieve Surface Water Quality Standards;
4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:
1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. RECLAIMED WATER CONVEYANCES

R18-9-601. Definitions

In addition to the definitions provided in R18-9-701, the following terms apply to this Article:
1. "Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
2. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-602. Pipeline Conveyances of Reclaimed Water

A. Applicability.
1. Any person constructing a pipeline conveyance on or after January 1, 2001, whether new or a replacement of an existing pipeline shall meet the requirements of this Article.
2. Any person who has constructed a pipeline conveyance before January 1, 2001, is considered to be in compliance with this Article.

B. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.

C. A person shall construct a pipeline conveyance so that:
1. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;
2. System structural integrity is maintained; and
3. The capability for inspection, maintenance, and testing is maintained.

D. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).

E. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

F. The following requirements for minimum separation distance apply. A person shall:
1. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (F)(3);
2. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (F)(3);
3. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
4. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

G. A person shall:
1. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.
2. For a mechanical appurtenance to a pipeline conveyance, ensure that the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-603. Open Water Conveyances of Reclaimed Water

A. This Article applies to an open water conveyance, regardless of the date of construction.

B. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.

C. Signage for Class B+, B, and C Reclaimed Water. A person shall:
1. Ensure that signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
2. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance; and
3. Ensure that signs are visible and legible from both sides of the open water conveyance.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

R18-9-701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:
1. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:

3. Implements land treatments to help achieve Surface Water Quality Standards;
4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:
1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. RECLAIMED WATER CONVEYANCES

R18-9-601. Definitions

In addition to the definitions provided in R18-9-701, the following terms apply to this Article:
1. "Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
2. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-602. Pipeline Conveyances of Reclaimed Water

A. Applicability.
1. Any person constructing a pipeline conveyance on or after January 1, 2001, whether new or a replacement of an existing pipeline shall meet the requirements of this Article.
2. Any person who has constructed a pipeline conveyance before January 1, 2001, is considered to be in compliance with this Article.

B. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.

C. A person shall construct a pipeline conveyance so that:
1. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;
2. System structural integrity is maintained; and
3. The capability for inspection, maintenance, and testing is maintained.

D. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).

E. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

F. The following requirements for minimum separation distance apply. A person shall:
1. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (F)(3);
2. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (F)(3);
3. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
4. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

G. A person shall:
1. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.
2. For a mechanical appurtenance to a pipeline conveyance, ensure that the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-603. Open Water Conveyances of Reclaimed Water

A. This Article applies to an open water conveyance, regardless of the date of construction.

B. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.

C. Signage for Class B+, B, and C Reclaimed Water. A person shall:
1. Ensure that signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
2. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance; and
3. Ensure that signs are visible and legible from both sides of the open water conveyance.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

R18-9-701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:
1. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:

a. The use of water subsequent to its discharge under the conditions of a National Pollutant Discharge Elimination System permit;
b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3; or
c. The use of industrial wastewater or reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures.

2. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
3. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
4. "Gray water" means wastewater collected separately from a sewage flow that originates from a clothes washer, bathtub, shower, and sink, but does not include wastewater from a kitchen sink, dishwasher, or toilet.
5. "Industrial wastewater" means wastewater generated from an industrial process.
6. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.
7. "Open access" means that access to reclaimed water by the general public is uncontrolled.
8. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. A.R.S. § 49-201(31).
9. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.
10. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Appendix A.
11. "Restricted access" means that access to reclaimed water by the general public is controlled.

Historical Note

Former Section R9-20-401 repealed, new Section R9-20-401 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-401 renumbered without change as Section R18-9-701 (Supp. 87-3). Amended by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-702. Applicability and Standards for Reclaimed Water Classes

A. This Article applies to:
1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user,
5. A person who uses gray water,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with reclaimed water from an industrial wastewater treatment facility, and
7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

Historical Note

Former Section R9-20-402 repealed, new Section R9-20-402 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-402 renumbered without change as Section R18-9-702 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-703. Transition of Permits

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.
1. To obtain a reclaimed water permit, a person shall submit a Reclaimed Water Individual Permit application, required under R18-9-705(B), a Notice of Intent for Direct Reuse of Reclaimed Water, required under R18-9-708(B)(2), or a Notice of Intent to Operate, required under R18-9-708(C)(1) to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.
1. At the request of a permittee, the Department shall amend an individual Aquifer Protection Permit issued before January 1, 2001 if the permittee adequately demonstrates that the applicable quality of reclaimed water produced for direct reuse is achieved. The Department shall review:
   a. The information in the individual Aquifer Protection Permit application and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and
   b. The available water quality data if the sewage treatment facility has operated for less than two years.
2. The Department shall ensure that an amended individual Aquifer Protection Permit contains:
   a. Identification of the class of reclaimed water generated by the facility;
   b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
   c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:
      i. Water quality test results demonstrating that

reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and

ii. The total volume of reclaimed water generated for direct reuse.

d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

Historical Note

Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-704. General Requirements

A. Sewage treatment facility. Except for permits continued under R18-9-703(A), a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall operate under the requirements of an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee irrigating with reclaimed water shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

G. Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
   a. Direct reuse for human consumption;
   b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
   c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
   a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;
   b. Application of reclaimed water to any area other than a direct reuse site; or
   c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance.

H. A permittee shall place and maintain signage at locations specified in Table 1 so the public is informed that reclaimed water is in use and that no one should drink from the system.

Table 1. Signage Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
A	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
B+	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
B	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
C	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use	Back of truck or on tank

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

Historical Note

Former Section R9-20-404 repealed, new Section R9-20-404 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-404 renumbered without change as Section R18-9-704 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-705. Reclaimed Water Individual Permit Application

A. Pre-application conference. Upon request of an applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in this Article.

B. To apply for a Reclaimed Water Individual Permit, a person shall provide the Department with:
1. The following information on a form provided by the Department:
   a. The name and mailing address of the owner or operator of the facility or the reclaimed water agent;
   b. The social security number of the applicant, if the applicant is an individual;
   c. The legal description of the direct reuse site, including latitude and longitude coordinates;
   d. Any other federal or state environmental permits issued to the applicant;
   e. Source of reclaimed water to be directly reused;
   f. Volume of reclaimed water to be directly reused on an annual basis;
   g. Class of reclaimed water to be directly reused;
   h. Description of the direct reuse activity; and
   i. The applicant's signature certifying that the information submitted in the application is true and accurate to the best of the applicant's knowledge.
2. A copy of the certificate of disclosure of violations required under A.R.S. § 49-109; and
3. The applicable permit fee specified under 18 A.A.C. 14.

C. Administrative completeness review. Upon receipt, the Department shall review the Reclaimed Water Individual Permit application to determine its administrative completeness under A.R.S. § 41-1074 and A.A.C. R18-1-503.

D. Substantive review. Upon receipt of a complete Reclaimed Water Individual Permit application, the Department shall review the application to determine its substantive adequacy under A.R.S. § 41-1075 and A.A.C. R18-1-504.

E. Draft permit. The Department shall provide the applicant a copy of a draft of the Reclaimed Water Individual Permit before the notice specified in subsection (F) is published.

F. Public participation.
1. Notice of Preliminary Decision.
   a. The Department shall publish a Notice of Preliminary Decision to issue or deny a Reclaimed Water Individual Permit within a period of time that allows the Department to meet the licensing time-frame requirements under 18 A.A.C. 5.
   b. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination in one or more newspapers of general circulation where the facility is located.
   c. The Department shall accept written comments from the public before a Reclaimed Water Individual Permit is issued or denied.
   d. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.
2. After publishing the notice specified in subsection (F)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Public interest in a public hearing exists, or
   b. Issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines that a public hearing is necessary and a public hearing has not already been noticed under subsection (F)(1)(a), the Department shall schedule a public hearing and republish the Notice of Preliminary Decision as a legal notice at least once, in one or more newspapers of general circulation where the facility is located.
4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

G. Final permit issuance or denial.
1. The Department shall give the applicant written notification of its final decision to issue or deny the permit application within the overall licensing time-frame requirements in 18 A.A.C. 5.
2. The Department may deny a Reclaimed Water Individual Permit if the Department determines upon completion of the application process that the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate that the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or
      iii. Any information relevant to the demonstration that is developed or acquired by the Department, or
   c. Provided false or misleading information.
3. If the Department denies a Reclaimed Water Individual Permit the Department shall provide the applicant with written notification that explains the following:
   a. The reasons for the denial with references to the statutes or rules on which the denial is based.
   b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

Former Section R9-20-405 repealed, new Section R9-20-405 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-405 renumbered without change as Section R18-9-705 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-706. Reclaimed Water Individual Permit General Provisions

A. A Reclaimed Water Individual Permit obtained under R18-9-705:
1. Is valid for five years;
2. May be amended, transferred, reissued, or revoked by the Director based on whether the permittee meets the terms of the individual permit and the requirements of this Article; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:

a. The permittee submits an application for a new permit at least 120 days before the expiration of the existing permit; and
b. The permitted activity is of a continuing nature.

B. A Reclaimed Water Individual Permit shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse;
2. Specific reuse applications or limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3:
   a. Water quality test results demonstrating that the reclaimed water meets the applicable standards for the class of water identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities that include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;
   c. The date the analyses were performed;
   d. The name of the person who performed the analyses;
   e. The analytical techniques or methods used;
   f. The results of the analyses; and
   g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.
6. Requirements to retain all monitoring activity records and results, including all original strip chart recordings for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.
7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.

C. Permit transfer. A permittee may transfer a Reclaimed Water Individual Permit to another person if the following conditions are met:
1. The permittee notifies the Director of the proposed transfer.
2. The permittee submits a written agreement containing a specific date for the transfer of permit responsibility and coverage between the current permittee and the proposed new permittee, including an acknowledgment that the existing permittee is liable for violations up to the date of transfer and that the proposed new permittee will be liable for violations from that date forward.
3. The notice specified in subsection (C)(1) contains any information for the proposed new permittee that is changed from the information submitted under R18-9-705(B).
4. The Director, within 30 days of receiving a transfer notice from the permittee, does not notify both the current permittee and proposed new permittee of the intent to amend, revoke, or reissue the permit or require the proposed new permittee to file an application for a new permit rather than agreeing to transfer the current permit.

Historical Note

Former Section R9-20-406 repealed, new Section R9-20-406 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-406 renumbered without change as Section R18-9-706 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-707. Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water

A. The following activities are prohibited unless a Reclaimed Water Individual Permit is obtained under R18-9-705:
1. Direct reuse of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or that is combined with reclaimed water from an industrial wastewater treatment facility.
2. Direct reuse of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in R18-9-705(B), an application for a Reclaimed Water Individual Permit shall include:
1. Each source of the industrial wastewater with Standard Industrial Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

Historical Note

Former Section R9-20-407 repealed, new Section R9-30-407 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-407 renumbered without change as Section R18-9-707 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-708. Reusing Reclaimed Water Under a General Permit

A. Type 1 Reclaimed Water General Permit. A person may directly reuse reclaimed water without notice to the Department if:
1. The direct reuse is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Reclaimed Water General Permit under R18-9-711.

B. Type 2 Reclaimed Water General Permit.
1. A person may directly reuse reclaimed water under a Type 2 Reclaimed Water General Permit if:
   a. The direct reuse is authorized by and meets the requirements of this Article;
   b. The direct reuse meets all the conditions of the applicable Type 2 Reclaimed Water General Permit under R18-9-712 through R18-9-716;
   c. The person files a Notice of Intent for Direct Reuse of Reclaimed Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent for Direct Reuse of Reclaimed Water.

a. A person shall submit, by certified mail, in person, or by another method approved by the Department, the Notice of Intent for Direct Reuse of Reclaimed Water on a form provided by the Department.
b. The Notice of Intent for Direct Reuse of Reclaimed Water shall include;
i. The name, address, and telephone number of the applicant;
ii. The social security number of the applicant, if the applicant is an individual;
iii. The name, address, and telephone number of the contact person;
iv. The source, volume, and class of reclaimed water to be directly reused;
v. A legal description of the direct reuse site, including latitude and longitude coordinates;
vi. The description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity; and
vii. The permittee's signature certifying that the permittee agrees to comply with all requirements of this Article, including specific terms of the applicable Reclaimed Water General Permit.

C. Type 3 Reclaimed Water General Permit. A person may operate under a Type 3 Reclaimed Water General Permit after filing an applicable Notice of Intent to Operate with the Department and receiving a written Verification of General Permit Conformance for the operation.
1. Application submittal. The applicant shall submit, either by certified mail, in person at the Department, or by another method approved by the Department:
a. The Notice of Intent to Operate on a form provided by the Department containing the information specified in the applicable Type 3 Reclaimed Water General Permit under R18-9-717(B), R18-9-718(C), or R18-9-719(B), and
b. The applicable fee established in 18 A.A.C. 14.
2. Verification issuance. If, after reviewing the Notice of Intent to Operate, the Department determines that the direct reuse conforms with the conditions of a Type 3 Reclaimed Water General Permit and all other applicable requirements of this Article, the Department shall issue the Verification of General Permit Conformance.
3. Verification denial.
a. If the Department determines on the basis of its review or an inspection that the direct reuse does not conform to the conditions of the applicable Type 3 Reclaimed Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Verification of General Permit Conformance.
b. If an application is denied, the applicant shall not operate under a Type 3 Reclaimed Water General Permit.
c. The applicant may appeal the decision not to issue a Verification of General Permit Conformance under A.R.S. §§ 41-1092 through 41-1092.12.
4. Automatic issuance. If the Department does not issue the Verification of General Permit Conformance within the time-frame specified under 18 A.A.C. 1, Article 5, and does not notify the applicant that it will not issue the verification, the verification automatically becomes effective upon expiration of the overall time-frame.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-709. Reclaimed Water General Permit Renewal and Transfer

A. General permit renewal. A permittee shall renew a Reclaimed Water General Permit at least 90 days before the permit expires by following the procedure described in either R18-9-708(B) or (C) and include the applicable fee established in 18 A.A.C. 14.
1. A Type 1 Reclaimed Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required;
2. A Type 2 Reclaimed Water General Permit is valid for five years from the date the Department receives the Notice of Intent for Direct Reuse of Reclaimed Water;
3. A Type 3 Reclaimed Water General Permit is valid for five years from the date the Verification of General Permit Conformance becomes effective.

B. General permit transfer. A permittee shall provide notice to the Department by certified mail within 15 days following the transfer of a Type 2 or Type 3 Reclaimed Water General Permit. The Notice of Transfer shall:
1. Contain any information that has changed from the original Notice of Intent for Direct Reuse of Reclaimed Water or the Notice of Intent to Operate, including all information on the proposed new permittee, and
2. Include the applicable fee established in 18 A.A.C. 14.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-710. Reclaimed Water General Permit Revocation

A. The Director may revoke a Reclaimed Water General Permit if the permittee fails to comply with any requirement in this Article, including a condition specified in the applicable Reclaimed Water General Permit. The Director shall make the determination based on the risk to public health and safety or a threat to waters of the state.
1. Before revoking a general permit, the Department shall provide notice to the permittee by certified mail of the Department's intent to revoke the Reclaimed Water General Permit. The notice of intent to revoke the general permit shall provide the permittee a reasonable opportunity to correct any noncompliance and specify a time-frame within which the permittee shall achieve compliance.
2. If the permittee fails to correct the noncompliance within the specified time-frame, the Department shall notify the permittee, by certified mail, of the Director's decision to revoke the Reclaimed Water General Permit.

B. The Director shall revoke a Reclaimed Water General Permit for any or all facilities located within a specific geographic area, if, due to a geologic or hydrologic condition, the cumulative effect of the facilities subject to the Reclaimed Water General Permit has violated or will violate a Water Quality Standard established under A.R.S. §§ 49-221 and 49-223.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water

A. A Type 1 Reclaimed Water General Permit allows private residential direct reuse of gray water for a flow of less than 400 gallons per day if all the following conditions are met:
1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, lawn watering, or landscape irrigation;
3. Surface application of gray water is not used for irrigation of food plants, except for citrus and nut trees;
4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities;
5. The application of gray water is managed to minimize standing water on the surface;
6. The gray water system is constructed so that if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable. The gray water system may include a means of filtration to reduce plugging and extend system lifetime;
7. Any gray water storage tank is covered to restrict access and to eliminate habitat for mosquitoes or other vectors;
8. The gray water system is sited outside of a floodway;
9. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;
10. For residences using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures that the facility can handle the combined black water and gray water flow if the gray water system fails or is not fully used;
11. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates that the piping does not carry potable water;
12. Gray water applied by surface irrigation does not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and
13. Surface irrigation by gray water is only by flood or drip irrigation.

B. Prohibitions. The following are prohibited:
1. Gray water use for purposes other than irrigation, and
2. Spray irrigation.

C. Towns, cities, or counties may further limit the use of gray water described in this Section by rule or ordinance.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years that describe the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs as specified in R18-9-704(H).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:
1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, Appendix A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure that:
1. Impoundments storing reclaimed water allowed by the general permit are lined using a low-hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   a. The water allotment assigned by the Arizona Department of Water Resources;
   b. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or
   c. An alternative method approved by the Department.

D. In addition to the Notice of Intent for Direct Reuse of Reclaimed Water specified in R18-9-708(B)(2), the applicant shall provide a list of impoundments and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs as specified in R18-9-704(H).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under R18-9-712 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address, and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;
4. The source and volume of reclaimed water to be blended;
5. The class of reclaimed water to be blended;
6. The source, volume, and quality of other water to be blended;
7. A legal description of the reclaimed water blending facility, including latitude and longitude coordinates;
8. A description of the reclaimed water blending facility, including a demonstration that the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;
9. A signature on the notice of intent certifying that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this reclaimed water general permit; and
10. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written Verification of General Permit Conformance under R18-9-708(C).

D. A permittee shall monitor:
1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the reclaimed water class established in 18 A.A.C. 11, Article 3, the permittee shall submit a report to the Department within 30 days with a proposal to change the blending process. The permittee shall also double the monitoring frequency for the next two months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Reclaimed Water Individual Permit.
2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department on or before the anniversary date of the verification approval and shall make this information available to the end users.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent

A. A Type 3 Reclaimed Water General Permit allows a person to operate as a Reclaimed Water Agent if that the conditions of this Article are met, and the following conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:
1. Signage requirements specified under R18-9-704(H), as applicable;
2. Impoundment liner requirements specified under R18-9-712(D), R18-9-713(C), R18-9-714(C), R18-9-715(B), or R18-9-716(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-713(C), R18-9-715(B), and R18-9-716(B), as applicable.

B. A person holding a Type 3 Reclaimed Water Permit for a Reclaimed Water Agent:
1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Reclaimed Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address, and telephone number of the applicant;

2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;
4. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address and telephone number of the end user;
   b. A legal description of each direct reuse site, including latitude and longitude coordinates; and
   c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.
5. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
6. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and
7. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written Verification of General Permit Conformance issued under R18-9-708(C).

E. A reclaimed water agent shall record and annually report the following information to the Department, on or before each anniversary date of the verification approval:
1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

F. The reclaimed water agent shall notify the Department before the end of each calendar year of any changes in the information submitted under subsection (C).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water

A. A Type 3 Reclaimed Water General Permit allows a gray water irrigation system if:
1. The general permit described in R18-9-711 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in subsection (C).

B. A person shall file a Notice of Intent to Operate a Gray Water Irrigation System with the Department at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. A legal description of the direct reuse site, including latitude and longitude coordinates;
4. The design plans for the gray water irrigation system;
5. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with the requirements of this Article and the terms of this Reclaimed Water General Permit; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following technical requirements apply to the design and installation of a gray water irrigation system allowed under this Reclaimed Water General Permit:
1. Design of the gray water irrigation system shall meet the on-site wastewater treatment facility requirements under R18-9-A312(C), (D)(1), (D)(2), (E)(1), (G), and R18-9-E302(C)(1), except the septic tank specified in R18-9-E302(C)(1) is not required if pretreatment of gray water is not necessary for the intended application;
2. Design of the dispersal trenches for the gray water irrigation system shall meet the on-site wastewater treatment facility requirements for shallow trenches specified in R18-9-E302(C)(2);
3. The depth of the gray water dispersal trenches shall be appropriate for the intended irrigation use but not more than 5 feet below the finished grade of the native soil; and
4. The void space volume of the aggregate fill in the gray water dispersal trench below the bottom of the distribution pipe shall have enough capacity to contain two days of gray water at the design flow.

D. The Department may review design plans and details and accept a gray water irrigation system that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-720. Enforcement and Penalties

Any person who violates a condition specified in a permit issued under this Article, falsifies data or information submitted to the Department as required under Articles 6 or 7 of this Chapter, or violates a provision of Article 6 or 7 of this Chapter, is subject to the enforcement actions prescribed under A.R.S. §§ 49-261 and 49-262.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

ARTICLE 8. REPEALED

R18-9-801. Repealed

Historical Note
Corrected A.R.S. reference (Supp. 77-3). Former Section R9-8-311 renumbered without change as Section R18-9-801 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-802. Repealed

Historical Note
Amended by adding subsections (N) through (R) effective June 8, 1981 (Supp. 81-3). Former Section R9-8-312 renumbered without change as Section R18-9-802 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-803. Repealed

Historical Note
Amended effective April 18, 1979 (Supp. 79-2). Amended by adding subsection (E) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-313 renumbered without change as Section R18-9-803 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effec-

General and Specific Statutes for
Title 18, Chapter 9, Article 5

49-202.01. Surface water quality general grazing permit; best management practices for grazing activities; definition

A. As part of the duties established pursuant to section 49-203, subsection A, paragraph 3, the director shall implement a surface water quality general grazing permit consisting of voluntary best management practices for grazing activities. The implementation shall begin within one hundred eighty days after rule adoption by the agricultural best management practices advisory committee established pursuant to section 49-248.

B. The terms and conditions of the surface water quality general grazing permit shall be voluntary best management practices which have been determined by the committee to be the most practical and effective means of reducing or preventing the nonpoint source discharge of pollutants into navigable waters by grazing activities.

C. In adopting voluntary grazing best management practices, the committee shall consider:
   1. The availability and effectiveness of alternative technologies.
   2. The economic and social impacts of alternative technologies on grazing and associated industries.
   3. The institutional considerations of alternative technologies.
   4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters.

D. For purposes of this section, "grazing activities" means the feeding of all classes of domestic ruminant and nonruminant animals upon grasses, forbs and shrubs in Arizona watersheds.

49-203. Powers and duties of the director and department

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
   3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
   4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
   5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
   6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
   7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the

permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.

8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight

to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

General and Specific Statutes for
Title 18, Chapter 9, Articles 6 and 7

49-203. Powers and duties of the director and department

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
   3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
   4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
   5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
   6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
   7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
   8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
   9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
   10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
   11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or

volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:
   1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
   2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
   3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
   4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
   5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
   6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
   7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
   8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

44-1373. Restricted use of personal identifying information; civil penalty; definition

A. Except as otherwise specifically provided by law, beginning on January 1, 2005, a person or entity shall not:
   1. Intentionally communicate or otherwise make an individual's social security number available to the general public.
   2. Print an individual's social security number on any card required for the individual to receive products or services provided by the person or entity.
   3. Require the transmission of an individual's social security number over the internet unless the connection is secure or the social security number is encrypted.
   4. Require the use of an individual's social security number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the site.
   5. Print a number that the person or entity knows to be an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. This paragraph does not prohibit the mailing of documents that include social security numbers sent as part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the social security number. In a transaction involving or otherwise relating to an individual, if a person or entity receives a number from a third party, the person or entity has no duty to inquire or otherwise determine if the number is or includes that individual's social security number. The person or entity may print that number on materials that are mailed to the individual, unless the person or entity that received the number has actual knowledge that the number is or includes the individual's social security number. This paragraph does not prohibit the mailing to the individual of any copy or reproduction of a document that includes a social security number if the social security number was included on the original document before January 1, 2005.

B. Notwithstanding subsection A, a person or entity that before January 1, 2005 used an individual's social security number in a manner inconsistent with subsection A may continue using that individual's social security number in that manner on and after January 1, 2005 subject to the following conditions:
   1. The use of the social security number must be continuous. If the use is stopped for any reason, subsection A applies.
   2. Beginning in 2005, the person or entity must provide the individual with an annual written disclosure of the individual's right to stop the use of the social security number in a manner prohibited by subsection A.
   3. If the individual requests in writing, the person or entity must stop using the social security number in a manner prohibited by subsection A within thirty days after receiving the request. No fee or charge is allowed for implementing the request, and the person or entity shall not deny services to the individual because of the request.

C. This section does not prohibit the collection, use or release of a social security number as required by the laws of this state or the United States or for internal verification or administrative purposes.

D. Beginning on January 1, 2005, this state or any political subdivision of this state shall not use an individual's social security number on state issued or political subdivision issued forms of identification.

E. This section does not prohibit an agency of this state or a political subdivision of this state from disseminating or using the last four numbers of an individual's social security number.

F. A government agency shall not transmit to an individual material that contains both an individual's social security number and bank, savings and loan association or credit union account number. This subsection does not prohibit the transmitting of documents that include social security and bank, savings and loan association or credit union account numbers as a part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the social security, bank, savings and loan association or credit union account number.

G. Except as otherwise provided by law, documents or records that are recorded and made available on the recording entity's public web site after the effective date of this amendment to this section shall not contain more than five numbers that are reasonably identifiable as being part of an individual's social security number and shall not contain an individual's:
   1. Credit card, charge card or debit card numbers.
   2. Retirement account numbers.
   3. Savings, checking or securities entitlement account numbers.

H. Only the attorney general or a county attorney, or both, may commence a legal action for a violation of this section.

I. A person or entity is subject to a civil penalty of up to five hundred dollars for each act of recording that violates subsection G. The civil penalty shall not apply to a person or entity that transmits the document for recording but has no authority for the creation of the document.

J. A county agency is not subject to civil liability for any action relating to information recorded pursuant to subsection G.

K. For the purposes of this section, "individual" means a resident of this state.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0803)
Title 9, Chapter 16, Article 4, Registration of Sanitarians

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-4**

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

FROM: Shama Thathi, Staff Attorney

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0803)**
Title 9, Chapter 16, Article 4, Registration of Sanitarians

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 2010, Ch. 8, § 3.

This five-year-review report covers nine rules, including a table, in A.A.C. Title 9, Chapter 16, Article 4, related to registration of sanitarians. The term "sanitarian" is defined as "a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health." A.R.S. § 36-136.01(J).

Article Contents

Article 4 contains nine rules and one table addressing registration of sanitarians, including definitions; sanitarian examination; registration; renewal registration requirements; continuing education requirements; change of name or address; time-frames; registered sanitarian's authority; and criteria for the denial, suspension or revocation of a sanitarian registration.

Year that Each Rule was Last Amended or Newly Made

All of the rules were last amended on September 11, 2004.

Proposed Action

The Department does not plan to amend the rules because they are effective and sufficient to protect public health and safety. The Department indicates that it establishes its rulemaking priorities based on legislative mandates, emergency matters to protect public health safety, court orders, voter's approved propositions, and available resources.

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 is in 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 an exception of R9-16-401, as the term "natural science" should be amended to include life science and physical science.

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 Department indicates that it received one written criticism, from the Pima County Health Department, during the last five years. The commenter stated that there should be reciprocity for individuals who take the National Environmental Health Administration (NEHA) exam and score 70 percent or higher. Pursuant to A.R.S. § 36-136.01, an applicant may be admitted without an examination if the applicant is an individual who is registered as a sanitarian in another jurisdiction and meets one of the two requirements in subsection (I) and the "examination requirements in the applicant's regulatory jurisdiction are substantially equivalent to this state's examination requirements." The Department concludes that even though NEHA's exam is substantially similar to this state's examination, NEHA is not a "regulatory jurisdiction" and therefore does not meet the statutory requirements. Staff believes the Department adequately addressed the written criticism.

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

Yes. The Department cites to A.R.S. §§ 36-132(A)(1) and 36-136(F) as general 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." As specific statutory authority, the Department cites to A.R.S. § 36-136.01, which establishes a sanitarians council and establishes rules for the registration of sanitarians.

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 R9-16-408, which contains outdated references in subsections (A)(2) and (C).

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 Department indicates that the rules are clear, concise, and understandable with two exceptions. R9-16-402 should be amended to remove the requirement of a letter verifying an applicant's employment or military duty in environmental health be provided "from the individual who supervised the applicant," in subsections (C)(2) and (3). Additionally, R9-14-402 and R9-14-404 could be improved by reconciling the term "current address" with the term "mailing address" in R9-16-406(B).

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are based on state law, and there are no directly corresponding federal laws.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

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

Not applicable. The rules were adopted before July 29, 2010.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

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

Yes. In the five-year-review report approved in 2011, the Department indicated that it did not plan to amend the rules within the next five years unless a substantive issue arose.

Conclusion

The Department does not plan to amend the rules unless it becomes necessary to prevent a specific threat to public health and safety. 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: September 7, 2016 **AGENDA ITEM: G-4**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0803)**
Title 9, Chapter 16, Article 4, Registration of Sanitarians

I have 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 Department rulemaking completed in 2004 was reviewed for Article 4.

The rules address procedures and requirements for the licensing and registration of sanitarians. Registered sanitarians monitor and enforce public health and safety regulations in food establishments, children's camps, campgrounds, motels, hotels, tourist courts, trailer coach parks, public toilet facilities, public schools, and public swimming pools. The education and training required to maintain a sanitarian license increases a sanitarian's ability to respond to current issues in public health and safety during the inspection process. The Department promotes and protects the health of Arizona's children and adults through direct care, science, public policy, and leadership.

Key stakeholders that are impacted are the Department, county health departments, registered sanitarians, applicants for registration as a sanitarian, and the general public. Fees collected from the sanitarian exam are directly deposited into the general fund, and they have a minimal positive impact on state revenues.

Within the Department, regulations for sanitarian registration are established by the Arizona Sanitarians' Council. In 2015, the Council approved 51 sanitarian registration applications, approved 35 new registered sanitarians, and approved 493 registered sanitarian registration renewals. The Council also administered the sanitarian examination to 55 applicants; 31 of these applicants passed the examination.

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above. The Department indicates that the fees charged for the sanitarian exam only cover about 52% of the costs incurred by the Department to administer the exam. These fees do not directly fund the activities of the Department, but they indirectly fund the Department through appropriations of the general fund.

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 impose the least burden and costs to persons regulated by the rules. The Department received written criticism in May 2015 from the Pima County Health Department. The commenter criticized the Department for not having a reciprocity agreement for individuals registered by NEHA (National Environmental Health Association). The Department replied that this type of reciprocity is not possible under A.R.S. § 36-136.01(C) because NEHA is not another jurisdiction. Before this issue could be considered, statutory changes would be required.

The Department determines that the rules require some minor revisions due to incorrect references and outdated language. Due to the Department's limited resources and other priorities of higher urgency, there is no plan to revise these rules.

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

Arizona Department of Health Services

Division of Policy & Intergovernmental Affairs
Office of Administrative Counsel and Rules

150 N. 18th Avenue, Suite 200
Phoenix, Arizona 85007-3232
(602) 542-1020
(602) 364-1150 FAX

DOUG J. DUCEY, GOVERNOR
CARA CHRIST, MD , DIRECTOR

August 10, 2016

Nicole A. Ong, Chairperson
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 16, Article 4 Registration of Sanitarians
This cover letter revises the cover letter dated May 25, 2016.

Dear Ms. Ong:

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 16, Article 4 is due to the Council no later than May 31, 2016. The Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 16, Article 4, 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 each rules reviewed, copies of general and specific statutes, and copies economic impact statements are included in the package. The Department intends to take the action described in the report.

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:tk
Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

May 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

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TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people of the state of Arizona. A.R.S. § 36-136(F) authorizes the Department to make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health. A.R.S. § 36-136.01 authorizes the Department to establish a sanitarians council (Council) and establish rules for the registration of sanitarians in the state of Arizona.

The Department adopted at Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 4 rules to implement A.R.S. § 36-136.01. A.A.C. R9-16-401, R9-16-402, and R9-16-405 through R9-16-414 were originally promulgated in September 1976. The rules were substantially amended effective May 16, 2002 and last amended effective September 11, 2004, following the amendment of A.R.S. § 36-136.01 by Laws 2003, Ch. 21.

The current rules in 9 A.A.C. 16, Article 4 contain definitions; examination, registration, and renewal registration requirements; continuing education requirements; time-frames; registered sanitarian's authority; and criteria for the denial, suspension, or revocation of a sanitarian registration. The rules are used by the Council, who approves applicants to take the sanitarian examination, approves applicants for sanitarian registration, and approves registered sanitarians registration renewal, including registered sanitarians' continued education. In 2015, the Council approved 51 sanitarian registration applications, administered the sanitarian examination to 55 applicants, of which 31 applicants passed, approved 35 new registered sanitarians including registered sanitarians from other jurisdictions, and approved 493 registered sanitarian registration renewals.

The rules in 9 A.A.C.16, Article 4 are effective; clear, concise, and understandable; and consistent with state and federal statutes. The rules are enforced without difficulty. The Department received a written criticism regarding R9-16-403 from a county health department, but, due to existing statutes, the Department is not able to resolve the criticism to the county health department's satisfaction. The Department does not plan to amend the rules in 9 A.A.C. 16, Article 4 as indicated in this report.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statutes

The general statutory authority for the rules in 9 A.A.C. 16, Article 4, is A.R.S. §§ 36-132(A)(1) and 36-136(F).

The specific statutory authority for the rules in 9 A.A.C. 16, Article 4, is A.R.S. § 36-136.01.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 16, Article 4, is to prescribe standards and limits for the registration of sanitarians in Arizona.

3. Analysis of effectiveness in achieving the objective

Except for the use of an antiquated term identified in R9-16-401, the rules in Articles 4 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

Except for the outdated reference described in R9-16-408, the rules in Article 4 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in Article 4 are enforced as written without difficulty to the Department, the Council, registered sanitarians, and county health departments.

6. Analysis of clarity, conciseness, and understandability

Despite the outdated language in R9-16-402 and the use of the term "address" in R9-16-404, the rules in Article 4 are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

In the past five years, the Department received one written criticism for the rules in Article 4. The written criticism received is discussed in R9-16-403 Information for Individual Rules.

8. Economic, small business, and consumer impact comparison

The 2004 Economic, Small Business, and Consumer Impact Statement (EIS) included an analysis for all the rules in Article 4 except for rules in R9-16-401, Definitions; R9-16-402, Sanitarian Examination; R9-16-406, Change of Name or Address; and R9-16-408, Authority of a Registered Sanitarian.

In the Department's review of the rules in the 2004 EIS, the Department determined that the actual economic impact and probable effects to the persons directly affected by the rules are as estimated in the 2004 EIS. The persons directly affected by the rules are: the Department, county health departments, registered sanitarians, applicants for sanitarian registration that hold an equivalent accreditation from another jurisdiction, sanitarians who are ill or on active military duty, and the general public.

The Department determined in its analysis of rules R9-16-401, R9-16-402, R9-16-406, and R9-16-408 that the persons directly affected by bearing the costs of or by benefiting from the rules are the same as stated in the 2004 EIS. The Department concludes from its review of R9-16-401, R9-16-406, and R9-16-408 that the Department incurred a minimal cost to add to the rules the definitions, the notification for reporting a name or address change, and the standard for registered sanitarian authority. Additionally, the Department and others affected receive a minimal benefit from using the definitions to consistently interpret the rules, using the request process to notify the Department of a name or address change, and using the registered sanitarian authority standard to determine registered sanitarian's compliance.

The Department's review of R9-16-402 identified that there is a considerable difference between the fees paid by the applicants to take the sanitarian examination and the actual cost to the Department to administer the sanitarian examination. The cost to the Department to review sanitarian examination applications has increased due to increased salaries and time to review longer applications with additional forms, such as verifying proof of U.S. citizenship or legal residency required by A.R.S. § 1-501. The Department has had an increase of inquiries from individuals due to a change to the sanitarian examination administered. The Department now estimates that it takes four hours, compared to the previous one to two hours, of staff time at an average of $25 per hour to review a sanitarian examination. The fees collected cover only 52% of the actual costs to administer the sanitarian examination. The fees do not directly fund the Department, but they indirectly fund the Department through general fund appropriations. The Department expects that the cost to the Department is greater than originally estimated and the cost to others affected is likely none-to-minimal. And the benefit to the Department is less than expected, and the benefit to others affected greater than expected. The Department anticipates that there are no less intrusive or less costly alternatives for achieving the purpose of rules in 9 A.A.C. 16, Article 4.

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. Status of the completion of action indicated in the previous five-year-review report

In the 2011 Five-year-review Report, the Department stated that the Department did not plan to amend the rules within the next five years unless a substantive issue arises. The Department carried out this plan, and during the last five years, the Department did not amend the rules in Article 4.

12. Analysis of stringency compared to federal laws

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010.

14. Proposed course of action

The Department has determined that the rules are effective and achieve the regulatory objectives required by A.R.S. §§ 36-132(A), 36-136(F), and 36-136.01. With the rules sufficient to protect public health safety, the Department does not plan to amend the rules. Should an issue occur that prevents the Department from meeting its regulatory objectives, the Department will amend the rules in 9 A.A.C. 16, Article 4. The Department establishes its rulemaking priorities based on: emergency matter to protect public health safety, legislative mandates, court orders, voter's approved propositions, and available resources.

INFORMATION FOR INDIVIDUAL RULES

R9-16-401. Definitions

2. Objective

The objective of the rule is to define terms used in 9 A.A.C. 16, Article 4, so that a reader may consistently interpret the requirements in the Article.

3. Analysis of effectiveness in achieving the objective

The rule is effective but could be more effective if the term "natural science" were revised to list the specialized fields of the two branches of natural science: life science and physical science.

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 antiquated term identified in paragraph 3, the rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

R9-16-402. Sanitarian Examination

2. Objective

The objective of the rule is to establish standards for the sanitarian examination, including:

a. The frequency at which the sanitarian examination is offered,

b. Qualification requirements,

c. Examination application requirements,

d. Applicable fees, and

e. Passing criteria.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable; however, there is language in the rule that reflects an outdated practice and use of term. The rule could be clearer if in subsection (C)(2) and (3), the rule do not require that a letter verifying an applicant's employment or military duty in environmental health be provided "from the individual who supervised the applicant," since it is unlikely that that individual is still in a position to provide a letter verifying the applicant's employment or military duty. The rule could also be improved if the term "current address" used

in subsection (C)(1)(b) were replaced with the term "mailing address" requested in R9-16-406(B). The Department in R9-16-406 instructs a registered sanitarian to send a written notice to the Council if the registered sanitarian's mailing address changes.

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 Department understands that requesting an applicant to provide a letter verifying the applicant's employment or military duty in environmental health "from the individual who supervised the applicant," could be burdensome to the applicant. To eliminate a potential increase in burden to an applicant, the Department accepts letters verifying employment from the employer were the applicant completed years of employment as a sanitarian aide and accepts letters verifying environmental health experience from the military unit were the applicant completed years of full-time military duty in environmental health. Because the Department's acceptance of the other verification letters eliminates any increase in burden to the applicant, the rules continue to impose the least burden and cost to persons regulated while achieving the regulatory objective consistent with statutory requirements.

R9-16-403. Sanitarian Registration

2. Objective

The objective of the rule is to establish the application requirements for an applicant who is registered as a sanitarian in another jurisdiction and an applicant who is not registered as a sanitarian in another jurisdiction.

7. Summary of the written criticism of the rule received within the last five years

Criticism: In May 2015, one written criticism from Pima County Health Department (CHD) regarding R9-16-403, Sanitarian Registration, was received. CHD stated, "It would be nice is [if] some common sense was used and reciprocity for individuals registered by NEHA [National Environmental Health Association] having taken NEHA exam and having a score of 70% or greater be able to get reciprocity."

Response: The Department is required by A.R.S. § 36-136.01(C) to register an applicant as a sanitarian without an examination if the applicant is an individual who is registered as a sanitarian in another jurisdiction, meets at least one of the requirements in subsection (I) and the examination requirements in the applicants' jurisdiction are substantially equivalent to this state's

examination. Although NEHA's examination is substantially equivalent to this state's examination, NEHA is not "another jurisdiction" (state) and therefore does not meet the statutory requirements under which the Department can register an applicant without an examination.

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 written criticism described in paragraph 7, the rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

R9-16-404. Annual Registration Renewal

2. Objective

The objective of the rule is to establish the requirements for renewal of registration as a sanitarian.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable, but could be improved if the term "current address" used in subsection (A)(1) were replaced with the term "mailing address" used in R9-16-406(B). The Department in R9-16-406 instructs a registered sanitarian to send a written notice to the Council if the registered sanitarian's mailing address changes.

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 use of the term "address" identified in paragraph 6 does not affect the rule; and the rule continues to impose the least burden and cost to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

R9-16-405. Continuing Education

2. Objective

The objective of the rule is to establish requirements for continuing education for a registered sanitarian, including procedures for deferring continuing education.

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 while achieving the regulatory objective consistent with statutory requirements.

R9-16-406. **Change of Name or Address**

2. **Objective**

The objective of the rule is to establish requirements for providing notice to the Department when there is a change in the registered sanitarian's name or address.

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 while achieving the regulatory objective consistent with statutory requirements.

R9-16-407. **Time-frames**

2. **Objectives**

The objectives of the rule are to establish time-frames for:

a. Departmental approval or denial to take the sanitarian examination;

b. Registration upon completion of the sanitarian examination;

c. Registration of an individual who is registered, certified, or licensed as a sanitarian in another jurisdiction; and

d. Annual renewal of registration.

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 while achieving the regulatory objective consistent with statutory requirements.

R9-16-408. **Authority of a Registered Sanitarian**

2. **Objectives**

The objectives of the rule are to:

a. Establish registered sanitarians as the regulatory authority in A.A.C. R9-8-107(B)(11),

b. Prohibit an individual who is not a registered sanitarian from functioning as a registered sanitarian, and

c. Require an individual who is not a registered sanitarian and who prepares an inspection report under 9 A.A.C. 8 to submit the report to a registered sanitarian.

4. **Analysis of consistency with state statutes and rules**

The rule is substantively consistent with state statutes and rules. There is an outdated reference in subsections (A)(2) and (C) to an inspection report "under 9 A.A.C. 8 or 9 A.A.C. 17." The Pure Food Control rules were originally promulgated in 9 A.A.C. 17. The regulations for Pure Food Control have since been incorporated into 9 A.A.C. 8, Article 1, so the inspection reports referenced in subsections (A)(2) and (C) "under 9 A.A.C. 8 or 9 A.A.C. 17" are now regulated only under 9 A.A.C. 8. The outdated reference to 9 A.A.C. 17, Medical Marijuana Program, has no substantive effect on the rule.

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 outdated reference identified in paragraph 4, the rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

R9-16-409. **Denial, Suspension, or Revocation**

2. **Objective**

The objective of the rule is to establish the criteria and procedures the Department follows to deny an applicant's request for sanitarian registration or suspend or revoke a registered sanitarian's registration.

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 while achieving the regulatory objective consistent with statutory requirements.

ATTACHMENT D – WRITTEN CRITICISM

From: Brigitte Dufour
Sent: Thursday, May 12, 2016 12:16 PM
To: Teresa Koehler
Subject: FW: Reciprocity for the NEHA REHS RS Credential

From: Harmony Duport
Sent: Wednesday, May 20, 2015 3:10 PM
To: Blanca Caballero; Brigitte Dufour
Subject: RE: Reciprocity for the NEHA REHS RS Credential

Hi Blanca,

This has come up several times, but the statute only allows for reciprocity when a sanitarian is registered in another jurisdiction, which NEHA is not. Allowing reciprocity for NEHA registered sanitarians that aren't also registered in a jurisdiction would require a statutory change.

Thank you,

Harmony Duport, R.S.
Deputy Chief, Bureau of Epidemiology & Disease Control
Acting Chief, Office of Disease Integration & Services
Division of Public Health Preparedness
Arizona Department of Health Services
Ph: (602)364-3138 Fax: (602)364-3146
Visit us at: www.azdhs.gov

From: Blanca Caballero
Sent: Tuesday, May 19, 2015 2:11 PM
To: Harmony Duport; Brigitte Dufour
Subject: FW: Reciprocity for the NEHA REHS RS Credential

Hi Harmony,
Please see David's email below. I received another email with a similar request from Maricopa County. I'm sure we've looked into accepting the NEHA exam, directly from NEHA, but wanted to run this by you again. We'd only be able to change this if the rules were reopened, right?

Blanca Caballero
Food Safety & Environmental Services Program Manager
Office: 602-364-3851

From: David Ludwig [mailto:David.Ludwig@pima.gov]
Sent: Tuesday, May 19, 2015 2:05 PM
To: Blanca Caballero
Subject: RE: Reciprocity for the NEHA REHS RS Credential

Blanca – Hello
Any chance that the AZ Registration Board will give reciprocity in the other direction? Those that take the NEHA exam from NEHA and become nationally registered be given AZ registration if they passed at a 70% passing rate as required by AZ?

I know the argument that NEHA is not a State therefore candidates cannot be considered for reciprocity – but we are now talking about the same exam. It would be nice is some common sense was used and reciprocity for individuals registered by NEHA having taken the NEHA exam and having a score of 70% or greater be able to get reciprocity.

Thanks for listening,

David F. Ludwig, MPH, REHS, RS, CPM
Program Manager – Consumer Health & Food Safety
Pima County Health Department
3950 S. Country Club Rd., Ste. 2304
Tucson, AZ 85714
Office: (520) 724-7734
Cell: (520) 333-9242

From: Blanca Caballero [mailto:Blanca.Caballero@azdhs.gov]
Sent: Tuesday, May 19, 2015 1:45 PM
To: Andy Linton (alinton@mail.maricopa.gov); Becky Bramlett (Becky.Bramlett@mohavecounty.us); Cecil Newell; Chris Sexton; christopher.reimus@pinalcountyaz.gov; David Ludwig; Diana Gomez; Don Thomas; Gary Frucci; Gavin Lawson (Glawson@graham.az.gov); Jeff Nafziger (Jeff.Nafziger@navajocountyaz.gov); jkline@co.greenlee.az.us; Jose Arriola; Joyce McCluskey; Lemon, Mike; Luis Guerrero (lguerrero@santacruzcountyaz.gov); Maria Nunez (maria.nunez@yumacountyaz.gov); Marlene Gaither; mbolinger@co.greenlee.az.us; Michael Lemon (mlemon@gilacountyaz.gov); Michael McGee (MMcGee@cochise.az.gov); Michael O'Driscoll; Randy Phillips (rphillips@coconino.az.gov)
Cc: Becky Bramlett (Becky.Bramlett@mohavecounty.us); Michelle Chester (MChester@mail.maricopa.gov); Jonathan Tran (JTran@mail.maricopa.gov); Jose Arriola; Harmony Duport; Brigitte Dufour; David Morales (DMorales@mail.maricopa.gov); George Amaya; Lee, Harlan; Roberto.Angel@albertsons.com
Subject: Reciprocity for the NEHA REHS RS Credential

Good afternoon,
I've recently received some questions regarding the reciprocity application process for the NEHA REHS/RS Credential. Please see the attached document with information for candidates that have recently taken the Arizona Sanitarians' Exam (NEHA version) and are interested in the NEHA credential.
Thank you,
Blanca

Blanca Caballero, CPM, RS/REHS
Food Safety & Environmental Services Program Manager
Office of Environmental Health
Arizona Department of Health Services
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ATTACHMENT A – CURRENT RULES

ARTICLE 4. REGISTRATION OF SANITARIANS

R9-16-401. Definitions

In this Article, unless otherwise specified:

1. "Applicant" means an individual requesting from the Council:
   a. Approval to take the sanitarian examination;
   b. Registration as a sanitarian; or
   c. Renewal of registration as a sanitarian.
2. "Application packet" means a Council-approved application form and the documentation necessary to establish an individual's qualifications for registration as a sanitarian.
3. "Billet" means an individual's military job position and job description.
4. "Council" means the Sanitarians' Council established under A.R.S. § 36-136.01(A).
5. "Course" means a program of instruction for which credit toward graduation or certification is given.
6. "Continuing education" means a course, seminar, lecture, conference, workshop, or programmed learning activity related to employment as a registered sanitarian.
7. "Day" means calendar day.
8. "Environmental health" means the well-being of a human as affected or influenced by external conditions such as: bacteria and viruses; transmitted diseases; hygiene; housing; and contamination of food, air, water, or soil.
9. "Full-time military duty" means active duty in any branch of the United States military service.
10. "Natural science" means anatomy, bacteriology, biochemistry, biology, botany, biophysics, biostatistics, cell physiology, chemical engineering, chemistry, ecology, embryology, endocrinology, entomology, environmental health, epidemiology, food bacteriology, dairy sciences, genetics, geophysics, geology, herpetology, histology, hydro geology, hydrology, ichthyology, limnology, microbiology, molecular biology, ornithology, parasitology, pathology, pharmacy, physics, physiology, plant taxonomy, radiological health, sanitary engineering, sewage sanitation, soil science, toxicology, vector control, veterinary science, virology, or zoology or the study of air pollution, community health, environmental diseases, hazardous waste, industrial hygiene, infectious diseases, occupational safety, or public health.
11. "Person" has the same meaning as in A.R.S. § 1-215.
12. "Practice of a registered sanitarian" means acting under the authority of R9-16-408(A).
13. "Registration" means the approval issued by the Council to an applicant who meets the requirements in A.R.S. § 36-136.01 and this Article.
14. "Regulatory authority" has the same meaning as in R9-8-107(B)(11).
15. "Supervise" means to oversee and provide guidance for the accomplishment of a function or activity.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-402. Sanitarian Examination

A. The Council shall provide the sanitarian examination at least four times per calendar year.

B. An applicant meeting any one of the requirements in A.R.S. § 36-136.01(I) may sit for the sanitarian examination.

C. At least seven days before a Council meeting, an applicant for the sanitarian examination shall:

1. Submit an application form to the Council that contains:
   a. The applicant's full name and all former names;
   b. The applicant's current address and telephone number;
   c. The applicant's social security number;
   d. If applying under A.R.S. § 36-136.01(I)(1) on the basis of the applicant's employment by a public health agency or private industry in a position directly related to environmental health:
      i. The name of each of the applicant's employers,
      ii. The applicant's position for each employer,
      iii. The months and years of employment in each position, and
      iv. The name and telephone number of each individual who supervised the applicant during five years of employment in environmental health;
   e. If applying under A.R.S. § 36-136.01(I)(2) on the basis of military duty:
      i. Each of the applicant's billets in environmental health,
      ii. The months and years in each billet, and
      iii. The name and telephone number of each individual who supervised the applicant during five years of full-time military duty in environmental health;
   f. If applying under A.R.S. § 36-136.01(I)(3) on the basis of education in natural science:
      i. The name and address of each college or university attended,
      ii. The months and years of attendance,

iii. Any degree obtained, and
iv. A listing of courses in natural science completed with a grade of C or better;

g. Whether the applicant has had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction and if so, the:
i. Reason for denial or rejection,
ii. Date of the denial or rejection, and
iii. Name and address of the state or jurisdiction that denied or rejected the application;

h. Whether the applicant has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:
i. Reason for the suspension, revocation, or consent agreement;
ii. Date of the suspension, revocation, or consent agreement; and
iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;

i. Whether the applicant has pled guilty to, been convicted of, or entered a plea of no contest to a misdemeanor related to the applicant's employment as a sanitarian or a felony and if so, the:
i. Felony or misdemeanor charged;
ii. Date of conviction or plea; and
iii. Court having jurisdiction over the felony or misdemeanor;

j. Whether the applicant has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;

k. The applicant's current employer, including address, job position, and dates of employment, if applicable; and

l. A signed statement by the applicant verifying the truthfulness of the information provided;

2. If applying under A.R.S. § 36-136.01(I)(1), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, totaling at least five years of employment directly related to environmental health;

3. If applying under A.R.S. § 36-136.01(I)(2), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, totaling at least five years of full-time military duty in environmental health;

4. If applying under A.R.S. § 36-136.01(I)(3), arrange to have an official college or university transcript provided directly to the Council from each college or university; and

5. Submit the application fee in A.R.S. § 36-136.01(F).

D. After receiving the written notice of approval in R9-16-407(C)(1)(b), an applicant shall submit to the Council, at least 30 days before the scheduled date of a sanitarian examination, a nonrefundable examination fee of $110 payable to the Treasurer of the state of Arizona.

E. An applicant who does not take a sanitarian examination on the scheduled date shall comply with subsection (D) before taking a subsequent sanitarian examination.

F. An applicant who scores:

1. Seventy percent or more on the sanitarian examination is issued a certificate of registration; or

2. Less than 70%:

a. Fails the sanitarian examination; and

b. Shall meet the requirements in subsections (B), (C) and (D) to sit for the sanitarian examination again.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-403. Sanitarian Registration

An applicant for registration as a sanitarian shall submit to the Council the application form, information, and application fee in R9-16-402 and:

1. If the applicant is registered, certified, or licensed as a sanitarian in another jurisdiction submit to the Council:

a. A copy of the applicant's sanitarian registration, certification, or licensure from the other jurisdiction;

b. A copy of the examination requirements for registration, certification, or licensure in the other jurisdiction;

c. The name of the testing company that provided the sanitarian examination the applicant passed to be registered, certified, or licensed in the other jurisdiction; and

d. Documentation of a score of 70% or more by the applicant on the other jurisdiction's sanitarian examination; or

2. If the applicant is not registered, certified, or licensed as a sanitarian in another jurisdiction:

a. Be approved to take the sanitarian examination,

b. Take and pass the sanitarian examination in R9-16-402 with a score of 70% or more, and

c. Submit to the Council the examination fee in R9-16-402(D).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-403 renumbered to R9-16-404; new R9-16-403 made by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-404. Annual Registration Renewal

A. Except as provided in subsection (B), a registered sanitarian shall submit an application packet for registration renewal on or before December 31 of each year that includes:
  1. The applicant's name and current address;
  2. Whether the applicant, since the applicant last submitted a registration or registration renewal application in this state:
    a. Has had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with a state or jurisdiction and if so, the:
      i. Reason for the suspension, revocation, or consent agreement;
      ii. Date of the suspension, revocation, or consent agreement; and
      iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;
    b. Has pled guilty to, been convicted of, or entered into a plea of no contest to a misdemeanor that is related to the applicant's employment as a sanitarian or a felony and if so, the:
      i. Felony or misdemeanor,
      ii. Date of conviction, and
      iii. Court having jurisdiction over the felony or misdemeanor; or
    c. Has been named as a defendant in a malpractice case resulting from the applicant's employment as a sanitarian and if so, an explanation of the circumstances of the malpractice case;
  3. Documentation of:
    a. The continuing education required in R9-16-405(A) or (E) including for each continuing education:
      i. A description of the continuing education's content,
      ii. The name of the person providing the continuing education,
      iii. The number of hours the sanitarian participated in the continuing education, and
      iv. The date the continuing education was completed; or
    b. A request for deferring continuing education and applicable documentation required in R9-16-405(C);
  4. The fee required in A.R.S. § 36-136.01(F); and
  5. A signed statement by the applicant verifying the truthfulness of the information provided.

B. A registered sanitarian who does not submit an application packet for renewal registration by December 31 has a grace period until February 15 to submit the application packet. If the registered sanitarian does not submit the application packet for renewal registration in subsection (A) during the grace period:
  1. The sanitarian's registration expires; and
  2. The sanitarian shall, before practicing as a registered sanitarian:
    a. Submit for Council approval a new application to take the sanitarian examination and the application fee required in R9-16-402(C)(5),
    b. Receive Council approval to take the sanitarian examination,
    c. Submit the nonrefundable examination fee required in R-16-402(D), and
    d. Pass the sanitarian examination as required in R9-16-402(F)(1).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-404 renumbered to R9-16-406; new R9-16-404 renumbered from R9-16-403 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-405. Continuing Education

A. Except as provided in subsections (B) and (C), a registered sanitarian shall obtain 12 hours of continuing education in each calendar year for renewal of registration.

B. A registered sanitarian who has been registered for less than 12 months is not required to obtain continuing education for renewal of registration.

C. A registered sanitarian may submit, with a renewal application, a request to defer the 12 hours of continuing education for renewal of registration that includes written documentation of the registered sanitarian's illness or active military duty for at least six months of the preceding 12 months that prevented the registered sanitarian from completing the continuing education requirement.

D. The Council shall approve a registered sanitarian's request for a deferral of the continuing education requirement if the request includes the documentation required in subsection (C).

E. A registered sanitarian who has had the continuing education requirement deferred in a calendar year shall obtain:
  1. The 12 deferred hours of continuing education by the end of the subsequent calendar year, and
  2. The 12 hours of continuing education required in subsection (A) for the calendar year.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-405 renumbered to R9-16-407; new R9-16-405 made by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-406. Change of Name or Address

A. A registered sanitarian shall send written notice of a change in the registered sanitarian's name to the Council within 30 days from the date of the change.

B. A registered sanitarian shall send written notice of a change in the registered sanitarian's mailing address to the Council within 30 days from the date of the change.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-406 renumbered to R9-16-408; new R9-16-406 renumbered from R9-16-404 by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-407. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Council is set forth in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Council is specified in Table 1.

1. The administrative completeness review time-frame begins:
   a. For an applicant applying to take the sanitarian examination, when the Council receives the application packet required in R9-16-402;
   b. For an applicant who is approved to take the sanitarian examination, when the applicant takes the sanitarian examination; or
   c. For an applicant who is registered, certified, or licensed as a sanitarian in another jurisdiction, when the Council receives the application packet required in R9-16-403; or
   d. For an applicant applying to renew the applicant's registration as a sanitarian, when the Council receives the application packet required in R9-16-404.
2. If an application packet in subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d) is:
   a. Incomplete, the Council shall provide a deficiency notice to the applicant describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Council receives the documentation or information listed in the deficiency notice. An applicant shall submit to the Council the documentation or information listed in the deficiency notice within the time period specified in Table 1 for responding to a deficiency notice.
      i. If the applicant submits the documentation or information listed in the deficiency notice within the time period specified in Table 1, the Council shall provide a written notice of administrative completeness to the applicant.
      ii. If the applicant does not submit the documentation or information listed in the deficiency notice within the time period in Table 1, the Council considers the application withdrawn and shall return the application packet to the applicant; or
   b. Complete, the Council shall provide a notice of administrative completeness to the applicant.
3. If an applicant takes and submits the sanitarian examination in subsection (B)(1)(b) and the examination is:
   a. Incomplete, the Council shall provide a deficiency notice to the applicant stating that the applicant's sanitarian examination is incomplete and identifying the date of the next scheduled sanitarian examination. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the Council receives a completed sanitarian examination; or
   b. Complete, the Council shall provide a written notice of administrative completeness to the applicant.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is specified in Table 1 and begins to run on the date of the notice of administrative completeness.

1. If an application for approval to take the sanitarian examination in subsection (B)(1)(a):
   a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant.
      i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny approval to take the sanitarian examination and provide the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A); or
      ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant; or

b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall provide a written notice of approval to take the sanitarian examination to the applicant.

2. If the Council determines that an applicant:
   a. Failed to sit for the sanitarian examination within the time-frame in subsection (F), the Council shall provide a written notice to the applicant requiring the applicant to submit a new application for approval to take the sanitarian examination if the applicant requests registration;
   b. Failed the sanitarian examination, the Council shall deny registration and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or
   c. Passed the sanitarian examination, the Council shall issue a certificate of registration as a sanitarian to the applicant.
3. If an application for registration as a sanitarian in subsection (B)(1)(c):
   a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant and take action as follows:
      i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny registration and provide the applicant a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A); or
      ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant; or
   b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant.
4. If an application for renewal of registration as a sanitarian in subsection (B)(1)(d):
   a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant;
      i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted does not demonstrate compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall deny renewal and provide a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A) to the applicant; or
      ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted demonstrates compliance with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant; or
   b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a renewal certificate of registration as a sanitarian to the applicant.

D. If an applicant receives a written notice of appealable agency action in subsections (C)(1)(a)(i), (C)(2)(b), (C)(3)(a)(i), or (C)(4)(a)(i), the applicant may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.

E. If the Council grants approval to take the sanitarian examination or issues or renews a certificate of registration as a sanitarian during the administrative completeness review time-frame, the Council shall not issue a separate written notice of administrative completeness.

F. If an applicant does not sit for the sanitarian examination within 12 months of the Council's approval to take the sanitarian examination, the applicant shall, before taking the sanitarian examination:
   1. Submit a new application for Council approval and the application fee required in R9-16-402(C);
   2. Receive Council approval to take the sanitarian examination; and
   3. Submit the nonrefundable examination fee required in R9-16-402(D).

G. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Council considers the next business day as the time-frame's last day.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Sanitarian Examination (R9-16-402)	A.R.S. § 36-136.01(B)	290	30	60	200	60
Registration after completing the sanitarian examination (R9-16-403)	A.R.S. § 36-136.01(B)	90	30	N/A	60	N/A
Registration of an	A.R.S. §	180	90	15	90	15

individual registered, certified, or licensed as a sanitarian in another jurisdiction (R9-16-403)	36-136.01(C)					
Annual Registration Renewal (R9-16-404)	A.R.S. § 36-136.01(D)	180	90	15	90	15

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-407 renumbered to R9-16-409; new R9-16-407 renumbered from R9-16-405 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-408. Authority of a Registered Sanitarian

A. A registered sanitarian may:
   1. Act as an authorized representative of a regulatory authority under 9 A.A.C. 8; and
   2. Sign inspection reports under 9 A.A.C. 8 and 9 A.A.C. 17.

B. An individual who is not a registered sanitarian shall not approve or disapprove operation of a food establishment under 9 A.A.C. 8.

C. An individual who is not a registered sanitarian and who prepares an inspection report under 9 A.A.C. 8 and 9 A.A.C. 17 shall submit the report to a registered sanitarian.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-408 renumbered from R9-16-406 by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

R9-16-409. Denial, Suspension, or Revocation

A. The Council may deny, suspend, or revoke a sanitarian's registration if the Council determines that the applicant or registered sanitarian:
   1. Intentionally provided false information on an application or cheated during the sanitarian examination;
   2. Had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction;
   3. Had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with any state or jurisdiction;
   4. Pled guilty to, was convicted of, or entered into a plea of no contest to a misdemeanor resulting from employment as a registered sanitarian or a felony;
   5. Assisted an individual who is not a registered sanitarian to circumvent the requirements in this Article;
   6. Allowed an individual who is not a registered sanitarian to use the registered sanitarian's registration; or
   7. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.

B. In determining whether to deny an applicant's registration or suspend or revoke a sanitarian's registration, the Council shall consider the threat to public health based on:
   1. Whether there is repeated non-compliance with statutes or rules,
   2. Whether there is a pattern of violations or non-compliance,
   3. Type of violation,
   4. Severity of violation, and
   5. Number of violations.

C. The Council's notice of denial, suspension, or revocation to the applicant or registered sanitarian, notice of hearing, and all hearing procedures shall comply with A.R.S. Title 41, Chapter 6, Article 10.

D. The Council shall provide written notice of a registered sanitarian's denial, suspension, or revocation containing a description of the sanitarian's noncompliance with applicable statutes and rules, by certified mail, to each local health department and each public health service district.

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-409 renumbered from R9-16-407 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3).

ATTACHMENT B – GENERAL and SPECIFIC 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. Powers and duties of director; compensation of personnel

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the

director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
E. The compensation of all personnel shall be as determined pursuant to section 38-611.
F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
H. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food 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.

36-136.01. Sanitarians council; members; powers; fees; examinations; continuing education; exceptions; renewal; definition

A. The director shall establish a sanitarians council composed of five members. The members shall be the director of the department of health services or the director's representative, two governmental sanitarians, one of whom shall represent the two largest counties and one of whom shall represent the thirteen smaller counties, one industrial sanitarian and one lay person representing the public. The director shall be the council chairman. Members of the council are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

B. The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians. A person shall not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the department as a sanitarian of the class determined by the council to be appropriate for the performance of the functions of that person's employment.

C. The council may register an applicant as a sanitarian without an examination if both of the following are true:

1. The applicant is registered, certified or licensed as a sanitarian in another jurisdiction and pays all applicable fees prescribed pursuant to this section.

2. The council determines that the applicant meets at least one of the requirements prescribed pursuant to subsection I of this section and the examination requirements in the applicant's regulatory jurisdiction are substantially equivalent to this state's examination requirements.

D. Each registration expires on December 31 of each year. To renew a registration, the registrant must submit an application that contains the information prescribed by the director by rule and documentation of completion of at least ten hours of council approved continuing education during the previous twelve months. A registrant who has been registered for less than twelve months before the registration expiration date is not required to complete continuing education for the year that immediately precedes registration renewal. A registrant who does not renew the registration on or before February 15 of each year shall not perform the duties of a registered sanitarian.

E. Pursuant to rules adopted by the director, the council may defer the continuing education requirements prescribed in subsection D of this section.

F. The council shall charge and collect a nonrefundable application fee of twenty-five dollars. The council shall charge and collect a nonrefundable examination fee established by the director by rule that does not exceed the cost of administering the examination. A fee of ten dollars shall be charged and collected for the annual renewal of registration certificates.

G. All monies collected by the sanitarians council shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. Only a person with a valid registration certificate issued pursuant to this section may use the title "registered sanitarian" or the abbreviation "R.S." after the registrant's name.

I. An applicant is eligible for registration as a sanitarian if the applicant meets at least one of the following qualifications:

1. The applicant has completed five years of employment as a sanitarian aide in either a recognized public health agency or private industry in a position directly related to environmental health.
2. The applicant has satisfactorily completed at least five years of full-time military duty in the field of environmental health.
3. The applicant has successfully completed thirty semester hours of credit at an accredited college or university in the natural sciences.
J. For the purposes of this section, "sanitarian" means a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health.

41-1072 . Definitions
In this article, unless the context otherwise requires:
1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception
A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.
B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.
C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.
D. In establishing time frames, agencies shall consider all of the following:
1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.
E. This article does not apply to licenses issued either:
1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame
A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075 . Compliance with substantive review time frame
A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.
B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame
Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section **41-1075,** an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:
1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

G-5

ARIZONA DEPARTMENT OF REVENUE (F-16-0805)
Title 15, Chapter 5, Article 6, Prime Contracting Classification; Article 9, Mining Classification; Article 10, Transaction Privilege Tax – Transient Lodging Classification; Article 11, Transaction Privilege Tax – Job Printing Classification; Article 13, Sales Tax – Publishing Classification; Article 14, Transporting Classification; Article 15, Personal Property Rental Classification; Article 16, Commercial Lease Classification; Article 17, Restaurant Classification; Article 18.1, Sales of Food; Article 20, General; Article 21, Utilities Classification

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-5**

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

FROM: Shama Thathi, Staff Attorney

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF REVENUE (F-16-0805)**
Title 15, Chapter 5, Article 6, Prime Contracting Classification; Article 9, Mining Classification; Article 10, Transaction Privilege Tax – Transient Lodging Classification; Article 11, Transaction Privilege Tax – Job Printing Classification; Article 13, Sales Tax – Publishing Classification; Article 14, Transporting Classification; Article 15, Personal Property Rental Classification; Article 16, Commercial Lease Classification; Article 17, Restaurant Classification; Article 18.1, Sales of Food; Article 20, General; Article 21, Utilities Classification

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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 Revenue (Department) is to "efficiently and fairly administer and collect the taxes levied by this state and to determine the valuation of centrally assessed property in this state." Laws 2006, Ch. 391, § 7. The Department is authorized to levy a privilege tax "measured by the amount of volume of business transacted by persons on account of their business activities…." A.R.S. § 42-5008(A).

This five-year-review report covers 51 rules in A.A.C. Title 15, Chapter 5, Articles 6, 9 through 11, 13 through 17, 18.1, 20, and 21. The rules govern the administration of Arizona transaction privilege tax under the prime contracting, mining, transient lodging, job printing, publishing, transporting, personal property rental, commercial lease, restaurant, and utilities classifications. Additionally, this report contains a review of the Arizona transaction privilege tax rules governing sales of food and the general rules. The rules, as written, have become effective at various times between 1981 and 2007.

Article Contents

Article 6 contains one rule addressing prime contracting classification.

Article 9 contains five rules addressing mining classification, including manufacturing or processing service charges, market value of products shipped out of Arizona, and actual freight costs.

Article 10 contains three rules addressing transient lodging classification, including application of the definition of transient for purposes of taxation, activities other than lodging, and providing lodging to government agencies.

Article 11 contains five rules addressing job printing classification, including printer's sale of printing, sale of materials to a printer, and sale of image developing.

Article 13 contains four rules addressing publishing classification, including printing costs and out-of-state distribution of publications.

Article 14 contains three rules addressing transporting classification, including excess baggage charges, demurrage charges, and rental of aircraft.

Article 15 contains five rules addressing personal property classification, including sourcing of leased tangible personal property, rental of tangible personal property to government agencies, schools, churches, and other nonprofit organizations, and purchase agreements.

Article 16 contains seven rules addressing commercial lease classification, including casual commercial leasing activity, rental to government agencies and nonprofit organization.

Article 17 contains five rules addressing restaurant classification, including providing food or drink to government agencies, amusement devices, cover charges, gratuities, and coupon redemption.

Article 18 contains two rules addressing sales of food, including restaurant food sales.

Article 20 contains six rules addressing general classification, including liability for transaction privilege tax, multi-location and multi-business taxpayers, credit for accounting and reporting expenses, transactions between affiliated persons, and bad debts.

Article 21 contains five rules addressing utilities classification, including interstate and foreign sales, locally delivered utilities, compressed and bottle liquids, sales to irrigation districts, and security deposits.

Proposed Action

The Department plans to amend most of the rules to address issues identified in the report. The Department anticipates submitting a request for exception from the Moratorium to the Governor's Office by September 30, 2016.

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 is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Department indicates that the rules are generally effective in achieving their objectives, with the following exceptions:

- R15-5-902 contains obsolete information due to a statutory change.
- R15-5-1001 should provide guidance regarding the documentation required to establish that lodging was obtained for 30 or more days at a lodging facility.
- R15-5-1101 contains outdated statutory references.
- R15-5-1302 contains obsolete information. In addition, the rule contains definitions that should be located elsewhere.
- R15-5-1303 is generally ineffective and contains information other than definitions.
- R15-5-1305 incorrectly implies that a publication, distributed outside this state, is only taxable when the publication is distributed from a point within this state.
- R15-5-1503 should address the application of the rule to software and other electronic products.
- R15-5-1602 contains obsolete information and outdated statutory references.
- R15-5-1605 contains obsolete information.
- R15-5-1860 is ineffective because the term "food for consumption on the premises" inaccurately states that frozen sandwiches are included in the term "hot and cold sandwiches."
- R15-5-1862 should address businesses selling products that are consumed on the premises.
- R15-5-2001 contains definitions that are defined in A.R.S. § 42-5001.
- R15-5-2007 should address the application of the rule to limited liability companies.

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

No. The Department indicates that it has not received any written criticisms of these rules during the last five years.

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

Yes. The Department cites to A.R.S. § 42-1005 as general authority. Under A.R.S. § 42-1005(A)(1), the director shall "[m]ake such administrative rules as he deems necessary and

proper to effectively administer the [D]epartment and enforce this title [42] and title 43." The Department has also listed applicable specific authority for the rules reviewed in the report.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- R15-5-902 is inconsistent with A.R.S. § 42-5061(A)(27), which allows an exemption for retailers on the income derived from the sale of materials incorporated into modification projects.
- R15-5-1001 contains outdated statutory references.
- R15-5-1302 is inconsistent with statute because it does not reflect statutory language regarding publications not included in the classification and certain items that may be deducted from the tax base, pursuant to A.R.S.§ 42-5065.
- R15-5-1303 contains an outdated reference.
- R15-5-1602 contains outdated statutory references.
- R15-5-1604 is inconsistent with A.R.S. § 44-302(A)(15), which provides for a three-year rather than a five-year unclaimed property time period.
- R15-5-1860 contains an incorrect statutory reference.
- R15-5-2001 contains definitions that are inconsistent with the statutory definitions.
- R15-5-2007 contains an outdated reference.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. With the exception of R15-5-1302, R15-5-1604, and R15-5-1860, the Department indicates that it enforces the rules reviewed in the report without issues. These three rules are enforced to the extent that they are consistent with statute.

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:

- R15-5-1001 should include more current examples of obtaining lodging in an owner occupied home and mobile homes.
- R15-5-1302 refers to a repealed rule in subsection (C).
- R15-5-1303 contains unnecessary historical information and an incorrect reference to another Article.
- R15-5-1304 should be amended to improve general clarity.
- R15-5-1305 should be amended to clarify that a publication that is published in this state is taxable regardless of the point of distribution or destination of the publication.
- R15-5-1503 is unclear because it lacks specificity as to the application of the rule to software and other electronic products.

- R15-5-1860 is confusing because of the erroneous inclusion of frozen sandwiches in the term "hot and cold sandwiches."
- R15-5-2002 should be amended to improve general clarity.
- R15-5-2004 should be amended to improve general clarity.
- R15-5-2007 is unclear because it lacks specificity as to the application of the rule to limited liability companies.
- R15-5-2010 should be amended to improve general clarity.
- R15-5-2011 should be amended to improve general clarity.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Not applicable. The Department indicates that there is no corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

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

Not applicable. The rules do not require issuance of a permit or license.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

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

Yes. In the previous five-year-review report, approved by the Council on December 6, 2011, the Department proposed amendments to nine rules. However, those anticipated amendments were not made because the Department believed that it did not have proper justification under the previous Executive Orders.

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

Yes. The Department anticipates seeking an exception from the moratorium by September 30, 2016. For the reasons stated above, the Department plans to amend R15-5-902, R15-5-1001, R15-5-1101, R15-5-1302, R15-5-1303, R15-5-1304, R15-5-1305, R15-5-1503, R15-5-1602, R15-5-1604, R15-5-1605, R15-5-1860, R15-5-1862, R15-5-2001, R15-5-2002, R15-5-2004, R15-5-2007, R15-5-2010, and R15-5-2011.

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: September 7, 2016 **AGENDA ITEM: G-5**

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

FROM: GRRC Economic Team

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF REVENUE (F-16-0805)**
Title 15, Chapter 5, Article 6, Prime Contracting Classification; Article 9, Mining Classification; Article 10, Transaction Privilege Tax – Transient Lodging Classification; Article 11, Transaction Privilege Tax – Job Printing Classification; Article 13, Sales Tax – Publishing Classification; Article 14, Transporting Classification; Article 15, Personal Property Rental Classification; Article 16, Commercial Lease Classification; Article 17, Restaurant Classification; Article 18.1, Sales of Food; Article 20, General; Article 21, Utilities Classification

---

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>

An economic, small business, and consumer impact statement (EIS) was unavailable for the rules reviewed.

In the report, the Department states that the economic impact of the taxation regulatory scheme is derived from statutes, and not the rules adopted to interpret the statutory application of the tax. The Department's rules are utilized to support statutes passed by the legislature. The rules were updated in order to allow the Department's rules to match the statutes detailing how the Department should operate with regard to transaction privilege and use taxes.

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

The Department reports that the probable benefits of the rules outweigh the probable costs, and that the rules impose the least burden and costs to persons regulated.

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

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

4. Conclusion

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

STATE OF ARIZONA
Department of Revenue

Douglas A. Ducey
Governor

David Briant
Director

May 31, 2016

Ms. Nicole A. Ong
Chairwoman
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Room 402
Phoenix, Arizona 85007

Re: Five Year Review Report for A.A.C. Title 15, Chapter 5, Articles 6, 9, 10, 11, 13, 14, 15, 16, 17, 18.1, 20 and 21.

Dear Ms. Ong:

The enclosed report is a summarization of the five-year rule review undertaken by the Department of Revenue ("Department") covering the administrative rules in Title 15, Chapter 5, Articles 6, 9, 10, 11, 13, 14, 15, 16, 17, 18.1, 20 and 21. The review was conducted pursuant to A.R.S. § 41-1056.

This report is the result of the review and analysis of existing rules and statutory provisions pertaining to the following transaction privilege tax ("TPT") classifications:

- Prime contracting
- Mining
- Transient Lodging
- Job Printing
- Publishing
- Personal Property Rental
- Commercial Lease
- Restaurant
- Utilities

This report is also the result of the review and analysis of existing rules and statutory provisions pertaining to the Sales of Food rules and the General rules relating to TPT. The Department certifies that it is in compliance with A.R.S. § 41-1091.

The Department anticipates submission of the following rules proposed for amendment to the Governor's Regulatory Review Council. The Department anticipates seeking an exception to the rules moratorium under the current Executive Order by September 30, 2016.

R15-5-902 General

R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

R15-5-1101 Definitions

R15-5-1302 General
R15-5-1303 Definitions
R15-5-1304 Printing Costs
R15-5-1305 Out-of-state distribution

R15-5-1503 Sourcing of Leased Tangible Personal Property

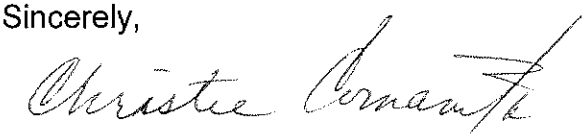
R15-5-1602 Casual Leasing Activity
R15-5-1604 Gross Income
R15-5-1605 Rental to Government Agencies

R15-5-1860 Definitions
R15-5-1862 Restaurant food sales

R15-5-2001 Definitions
R15-5-2002 Liability for Transaction Privilege Tax
R15-5-2007 Credit for Accounting and Reporting Expenses
R15-5-2004 Multi-location and Multi-business Taxpayers
R15-5-2010 Transactions between Affiliated Persons
R15-5-2011 Bad Debts

If you have any questions, please contact Lisa Querard, Attorney III, Tax Research & Analysis Section at (602) 716-6813 or via email at LQuerard@azdor.gov. Thank you for your consideration.

Sincerely,



Christie Comanita
Policy and Research Administrator
Taxpayer Services Division

Enclosures

ARIZONA DEPARTMENT OF REVENUE

FIVE-YEAR-REVIEW REPORT:

TRANSACTION PRIVILEGE AND USE TAX SECTION

A.A.C. Title 15, Chapter 5, Articles 6, 9 through 11,

13 through 17, 18.1, 20 and 21

For the

GOVERNOR'S REGULATORY REVIEW COUNCIL

May 2016

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INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES

This report summarizes the result of a review of the rules governing the administration of Arizona transaction privilege tax under the prime contracting, mining, transient lodging, job printing, publishing, transporting, personal property rental, commercial lease, restaurant and utilities classifications. This report also summarizes the result of a review of the Arizona transaction privilege tax rules governing sales of food and the general rules.

The following information is identical for each group of rules in Title 15 Chapter 5 for each Article listed in the heading. Because this information is the same for each rule and pursuant to Arizona Administrative Code ("A.A.C.") R1-6-301(B) the following information is discussed only once and is not included in the analysis of individual rules:

A. Authorization

General Authorization for the Rules:

All of the rules are generally authorized by Arizona Revised Statutes ("A.R.S.") § 42-1005, which provides that the Director of the Department of Revenue ("Department") may make administrative rules as he deems necessary and proper to effectively administer the Department and enforce A.R.S. Title 42 and Title 43. A.R.S. § 42-5003 also vests administration of the transaction privilege tax in the Department.

Specific Authorization for the Rules:

1. A.R.S. § 42-5072 is the specific statute upon which the following rules are based:

   R15-5-901 Definitions

   R15-5-902 General

   R15-5-904 Manufacturing or Processing Service Charges

   R15-5-905 Products Shipped Out of Arizona

   R15-5-908 Actual Freight Paid

2. A.R.S. § 42-5070 is the specific statute upon which the following rules are based:

   R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

   R15-5-1002 Activities in Addition to Providing Lodging

   R15-5-1003 Providing Lodging to Government Agencies

3. A.R.S. § 42-5066 is the specific statute upon which the following rules are based:

   R15-5-1101 Definitions

   R15-5-1102 Printer's Sale of Printing

   R15-5-1106 Sales of Materials to a Printer

   R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

   R15-5-1112 Sale of Image Developing

4. A.R.S. § 42-5065 is the specific statute upon which the following rules are based:

R15-5-1302 General

R15-5-1303 Definitions

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

5. A.R.S. § 42-5062 is the specific statute upon which the following rules are based:

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

6. A.R.S. § 42-5071 is the specific statute upon which the following rules are based:

R15-5-1502 General

R15-5-1503 Sourcing of Leased Tangible Personal Property

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

7. A.R.S. § 42-5069 is the specific statute upon which the following rules are based:

R15-5-1601 Definitions

R15-5-1602 Casual Leasing Activity

R15-5-1604 Gross Income

R15-5-1605 Rental to Government Agencies

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

8. A.R.S. § 42-5074 is the specific statute upon which the following rules are based:

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

9. A.R.S. §§ 42-5101 through 5106 are the specific statutes upon which the following rules are based:

R15-5-1860 Definitions

R15-5-1862 Restaurant food sales

10. A.R.S. § 42-5063 is the specific statute upon which the following rules are based:

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

C. Effectiveness of the Rules in Achieving Their Objectives

The stated objectives of the following rules are effectively met:

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1304 Printing Costs

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1604 Gross Income

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2010 Transactions between Affiliated Persons

R15-5-2011 Bad Debts

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

D. Consistency of the Rules with State and Federal Statutes and Other Rules

The following rules are consistent with state and federal statutes and rules:

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1101 Definitions

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1605 Rental to Government Agencies

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-1862 Restaurant food sales

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2010 Transactions between Affiliated Persons

R15-5-2011 Bad Debts

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

The following rules are consistent with state and federal statutes and rules. However, each contains an incorrect or outdated reference to a state statute or rule:

R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

R15-5-1303 Definitions

R15-5-2007 Credit for Accounting and Reporting Expenses

E. Agency Enforcement Policy

The following rules reflect established policy and procedures and are consistently and fairly enforced:

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-902 General

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1101 Definitions

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1303 Definitions

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1503 Sourcing of Leased Tangible Personal Property

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1602 Casual Leasing Activity

R15-5-1605 Rental to Government Agencies

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-1862 Restaurant food sales

R15-5-2001 Definitions

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2007 Credit for Accounting and Reporting Expenses

R15-5-2010 Transactions Between Affiliated Persons

R15-5-2011 Bad Debts

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

F. Clarity, Conciseness, and Understandability

The following rules are clear, concise and understandable:

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sale of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1604 Gross Income

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-1862 Restaurant food sales

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

The following rules are generally clear, concise, and understandable. However, these rules contain language that does not conform to existing rulewriting standards:

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2010 Transactions between Affiliated Persons

R15-5-2011 Bad Debts

G. Written Criticisms Received within the Last Five Years

The Arizona Department of Revenue has not received any written criticism regarding any of the rules analyzed in this review during the past five years.

H. Economic, Small Business, and Consumer Impact

Generally, the economic impact of the taxation regulatory scheme is derived from the statutes themselves, and not the rules adopted to interpret the application of the tax. It is only when a rule imposes the requirement to prepare a form or submit documentation, not specifically required by statute, that the rule has an economic impact.

No current economic impact studies have been conducted by the Department. Thus, the Department's analysis in this section is limited by prior economic impact studies as well as by the data available to it through personnel in its

various divisions and sections. Any probable cost ranges referenced in this section are as follows:

- Minimal costs = less than $1,000
- Moderate costs = $1,000 to $10,000
- Substantial costs = more than $10,000

Where such ranges are not referenced, the Department characterizes probable or anticipated impacts in qualitative terms, pursuant to A.R.S. § 41-1055(C).

1. Rules in A.A.C. Title 15, Chapter 1, Article 6

R15-5-601 was renumbered from R15-10-202 (Supp. 94-1). R15-10-202 was adopted in 1989. The rule established five different bond amounts and the types of contractors that would be required to post each type of bond. The requirement for a bond is imposed by A.R.S. §§ 42-5006 and 42-5007 and applies primarily to out of state contractors required to be licensed under the prime contracting TPT statute. The Department anticipated incurring costs in notifying taxpayers of the required bond. However, the Department expected to benefit as only businesses seriously pursuing contracting and manufactured housing businesses would apply for licenses. It was believed that the board of contractors may have to increase compliance investigations because contractors might try to avoid licensing for transaction privilege tax due to the increased cost of licensing. Processing bonds was expected to take time, and therefore applicants were now going to have to plan ahead. Finally, it was anticipated that consumers would

benefit through increased collection of transaction privilege tax from a class of business that traditionally had not paid its fair share. The cost of items sold by contractors was thought to possibly increase if the additional cost of the bond was passed through to customers.

In 2015, the prime contracting classification changed as a result of amendments passed by the Arizona Legislature. One major change is the taxable activity under the prime contracting classification. A contractor is not required to obtain (or renew) a prime contracting TPT license if its business activities are limited to contracts for the maintenance, repair, replacement, or alteration ("MRRA activities") of an existing property with either: (a) the owners of real property or (b) the owners of the improvements to real property. Modification projects remain taxable under the prime contracting classification. Thus, out of state contractors conducting contracting activity which now requires a bond may be reduced because of this change in statute. Because the rule only applies to out of state taxpayers, those taxpayers will likely experience some benefit.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

2. Rules in A.A.C. Title 15, Chapter 5, Article 9

The majority of the rules in article 9 were amended effective July 18, 2000. Two rules were repealed and one was renumbered.

An economic impact statement was prepared for the article as a whole as a consequence of the rules affecting the Department, other state agencies, private entities, consumers and small business.

The Department considered repealing rather than amending the rules. However, it was determined that taxpayers in the mining business would be better served by amending all of the rules under the mining classification to provide clarification, remove conflicts with statute, and to conform the language to the Secretary of State's guidelines.

Overall it was believed the Department would incur minimal costs in meeting the APA requirements. Over time it was anticipated that Department personnel would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise and understandable. The removal of references to metal mining that conflicted with the statute was one of the main changes behind this benefit.

The Secretary of State and The Governor's Regulatory Review Council staff were expected to incur costs in noticing, printing, reviewing and analyzing the rules. It was expected that public and private entities could incur a minimal cost

in obtaining copies, while benefiting from the rules by having definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, it was projected that there would be no direct or indirect impact on consumers.

Small businesses were expected to see the same consequences as private entities. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments, repeals and renumbering are accurate.

3. Rules in A.A.C. Title 15, Chapter 5, Article 10

Two of the rules in Article 10 were amended in 1995 and the third rule was adopted at that time. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. The Department should experience time and cost savings in answering inquiries from the public because the rules would provide clarification.

The amendment of R15-5-1001 was expected to benefit operators of lodging facilities both directly and indirectly by providing a detailed explanation of the application of the definition of "transient" which had caused much confusion in the industry.

The amendment of R15-5-1002 was thought to possibly increase the record keeping responsibilities of the taxpayers operating lodging facilities that also provide meals. However, the clear guidance the rule provided would aid the taxpayer in meeting the additional responsibilities.

The adoption of R15-5-1003 was expected to benefit operators of lodging facilities both directly and indirectly by providing specific information regarding an area that has been the cause of confusion in the past.

Although the operator of a lodging facility is the person ultimately liable for the transaction privilege tax, the burden of the tax may be passed on to the person obtaining lodging. Therefore, many inquiries regarding the tax consequences of

a transaction are received from persons obtaining lodging. Such consumers were expected to benefit from easily accessible information regarding the application of tax under the transient lodging classification. Specifically, companies that obtain lodging for long periods of time for employees or for meetings and conventions would benefit by having detailed information to aid in dealing with lodging facilities.

The amendment and adoption of these rules were not anticipated to cause any additional reporting or compliance requirements for small businesses. However, an increase of record keeping responsibilities was possibly expected for taxpayers operating lodging facilities that provide lodging and meals.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

4. Rules in A.A.C. Title 15, Chapter 5, Article 11

Effective February 6, 2006, R15-5-1101, R15-5-1102 and R15-5-1112 were adopted, R15-5-1106 and R15-5-1111 were amended, and five rules were repealed. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private

entities, and consumers were discussed as well as the impact on small businesses.

The Department expected to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that are distributed to the public. The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that were addressed by the rule.

Political subdivisions of this state were expected to incur minimal costs in noticing and printing the new rule for the public as they deemed necessary.

The Department did not anticipate any effect on the revenues or payroll expenditures of employers who were subject to the proposed rulemaking.

The rulemaking clarified the nature of activities that are subject to tax under the retail classification and those that are taxable under the job printing classification, both of which have a tax rate of 5.6 percent. Those businesses that did not have a clear understanding of the job printing classification as it relates to electronic-based business activities may have been unclear about their tax liability, or alternately, remitted tax under the retail classification rather than the job printing classification. Such businesses may have incurred additional costs to remit and report the correct amount of tax due on various electronic-based forms of printing

discussed in the amendments, or alternately, they may have initially incurred administrative costs, to the extent that such businesses would have to make adjustments to their internal recordkeeping and reporting methods.

The Department anticipated no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon sellers and vendors, rather than the final consumers. Nevertheless, the amount of the tax is typically passed on to consumers and they therefore are affected, albeit indirectly, by the final rule. The Department anticipated there would be no change to the amount of Arizona transaction privilege tax passed on to persons for whom the taxable activities are performed. As stated above, the state tax rates for activities subject to tax under the retail classification and the job printing classification are the same, and consumers would thus not perceive a change in the amount of tax passed on to them by vendors.

The Department predicted that there would be either no impact or a minimal positive impact on state revenue derived from transaction privilege tax proceeds collected. The minimal positive impact would be the result of businesses providing electronic-based job printing services that were unaware of their tax liability under the job printing classification.

The Arizona State Legislature amended A.R.S. § 42-5066, effective September 21, 2006 to provide a specific deduction in the job printing classification for postage and freight charges. The Department amended its rule on a printer's sale of printing to account for the new exemption. Effective February 6, 2007, R15-5-1102 was amended. An economic impact statement was prepared for the Article at the time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers questioning the apparent contradiction between the language of the previous rule and the postage and freight charge deduction provided by the statute.

The Department anticipated that businesses would benefit from the new statutory deduction and clear guidance provided by the rule.

Although the underlying introduction of a new statutory deduction was anticipated to have a minimal negative effect on transaction privilege tax collected under the job printing classification, the Department did not predict that the amendment of the rule would have an effect on state revenues.

The statutory change that this rule responded to for state transaction privilege tax purposes did not impact the local job printing taxes imposed by political subdivisions in Arizona.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and repeal are accurate.

5. Rules in A.A.C. Title 15, Chapter 5, Article 13

The rules in Article 13 were adopted in 1976. R15-5-1302 was amended in 1981. There is no documentation available regarding the anticipated economic impact of the rules.

Generally, the economic impact of the taxation regulatory scheme is derived from the statutes themselves and not the rules adopted to interpret the application of the tax. It is only when a rule imposes the requirement to prepare a form or submit documentation, not specifically required by statute, that the rule has an economic impact.

It was believed that any cost incurred by the Department and other state agencies would be minimal. The amendment of the rules would result in time

and cost savings for the Department because the clarification would reduce the number of inquiries from taxpayers.

Taxpayers were not expected to incur any expense as a result of the amendment of the rules. The Department anticipated that Taxpayers would benefit from the amended rules by having definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, the Department did not believe that there would be a direct or indirect impact on consumers.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

6. Rules in A.A.C. Title 15, Chapter 5, Article 14

All rules in Article 14 were amended effective June 12, 2000. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

Overall, it was believed that any costs incurred by the Department, other state agencies and taxpayers would be minimal. The Department anticipated experiencing time and cost savings in answering inquiries from the public since the rules would be clear, concise, and understandable. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow. Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, the Department did not expect a direct or indirect impact on consumers.

The amendment of the rules was not expected to cause any additional reporting or compliance requirements for small businesses. Small businesses would benefit both directly and indirectly from the increased clarity of the transporting classification with the amendment of the rules.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

7. Rules in A.A.C. Title 15, Chapter 5, Article 15

With the exception of A.A.C. R15-5-1503, all of the rules in Article 15 were amended in 2000. An economic impact statement was prepared at that time.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. The Department would experience time and cost savings in answering inquiries from the public because the existing rules were not clear or concise and some of the rules contained obsolete or repetitive information. The rule amendments would reduce the need for Department personnel to explain to taxpayers the requirements and procedures addressed in the rules.

Taxpayers engaged in business under the personal property rental classification were not expected to incur any expense in the amendment of the rules. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, the Department did not expect any direct or indirect impact on consumers.

The amendments do not impose any additional fees, taxes, or expenditures and thus, were expected by the Department to have a very minimal revenue impact, if any, on the general fund.

The amendment of the rules caused no additional reporting or compliance requirements for small businesses. Small businesses were expected to benefit both directly and indirectly from the increased clarity of the rules.

With regard to A.A.C. R15-5-1503, it was amended effective September 11, 2004. The Department expected to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that were distributed to the public. The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by the rule.

The Secretary of State was expected to incur minimal costs in noticing and printing the new rule. Political subdivisions of this state were expected to incur minimal costs in noticing and printing the new rule for the public if the sourcing provisions for personal property leases and rentals of a particular subdivision differed from those in the rule.

Taxpayer-lessors were expected to incur costs associated with: (a) noticing and retraining personnel on the new sourcing provisions of the rule and (b) maintaining adequate records on the location of leased property to ensure that gross receipts from property that has been taken out of Arizona for exclusive use outside the state are not taxed if such records are not already maintained as part

of their business. If lessors used software that automatically calculated tax liability for leases and rentals, there may have been costs associated with adjusting the formulas used by the application.

The rule was nevertheless expected to benefit taxpayers by providing a “bright-line” standard for determining the location of leasing activity based on information that is already currently being collected and reported to the Department or other state agencies by lessors. The Department expected taxpayer-lessors to further benefit from clarification that gross receipts derived from leases and rentals of property that had been taken out of Arizona and used exclusively outside of the state are not subject to transaction privilege tax.

The Department anticipated that benefits to taxpayers would vary greatly depending on, among other factors: the size of a lessor’s business operation, the sophistication of its operation, complexity of its leasing or rental transactions, and quality of its records as maintained.

The Department anticipated no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

The Department believed that small businesses would actually bear lower compliance costs under the final rule because of the simplification of the sourcing of leases and rentals. Most small businesses were believed likely to be single

business location enterprises that would benefit from the ease in sourcing leases and rentals to their business addresses.

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon lessors, rather than lessees. Nevertheless, the amount of the tax is typically passed on to lessees and they therefore are affected (albeit indirectly) by the final rule. There was no change to the amount of Arizona transaction privilege tax passed to lessees of property leased and used in the state, but lessees of property taken out of state that were intended for such out-of-state use at the inception of the lease will find that no liability for tax to Arizona attaches to those leases. This result is a benefit to those consumers in determining any sales or use tax liability personally owing on their leases or rentals.

The state tax rate at that time for the personal property rental classification was 5.6%. The Department predicted that there would be a moderate negative impact on state revenue derived from transaction privilege tax proceeds collected from leases and rentals that are taken out of Arizona for exclusive use outside of the state.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

8. Rules in A.A.C. Title 15, Chapter 5, Article 16

In 1995, R15-5-1601, R15-5-1602, R15-5-1605 and R15-5-1606 were amended and R15-5-1604 was adopted. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. It was expected that the Department would experience time and cost savings in answering inquiries from the public because the rules provided clarification.

The rule action under the commercial lease classification did not involve any increase in reporting or compliance requirements for lessors of real property. Lessors of real property were expected to benefit both directly and indirectly from the increased clarity of the concepts of the commercial lease classification.

The adoption of R15-5-1604 was expected to benefit lessors of real property by providing an enumeration of taxable income sources customarily received under the commercial lease classification.

Although the lessor of real property is the person ultimately liable for the tax, the burden of the tax may be passed on to the lessee. Therefore, many questions are received from the lessees. The adoption and amendment of the rules was expected to benefit lessees of real property by providing accurate and up to date information regarding the application of tax.

The adoption and amendment of the rules was expected to cause no additional reporting or compliance requirements for small businesses.

With regard to A.A.C. R15-5-1608 and R15-5-1609, they have been in effect since sometime prior to 1976. There was no economic, small business, and consumer impact statement ("EIS") requirement for administrative rules adopted prior to 1981. As such, the Department has never prepared an economic analysis for these rules. The rules clarify the tax treatment of storage facilities and real property licensee agreements thereby reducing the need for Department personnel to explain the issues addressed in the rules. This results in time and cost savings to the Department, lessors and lessees. In addition, the rules interpret the statutory provision and do not impose any additional requirements not listed in statute.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

9. Rules in A.A.C. Title 15, Chapter 5, Article 17

All of the rules in Article 17 were amended effective December 16, 1997. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

Overall, it was believed that any costs incurred by the Department, other state agencies and taxpayers would be minimal. The Department would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise, and understandable. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow. Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, there was expected to be no direct or indirect impact on consumers.

The amendment of the rules was not expected to cause any additional reporting or compliance requirements for small businesses. Small businesses were expected to benefit both directly and indirectly from the increased clarity of the restaurant classification with the amendment of the rules.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

10. Rules in A.A.C. Title 15, Chapter 5, Article 18.1

R15-5-1860 and R15-5-1862 were amended and adopted effective October 15, 1980. There was no economic, small business, and consumer impact statement ("EIS") requirement for administrative rules adopted in 1980. As such, the Department has never prepared an economic analysis for these rules.

These rules clarify the Department's policies and procedures and thus, reduce the need for Department personnel to explain to licensees the requirements and procedures addressed in the rules. This results in time and cost savings to the Department, food retailers, and restaurant patrons. Restaurant and retail licensees, vendors and food workers also become more knowledgeable and well-versed in policies and procedures relating to tax-exempt food and taxable food operations. As such, grocery and restaurant patrons would experience less taxing inconsistency among restaurants, food vendors and retail operations. In addition, R15-5-1860 and R15-5-1862 interpret statutory provisions and do not impose any additional requirements not listed in statute.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, there would be no direct or indirect impact on consumers beyond what currently existed. Small businesses were expected to see the same consequences as private entities when applying rules applicable to selling taxable or tax-exempt food. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

11. Rules in A.A.C. Title 15, Chapter 5, Article 20

R15-5-2001, R15-5-2002, R15-5-2004, R15-5-2010, and R15-5-2011 were all amended in 1993. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. The amount of time spent by the Department responding to correspondence and phone calls would be reduced because of

increased public awareness and understanding due to the clarification of the rules.

The Department did not anticipate substantial direct or indirect costs incurred by taxpayers as a result of the amendments, although initially It was thought there may be temporary indirect labor costs incurred in researching issues due to the rearrangement and renumbering the rules.

There would be no direct impact on the consumer, although indirect costs could be passed on to the consumer as a result of any increased costs to vendors. However, these costs should be minimal and temporary.

Consumers would benefit from the clarification of the definition of "casual sale" in R15-5-2001.

The amendment of these rules did not cause any additional reporting or compliance requirements for small businesses.

R15-5-2007 was amended in 1996. The economic impact statement discussed consequences affecting the Department, other state agencies, counties and municipalities, taxpayers, consumers, and small businesses.

It was believed that the costs incurred by Department and other state agencies would be minimal. The amendment of the rule would result in time and cost savings for the Department since it would no longer be necessary for personnel to explain to taxpayers the requirements and procedures regarding the accounting credit.

A taxpayer having more than one transaction privilege tax license would bear the burden of determining whether it will allocate the allowable credit amount to one or more of its licenses and report the allocation to the Department. However, the taxpayer would benefit from the rule by having definitive requirements and procedures to follow.

The Department believed that there would be no direct or indirect costs or benefits to consumers.

Small businesses that pay transaction privilege or severance tax may be potentially impacted by the rule; however, the amendment to the rule caused no additional reporting or compliance requirements.

The impact statement discussed the adverse consequences to counties, municipalities, and the state general fund as a result of the costs associated with the rule. However, this is not an accurate observation because the economic

impact of the accounting credit is derived from the statutes themselves and not the rules adopted to interpret the statute.

With the exception of the statement regarding the fiscal impact to counties, municipalities, and the state general fund resulting from the accounting credit, and based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

12. Rules in A.A.C. Title 15, Chapter 5, Article 21

The majority of the rules in article 21 were amended effective October 17, 1997. One rule was repealed. An economic impact statement was prepared for the article as a whole as a consequence of the rules affecting the Department, private entities, consumers and small business.

The Department previously determined that taxpayers in the utilities business would be best served by amending the utilities classification rules to provide clarification, remove conflicts with statute and to conform the language to the Secretary of State's guidelines. In addition, any antiquated and repetitive rules would be repealed.

It was anticipated that Department personnel would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise and understandable. Better guidance to taxpayers was expected to lead to fewer protests and appeals resulting in cost savings for taxpayers.

The Department projected that there would be no impact on consumers. Small businesses were expected to see the same consequences as private entities. Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

I. Business Competitiveness Analysis

The Department has not received any analysis of the rules discussed in this report that compares how those rules impact this state's business competitiveness as compared to the competitiveness of businesses in other states within the last five years.

J. Previous Five Year Review Report

In the previous five year review the Department considered proposed action for nine (9) rules as follows:

R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

R15-5-1302 General

R15-5-1303 Definitions

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

R15-5-1604 Gross Income

R15-5-1860 Definitions

R15-5-1862 Restaurant food sales

R15-5-2007 Credit for Accounting and Reporting Expenses

Due to the rules moratorium, those anticipated amendments were not made. The Department did not seek an exception to the rules moratorium because it did not have proper justification to do so under the previous Executive Orders. However, the Department anticipates seeking an exception to the rules moratorium under the current Executive Order by September 30, 2016.

K. Cost/Benefit Analysis

After analysis, the probable benefits of the following rules within this state outweighs the probable costs, and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-902 General

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2010 Transactions between Affiliated Persons

R15-5-2011 Bad Debts

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

L. Stringency Compared with Federal Law

The Department has determined after analysis that there are no federal laws that apply or correspond to the following rules. Therefore the following rules are not more stringent than a corresponding federal law.

R15-5-601 Taxpayer Bonds for Contractors

R15-5-901 Definitions

R15-5-902 General

R15-5-904 Manufacturing or Processing Service Charges

R15-5-905 Products Shipped Out of Arizona

R15-5-908 Actual Freight Paid

R15-5-1001 Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

R15-5-1101 Definitions

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

R15-5-1302 General

R15-5-1303 Definitions

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1503 Sourcing of Leased Tangible Personal Property

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1602 Casual Leasing Activity

R15-5-1604 Gross Income

R15-5-1605 Rental to Government Agencies

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Cover Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-1860 Definitions

R15-5-1862 Restaurant food sales

R15-5-2001 Definitions

R15-5-2002 Liability for Transaction Privilege Tax

R15-5-2004 Multi-location and Multi-business Taxpayers

R15-5-2007 Credit for Accounting and Reporting Expenses

R15-5-2010 Transactions between Affiliated Persons

R15-5-2011 Bad Debts

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

M. Compliance with A.R.S. § 41-1037 (for Rules Adopted after July 29, 2010)

None of the rules analyzed in this five year review require the issuance of a regulatory permit, license or agency authorization, and none of the rules were adopted after July 29, 2010.

N. Proposed Course of Action

1. The Department of Revenue proposes no changes to the following rules:

R15-5-601	Taxpayer Bonds for Contractors
R15-5-901	Definitions
R15-5-904	Manufacturing or Processing Service Charges
R15-5-905	Products Shipped Out of Arizona
R15-5-908	Actual Freight Paid
R15-5-1002	Activities in Addition to Providing Lodging
R15-5-1003	Providing Lodging to Government Agencies
R15-5-1102	Printer's Sale of Printing
R15-5-1106	Sale of Materials to a Printer
R15-5-1111	Miscellaneous Costs of a Printer Are Not Deductions
R15-5-1112	Sale of Image Developing
R15-5-1404	Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

R15-5-1502 General

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

R15-5-1512 Lease--Purchase Agreements

R15-5-1601 Definitions

R15-5-1606 Nonprofit Organizations

R15-5-1608 Commercial property -- storage facilities

R15-5-1609 Commercial property -- licensee agreements

R15-5-1704 Providing Food or Drink to Government Agencies

R15-5-1705 Amusement Devices

R15-5-1706 Coverage Charges

R15-5-1708 Gratuities (Tips)

R15-5-1709 Coupon Redemption

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

Analysis of Individual Rules
Title 15. Revenue

Chapter 5. Department of Revenue

Article 6. Prime Contracting Classification

R15-5-601. Taxpayer Bonds for Contractors

A. Authority: A.R.S. §§ 42-5006 and 42-5007 are the specific statutes upon which this rule is based.

B. Objective: This rule informs taxpayers of the bonding requirements under the transaction privilege tax.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 9. Mining Classification

R15-5-901. Definitions

B. Objective: This rule defines terms used in the rules governing the mining classification under Article 9.

R15-5-902. General

B. Objective: This rule provides general information regarding taxation under the mining classification.

C. Effectiveness: A.R.S § 42-5061 (A)(27) was amended in 2015 as a result of amendments to A.R.S § 42-5075 dealing with the prime contracting classification. It allows an exemption for retailers on the income derived from the sale of materials incorporated into modification projects and for materials used in MRRA projects. This had the effect of indirectly amending A.R.S § 42-5072(B) which provides an exemption from the mining classification for income derived from sales in A.R.S § 42-5061 (A)(27). However, R15-5-902(B) has not been amended since the statutory change. Therefore, this rule is no longer effective as some of the information contained in the rule is obsolete.

D. Consistency: R15-5-902(B) is no longer consistent with the statute since the statute has been amended.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not reflect statutory changes.

N. Proposed Course of Action: The Department will amend this rule to incorporate the changes made to the statute.

R15-5-904. Manufacturing or Processing Service Charges

B. Objective: This rule provides guidance regarding the taxability of manufacturing or processing service charges when engaged in mining business.

R15-5-905. Products Shipped Out of Arizona

B. Objective: This rule provides guidance regarding the determination of the tax base under the mining classification for nonmetalliferous mineral products that are shipped out of state without being sold.

R15-5-908. Actual Freight Paid

B. Objective: This rule provides information regarding the deduction of actual freight costs incurred by a mining business in connection with a sale that are included in the sales price.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 10. Transient Lodging Classification

R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

B. Objective: This rule explains that obtaining lodging at a lodging facility for 30 or more consecutive days is not subject to tax under the transient lodging classification.

C. Effectiveness: This rule is only partially effective in meeting its objective. This rule does not provide guidance regarding the documentation required to establish that lodging was obtained for 30 or more consecutive days at a lodging facility In addition, this rule should be updated to include more current examples that deal

with obtaining lodging in an owner occupied home and mobile homes/slab rentals.

F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it should be updated to include more current examples that deal with obtaining lodging in an owner occupied home and mobile homes/slab rentals and it contains outdated statutory references.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains outdated statutory references and could include more current examples.

N. Proposed Course of Action: The Department will amend this rule to provide guidance regarding the documentation required to establish that lodging was obtained for 30 or more consecutive days at a lodging facility. In addition, the Department will amend this rule to include more current examples that deal with obtaining lodging in an owner occupied home and mobile homes/slab rentals. The Department will also correct the outdated statutory references.

R15-5-1002. Activities in Addition to Providing Lodging

B. Objective: This rule explains that a transient lodging facility's income from providing meals or room service is subject to tax under the restaurant classification and income from the sale of tangible personal property is subject to tax under the retail classification.

R15-5-1003. Providing Lodging to Government Agencies

B. Objective: This rule explains that rentals of transient lodging facilities to any government agency or its employees are taxable.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 11. Job Printing Classification

R15-5-1101. Definitions

B. Objective: This rule defines terms used in the rules governing the job printing classification under Article 11.

C. Effectiveness: This rule is effective in so far as it contains current information and is not inconsistent with statute. However, it is partially ineffective because it contains outdated statutory references.

F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable; however, it contains outdated statutory references.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains outdated statutory references.

N. Proposed Course of Action: The Department will amend this rule to correct the outdated statutory references.

R15-5-1102. Printer's Sale of Printing

B. Objective: This rule explains that all of a printer's costs or expenses of filling a customer's printing order are subject to tax under the job printing classification.

R15-5-1106. Sale of Materials to a Printer

B. Objective: This rule explains that sales to a printer of materials that do not become an ingredient or component part of a printing are subject to tax under the retail classification unless otherwise exempt.

R15-5-1111. Miscellaneous Costs of a Printer Are Not Deductions

B. Objective: This rule informs printers that they may not deduct the cost of subletting or the cost of labor or materials.

R15-5-1112. Sale of Image Developing

B. Objective: This rule informs taxpayers when the sale of image developing is subject to tax and when it is not subject to tax.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 13. Publishing Classification

R15-5-1302. General

B. Objective: This rule provides general information regarding the imposition of tax on the business of publishing.

C. Effectiveness: This rule has not been amended since 1981 and the statute has been amended. This rule is no longer effective as much of the information contained in it is obsolete. In addition, this rule contains definitions that would be better situated under the rule that provides definitions for terms used in the rules under Article 13.

D. Consistency: This rule has not been amended since 1981 and the statute has been amended several times. Therefore, the rule is no longer consistent with the statute.

E. Enforcement: This rule reflects established policy and procedures and is consistently and fairly enforced to the extent that it is not inconsistent with state statute.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it is not consistent with the Secretary of State's guidelines and does not reflect statutory changes. In addition, subsection C references a rule that has since been repealed.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not reflect statutory changes.

N. Proposed Course of Action: The Department will amend this rule to incorporate the changes made to the statute and to relocate the definitions to the rule that provides definitions for terms used in the rules under Article 13. In addition, the Department will amend the rule for consistency with the Secretary of State's guidelines and will delete the reference in subsection C to the rule that has been repealed.

R15-5-1303. Definitions

B. Objective: This rule defines terms used in the rules governing the publishing classification under Article 13.

C. Effectiveness: This rule is generally effective in meeting its objective. However, this rule contains information other than definitions. Subsection C explains that sales of books are subject to tax under the retail classification.

F. Clarity, Conciseness, and Understandability: This rule contains unnecessary historical information and contains an incorrect reference to another Article. In addition, it does not comply with the Secretary of State's guidelines.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains an incorrect reference to another Article.

N. Proposed Course of Action: The Department will amend the rule for consistency with the Secretary of State's guidelines. In addition, the Department will renumber the rule to be the first rule in the Article thereby complying with the Secretary of State's guidelines. Finally, subsection C will be deleted from the rule.

R15-5-1304. Printing Costs

B. Objective: This rule informs taxpayers that the cost of printing a publication is not deductible from the gross income.

F. Clarity, Conciseness, and Understandability: This rule is awkwardly phrased and does not comply with the Secretary of State's guidelines.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it is awkwardly phrased and unclear.

N. Proposed Course of Action: The Department will amend this rule to make it clearer and more understandable and consistent with the Secretary of State's guidelines.

R15-5-1305. Out-of-state distribution

B. Objective: This rule informs taxpayers that income from publications that are published in this state and distributed out-of-state is taxable.

C. Effectiveness: This rule is only partially effective in meeting its objective. This rule incorrectly implies that a publication that is distributed outside this state is only taxable when the publication is distributed from a point within this state.

F. Clarity, Conciseness, and Understandability: This rule is unclear as it does not address publications that are published in this state and distributed from a point outside the state. In addition, the rule is not consistent with the Secretary of State's guidelines.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons it regulates because it does not address publications that are published in this state and distributed from a point outside the state.

N. Proposed Course of Action: The Department will amend this rule to clarify that a publication that is published in this state is taxable regardless of the point of distribution or destination of the publication. In addition, the Department will amend this rule to be consistent with the Secretary of State's guidelines.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 14. Transporting Classification

R15-5-1404. Excess Baggage Charges

B. Objective: This rule informs taxpayers when income from charges for excess baggage is subject to tax and when it is not subject to tax under the transporting classification.

R15-5-1405. Demurrage Charges

B. Objective: This rule informs taxpayers when income from demurrage charges is subject to tax and when it is not subject to tax under the transporting classification.

R15-5-1408. Rental of Aircraft

B. Objective: This rule informs taxpayers when income from transporting by aircraft is taxable under the transporting classification and when it is taxable under the personal property rental classification.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 15. Personal Property Rental Classification

R15-5-1502. General

B. Objective: This rule informs taxpayers that gross income derived from the rental of all types of tangible personal property is subject to tax under the personal

property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

R15-5-1503. Sourcing of Leased Tangible Personal Property

B. Objective: This rule informs taxpayers when leased tangible personal property is subject to tax and when it is not subject to tax under the personal property classification. In addition, this rule informs taxpayers when the Department will source gross receipts from leasing or renting tangible personal property to the taxpayer's business location and when the Department will source such gross receipts to the lessee's residential or primary business street address. This rule also informs taxpayers that gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside the state.

C. Effectiveness: This rule is generally effective in meeting its objective. However, it does not address the application of the rule to software and other electronic products.

D. Consistency: Although this rule is generally consistent with the statute and other rules, the lack of any specific application to software and other electronic products makes it inconsistent with the manner in which the law has been interpreted.

F. Clarity, Conciseness, and Understandability: This rule is generally clear and understandable. However, this rule does not address the application of the rule to software and other electronic products and so taxpayers may be unclear under what circumstances the rental of software and other electronic products should

be sourced to Arizona. In addition, some definitions included in the rule are repetitive.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not address the application of the rule to software and other electronic products and some definitions included in the rule are repetitive.

N. Proposed Course of Action: The Department will amend the rule to provide information regarding the application of the rule to software and other electronic products and will remove repetitive definitions

R15-5-1506. Rental of Tangible Personal Property to Government Agencies

B. Objective: This rule explains that the rental of tangible personal property to the United States Government, the State of Arizona, or other governmental subdivisions is subject to tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

R15-5-1507. Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

B. Objective: This rule explains that the rental of tangible personal property to a school, church or other nonprofit organization is subject to tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

R15-5-1512. Lease - - Purchase Agreements

B. Objective: This rule explains when income from a lease agreement that includes an option to purchase the tangible personal property is taxable under the personal property rental classification and when it is taxable under the retail classification.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 16. Commercial Lease Classification

R15-5-1601. Definitions

B. Objective: This rule defines terms used in the rules governing the commercial lease classification under Article 16.

R15-5-1602. Casual Leasing Activity

B. Objective: This rule explains the historical tax treatment of casual rentals of real property.

C. Effectiveness: This rule is effective in so far as it contains current information and is not inconsistent with statute. However, it is partially ineffective because some of the information contained in the rule is obsolete and contains outdated statutory references.

D. Consistency: This rule has not been amended since 1995 and the statute has been amended. Some aspects of the rule are no longer consistent with the statute.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it contains obsolete information and outdated statutory references.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not reflect statutory changes and contains obsolete information.

N. Proposed Course of Action: The Department will amend to be consistent with current statutes and to remove obsolete information.

R15-5-1604. Gross Income

B. Objective: This rule illustrates the types of income that are taxable under the commercial lease classification.

D. Consistency: This rule is inconsistent with a statutory change made in A.R.S. § 44-302(A)(15).

E. Enforcement: This rule reflects established policy and procedures and is consistently and fairly enforced to the extent that it is not inconsistent with state statute.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not reflect a change in A.R.S. § 44-302(A)(15) that provides a three-year abandonment period for a refundable deposit.

N. Proposed Course of Action: The Department will amend this rule to recognize a change in A.R.S. § 44-302(A)(15)that changed the abandonment period for refundable deposits from a five year to a three year period.

R15-5-1605. Rental to Government Agencies

B. Objective: This rule explains that the rental of real property to the United States Government, the State of Arizona, or any other governmental agency is subject to tax under the commercial lease classification unless otherwise exempt.

C. Effectiveness: This rule is generally effective in so far as it contains current information. However, it is partially ineffective because some of the information contained in the rule is obsolete.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it contains information that is obsolete.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains obsolete information.

N. Proposed Course of Action: The Department will amend this rule to remove the obsolete information.

R15-5-1606. Nonprofit Organizations

B. Objective: This rule explains that the rental of real property by or to a nonprofit organization is subject to tax under the commercial lease classification unless otherwise exempt.

R15-5-1608. Commercial property - - storage facilities

B. Objective: This rule informs taxpayers when the rental of storage facilities is subject to tax and when it is not subject to tax under the commercial lease classification.

R15-5-1609. Commercial property - - licensee agreements

B. Objective: This rule informs taxpayers that a license to use real property is not a taxable lease under the commercial lease classification.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 17. Restaurant Classification

R15-5-1704. Providing Food or Drink to Government Agencies

B. Objective: This rule explains that a restaurant's gross proceeds of sales or gross income from sales of food or drink to the United States Government, the State of Arizona or its political subdivisions, or any other governmental agency or its employees, is subject to tax under the restaurant classification unless otherwise exempt.

R15-5-1705. Amusement Devices

B. Objective: This rule informs taxpayers that a restaurant's income from the operation of an amusement device is subject to tax under the amusement classification.

R15-5-1706. Cover Charges

B. Objective: This rule informs taxpayers that a restaurant's income from a cover charge or other minimum charge is subject to tax under the restaurant classification.

R15-5-1708. Gratuities (Tips)

B. Objective: This rule informs the taxpayer how gratuities are taxed under the restaurant classification.

R15-5-1709. Coupon Redemption

B. Objective: This rule informs the taxpayer how coupon redemption is taxed under the restaurant classification.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 18.1. Sales of Food

R15-5-1860. Definitions

B. Objective: This rule defines terms used in the rules governing the sales of food under Article 18.1.

C. Effectiveness: This rule is generally effective in meeting its objective. However, the definition of the term "food for consumption on the premises" erroneously states that frozen sandwiches are included in the term "hot and cold sandwiches".

D. Consistency: Although this rule is generally consistent with the statute and other rules, the inclusion of frozen sandwiches in the term "hot and cold sandwiches" is inconsistent with the statute. In addition, this rule contains an incorrect statutory reference.

E. Enforcement: The portion of the rule that includes frozen sandwiches in the term "hot and cold sandwiches" is not enforced.

F. Clarity, Conciseness, and Understandability: The erroneous inclusion of frozen sandwiches in the term "hot and cold sandwiches" is confusing. In addition, this rule contains an outdated statutory reference.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it erroneously includes frozen sandwiches in the term "hot and cold sandwiches."

N. Proposed Course of Action: The Department has revised the rule to clarify the taxation of "food" and "food for consumption on the premises" as defined in A.R.S. § 42-5101. In addition, the Department has reorganized the rule to make it more concise and to conform to the Secretary of State's guidelines and has corrected the outdated statutory reference. This rule is currently being reviewed by the Department internally.

R15-5-1862. Restaurant food sales

B. Objective: This rule provides guidance regarding the taxation of food sales by a restaurant, by a retailer that also operates a restaurant, or by a delicatessen business.

C. Effectiveness: This rule is generally effective in meeting the objective of the rule. However, the rule does not address businesses that sell products such as coffee beans, doughnuts, bagels and pies where the purchased product is not eaten on the premises.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not address businesses that sell products that are not eaten on the premises.

N. Proposed Course of Action: The Department revised the rule to clarify the taxation of businesses that sell products such as coffee beans, doughnuts, bagels and pies where the purchased product is not eaten on the premises. In addition, the Department reorganized the rule to make it more concise and to conform to the Secretary of State's guidelines. It also corrected the outdated statutory reference. This rule is currently being reviewed by the Department internally.

Title 15. Revenue
Chapter 5. Department of Revenue
Article 20. General

R15-5-2001. Definitions

A. Authority: This rule specifically implements A.R.S. § 42-5001.

B. Objective: This rule defines terms used in Title 15, Chapter 5.

C. Effectiveness: This rule is generally effective in meeting its objective. However, it contains definitions of terms that are already specifically defined in A.R.S. § 42-5001. In addition, some definitions included in the rule appear to be inconsistent with the statutory definitions.

D. Consistency: Although this rule is generally consistent with the statute and other rules, some definitions included in the rule appear to be inconsistent with the statutory definitions.

F. Clarity, Conciseness, and Understandability: This rule is generally clear and understandable; however, some definitions included in the rule appear to be inconsistent or repetitive with the statutory definitions.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because some definitions included in the rule appear to be inconsistent or repetitive with the statutory definitions.

N. Proposed Course of Action: The Department will amend the rule to remove inconsistent or repetitive definitions.

R15-5-2002. Liability for Transaction Privilege Tax

A. Authority: This rule specifically implements A.R.S. § 42-5024.

B. Objective: This rule informs taxpayers that the vendor is ultimately liable for the transaction privilege tax, regardless of whether or not the vendor passes the economic burden of the tax to the customer.

N. Proposed Course of Action: The Department will amend this rule to conform to existing rulewriting standards.

R15-5-2004. Multi-location and Multi-business Taxpayers

A. Authority: This rule specifically implements A.R.S. §§ 42-5019 and 5020.

B. Objective: This rule informs taxpayers that a taxpayer with multiple businesses shall maintain separate records for each business. In addition, a taxpayer engaging in businesses under more than one business classification shall maintain books and records reflecting the income of each classification

separately; otherwise, the tax is imposed at the highest rate applicable to a classification under which a taxpayer is doing business.

N. Proposed Course of Action: The Department will amend this rule to conform to existing rulewriting standards.

R15-5-2007. Credit for Accounting and Reporting Expenses

A. Authority: This rule specifically implements A.R.S. § 42-5017.

B. Objective: This rule explains the proper application of the credit that is allowed against taxes for expenses incurred by the taxpayer in accounting and reporting the taxes.

C. Effectiveness: This rule is generally effective in meeting its objective. However, it does not address the application of the rule to limited liability companies.

F. Clarity, Conciseness, and Understandability: This rule is generally clear and understandable. However, this rule does not address the application of the rule to limited liability companies and contains incorrect references to statutes and rules.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not address the application of the rule to limited liability companies.

N. Proposed Course of Action: The Department will amend the rule to provide information regarding the application of the rule to limited liability companies. In addition, the Department will amend the rule to correct the incorrect references to statutes and rules.

R15-5-2010. Transactions Between Affiliated Persons

A. Authority: This rule specifically implements A.R.S. § 42-5012.

B. Objective: This rule informs taxpayers that the tax shall be computed on the constructive purchase price when a transaction is between affiliated persons and the facts and circumstances indicate that the reported gross receipts from the transaction are not indicative of the fair market value of the transaction.

N. Proposed Course of Action: The Department will amend this rule to conform to existing rulewriting standards.

R15-5-2011. Bad Debts

A. Authority: This rule specifically implements A.R.S. §§ 42-1005 and 42-5003.

B. Objective: This rule explains the circumstances under which a deduction from gross receipts may be taken for bad debts.

N. Proposed Course of Action: The Department will amend this rule to conform to existing rulewriting standards.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 21. Utilities Classification

R15-5-2104. Interstate and Foreign Sales

B. Objective: This rule provides guidance regarding the determination of the tax base under the utilities classification for sales of electricity, gas or water delivered

through transmission lines or pipelines to a point in another state or country from a point in this state and used outside this state.

R15-5-2105. Locally Delivered Utilities

B. Objective: This rule provides guidance regarding the determination of the tax base under the utilities classification for sales of electricity, gas or water produced outside this state that is delivered through transmission lines or pipelines to a point in this state for use in this state.

R15-5-2106. Compressed and Bottled Liquids

B. Objective: This rule informs taxpayers that the sale of bottled gases or bottled water is subject to tax under the retail classification unless otherwise exempt.

R15-5-2107. Sales to Irrigation Districts

B. Objective: This rule informs taxpayers that a person engaged in business under the utilities classification is subject to tax under the utilities classification on income from producing and furnishing or furnishing electricity or gas to an irrigation district unless otherwise exempt.

R15-5-2110. Security Deposits

B. Objective: This rule explains when customer deposits that are held as security for payment of utility billings are recognized as income and subject to tax under the utility classification.

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

Authority: A.R.S. § 42-1004

The provisions in these rules became effective August 1, 1976, unless otherwise noted in the Historical Note following the rule.

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

Section
R15-5-601. Taxpayer Bonds for Contractors

ARTICLE 9. MINING CLASSIFICATION

Section
R15-5-901. Definitions
R15-5-902. General
R15-5-904. Manufacturing or Processing Service Charges
R15-5-905. Products Shipped Out of Arizona
R15-5-908. Actual Freight Paid

ARTICLE 10. TRANSACTION PRIVILEGE TAX -- TRANSIENT LODGING CLASSIFICATION

Section
R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification
R15-5-1002. Activities in Addition to Providing Lodging
R15-5-1003. Providing Lodging to Government Agencies

ARTICLE 11. TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

Section
R15-5-1101. Definitions
R15-5-1102. Printer's Sale of Printing
R15-5-1106. Sale of Materials to a Printer
R15-5-1111. Miscellaneous Costs of a Printer Are Not Deductions
R15-5-1112. Sale of Image Developing

ARTICLE 13. SALES TAX -- PUBLISHING CLASSIFICATION

Section
R15-5-1302. General
R15-5-1303. Definitions
R15-5-1304. Printing costs
R15-5-1305. Out-of-state distribution

ARTICLE 14. TRANSPORTING CLASSIFICATION

Section
R15-5-1404. Excess Baggage Charges
R15-5-1405. Demurrage Charges
R15-5-1408. Rental of Aircraft

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

Section
R15-5-1502. General
R15-5-1503. Sourcing of Leased Tangible Personal Property
R15-5-1506. Rental of Tangible Personal Property to Government Agencies
R15-5-1507. Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations
R15-5-1512. Lease -- Purchase Agreements

ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION

Section
R15-5-1601. Definitions
R15-5-1602. Casual Leasing Activity
R15-5-1604. Gross Income
R15-5-1605. Rental to Government Agencies
R15-5-1606. Nonprofit Organizations
R15-5-1608. Commercial property -- storage facilities
R15-5-1609. Commercial property -- licensee agreements

Department of Revenue – Transaction Privilege and Use Tax Section

ARTICLE 17. RESTAURANT CLASSIFICATION

Section
R15-5-1704. Providing Food or Drink to Government Agencies
R15-5-1705. Amusement Devices
R15-5-1706. Cover Charges
R15-5-1708. Gratuities (Tips)
R15-5-1709. Coupon Redemption

ARTICLE 18.1. SALES OF FOOD

Section
R15-5-1860. Definitions
R15-5-1862. Restaurant food sales

ARTICLE 20. GENERAL

Section
R15-5-2001. Definitions
R15-5-2002. Liability for Transaction Privilege Tax
R15-5-2004. Multi-location and Multi-business Taxpayers
R15-5-2007. Credit for Accounting and Reporting Expenses
R15-5-2010. Transactions Between Affiliated Persons
R15-5-2011. Bad Debts

ARTICLE 21. UTILITIES CLASSIFICATION

Section
R15-5-2104. Interstate and Foreign Sales
R15-5-2105. Locally Delivered Utilities
R15-5-2106. Compressed and Bottled Liquids
R15-5-2107. Sales to Irrigation Districts
R15-5-2110. Security Deposits

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

R15-5-601. Taxpayer Bonds for Contractors

A. For the purpose of this rule:

1. The principal place of business shall be Arizona if the licensee has continuously operated a facility with at least one full-time employee in Arizona for 12 consecutive months preceding the determination.
2. A surety bond shall include a bond issued by a company authorized to execute and write bonds in Arizona as a surety or composed of securities or cash which are deposited with the Department of Revenue.

B. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:

1. Two thousand dollars for:
   a. General contractors of residential buildings other than single family;
   b. Operative builders;
   c. Plumbing, air conditioning, and heating, except electric;
   d. Painting, paper hanging;
   e. Decorating;
   f. Electrical work;
   g. Masonry stonework and other stonework;
   h. Plastering, drywall, acoustical and insulation work;
   i. Terrazzo, tile, marble and mosaic work;
   j. Carpentry;
   k. Floor laying and other floor work;
   l. Roofing and sheet metal work;
   m. Concrete work;
   n. Water well drilling;
   o. Structural steel erection;
   p. Glass and glazing work;
   q. Excavating and foundation work;
   r. Wrecking and demolition work;
   s. Installation and erection of building equipment;
   t. Special trade contractors; and
   u. Manufacturers of mobile homes.
2. Seven thousand dollars for:

a. General contractors of single family housing;
b. Water, sewer, pipeline, communication and power- line construction.

3. Seventeen thousand dollars for:
   a. General contractors of industrial buildings and warehouses;
   b. General contractors nonresidential buildings other than single family;
   c. Highways and street construction except elevated highways.
4. Twenty-two thousand dollars for heavy construction.
5. One-hundred two thousand dollars for bridge, tunnel and elevated highway construction.

C. Except as provided in subsection (D) of this rule, any applicant whose principal place of business is outside Arizona or who has conducted business in Arizona for less than one year shall post a bond before the transaction privilege tax license shall be issued.

D. Any taxpayer subject to bonding requirements may submit a written request to the Director of the Department of Revenue for an exemption from the bond. The exemption request shall provide at least one of the following:

1. Any taxpayer who has been actively engaged in business for at least two years immediately preceding the exemption request may submit statements from an authorized state employee from each state in which the business has been licensed in the last two years verifying that the taxpayer has, for at least two years immediately preceding the date of the statement, made timely payment of all sales taxes and other transaction privilege taxes incurred.
2. Two-year reporting history as described above in subsection (D)(1) and an explanation of good cause for late or insufficient payment of the tax;
3. Documentation which verifies that no potential for Arizona tax liability exists;
4. Bond for a previously issued Arizona transaction privilege license that adequately covers the licensee's expected transaction privilege tax liability for Arizona for both the previously issued license and for this license.

E. The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Department another bond within five business days of the licensee's receipt of written notification by the Department.

F. Any licensee, who has had a bond posted for at least two years and fulfills any exception listed in subsection (D), or whose principal place of business becomes Arizona, may request a written waiver and that the bond be returned.

Historical Note

Former Section R15-5-601 repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-601 renumbered from R15-10-202 (Supp. 94-1).

ARTICLE 9. MINING CLASSIFICATION

R15-5-901. Definitions

In addition to the definitions provided in A.R.S. § 42-5001, the following definitions apply to this Article:

1. "Mining" means operations involving the extraction of nonmetalliferous mineral products from beneath or at the surface of the earth for commercial use and includes underground, surface, and open-pit operations.
2. "Nonmetalliferous mineral product" has the same meaning as prescribed in A.R.S. § 42-5072.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6). Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-901 renumbered from R15-5-903 and amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

R15-5-902. General

A. A person engaged in the business of mining is subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a purchaser that resells the product in the ordinary course of business.

B. A person engaged in the business of mining is not subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a person engaged in business classified under the prime contracting classification if the nonmetalliferous mineral product is to be incorporated into a structure or project as part of the business.

C. A person engaged in the business of mining is subject to tax under the retail classification on the gross income received from the sale of a nonmetalliferous mineral product to a final consumer.

D. A person engaged in the business of mining shall not deduct from the tax base amounts paid as royalties.

Historical Note

Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

R15-5-904. Manufacturing or Processing Service Charges

A. A person engaged in the business of mining is subject to tax on the gross proceeds of sales or gross income from refining petroleum products, producing a combination of nonmetalliferous mineral products, as well as other manufacturing or processing service charges derived from contracts with the owner of the products.

B. A person who mines and processes nonmetalliferous mineral products is subject to tax on the gross proceeds of sales or gross income from the sale of the first marketable product. For example, a person who mines clay and processes the material into bricks is taxable on the gross proceeds of sales or gross income from the sale of the bricks.

Historical Note

Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

R15-5-905. Products Shipped Out of Arizona

A. A person engaged in the business of mining that ships a nonmetalliferous mineral product out-of-state without making a sale in Arizona shall include in the tax base the market value of the nonmetalliferous mineral product before it enters interstate commerce.

B. Unless otherwise provided in subsection (D), the taxpayer shall calculate the market value of a nonmetalliferous mineral product shipped out-of-state in the following manner:

1. Establish the total selling price of the product outside Arizona.
2. Deduct, from the total selling price, costs incurred out-of-state that increase the value of the product. These costs include:
   a. The cost of actual freight paid, as provided in R15-5-908, to the point of sale outside Arizona;
   b. The refining or processing cost incurred before the first sale; and
   c. The cost of sales commissions, paid or accrued, in connection with the sale.

C. The market value of the product shipped out-of-state shall not include the cost of processing if the processor has paid the Arizona transaction privilege tax on the gross proceeds of sales or gross income derived from the processing. (See R15-5-904.)

D. A taxpayer may compute the market value of a nonmetalliferous mineral product shipped out-of-state in any manner that accurately reflects the value of the nonmetalliferous mineral product at the point it enters interstate commerce if the taxpayer gives prior written notification to the Department and the Department approves the computation method.

Historical Note

Amended effective March 18, 1981 (Supp. 81-2). Amended effective June 18, 1987 (Supp. 87-2). Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

R15-5-908. Actual Freight Paid

A. A person engaged in the business of mining may deduct from the tax base under the mining classification actual freight costs incurred in connection with the sale that are included in the sales price if the actual freight costs incurred are separately stated in the billing to its customer.

B. A person engaged in the business of mining that does not separately state the actual freight costs incurred in the billing to the customer may still deduct the actual freight costs paid to a third party, provided the person keeps books and records to show separately the actual freight paid to the third party.

C. A taxpayer shall not deduct the cost incurred by the taxpayer before a sale for freight from the mining or production location to the sales location.

Historical Note

Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

ARTICLE 10. TRANSACTION PRIVILEGE TAX -- TRANSIENT LODGING CLASSIFICATION

R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

A. Effective January 1, 1979, the leasing or renting of dwelling units and lodging facilities to a person shall not be taxable under the transient lodging classification if the lodging is obtained for a continuous block of time for 30 or more consecutive days except as provided under A.R.S. § 42-1310.10(B). For purposes of this rule, "person" has the same meaning as under A.R.S. § 42-1301.

B. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall not be taxable under the transient lodging classification from the first day of occupancy.

1. Lodging obtained for 30 or more consecutive days in increments of time for a period of less than 30 consecutive days rather than for a continuous block of time shall be taxable under the transient lodging classification except as provided under A.R.S. § 42-1310.10(B).
2. A lodger may originally acquire lodging on an incremental basis for a period of less than 30 consecutive days and subsequently change to a continuous block of time for 30 or more consecutive days; however, the lodging originally obtained on an incremental basis of less than 30 consecutive days shall remain subject to tax regardless of any subsequent action on the part of the lodger.

C. If lodging is obtained on a continuous basis for 30 or more consecutive days but the person obtaining the lodging leaves before the 30-day period ends and only pays for a period of 29 days or less, the exclusion shall not apply. The gross receipts from providing lodging for 29 days or less shall be subject to tax under the transient lodging classification.

D. The following situations are indicative of the application of the provisions in this rule:

1. A person rents a motel room on a weekly basis for 10 consecutive weeks. The total rental period is greater than 30 consecutive days; however, the method of renting by the week meets the definition of "transient." Gross receipts from renting lodging space on such a basis are subject to tax under the transient lodging classification.
2. A motion picture company contracts with a hotel to rent a block of 15 rooms for a three-month period during which filming will occur in the area. During that three-month period, a variety of crew members and actors will occupy the rooms. Any one room may have a different occupant during the three-month time period as filming progresses and different actors or crew members are involved in the production of the film. The rental by the motion picture company for the three-month period is not subject to tax under the transient lodging classification since the motion picture company contracted with the hotel to rent for a three-month period and, therefore, does not meet the definition of a transient.
3. An individual reserves a room in a rooming house for two weeks. The individual decides to stay another two weeks. The total number of days' stay is now at 28 days. Once again, the individual extends the stay by two weeks. Each time period is less than 30 days. Even though the total period of time is over 29 days, after the third extension of two weeks, the individual continues to be a transient for purposes of taxation under the transient lodging classification. If the individual had rented the room for 30 days

or more after the first two weeks, gross receipts from the additional time would not be subject to tax. However, the first two-week block of time would remain taxable since that time period falls under the definition of transient.

4. An individual is not sure how long he will be staying at a hotel so, upon registration, gets the room for 35 days. After 21 days the individual decides to leave and pays only for the 21-day stay. Gross receipts are subject to tax under the transient lodging classification. If the individual had a contractual agreement in which, regardless of length of occupancy, he was required to pay for the entire 35 days, the gross receipts from such a transaction would not be taxable.

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1001 renumbered from R15-5-1614 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1002. Activities in Addition to Providing Lodging

A. If a transient lodging facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from lodging shall be separately stated and reported from the gross receipts from restaurant activities.

B. Gross receipts from the providing of meals or room service shall be subject to tax under the restaurant classification.

C. Gross receipts from the sale of tangible personal property by transient lodging facilities such as from magazine stands, gift shops, or in-room food or beverage bars shall be subject to tax under the retail classification.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1002 renumbered from R15-5-1615 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1003. Providing Lodging to Government Agencies

Gross receipts from providing transient lodging to the United States Government, the state or its political subdivisions, or any other government agency or its employees shall be taxable under the transient lodging classification unless otherwise exempt.

Historical Note

Adopted effective April 21, 1995 (Supp. 95-2).

ARTICLE 11. TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

R15-5-1101. Definitions

For purposes of this Article, the following definitions apply:

1. "Image developing" means the copying or reproducing by a printer of an image by any means from film, paper, video, or another data storage medium to photographic print paper or another storage medium that can visually display the image.
2. "Job printing" means the copying or reproducing by a printer of documents or data directly or indirectly provided by the printer's customer, including by another person at the customer's direction, for the ultimate purpose of producing a physical or electronic copy of the document or data. The document or data can be textual or pictorial, and may be received by the printer in physical or electronic form. Examples of methods of job printing include dye sublimation, electrostatic printing, flexography, gravure, inkjet printing, laser printing, lithography, offset printing, optical scanning, photocopying, photofinishing, reprographic printing, screen printing, thermography, xerography, and similar means of duplication.
3. "Photography" means the process of taking and supplying images to customers, using film, video, or another data storage medium.
4. "Printer" means a person that copies or reproduces textual or pictorial material by any means, process, or method of job printing, engraving, embossing, or copying, but that does not distribute the copied or reproduced material on the person's own behalf.
5. "Printing" means a finished product in physical or electronic form produced by a printer through job printing, engraving, embossing, or copying and that is held for sale by the printer.
6. "Qualifying health care organization" has the same meaning as prescribed in A.R.S. § 42-5001(10).
7. "Qualifying hospital" has the same meaning as prescribed in A.R.S. § 42-5001(11).

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

R15-5-1102. Printer's Sale of Printing

A. Except as otherwise provided in subsection (F) or other applicable A.R.S. § 42-5066(B) exemptions, gross income or gross proceeds derived from all of a printer's costs or expenses of filling a customer's printing order are subject to tax under this Article. Examples of costs or expenses include charges for set-up, die cutting, embossing, folding, and binding operations.

B. Gross income or gross proceeds derived from an Arizona printer's sale of printing within Arizona are subject to tax even when the printer conducts the job printing, engraving, embossing, or copying activity outside the state, unless the printing is shipped or delivered outside the state for use outside the state.

C. If a printer ships or delivers printing to be used outside the state to a common carrier for transportation to a location outside the state, the common carrier is deemed to be the agent of the printer for purposes of determining whether the printing has been shipped or delivered outside the state, regardless of who is responsible for payment of the freight charges.

D. A printer may substantiate a shipment or delivery of printing outside the state by one of the following records:

1. An internal delivery order that is supported by receipts for expenses incurred in delivery of printing and signed on the delivery date by the person who delivers the printing;
2. A common carrier's receipt or bill of lading;

3. A parcel post receipt;
4. An export declaration;
5. A receipt from a licensed broker; or
6. Proof of export or import, signed by a customs officer.

E. Except as provided in subsection (F) or other applicable A.R.S. § 42-5066(B) exemptions, gross income or gross proceeds derived from an Arizona printer's charges for the distribution of printing are generally subject to tax under this Article. In the absence of documentation listed in subsection (D), it remains the taxpayer's burden to substantiate that the gross income or gross proceeds derived from a sale of printing are not taxable because the printing is shipped or delivered outside the state for use outside the state, pursuant to A.R.S. § 42-5066(B)(2). A printer substantiates that printing is shipped or delivered outside the state for use outside the state if the printer shows that the address or number to which the printer distributes the printing does not identify or is incapable of identifying an in-state location.

F. Pursuant to A.R.S. § 42-5066(B)(4), a printer may deduct its gross income or gross proceeds derived from charges for postage and freight if the printer separately states the charges on a customer's invoice and in the printer's records, except that the amount deducted shall not exceed the amount paid by the printer to the United States Postal Service or a commercial delivery service. A printer may not deduct its gross income or gross proceeds derived from charges for delivery of the printing using the printer's own conveyance.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 470, effective February 6, 2007 (Supp. 07-1).

R15-5-1106. Sale of Materials to a Printer

Sales to a printer of materials that do not become an ingredient or component part of a printing fall under the retail classification (see Article 1 of this Chapter) and are subject to tax unless otherwise exempt under A.R.S. § 42-5061. Examples of such materials include color process plates, electrotypes, film processing chemicals, printing plates, and wood mounts. In contrast, sales by the printer of any such materials that are job printed, engraved, embossed, or copied by the printer for the printer's customer constitute sales of printing and fall under this Article. An example is a printer's sale to a customer of a printing plate upon which the printer has performed job printing, engraving, embossing, or copying activity for the customer.

Historical Note

Amended by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

R15-5-1111. Miscellaneous Costs of a Printer Are Not Deductions

A. A printer shall not deduct the cost of subletting job printing, engraving, embossing, or copying activities.

B. A printer shall not deduct the cost of labor or materials employed in the job printing, engraving, embossing, or copying activity of another person.

Historical Note

Amended by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

R15-5-1112. Sale of Image Developing

A. Gross income or gross proceeds derived from a sale of image developing in which the image developing is not part of a sale of photography are subject to tax under this Article.

B. Gross income or gross proceeds derived from a sale of image developing to a business that resells the image developing are nontaxable under this Article.

C. Gross income or gross proceeds derived from a sale of image developing either to a qualifying health care organization that uses the image developing solely to provide health and medical related educational and charitable services or to a qualifying hospital are nontaxable under this Article. An example is image developing of x-ray film or photographs.

Historical Note

Section repealed; new Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

ARTICLE 13. SALES TAX -- PUBLISHING CLASSIFICATION

R15-5-1302. General

A. The gross income derived from the business of publishing within the state is taxable under this classification. Gross income includes revenue from subscriptions, notices, and local advertising.

B. Subscription income includes all circulation revenue. In determining the taxable base, however, there shall be excluded from such revenue those actual amounts retained by or credited to carriers and other vendors as compensation for delivery or sale of newspapers.

1. Carriers are defined as those persons who deliver newspapers to individual subscribers. Such deliveries are confined to a specific area or route.
2. Other vendors are defined as those persons who deliver newspapers to retailers such as news stands, convenience markets, drug stores and to coin-operated vending machines located in or near commercial establishments such as office buildings, hotels, motels, grocery and department stores.

C. Income of publishers from sales of newspapers, whether directly or through other vendors, to news stands, convenience markets, drug stores or other retailers are taxable under this classification. The sales of newspapers by such retailers to consumers are taxable as retail sales. (See R15-5-1802(C))

Historical Note
Amended effective March 18, 1981 (Supp. 81-2).

R15-5-1303. Definitions
A. A "publisher" is one who manufactures and distributes a publication from a point within this state.
B. The term "publication" includes books, newspapers, magazines, music, periodicals, and any other literary work.
C. Effective 9/12/75, the term "publication" shall specifically exclude books. Sales of books directly to a final consumer, however, are taxable under the retail classification (see Article 18).

R15-5-1304. Printing costs
The cost of printing a publication, including the subletting of printing to another person, is not deductible from the gross income.

R15-5-1305. Out-of-state distribution
Income from publications, other than books, mailed or distributed from a point within this state to a point outside the state is subject to the tax under this classification.

ARTICLE 14. TRANSPORTING CLASSIFICATION

R15-5-1404. Excess Baggage Charges
A. Gross proceeds of sales or gross income from charges for excess baggage shipped from one point to another point in this state is included in the tax base under the transporting classification except as provided in subsection (B).
B. Gross proceeds of sales or gross income from charges for excess baggage shipped by motor vehicle from one point to another point in this state is not included in the tax base under the transporting classification if a light motor vehicle fee imposed under A.R.S. § 28-5492 or a motor carrier fee imposed under A.R.S. § 28-5852 is paid to the Department of Transportation on the vehicle used in the transporting.

Historical Note
Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

R15-5-1405. Demurrage Charges
Gross proceeds of sales or gross income from demurrage charges is included in the tax base under the transporting classification unless the transporting to which it relates is excluded from the transporting classification.

Historical Note
Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

R15-5-1408. Rental of Aircraft
A. Gross proceeds of sales or gross income from transporting by aircraft freight or property from one point to another point in this state is included in the tax base under the transporting classification.
B. A charge for the use of an aircraft when a pilot is not provided is rent. Gross proceeds of sales or gross income from the rental or leasing of aircraft is included in the tax base under the personal property rental classification unless a specific deduction or exclusion applies.

Historical Note
Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

R15-5-1502. General
A. Gross income derived from the rental of tangible personal property is included in the tax base under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include: televisions, cars, trucks, lawnmowers, floor polishers, tuxedos, uniforms, furniture, towels, and linens.
B. In this Article, the terms "lease," "rental," and "leasing" are used synonymously.
C. Gross income from the lease of tangible personal property to a lessee who subleases the property is not taxable under the personal property rental classification if the lessee is engaged in the business of leasing the property under the personal property rental classification.
D. Gross income from the rental of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees even if these charges are billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.

Historical Note
Amended subsection (D) and added subsection (E) effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 6 A.A.R.

3091, effective July 18, 2000 (Supp. 00-3).

R15-5-1503. Sourcing of Leased Tangible Personal Property

A. In this Section:
1. "Business location" means the business address that appears on a lessor's privilege license, but if the lessor does not have a business address in Arizona, business location means the lessee's residential or primary business street address.
2. "Source" means to determine the location of leasing or renting activity for tax purposes.

B. The personal property rental classification applies to a person who is engaging or continuing in the business of leasing or renting tangible personal property in Arizona for a consideration. Gross receipts from leasing or renting tangible personal property in Arizona are taxable under this classification.

C. The Department shall source gross receipts from leasing or renting tangible personal property to the business location. Thus, gross receipts of a lessor without a business address in Arizona, derived from leasing or renting tangible personal property, are sourced to the lessee's residential or primary business street address and are taxable when the property is shipped, delivered, or otherwise brought into the state for use in Arizona.

D. Gross receipts from leasing or renting tangible personal property are not taxable if the property is shipped or delivered outside of the state and intended, at the inception of the lease, for use exclusively outside of the state.

E. Gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside of the state. Intermittent use of tangible personal property outside of the state does not constitute removal of the property from the state for use exclusively outside of the state, and therefore does not change the business location of the property or liability for the tax. For example, use of a business's leased tangible personal property by its employees at different locations on business trips and service calls does not change liability for the tax.

F. The burden of proof for establishing the applicability of subsection (D) or (E) is on the lessor.

G. For leasing or renting activity related to a motor vehicle, the Department shall examine whether the motor vehicle is licensed, registered, or primarily used in Arizona.

H. A taxpayer shall not take a deduction or credit for taxes paid in another state on a lease or rental of tangible personal property.

Historical Note

Amended by final rulemaking at 10 A.A.R. 3071, effective September 11, 2004 (Supp. 04-3).

R15-5-1506. Rental of Tangible Personal Property to Government Agencies

A lessor's gross income from the rental of tangible personal property to the United States Government, the state of Arizona, or other governmental subdivisions is taxable under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

Historical Note

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

R15-5-1507. Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations

A lessor's gross income from the rental of tangible personal property to a school, church, or other nonprofit organization is taxable under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

Historical Note

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

R15-5-1512. Lease -- Purchase Agreements

A. A lessor's gross income from the leasing of tangible personal property that includes an option to purchase the tangible personal property is taxable under the personal property rental classification until the lessee exercises the purchase option.

B. Gross income received after the lessee exercises the purchase option is taxable under the retail classification.

Historical Note

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION

R15-5-1601. Definitions

The following definitions apply for purposes of the rules in this Article, unless the context requires otherwise or unless otherwise defined.
1. "Agricultural property" means land or structures which are used for the purposes of growing crops or raising animals including agronomy, horticulture, viticulture, or animal husbandry.
2. "Economic unit of agricultural property" means agricultural property which is rented to the same lessee under one lease or rental agreement but may include more than one parcel or location which is functionally integrated.
3. "Real property used for commercial purposes" means land or structures, including parking lots but not including agricultural property or land or structures used for residential purposes.
4. "Rental" means renting or leasing
5. "Unit" means a single real property location rented or leased to a single tenant under one lease or rental agreement.

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1601 renumbered from R15-5-1603 and amended effective

April 21, 1995 (Supp. 95-2).

R15-5-1602. Casual Leasing Activity

A. For purposes of taxation under the commercial lease classification, there shall be no general exclusion for a casual rental of real property unless delineated under A.R.S. § 42-5059 except as provided in subsection (B) of this rule.

B. For periods ending on or before July 31, 1988, the rental of one unit or real property shall have been deemed to be a casual activity and not subject to transaction privilege tax if:
1. A lessor had income from another source which was unrelated to the income from the rental of real property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and
2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.

C. For periods beginning on or after August 1, 1988, gross income from the rental of one or more units of real property used for commercial purposes shall be deemed to be a business activity and shall be taxable under the commercial lease classification.

D. For periods prior to July 17, 1993, gross income from the rental of one economic unit of agricultural property shall not be taxable if the following conditions exist:
1. A lessor had income from another source which was unrelated to the income from the rental of one economic unit of agricultural property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and
2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.

E. For periods from and after July 17, 1993, gross income from the rental of agricultural property shall not be subject to tax if the conditions of A.R.S. § 42-5069(C)(12) are met.

F. The following situations are indicative of the application of the general provisions of the commercial lease classification:
1. A three-story office building is lease in its entirety to a large law firm. The building is one unit of property. Prior to August 1, 1988, the lessor of the office building was not considered to be engaged in business under the commercial lease classification if the conditions of subsection (A) existed. Commencing on or after August 1, 1988, the single rental of commercial real property is subject to tax under the commercial lease classification.
2. Individual spaces in a small medical building are rented to three different members of the medical profession on separate leases. The property consists of three units. Regardless of the time period in which the rental occurred, the lessor in this situation has always been engaged in business under the commercial lease classification.
3. A partnership is formed to hold one unit of real property for purposes of leasing. Income received from this activity is taxable since the partnership was formed for business purposes.
4. Two hundred acres of farmland are leased to one tenant. The acreage is one economic unit of agricultural property. The lessor is employed as an engineer and leases the property as an investment. Regardless of the time period in which the lease occurred, the lessor of the property is not engaged in business under the commercial lease classification.
5. Two hundred acres of agricultural property are leased to five unrelated parties on separate leases. The property consists of five economic units of agricultural property. Regardless of the time period in which the leases occurred, the lessor is engaged in business under the commercial lease classification. Five separate lease agreements are not a casual activity and the lessor does not fall within any of the current exemptions under A.R.S. § 42-5069(C)(12).

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1602 renumbered from R15-5-1607 and amended effective April 21, 1995 (Supp. 95-2). R15-5-1602(A), (E) and (F)(5) corrected to reflect updated citation references to Arizona Revised Statutes (Supp. 06-4).

R15-5-1604. Gross Income

A. Gross income under the commercial lease classification shall include all amounts paid to or on behalf of the lessor including but not limited to the following items:
1. Rent;
2. Property tax paid by the lessee either as reimbursement to the lessor or paid directly to the county assessor on the lessor's behalf;
3. Insurance paid by the lessee either as reimbursement to the lessor or directly on the lessor's behalf;
4. Common area maintenance charges paid by the lessee;
5. Payments by the lessee for the promotion of the facility or of the lessee;
6. Flat fees paid by the lessee for telephone and reception services, clerical services, library services, reproduction services or facsimile services when such services are contracted for as part of the lease or are obligatory under the lease:
7. Utility connect/disconnect charges;
8. Improvements to the leased property made on behalf of the lessor; or
9. Reimbursement for utility service in excess of the actual amount charged by the utility company.

B. Refundable deposits shall not be subject to tax at the time of receipt if such deposits are separate from gross receipts from commercial leasing and are maintained on the books and records of the lessor as a liability and not as income.
1. Any portion of a refundable deposit which is retained by the lessor as a forfeited deposit shall be included in gross receipts subject to tax.
2. Any portion of a refundable deposit which is not claimed by the tenant at the time the tenant departs shall be presumed to be abandoned property if not claimed within five years from the date of departure pursuant to A.R.S. Title 44, Chapter 3 and shall be reported and delivered as unclaimed property to the Department after the five-year period of time has elapsed.

3. If amounts reported as income are claimed as refundable deposits, the burden of proof shall be on the taxpayer to show that the income reported is not gross receipts subject to tax.

C. Nonrefundable charges, such as cleaning charges, shall be included in gross income at the time of receipt.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). Adopted effective April 21, 1995 (Supp. 95-2).

R15-5-1605. Rental to Government Agencies

A. Gross receipts from the rental of real property to the United States Government, state of Arizona, or any other government agency shall be taxable under the commercial lease classification unless otherwise exempt.

B. For periods beginning May 24, 1990, and ending on March 31, 1993, the gross receipts from the rental of a single unit of real property to the United States Government shall not be subject to tax if the lessor did not have any other commercial lease income and either of the following conditions existed;

1. The real property was listed on the National Register of Historic Places; or
2. The real property was leased to the United States Postal Service for use as a postal facility.

Historical Head

Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1606. Nonprofit Organizations

A. Nonprofit organizations shall be subject to tax under the commercial lease classification for gross receipts from the rental of real property unless otherwise exempt.

B. Leases of real property to nonprofit organizations shall be subject to tax under the commercial lease classification unless otherwise exempt.

Historical Head

Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1608. Commercial property -- storage facilities

Income from the rental of storage facilities is taxable, provided the lessee retains the right of direct access to the stored goods. Conversely, the storage of property by a warehouse, when the warehouse proprietor maintains full control over the specific location of the stored goods within the building, is not taxable. Such storage is deemed to be a service rather than rental of real property.

R15-5-1609. Commercial property -- licensee agreements

When a department store enters into an agreement with a licensee to provide space within the store which does not give the licensee exclusive right to any specific area within the store, the income from such an agreement is not subject to tax. The transaction is deemed to be a licensee agreement rather than the subleasing of real property.

ARTICLE 17. RESTAURANT CLASSIFICATION

R15-5-1704. Providing Food or Drink to Government Agencies

A restaurant's gross proceeds of sales or gross income from sales of food or drink to the United States Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification unless exempt as a sale to a qualifying hospital under A.R.S. § 42-5074(B)(7) or as a sale *for consumption within the premises of a prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff* under A.R.S. § 42-5074(B)(9).

Historical Note

Amended effective December 16, 1997 (Supp. 97-4). R15-5-1704 corrected to reflect updated citation references to Arizona Revised Statutes (Supp. 06-4).

R15-5-1705. Amusement Devices

A restaurant's gross proceeds of sales or gross income from the operation of amusement devices is included in the tax base under the amusement classification (see Article 4).

Historical Note

Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1706. Cover Charges

A restaurant's gross proceeds of sales or gross income from a cover charge or other minimum charge is included in the tax base under the restaurant classification.

Historical Note

Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1708. Gratuities (Tips)

A. A restaurant's gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant's tax base if:

1. The exact amount charged on a check for gratuities is segregated on the seller's records for the account of the employees actually providing the services; and
2. The amounts so segregated are distributed directly to the employees providing the services for which the charges were made.

B. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base under the restaurant classification.

Historical Note
Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1709. Coupon Redemption
A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if the restaurant receives advertising, services, or products in exchange for providing the discounts.

Historical Note
Adopted effective November 7, 1978 (Supp. 78-6). Amended effective December 16, 1997 (Supp. 97-4).

ARTICLE 18.1. SALES OF FOOD

R15-5-1860. Definitions
For the purpose of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.
2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
4. "Caterer" means a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour of day.
5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food and grocery items kept under refrigeration.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"
   a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as "taxable foods."
   b. "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
      i. Pet food and supplies
      ii. Cosmetics and grooming items
      iii. Tobacco products
      iv. Soaps and paper products and household supplies
      v. Dietary supplements such as vitamins or protein supplements
      vi. Medicines
      vii. Fertilizer
8. "Food for consumption on the premises"
   a. "Food for consumption on the premises" means the following:
      i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
      ii. Hot or cold sandwiches including frozen sandwiches.
      iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).
      iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.

v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
vi. Food sold by caterers.
vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.

b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.

9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.
10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
11. "Premises" means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
12. "Qualified retailer"
    a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
    b. Qualified retailers are:
        i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
            (1) Grocery stores;
            (2) Convenience stores;
            (3) Butcher shops;
            (4) Bakeries;
            (5) Dairy stores;
            (6) Cheese stores;
            (7) Farmer's markets.
        ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
        iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
        iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.
        v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include:
            (1) Snackmobile;
            (2) Chuck wagon;
            (3) Mobile hot dog stands.
        vi. Vending machines and other automatic retailers.
13. "Staple food" means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
15. Tax-exempt foods
    a. "Tax exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
    b. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
    c. The following are examples of items which the Department will consider as tax exempt food:
        bread and flour products

vegetables and vegetable products
candy and confectionery
sugar, sugar products and substitutes
cereal and cereal products
butter, oleomargarine, shortening and cooking oils
cocoa and cocoa products
coffee and coffee substitutes
milk and milk products
eggs and egg products
tea
meat and meat products
spices, condiments, extracts and food colorings
fish and fish products
frozen foods
soft drinks and soda (including bottles on which a deposit is required to be paid)
fruit and fruit products
packaged ice cream products
dietary substitutes
ice cubes and bottled water including carbonated and mineral water
purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.

Historical Note

Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5).

R15-5-1862. Restaurant food sales

A. Restaurants are generally not qualified retailers, and therefore cannot sell food tax free, but are taxable upon all of their gross income or gross proceeds of sale.

B. If a qualified retailer also operates a restaurant, the gross income or gross receipts of a sale from the two (2) activities must be kept separate. The gross receipts or gross income from the operation of the restaurant shall always be taxable, as will the income from all sales of taxable food and nonfood items. Except for items which may be exempt under some other provision, only tax-exempt foods sold by a qualified retailer not in connection with its restaurant operation shall be exempt.

C. To the extent that a delicatessen may sell taxable food, such as hot or cold sandwiches, such delicatessen will be required to report under this classification. Since a delicatessen business may constitute a qualified retailer, such business may still be eligible to sell tax exempt food, if such sales are separately accounted for.

Historical Note

Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5).

ARTICLE 20. GENERAL

R15-5-2001. Definitions

The following definitions apply for the purposes of the rules in this Chapter, unless the context requires otherwise or unless otherwise defined. An individual rule may contain definitions which are specific to the context of that rule.

1. "Casual sale" means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold.
2. "Department" means the Arizona Department of Revenue.
3. "Gross income" means all receipts of a trade or business from sales or services. It includes the total consideration received or constructively received. The value of all services which are part of the sale is considered part of the gross income, unless statutorily excluded.
4. "Gross receipts" means gross receipts as defined in A.R.S. § 42-5001.
5. "Real property" means land and anything permanently affixed to land.
6. "Taxpayer" means any person required by law to file returns or to pay transaction privilege tax, use tax, rental occupancy tax, or excise taxes to the Department.
7. "Vendor" means any person engaged in a business which is subject to Arizona tax.

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-2001 renumbered from R15-5-202 and amended effective October 14, 1993 (Supp. 93-4). R15-5-2001(4) corrected to reflect an updated citation reference to Arizona Revised Statutes (Supp. 06-4).

R15-5-2002. Liability for Transaction Privilege Tax

The transaction privilege tax is imposed directly on the person engaging in a taxable business within Arizona. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.

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Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2002 renumbered from R15-5-204 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2004. Multi-location and Multi-business Taxpayers

A. A taxpayer with multiple licenses for separate businesses shall maintain separate records for each licensed business.

B. A tax is levied upon the privilege of engaging in specified businesses within Arizona. Class codes for reporting gross receipts subject to tax have been determined by the Department based on statutory provisions. Each business classification is independent of the others even when transacted under one license. A person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately.

C. Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2004 renumbered from R15-5-2215 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2007. Credit for Accounting and Reporting Expenses

A. For purposes of this rule, the following definitions apply:

1. "Reporting period" means a calendar month unless another period is authorized pursuant to A.R.S. § 42-1322.
2. "Statutory delinquency date" means the date by which a payment of tax is considered delinquent pursuant to A.R.S. § 42-1322.
3. "Tax return" means the Transaction Privilege, Use, and Severance Tax Return (TPT-1).
4. "Taxable business" means a business which is subject to either transaction privilege or severance tax.
5. "Taxpayer" means taxpayer as defined in A.R.S. § 42-1322.04(C), including an entity which is exempt from state income tax. The following are considered a single taxpayer:
   a. Members of an Arizona affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
   b. Corporations in a unitary business filing a combined corporate income tax return under A.A.C. R15-2-1131(E);
   c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return under A.A.C. R15-2-1131(E); or
   d. Partnerships, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.

B. A taxpayer shall compute the credit, using the full amount of tax as required to be reported on the tax return, including any excess tax collected. The Department shall not allow a credit against taxes other than the state transaction privilege tax and the severance tax.

C. Except as provided in subsection (D), the Department shall not allow a credit if the taxpayer fails to pay the tax due before the statutory delinquency date. Failure to pay the tax due includes the following circumstances:

1. The taxpayer makes an underpayment of tax due, including any estimated tax due, or,
2. The taxpayer's check is dishonored.

D. In the case of taxpayer computational error, the Department shall allow the credit based on the amounts originally filed, if the computational error resulted in the overpayment or underpayment of the tax actually due:

1. In the case of an overpayment, the Department shall allow the credit on the actual amount of tax due for the reporting period.
2. In the case of an underpayment, the Department shall allow the credit on the amount of the tax paid prior to the statutory delinquency date.

E. To receive the credit for each reporting period, the taxpayer shall claim the credit on the tax return. If the taxpayer understates the amount of the credit on the tax return, the Department shall allow the amount of credit which the taxpayer has claimed. The taxpayer may file an amended return to claim any unclaimed portion of the credit if the taxpayer timely paid the tax upon which the credit is based. If the taxpayer overstates the amount of the credit, the Department shall allow the amount of credit actually permitted for the reporting period.

F. A taxpayer is entitled to one credit, regardless of the number of licenses, businesses, or locations the taxpayer may have. Taxpayers with multiple licenses for separate businesses or separate locations shall elect the manner in which to allocate the credit among their licenses within the $10,000 annual limitation. The election shall be made on a form 51-T. The taxpayer shall file the election on or before January 15 of the first year for which an election is being made or within 30 days prior to beginning operations if the taxpayer is a new business entity. The taxpayer is required to file an election one time; however, a new election may be filed under the following circumstances:

1. If a taxpayer does not claim the entire $10,000 credit during the calendar year, the taxpayer may amend the election at the end of the calendar year to reallocate the unclaimed portion of the credit for that particular year. This amended election shall be filed on or before January 31 of the following year. To claim the reallocated credit, the taxpayer shall file an amended tax return for each reporting period in which a sufficient tax was due and timely paid. For example: an individual owns three separate businesses with different transaction privilege tax licenses. At the beginning of the year, the individual allocates the $10,000 credit as follows: $3,000 to Company A; $2,000 to Company B; and $5,000 to Company C. At the end of the year, Companies A and B have claimed the credit up to their allocated amounts. However, Company C has only claimed $1,000 of its allocated credit. Company A timely paid a sufficient amount of tax during the months of August and September to qualify for an additional $4,000 credit. The individual may amend the election to reallocate the unclaimed credit to Company A. To claim the $4,000 credit, the individual must file an amended tax return for Company A for the months of August and September.
2. If a taxpayer acquires, sells, or terminates a taxable business during the calendar year, the taxpayer may amend the election at that time to reallocate the credit. The taxpayer shall only reallocate the portion of the credit which has not been claimed by the date on

which the taxpayer acquires, sells, or terminates the business. The taxpayer shall ensure that the election relates to the acquired, sold, or terminated business and is made on a prospective basis only. The taxpayer shall notify the Department of the reallocation 30 days prior to the due date of the tax return for the reporting period to which the reallocation applies. For example: Corporation A is the common parent of Corporations B and C and elects to file a consolidated corporate state income tax return. Each of the three corporations conducts a taxable business activity. Since the three corporations file state income tax as one entity, Corporation A is required to allocate the $10,000 credit among the three corporations. At the beginning of the year, Corporation A elects to allocate the entire $10,000 credit to Corporation B. On July 1, Corporation A acquires Corporation D which also conducts a taxable business activity. Corporation A may amend its election at this time to take into account Corporation D. Corporation A may reallocate the portion of the credit not already claimed by Corporation B to Corporation D.

G. Where a taxpayer is allocating the $10,000 credit, the following rules apply:

1. The Department shall allow a unitary business, filing a combined corporate state income tax return, or an Arizona affiliated group, filing a consolidated corporate state income tax return, one $10,000 credit. The unitary business or affiliated group may allocate the credit among its members. If the unitary business or affiliated group fails to allocate the $10,000 credit, the Department shall allocate the credit to the corporation in whose name the unitary business or affiliated group files its state income tax return regardless of whether the corporation conducts a taxable business.
   a. If a corporation joins an Arizona affiliated group or unitary business during the calendar year, the Department shall classify the corporation as a separate taxpayer for the period before it joins the affiliated group or unitary business. The Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period after it joins the affiliated group or unitary business. An affiliated group or unitary business may allocate the $10,000 credit, even if a member corporation claimed the credit before it joined the affiliated group or unitary business.
   b. If a corporation leaves an affiliated group or unitary business during the calendar year, the Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period before it leaves the affiliated group or unitary business. The Department shall not classify the corporation as the same taxpayer for the period after it leaves the affiliated group or unitary business. The corporation, as a separate taxpayer or part of a separate taxpayer, may allocate the $10,000 credit, even if the corporation claimed the credit before it left an affiliated group or unitary business.
2. If a partnership, S corporation, trust, or estate conducts multiple taxable businesses, the Department shall allow the partnership, S corporation, trust, or estate one $10,000 credit. The partnership, S corporation, trust, or estate may allocate the credit among its businesses. The credit shall not be allocated to the partners of a partnership, shareholders of an S corporation, or beneficiaries of a trust or estate.
3. In cases where the taxpayers are married and each spouse conducts a taxable business, the Department shall allow one $10,000 credit per income tax return. If the married taxpayers file separate individual income tax returns, the Department shall allow each spouse one $10,000 credit. If the married taxpayers file a joint income tax return, the Department shall allow one $10,000 credit for the couple.

Historical Note

Renumbered from R15-5-3025 (Supp. 94-2). Amended effective August 13, 1996 (Supp. 96-3).

R15-5-2010. Transactions Between Affiliated Persons

A. For purposes of this rule, the following definitions apply:

1. "Actual ownership" means direct ownership and control but does not include ownership by or through affiliated persons.
2. "Affiliated persons" means members of the individual's family or persons who have ownership or control of a business entity.
3. "Constructive purchase price" means the fair market value or, if the fair market value cannot be determined, the value established by expert appraisal that takes into consideration all factors relevant to the transaction.
4. "Control of a business entity" means direct or indirect ownership or control of more than 50% of the business entity. The following guidelines, as to indirect ownership, shall apply for purposes of determining control of a business entity.
   a. A corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.
   b. An individual shall be considered as owning directly or indirectly that portion which is owned by or for members of the individual's family.
   c. The ownership of stock by a corporation, partnership, estate, or trust shall be considered actual ownership to its shareholders, partners, or beneficiaries for purposes of making another individual a constructive owner.
   d. Ownership based on a family relationship shall not be treated as actual ownership by the related party for the purpose of making another individual a constructive owner.
5. "Fair market value" means the gross receipts that the transaction would have brought in the open market at a time and location similar to that of the affiliated party transaction and between a willing purchaser and a willing seller, who are not affiliated and have reasonable knowledge of the relevant facts.
6. "Members of the individual's family" means the relationship of spouse, brothers, and sisters, whether by whole or half blood and including adopted persons, ancestors, and lineal descendants.

B. The tax shall be computed upon the constructive purchase price when:

1. The transaction is between affiliated persons, and
2. The facts and circumstances indicate that the reported gross receipts from the transaction are not indicative of the fair market value of the transaction.

Historical Note

Renumbered from Section R15-5-1850 and amended effective October 14, 1993 (Supp. 93-4). Corrected typographical error to reflect

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what was filed with the Office of Secretary of State October 14, 1993; changed "owner" to "owned" in subsection (A)(4)(a) (Supp. 97-1).

R15-5-2011. Bad Debts

A. The deduction of a bad debt shall be allowed from gross receipts if the following conditions apply:
1. The gross receipts from the transaction on which the bad debt deduction is being taken have been reported as taxable;
2. The debt arose from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money; and
3. All or part of the debt is worthless.

B. A debt shall be considered worthless if:
1. The surrounding circumstances indicate that the debt is uncollectible; and
2. Legal action to enforce payment has not or, in all probability, would not result in the satisfaction of the debt.

C. The bad debt deduction shall be computed by subtracting the amounts received on the debt from the amount originally reported as taxable. The portion of the amounts received on the debt representing carrying charges, interest, and repossession expenses, which have not been reported as taxable, shall not be allowed as a bad debt deduction.

D. A bad debt deduction shall be taken in the month in which the conditions of subsection (A) apply.

E. A bad debt deduction shall be allowed, pursuant to the provisions in this rule, on conditional or installment sales if:
1. The tax liability is paid on the full sales price of the tangible personal property at the time of the sale; or
2. A contract or other financial obligation is sold to a third party as a sale with recourse and principal payments are made by the vendor to the third party, pursuant to the default of the original payor. Such principal payments may be taken as a bad debt deduction if the tax was paid by the vendor on the original sale of the tangible personal property or on the subsequent sale of the financing contract.
3. For purposes of the bad debt deduction in situations of default on conditional or installment sales, a "sale with recourse" means that a vendor sells a contract or other financial obligation to a third party but retains liability for payment upon default of the original payor.

F. Any recovery of a bad debt subsequent to a bad debt deduction shall be reported as taxable gross receipts when received.

Historical Note

Renumbered from Section R15-5-1813 and amended effective October 14, 1993 (Supp. 93-4). Corrected misspelling in subsection (E)(3) from "retails" to "retains" (Supp. 94-2).

ARTICLE 21. UTILITIES CLASSIFICATION

R15-5-2104. Interstate and Foreign Sales

A person engaged in business under the utilities classification may deduct from the tax base gross receipts from sales of electricity, gas, or water, delivered through transmission lines or pipelines to a point in another state or country, from a point in this state and used outside this state.

Historical Note

Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2105. Locally Delivered Utilities

A person engaged in business under the utilities classification is subject to tax on the gross receipts from sales of electricity, gas, or water, produced outside this state that is delivered through transmission lines or pipelines to a point in this state, for use in this state unless an exemption applies.

Historical Note

Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2106. Compressed and Bottled Liquids

The gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt.

Historical Note

Amended effective March 18, 1981 (Supp. 81-2). Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2107. Sales to Irrigation Districts

A person engaged in business under the utilities classification is subject to tax on the gross receipts from producing and furnishing or furnishing electricity or gas to an irrigation district for the purpose of producing water for irrigation of farm lands or of lands subdivided for residential purposes which are entitled to irrigation water unless an exemption applies.

Historical Note

Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2110. Security Deposits

Gross receipts from customer deposits that are held as security for payment of utility billings are not subject to tax until recognized as income. A deposit that is not applied to a customer's bill or refunded to a customer when utility services are discontinued shall be presumed to be abandoned property if the customer does not claim it within the period established under A.R.S. Title 44, Chapter 3. Customer depos-

its that are presumed to be abandoned property under A.R.S. Title 44, Chapter 3, shall be reported and delivered to the Department as unclaimed property. Amounts delivered to the Department as unclaimed property are not included in the tax base. For example:

1. A utility company requires a new customer to deposit $150 before it provides utility service. The customer moves and notifies the utility company to discontinue service. The customer's final bill is $130. The utility applies the deposit to the final bill and refunds $20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The amount refunded to the customer is not recognized by the utility as income and is not subject to tax.
2. A utility company requires a new customer to deposit $150 before it provides utility service. The customer notifies the utility company to discontinue service. The customer's final bill is $130. The utility applies the deposit to the final bill. The customer does not provide a forwarding address to the utility. Therefore, the utility company is not able to refund the remaining $20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The remaining $20 is presumed to be abandoned property if not claimed under A.R.S. Title 44, Chapter 3. The amount presumed to be abandoned property shall be reported and delivered to the Department as unclaimed property under A.R.S. Title 44, Chapter 3. The amount delivered to the Department as unclaimed property is not recognized as income by the utility and is not subject to tax.

Historical Note

Amended effective October 17, 1997 (Supp. 97-4).

General and Specific Authorizing Statutes:

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5001. Definitions

In this article and article 2 of this chapter, unless the context otherwise requires:

1. "Business" includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but does not include either:

(a) Casual activities or sales.

(b) The transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

2. "Distribution base" means the portion of the revenues derived from the tax levied by this article and articles 5 and 8 of this chapter designated for distribution to counties, municipalities and other purposes according to section 42-5029, subsection D.

3. "Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

4. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.

5. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.

6. "Gross income" and "gross proceeds of sales" do not include goods, wares or merchandise, or value thereof, returned by customers if the sale price is refunded either in cash or by credit, nor the value of merchandise traded in on the purchase of new merchandise when the trade-in allowance is deducted from the sales price of the new merchandise before completion of the sale.

7. "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and

taken nor the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

8. "Person" or "company" includes an individual, firm, partnership, joint venture, association, corporation, estate or trust, this state, any county, city, town, district, other than a school district, or other political subdivision and any other group or combination acting as a unit, and the plural as well as the singular number.

9. "Qualifying community health center":

(a) Means an entity that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(i) The sole provider of primary care in the community.

(ii) A nonhospital affiliated clinic that is located in a federally designated medically underserved area in this state.

(b) Includes clinics that are being constructed as qualifying community health centers.

10. "Qualifying health care organization" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that uses, saves or invests at least eighty per cent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted auditing standards and filed annually with the department. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty per cent requirement.

11. "Qualifying health sciences educational institution" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that solely provides graduate and postgraduate education in the health sciences. For the purposes of this paragraph, "health sciences" includes medicine, nursing, physician's assistant studies, pharmacy, physical therapy, occupational therapy, biomedical sciences, podiatry, clinical psychology, cardiovascular science, nurse anesthesia, dentistry, optometry and veterinary medicine.

12. "Qualifying hospital" means any of the following:

(a) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(c) A hospital, nursing care institution or residential care institution which is operated by the federal government, this state or a political subdivision of this state.

(d) A facility that is under construction and that on completion will be a facility under subdivision (a), (b) or (c) of this paragraph.

13. "Retailer" includes every person engaged in the business classified under the retail classification pursuant to section 42-5061 and, when in the opinion of the department it is necessary for the efficient administration of this article, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

14. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration, and includes:

(a) Any transaction by which the possession of property is transferred but the seller retains the title as security for the payment of the price.

(b) Fabricating tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work.

(c) Furnishing, preparing or serving for a consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property.

15. "Solar daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

16. "Solar energy device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce

electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

17. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

18. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year, if permission is obtained from the department to use a fiscal year as the tax period instead of the calendar year.

19. "Taxpayer" means any person who is liable for any tax which is imposed by this article.

20. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

42-5003. Administration and enforcement of article; employees; bonds

A. The administration of this article is vested in and shall be exercised by the department of revenue according to chapter 1, articles 1 and 3 of this title and this article, and all payments required by this article shall be made to the department.

B. The enforcement of this article in any court of the state shall be under the exclusive jurisdiction of the department and the attorney general.

C. The department shall appoint, as necessary, such agents, clerks and stenographers as authorized by law, who shall perform such duties as may be required not inconsistent with this article, and who shall be authorized to act for the department as it prescribes and as provided by this article. Each agent shall execute a bond in the amount of five thousand dollars conditioned upon the faithful discharge of the agent's duties, but the department may, in its discretion, bond all or any of its agents by a multiple or joint bond. The agents, clerks and stenographers may be removed by the department for cause, and the department shall be the final judge of the sufficiency of the cause.

42-5006. Taxpayer bonds; out-of-state licensed contractors and manufactured building dealers

A. Notwithstanding section 42-1102, the department shall require a surety bond for each taxpayer who is required to be licensed under title 32, chapter 10 or who is regulated under title 41, chapter 16, article 2, if the taxpayer's principal place of business is

outside this state or if the taxpayer has conducted business in this state for less than one year. The department shall prescribe the form of the bond. The bond shall be maintained for a period of at least two years.

B. The bond, duly executed by the applicant as principal and with a corporation duly authorized to execute and write bonds in this state as surety, shall be payable to this state and conditioned on the payment of all transaction privilege taxes incurred and imposed on the taxpayer by this state and its political subdivisions. The bond shall be in such amount, but not less than two thousand dollars, as will assure the payment of the transaction privilege taxes which may reasonably be expected to be incurred by the licensed establishment for a period of one hundred fifty days.

C. The director, by rule, may establish classes of expected tax liability in five thousand dollar increments, beginning with the minimum bond amount prescribed in subsection B of this section. The bond shall provide that after notice and a hearing the director may order forfeited to this state and any affected political subdivision part or all of the bond for nonpayment of taxes, interest and penalties.

D. A licensee on application for a new license covered by subsection A of this section, renewal of a license covered by subsection A of this section or transfer of a license covered by subsection A of this section is exempt from posting a bond if the licensee has for at least two years immediately preceding the application made timely payment of all transaction privilege taxes incurred.

E. If a licensee is not exempt from this section, the director may exempt the licensee if the director finds that the surety bond is not necessary to insure payment of such taxes to the state and any affected political subdivision or the licensee had good cause for the late or insufficient payment of the transaction privilege tax and affiliated excise taxes incurred.

42-5007. Taxpayer security; out-of-state prime contractors; definition

A. In lieu of the bond required under section 42-1102 or 42-5006, a person who is in the construction business, who does not have a principal place of business in this state and who enters into a prime construction contract to be performed in this state, at the time the contract is entered into, shall furnish to the director or the director's agent a surety bond or other acceptable security in an amount equal to the gross receipts to be paid under the contract multiplied by the aggregate rates of the applicable taxes imposed by this chapter to secure payment of the tax imposed by this chapter on the gross receipts from the contract and shall obtain a certificate from the director or the director's agent that the requirements of this section have been met.

B. If the total amount to be paid under the contract is changed by ten per cent or more after the date the bond or other security is furnished, the person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with subsection A or B of this section, the director or the director's agent may:

1. Demand by certified mail or in person that the person comply. On the person's failure to comply within ten days after the date of the mailing of such demand, the director may institute a proceeding to enjoin the person's business as provided in section 42-1103.

2. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply, and, on failure to comply immediately, the director may without further notice apply to tax court for an injunction under section 42-1103.

D. This section does not apply if the total gross receipts under the construction contract, including any change in such amount, are to be less than fifty thousand dollars.

E. A city, town or county or an agency of this state shall not issue a building or other construction permit to any person who is subject to the requirements of this section without having first been furnished by the construction contractor with the certificate from the director or the director's agent provided under subsection A of this section.

F. In this section "principal place of business" means a location where a person has continuously operated a facility with at least one full-time employee for the preceding twelve consecutive months.

42-5012. Sales between affiliated persons

In determining value as applied to sales from one to another of affiliated corporations or persons, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the department shall prescribe uniform and equitable rules for determining the value upon which the tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

42-5017. Credit for accounting and reporting expenses; definition

A. A credit is allowed against the taxes imposed by this article and article 5 of this chapter for expenses incurred by the taxpayer in accounting and reporting those taxes. The credit is equal to one per cent of the amount of tax due but not to exceed a total of ten thousand dollars in any calendar year for the combined total of all business premises of a taxpayer. Estimated taxes under section 42-5014, subsection D are not considered a separate reporting period.

B. A taxpayer shall claim the credit for each tax period on forms prescribed and furnished by the department, which may be incorporated in the return form prescribed pursuant to section 42-5014. A claim for credit is not allowed if the taxpayer fails to pay the tax due, plus any estimated tax liability, before the payment becomes delinquent.

C. As used in this section, "taxpayer" means the business entity under which the business reports for state income tax purposes or an entity that is exempt from state income tax.

42-5019. Reporting sales made in more than one class

A person engaged in any business in which sales are made on which the same rate does not apply, or in two or more businesses with respect to which the rate to be applied is not the same, shall make separate returns of the gross proceeds of sales or the gross income of each business separately classified.

42-5020. Persons engaged in more than one business

Any person engaging in two or more forms of business of like classification taxable under this article may file a consolidated return covering all business activities of like classification engaged in within this state.

42-5024. Personal liability for tax; remedies for collection

Every tax imposed by this article and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the state and may be collected by legal action under section 42-1114. Such remedy shall be in addition to existing remedies or those provided in this article.

42-5062. Transporting classification

A. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state. The transporting classification does not include:

1. Transporting for hire persons, freight or property by motor carriers subject to a fee prescribed in title 28, chapter 16, article 4 or by light motor vehicles subject to a fee under title 28, chapter 15, article 4, transportation network companies subject to a fee prescribed by section 28-9552 or transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

2. The business of transporting for hire persons traveling in air commerce by aircraft if taxation of the business is preempted by federal law.

3. Ambulances or ambulance services provided under title 48 or certified pursuant to title 36, chapter 21.1 or provided by a city or town in a county with a population of less than one hundred fifty thousand persons as determined in the most recent United States decennial census.

4. Public transportation program services for the dial-a-ride programs and special needs transportation services.

5. Transporting freight or property for hire by a railroad operating exclusively in this state if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this state to a point outside this state or from a point outside this state to a point in this state. For the purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.

6. Arranging transportation as a convenience or service to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third-party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

B. The tax base for the transporting classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

1. The gross proceeds of sales or gross income derived from transporting for hire persons, freight or property by a railroad pursuant to a contract with another railroad that is also considered to be engaged in the businesses of transporting persons, freight or property for hire if the other railroad is liable for the tax on gross proceeds of sales or gross income attributable to the transportation.

2. The gross proceeds of sales or gross income derived from business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

3. The gross proceeds of sales or gross income derived from a business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5073, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

4. The gross proceeds of sales or gross income derived from business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

5. The gross proceeds of sales or gross income derived from transporting fertilizer by a railroad from a point in this state to another point in this state.

42-5063. Utilities classification; definitions

A. The utilities classification is comprised of the business of:

1. Producing and furnishing or furnishing to consumers natural or artificial gas and water.

2. Providing to retail electric customers ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity.

B. The utilities classification does not include:

1. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity, gas or water to a person who resells the services.

2. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

3. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

4. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services that are related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

5. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

6. The leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in business under this section.

(b) To a person that is engaged in business under this section or section 42-5064 or that is a cable operator.

C. The tax base for the utilities classification is the gross proceeds of sales or gross income derived from the business, but the following shall be deducted from the tax base:

1. Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

2. Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This deduction shall not exceed the value of such property and equipment.

3. Gross proceeds of sales or gross income derived from sales to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

4. The portion of gross proceeds of sales or gross income that is derived from sales to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 of a utility product and that is used directly in environmental technology manufacturing, producing or processing. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of a qualified environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

5. The portion of gross proceeds of sales or gross income attributable to transfers of electricity by any retail electric customer owning a solar photovoltaic energy generating system to an electric distribution system, if the electricity transferred is generated by the customer's system.

6. Gross proceeds of sales or gross income derived from sales of electricity or natural gas to a business that is principally engaged in manufacturing or smelting operations and that uses at least fifty-one percent of the electricity or natural gas in the manufacturing or smelting operations. This paragraph does not apply to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include processing, fabricating, job printing, mining, generating electricity or operating a restaurant.

(c) "Principally engaged" means at least fifty-one percent of the business is a manufacturing or smelting operation.

(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

7. Gross proceeds of sales or gross income derived from sales of electricity or natural gas to a business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

D. For the purposes of this section:

1. "Ancillary services" means those services so designated in federal energy regulatory commission order 888 adopted in 1996 that include the services necessary to support the transmission of electricity from resources to loads while maintaining reliable operation of the transmission system according to good utility practice.

2. "Cable operator" has the same meaning prescribed in section 9-505.

3. "Electric distribution service" means distributing electricity to retail electric customers through the use of electric distribution facilities.

4. "Electric generation service" means providing electricity for sale to retail electric customers but excluding electric distribution or transmission services.

5. "Electric transmission service" means transmitting electricity to retail electric customers or to electric distribution facilities so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission.

6. "Other services" includes metering, meter reading services, billing and collecting services.

7. "Retail electric customer" means a person who purchases electricity for that person's own use, including use in that person's trade or business and not for resale, redistribution or retransmission.

8. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5065. Publication classification; definition

A. The publication classification is comprised of the business of publishing newspapers, magazines or other periodicals and publications if published in this state. The publication classification does not include:

1. Manufacturing or publishing books.

2. Sales of magazines or other periodicals or other publications by this state to encourage tourist travel.

B. The tax base for the publication classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from notices and subscription income, but the following shall be deducted from the tax base:

1. Gross income derived from advertising.

2. Gross proceeds of sales or gross income derived from sales of personal property to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health sciences educational institution as defined in section 42-5001.

C. For purposes of this section "subscription income" includes all circulation revenue, except amounts actually retained by or credited to carriers and other vendors as compensation for sale or delivery of publications and revenue from publications sold, directly or through wholesalers or jobbers, to retailers for resale.

42-5066. Job printing classification

A. The job printing classification is comprised of the business of job printing, engraving, embossing and copying.

B. The tax base for the job printing classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person in this state who has a transaction privilege tax license issued in this state, and who does either of the following:

(a) Resells the job printing, engraving, embossing or copying.

(b) Distributes such printing, engraving, embossing or copying without consideration in connection with the publication of a newspaper or magazine.

2. Sales of job printing, engraving, embossing and copying for use outside this state if the materials are shipped or delivered out of this state regardless of where title to the materials passes or their free on board point.

3. Sales of personal property to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health sciences educational institution as defined in section 42-5001.

4. Sales of postage and freight except that the amount deducted shall not exceed the actual postage and freight expense that is paid to the United States postal service or a commercial delivery service and that is separately itemized by the taxpayer on the customer's invoice and in the taxpayer's records.

42-5069. Commercial lease classification; definitions

A. The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property.

B. A person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes is deemed to be engaged in business and subject to the tax imposed by article 1 of this chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

C. The commercial lease classification does not include:

1. Any business activities that are classified under the transient lodging classification.

2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by those entities.

3. Leasing real property to a lessee who subleases the property if the lessee is engaged in business classified under the commercial lease classification or the transient lodging classification.

4. Leasing real property pursuant to a written lease agreement entered into before December 1, 1967. This exclusion does not apply to the businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease agreement.

5. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:

(a) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.

(b) "Affiliated persons" means members of an individual's family or persons who have ownership or control of a business entity.

(c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(d) "Members of an individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.

(e) "Reciprocal insurers" has the same meaning prescribed in section 20-762.

6. Leasing real property for boarding horses.

7. Leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

8. Leasing or renting real property or the right to use real property for use as a rodeo featuring primarily farm and ranch animals in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

9. Leasing or renting dwelling units, lodging facilities or trailer or mobile home spaces if the units, facilities or spaces are intended to serve as the principal or permanent place of residence for the lessee or renter or if the unit, facility or space is leased or rented to a single tenant thirty or more consecutive days.

10. Leasing or renting real property and improvements for use primarily for religious worship by a nonprofit organization that is exempt from taxation under section 501(c)(3)

of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

11. Leasing or renting real property used for agricultural purposes under either of the following circumstances:

(a) The lease or rental is between family members, trusts, estates, corporations, partnerships, joint venturers or similar entities, or any combination thereof, if the individuals or at least eighty percent of the beneficiaries, shareholders, partners or joint venturers share a family relationship as parents or ancestors of parents, children or descendants of children, siblings, cousins of the first degree, aunts, uncles, nieces or nephews of the first degree, spouses of any of the listed relatives and listed relatives by the half-blood or by adoption.

(b) The lessor leases or rents real property used for agricultural purposes under no more than three leases or rental agreements.

12. Leasing, renting or granting the right to use real property to vendors or exhibitors by a trade or industry association that is a qualifying organization pursuant to section 513(d)(3)(C) of the internal revenue code for a period not to exceed twenty-one days in connection with an event that meets all of the following conditions:

(a) The majority of such vending or exhibition activities relate to the nature of the trade or business sponsoring the event.

(b) The event is held in conjunction with a formal business meeting of the trade or industry association.

(c) The event is organized by the persons engaged in the particular trade or industry.

13. Leasing, renting or granting the right to use real property for a period not to exceed twenty-one days by a coliseum, civic center, civic plaza, convention center, auditorium or arena owned by this state or any of its political subdivisions.

14. Leasing or subleasing real property used by a nursing care institution as defined in section 36-401 that is licensed pursuant to title 36, chapter 4.

15. Leasing or renting an eligible facility as defined in section 28-7701.

16. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income

derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

17. The leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

D. The tax base for the commercial lease classification is the gross proceeds of sales or gross income derived from the business, but reimbursements to the lessor for utility service shall be deducted from the tax base.

E. Notwithstanding section 42-1104, subsection B, paragraph 1, subdivision (b) and paragraph 2, the failure to file tax returns for the commercial lease classification that report gross income derived from any agreement that constitutes, in whole or in part, a grant of a right of profit à prendre for the severance of minerals does not constitute an exception to the general rule for the statute of limitations.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.

2. "Leasing" includes renting.

3. "Real property" includes any improvements, rights or interest in such property.

4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5070. Transient lodging classification; definition

A. The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house,

apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

B. The transient lodging classification does not include:

1. Operating a convalescent home or facility, home for the aged, hospital, jail, military installation or fraternity or sorority house or operating any structure exclusively by an association, institution, governmental agency or corporation for religious, charitable or educational purposes, if no part of the net earnings of the association, corporation or other entity inures to the benefit of any private shareholder or individual.

2. A lease or rental of a mobile home or house trailer at a fixed location or any other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy for thirty or more consecutive days.

3. Leasing or renting four or fewer rooms of an owner-occupied residential home, together with furnishing no more than a breakfast meal, to transient lodgers at no more than a fifty per cent average annual occupancy rate.

C. The tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business, except that the tax base does not include gross proceeds of sales or gross income derived from business activity that is properly included in another business classification under this article and that is taxable to the person engaged in that business classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

D. For the purposes of this section, the tax base for the transient lodging classification does not include gross proceeds of sales or gross income derived from:

1. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article.

2. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under section 42-5062 or 42-5073 due to an exclusion, exemption or deduction.

3. Commissions paid to a person that is engaged in transient lodging business subject to taxation under this section by a person providing services or property to the customers of the person engaging in the transient lodging business.

E. The department shall separately account for revenues collected under the transient lodging classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

F. For the purposes of this section, "transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty consecutive days.

42-5071. Personal property rental classification; definitions

A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. The tax does not apply to:

1. Leasing or renting films, tapes or slides used by theaters or movies, which are engaged in business under the amusement classification, or used by television stations or radio stations.

2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by such entities.

3. Leasing or renting tangible personal property by a parent corporation to a subsidiary corporation or by a subsidiary corporation to another subsidiary of the same parent corporation if taxes were paid under this chapter on the gross proceeds or gross income accruing from the initial sale of the tangible personal property. For the purposes of this paragraph, "subsidiary" means a corporation of which at least eighty percent of the voting shares are owned by the parent corporation.

4. Operating coin-operated washing, drying and dry cleaning machines or coin-operated car washing machines at establishments for the use of such machines.

5. Leasing or renting tangible personal property for incorporation into or comprising any part of a qualified environmental technology facility as described in section 41-1514.02. This paragraph shall apply for ten full consecutive calendar or fiscal years following the initial lease or rental by each qualified environmental technology manufacturer, producer or processor.

6. Leasing or renting aircraft, flight simulators or similar training equipment to students or staff by nonprofit, accredited educational institutions that offer associate or baccalaureate degrees in aviation or aerospace related fields.

7. Leasing or renting photographs, transparencies or other creative works used by this state on internet websites, in magazines or in other publications that encourage tourism.

8. Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

9. The leasing or renting of space to make attachments to utility poles, as follows:

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

B. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Reimbursements by the lessee to the lessor of a motor vehicle for payments by the lessor of the applicable fees and taxes imposed by sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15, article 2 and article IX, section 11, Constitution of Arizona, to the extent such amounts are separately identified as such fees and taxes and are billed to the lessee.

2. Leases or rentals of tangible personal property that, if it had been purchased instead of leased or rented by the lessee, would have been exempt under:

(a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 49 or 53.

(b) Section 42-5061, subsection B, except that a lease or rental of new machinery or equipment is not exempt pursuant to:

(i) Section 42-5061, subsection B, paragraph 13 if the lease is for less than two years.

(ii) Section 42-5061, subsection B, paragraph 21.

(c) Section 42-5061, subsection I, paragraph 1.

(d) Section 42-5061, subsection M.

3. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739 and sales of aviation fuel that are subject to the tax imposed under section 28-8344.

4. Leasing or renting a motor vehicle subject to and on which the fee has been paid under title 28, chapter 16, article 4.

5. Amounts received by a motor vehicle dealer for the first month of a lease payment if the lease and the lease payment for the first month of the lease are transferred to a third-party leasing company.

C. Sales of tangible personal property to be leased or rented to a person engaged in a business classified under the personal property rental classification are deemed to be resale sales.

D. In computing the tax base, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under section 5-839, 28-5810 or 48-4234.

E. Until December 31, 1988, leasing or renting animals for recreational purposes is exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from leasing or renting animals for recreational purposes is subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the monies paid as taxes will be returned to the customer.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.

2. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5072. Mining classification; definition

A. The mining classification is comprised of the business of mining, quarrying or producing for sale, profit or commercial use any nonmetalliferous mineral product that has been mined, quarried or otherwise extracted within the boundaries of this state described in article I, section 1, Constitution of Arizona.

B. The tax base for the mining classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from sales described under section 42-5061, subsection A, paragraph 27 and subsection I, paragraph 2 shall be deducted from the tax base.

C. The tax base includes the value of the entire product mined, quarried or produced for sale, profit or commercial use in this state, regardless of the place of sale of the product or of the fact that deliveries may be made to points without this state. If, however, the

sale price of the product includes freight, the sale price shall be reduced by the actual freight paid by any person from the place of production to the place of delivery.

D. In the case of a person engaged in business classified under the mining classification all or part of whose income is derived from service or manufacturing charges instead of from sales of the products manufactured or handled, the tax base includes the gross income of the person derived from the service or manufacturing charge.

E. If a person engaging in business classified under the mining classification ships or transports all or part of a product out of this state without making sale of the product or ships his product outside of this state in an unfinished condition, the value of the product or article in the condition or form in which it existed when transported out of this state and before it enters interstate commerce is included in the tax base, and the department shall prescribe equitable and uniform rules for ascertaining that value. In determining the tax base, if the product or any part of the product has been processed in this state and the proceeds of such processing have been included in the tax base of the processor under this chapter, the person may deduct from the value of the product when transported out of this state the cost of such processing.

F. A person who conducts a business classified under the mining classification may be deemed also to be engaged in business classified under the retail classification to the extent the person's activities comprise business under the retail classification if the tax is paid at the rate imposed on the retail classification by section 42-5010. If the transaction is not subject to taxation under the retail classification, the transaction shall be included in the tax base under this section, except for the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.

2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this paragraph, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

G. For the purposes of this section, "nonmetalliferous mineral product" means oil, natural gas, limestone, sand, gravel or any other nonmetalliferous mineral product, compound or combination of nonmetalliferous mineral products.

42-5074. Restaurant classification

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), that do not regularly engage or continue in the restaurant business for the purpose of fund-raising.

4. Sales by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of

corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

12. Sales of articles of food and drink at low or reduced prices to eligible elderly, disabled or homeless persons by a restaurant that contracts with the department of economic security and that is approved by the food and nutrition services of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases of the articles of food and drink are made with the benefits issued pursuant to the supplemental nutrition assistance program.

C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

D. The department shall separately account for revenues collected under the restaurant classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

E. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

42-5075. Prime contracting classification; exemptions; definitions

A. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer. Sales for resale to another manufactured building dealer are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter.

B. The tax base for the prime contracting classification is sixty-five percent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must

obtain a letter of qualification from the department of revenue. This paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.

(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.

(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.

(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.

This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it reaches the environment.

7. The gross proceeds of sales or gross income that is derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or that is exempt from use tax under section 42-5159, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or exempt from use tax under section 42-5159, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other similar nonpermanent connections to either real property or real property improvements.

8. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

(b) Section 42-5061, subsection B.

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

(d) Section 42-5159, subsection B.

9. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, cooling and packaging of eggs.

10. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the modification of any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph 16.

12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

13. For taxable periods beginning from and after December 31, 1996 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood destroying organisms.

17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2024. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the Arizona commerce authority before beginning work under the contract.

19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the prime contractor or subcontractor, and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

20. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph:

(a) "Mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste, conditionally exempt small quantity generator waste or household hazardous waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in section 49-701, except that solid waste facility does include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.

(b) "Municipal solid waste landfill" has the same meaning prescribed in section 49-701.

(c) "Recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.

(d) "Renewable energy" has the same meaning prescribed in section 41-1511.

C. Entitlement to the deduction pursuant to subsection B, paragraph 7 of this section is subject to the following provisions:

1. A prime contractor may establish entitlement to the deduction by both:

(a) Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the base.

(b) Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the deductibility of the property under section 42-5061, subsection B, and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the prime contractor has reason to believe that the information contained in the certificate is not accurate or complete.

2. A person who does not comply with paragraph 1 of this subsection may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this

subsection but must instead obtain such additional information as required in order to be entitled to the deduction.

4. If a prime contractor is entitled to a deduction by complying with paragraph 1 of this subsection, the department may require the purchaser who caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the prime contractor to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the prime contractor would have been required to pay under article 1 of this chapter if the prime contractor had not complied with paragraph 1 of this subsection. Payment of the amount under this paragraph exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as a transaction privilege tax to the purchaser and as tax revenues collected from the prime contractor in order to designate the distribution base for purposes of section 42-5029.

D. Subcontractors or others who perform modification activities are not subject to tax if they can demonstrate that the job was within the control of a prime contractor or contractors or a dealership of manufactured buildings and that the prime contractor or dealership is liable for the tax on the gross income, gross proceeds of sales or gross receipts attributable to the job and from which the subcontractors or others were paid.

E. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under article 1 of this chapter. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

F. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall present to the purchaser of such prime contracting or manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.

G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the prime contracting classification from any prime contractor

engaged in the preparation or construction of a multipurpose facility, and related infrastructure, that is owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.

H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.

I. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.

J. Except as provided in subsection O of this section, the gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.

K. The portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

L. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill. Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.

M. The following apply in determining the taxable situs of sales of manufactured buildings:

1. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.

2. For sales in this state where the manufactured building dealer does not contract to deliver the building to a setup site or does not perform the setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.

3. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

N. The gross proceeds of sales or gross income attributable to a written contract for design phase services or professional services, executed before modification begins and with terms, conditions and pricing of all of these services separately stated in the contract from those for construction phase services, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

(a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

(b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum

price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:

(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.

(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.

(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.

(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.

(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:

(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.

(ii) The cost of labor and materials to be furnished by the owner of the real property.

(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.

(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.

(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.

(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.

(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, assayer services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection K of this section.

O. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.

2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

P. Notwithstanding subsection O of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders

when those projects are subject to this section. This subsection does not apply to contracts with:

1. Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.

2. Any special taxing district not specified in paragraph 1 of this subsection if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

Q. Notwithstanding subsection R, paragraph 10 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property, the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title

unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

R. For the purposes of this section:

1. "Alteration" means an activity or action that causes a direct physical change to existing property. For the purposes of this paragraph:

(a) For existing property that is properly classified as class two property under section 42-12002, paragraph 1, subdivision (c) or paragraph 2, subdivision (c) and that is used for residential purposes, class three property under section 42-12003 or class four property under 42-12004, this paragraph does not apply if the contract amount is more than twenty-five percent of the most recent full cash value established under chapter 13, article 2 of this title as of the date of any bid for the work or the date of the contract, whichever value is higher.

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if any of the following is true:

(i) The contract amount is more than seven hundred fifty thousand dollars.

(ii) The scope of work directly relates to more than forty percent of the existing square footage of the existing property.

(iii) The scope of work involves expanding the square footage of more than ten percent of the existing property.

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

(d) If a project for which the owner and the person performing the work reasonably believed, at the inception of the contract, would be treated as an alteration under this paragraph and, on completion of the project, the project exceeded the applicable threshold described in either subdivision (a) or (b) of this paragraph by no more than twenty-five percent of the applicable threshold for any reason, the work performed under the contract qualifies as an alteration.

(e) A change order that directly relates to the scope of work of the original contract shall be treated as part of the original contract, and the contract amount shall include any amount attributable to a change order that directly relates to the scope of work of the original contract.

(f) Alteration does not include maintenance, repair or replacement.

2. "Contracting" means engaging in business as a contractor.

3. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such contractor is acting in fulfillment of a contract.

4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-2142.

5. "Manufactured building dealer" means a dealer who either:

(a) Is licensed pursuant to title 41, chapter 16 and who sells manufactured buildings to the final consumer.

(b) Supervises, performs or coordinates the excavation and completion of site improvements or the setup or moving of a manufactured building including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.

6. "Modification" means construction, grading and leveling ground, wreckage or demolition. Modification does not include:

(a) Any project described in subsection O of this section.

(b) Any wreckage or demolition of existing property, or any other activity that is a necessary component of a project described in subsection O of this section.

(c) Any mobilization or demobilization related to a project described in subsection O of this section, such as the erection or removal of temporary facilities to be used by those persons working on the project.

7. "Modify" means to make a modification or cause a modification to be made.

8. "Owner" means the person that holds title to the real property or improvements to real property that is the subject of the work, as well as an agent of the title holder and any person with the authority to perform or authorize work on the real property or improvements, including a tenant and a property manager. For the purposes of

subsection O of this section, a person who is hired by a general contractor that is hired by an owner, or a subcontractor of a general contractor that is hired by an owner, is considered to be hired by the owner.

9. "Prime contracting" means engaging in business as a prime contractor.

10. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract. Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.

11. "Replacement" means the removal from service of one component or system of existing property or tangible personal property installed in existing property, including machinery or equipment, and the installation of a new component or system or new tangible personal property, including machinery or equipment, that provides the same similar or upgraded design or functionality, regardless of the contract amount and regardless of whether the existing component or system or existing tangible personal property is physically removed from the existing property.

12. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

42-5101. Definitions

In this article, unless the context otherwise requires:

1. "Eligible grocery business" means an establishment that is deemed eligible to participate in the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a) by the United States department of agriculture food and nutrition service or an establishment that proves to the satisfaction of the department of revenue that, based on the nature of the establishment's food sales, could be eligible to participate in the supplemental nutrition assistance program established by the food and nutrition act of 2008.

2. "Facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters and similar conveniences, trays, glasses, dishes or other tableware and

parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

3. "Food" means any food item intended for human consumption that is intended for home consumption as defined by rules adopted by the department pursuant to section 42-5106.

4. "Food for consumption on the premises" includes:

(a) Hot prepared food.

(b) Hot or cold sandwiches.

(c) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and similar conveniences and within parking areas for the convenience of in-car consumption of food.

(d) Food served with trays, glasses, dishes or other tableware.

(e) Beverages sold in cups, glasses, or open containers.

(f) Food sold by caterers.

(g) Food sold within the premises of theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches and any business that charges admission, entrance or cover fees for exhibition, amusement or entertainment.

(h) Any items contained in subdivisions (a) through (g) of this paragraph even though they are sold on a take-out or to go basis, and whether or not the item is packaged, is wrapped or is actually taken from the premises.

5. "Hot prepared food" includes those products, items or ingredients of food that are prepared and intended for sale in a heated condition. Hot prepared food includes a combination of hot and cold food items or ingredients if a single price has been established.

6. "Premises" means the total space and facilities in or on which a retailer conducts business and that are owned or controlled, in whole or in part, by a retailer or are made available for the use of customers of the retailer or group of retailers, including any building or part of a building, parking lot or grounds.

42-5102. Tax exemption for sales of food; nonexempt sales

A. Except for the gross proceeds of sales or gross income from the sale of food for consumption on the premises, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by any of the following:

1. A retailer who conducts an eligible grocery business.

2. A retailer who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged and sold in a similar manner as an eligible grocery business.

3. A retailer who sells food and does not provide or make available any facilities for the consumption of food on the premises.

4. A retailer who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers which are used to record taxable and tax exempt sales or a retailer who conducts a delicatessen business and who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.

5. A retailer who is a street or sidewalk vendor and who uses a pushcart, mobile facility, motor vehicle or other such conveyance.

6. Vending machines and other types of automatic retailers.

B. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a state university or community college or its designee on its campuses to students using a validated meal ticket or to patients purchasing or consuming food at the Arizona health sciences center.

C. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a retailer to:

1. A regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to section 15-802.

2. A child care facility that is licensed under section 36-882 or a child care group home certified under section 36-897.01.

3. A facility which provides on a regular basis care and supervision of persons who, because of age or a mental or physical condition, are incapable of caring for themselves and where they are unaccompanied by their custodians or guardians for periods of less than twenty-four hours a day.

4. An organization which is tax exempt under section 501(c)(3) of the internal revenue code and which provides the articles to persons with a nominal charge or without a monetary charge.

5. A prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff for consumption on the premises.

D. Notwithstanding subsection A of this section, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of low or reduced cost articles of food or drink to eligible elderly, disabled or homeless persons by a business subject to tax under section 42-5074 that contracts with the department of economic security and that is approved by the food and nutrition service of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the supplemental nutrition assistance program.

42-5104. Records of sales

A. Retailers shall maintain accurate, verifiable and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this chapter. A retailer may use any method of recording that properly reflects all purchases and sales of food items exempted from taxes imposed by this chapter, as well as all purchases and sales of items subject to taxes imposed by this chapter, provided such records are maintained in accordance with rules adopted by the department.

B. Any retailer who fails to maintain records as provided in this section shall pay the amount of taxes that would have been imposed on tangible personal property by this chapter if sales of food had not been exempted by article 2 of this chapter and this article.

C. If, upon request by the department, the retailer cannot demonstrate to the department that such records properly reflect all sales of food items exempted from taxes imposed by this chapter, the department may recompute the amount of tax to be paid pursuant to section 42-1108.

42-5106. Rules

A. The department shall adopt rules defining food consistent with section 42-5101 and this section.

B. The department shall include as food:

1. Returnable containers for which a deposit is collected.

2. Ice and dry ice used in packing, shipping or transporting food.

3. Seeds and plants to grow food for personal consumption.

C. The department shall not include food for consumption on the premises, alcoholic beverages, tobacco, medicines or dietary supplements, such as vitamins and protein supplements, as food, unless the item is otherwise deemed to be food under this section.

D. Notwithstanding section 42-5101, any ready-to-drink, nonalcoholic beverage that is contained in a closed or sealed bottle, can or carton, that is intended for human consumption and that is intended for home consumption is deemed to be food.

E. The department shall adopt rules that, other than for those items specifically included or excluded by subsections B, C and D of this section, define food to be those items that are intended for human consumption and that are intended for home consumption. In adopting these rules, the department shall give strong consideration to those specific items that are then eligible for purchase with supplemental nutrition assistance program benefits so as to effectuate the intent of the legislature as specified in this article.

G-6

ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0806)
Title 13, Chapter 12, Article 1, Private Investigator and Security Guard Hearing Board

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

MEETING DATE: September 7, 2016 **AGENDA ITEM: G-6**

TO: Members of the Governor's Regulatory Review Council

FROM: Matthew Rippentrop, Legal Intern

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0806)**
Title 13, Chapter 12, Article 1, Private Investigator and Security Guard Hearing Board

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

Authorized under A.R.S. § 41-1711, the Department of Public Safety (Department) is charged with preventing crime and protecting the public. The Private Investigator and Security Guard Hearing Board (Board) is established by A.R.S. § 32-2404 within the Department. The Board conducts disciplinary hearings concerning private investigators and security guards and makes recommendations regarding disciplinary actions to the Director.

A.A.C. 13, Chapter 12, Article 1 titled "Private Investigator and Security Guard Hearing Board" contains eight rules relating to Board hearing procedures and powers.

Year Each Rule was Last Amended or Newly Made

All the rules were adopted on July 11, 2006.

Proposed Action

In the previous report approved by the Council in 2011, the Department planned amendments to Sections 103 through 106 and Section 108 upon expiration of the Governor's moratorium. With the moratorium still ongoing, the Board has now decided it will not pursue the proposed amendments from the previous report. The current Board believes maintaining the timeframes and duties of an applicant seeking a good-cause exemption as they are currently written is appropriate. The Board indicates that to relieve regulatory burden, it often acts faster than the submission timeframes. However, the Board intends to keep the timeframes in effect should it require more time to effectively manage its cases in the future.

The Board intends to amend Section 102 in response to changes to A.R.S. §§ 32-2412 and 32-2609 which now allow for good-cause exception decisions on denials for misdemeanor cases. Previously such decision had been only available for felony cases. The Department anticipates submitting a rulemaking before July 1, 2018.

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 indicates it is in compliance with A.R.S. § 41-1091.

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

   Yes. The Department cites general authority under A.R.S. § 41-1713(A)(4), which provides the director shall "[m]ake rules necessary for the operation of the department." The Board cites specific authority under A.R.S. § 32-2405(A)(4), which provides the Board shall "[a]dopt rules to establish good cause exceptions" for licenses and registrations.

   Supporting statutes include A.R.S. §§ 32-2404, 32-2406, 32-2412, 32-2422, 32-2441, 32-2459, 32-2609, 32-2612, 32-2622, 32-2640, 32-2641, and 41-1758.03.

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 it has not received any written criticisms of the rules.

4. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Department indicates the rules are enforced.

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

   Yes. With the exception of Section 102(2), the Department indicates the rules are consistent with other rules and statutes. A recent change to the language of A.R.S. §§ 32-2412 and 32-2609 now allows for good-cause exception decisions on denials for misdemeanor cases, as well as felony cases. Currently, Section 102(2) only allows good-cause exception decisions for felony cases.

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

   Yes. The Department indicates the rules are effective in achieving their objectives.

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

Yes. The Department indicates the rules are clear, concise, and understandable.

8. **Stringency of the Rules:**

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

The Department indicates there are no corresponding 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:**

The rules were adopted before July 29, 2010.

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

Not applicable.

   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?**

The Department indicates it did not complete the course of action from the previous five-year-review report. The current Board has determined the best practice is to keep the submission timeframes as written.

Conclusion

No action is proposed. Though the Department often acts quicker than the submission time frames as provided in the rules, it has determined to keep the current timeframes in place should it require more time to effectively manage future cases. 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: September 7, 2016 **AGENDA ITEM: G-6**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : August 19, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0806)**
Title 13, Chapter 12, Article 1, Private Investigator and Security Guard Hearing Board

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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 contained in the five-year-review report.

The rules establish the procedures for applying for and reviewing a good-cause exception. The Board is required to hold hearings regarding a good-cause exception, which, if granted, will enable an otherwise disqualified individual to be licensed as a private investigator or security guard. The Board conducts disciplinary hearings and makes recommendations regarding discipline to the Director. The Board also conducts hearings regarding denial of a license and recommends to the Director that the denial be upheld or overturned. If certain specific criteria are met, an individual who is denied a license may request a hearing regarding a good-cause exception. The Board makes the decision to grant or deny a good-cause exception. In FY 2015, the Board held 69 hearings regarding license denial. It recommended that 27 of the denials be upheld and granted 29 felony and 13 misdemeanor good-cause exceptions. It held 34 disciplinary hearings that resulted in 23 license revocations, nine license suspensions, and two periods of probation.

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. The cost to comply with these rules is minimal and necessary to protect public health and safety. The only economic burden results from an applicant's collection of

information for the good-cause exception. However, this is voluntary and done with the hope of gaining the economic benefit of being licensed and employed as a private investigator or security guard.

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

ARIZONA DEPARTMENT OF PUBLIC SAFETY

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"Courteous Vigilance"

DOUGLAS A. DUCEY Governor
FRANK L. MILSTEAD Director

June 06, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N 15th Ave Ste 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to Arizona Revised Statute §41-1056, the Department of Public Safety submits for your approval a five-year review report of its rules listed in Title 13 Public Safety, Chapter 12 Private Investigator and Security Guard Hearing Board.

The Department reviewed Chapter 12, Article 1 totaling eight rules and does not intend for any of the rules to expire under A.R.S. § 41-1056(J).

The Department does not have any active Substantive Policy Statements for this chapter and therefore is in compliance with A.R.S. §41-1091.

If you have any questions regarding this report, please contact Mr. Paul Swietek, Police Planner at (602) 223-2049.

Thank you for your consideration.

Sincerely,

Frank L. Milstead, Colonel
Director

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Enclosure

ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 12 – PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

ARTICLE
1 – PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

May 18, 2016

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INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The Private Investigator and Security Guard Hearing Board is established by A.R.S. § 32-2404 within the Department of Public Safety. The Board conducts disciplinary hearings and makes recommendations regarding discipline to the Director. The Board also conducts hearings regarding denial of a license and recommends to the Director that the denial be upheld or overturned. If certain specific criteria are met, an individual who is denied a license may request a hearing regarding a good-cause exception. The Board makes the decision to grant or deny a good-cause exception.

Included in this report is a review of the following eight rules:

- R13-12-101 Definitions
- R13-12-102 Good-cause Exception Prerequisites
- R13-12-103 Application for a Good-cause Exception
- R13-12-104 Hearing on Good-cause Exception
- R13-12-105 Vacating, Rescheduling, or Continuing a Hearing
- R13-12-106 Telephonic Testimony
- R13-12-107 Failure to Appear
- R13-12-108 Notice of Decision

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under A.A.C. R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Hearing Board's specific authority is authorized under:

- A.R.S. § 32-2405(A)(4) which authorizes the Board to adopt and enforce rules regarding the establishment of good-cause exceptions for the issuance of licenses or registrations of security guards and private investigators.

Supporting statutes:

- A.R.S. § 32-2404 Hearing Board Qualifications and Appointments
- A.R.S. § 32-2406 Hearings and Special Meetings
- A.R.S. § 32-2412 Good-cause Exceptions for Misdemeanor and Felony Offenses
- A.R.S. § 32-2422 Qualification of Applicant for Agency License
- A.R.S. § 32-2441 Qualification of Applicant for Associate or Employee Registration
- A.R.S. § 32-2459 Grounds for Refusal to Issue License
- A.R.S. § 32-2609 Good-cause Exceptions
- A.R.S. § 32-2612 Qualification of Applicant for Agency License
- A.R.S. § 32-2622 Qualification of Applicant for License
- A.R.S. § 32-2640 Grounds for Refusal to Issue or Renew an Agency License
- A.R.S. § 32-2641 Grounds for Refusal to Issue Individual License
- A.R.S. § 41-1758.03 Fingerprint Clearance Card Issuance

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are effective in accomplishing their objectives.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

The Department determined that the rules are consistent with statutes and other rules with the exception of R13-12-102(2).

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy.

In FY2012, the Board held 41 hearings regarding license denial. It recommended that 24 of the denials be upheld and granted 17 felony good-cause exceptions. It held six disciplinary hearings that resulted in four license revocations, one license suspension, and one period of probation.

In FY2013, the Board held 55 hearings regarding license denial. It recommended that 21 of the denials be upheld and one be overturned, and granted 20 felony and 13 misdemeanor good-cause exceptions. It held 30 disciplinary hearings that resulted in 12 license revocations, 16 license suspensions, and two periods of probation.

In FY2014, the Board held 75 hearings regarding license denial. It recommended that 29 of the denials be upheld and one overturned, and granted 15 felony and 30 misdemeanor good-cause exceptions. It held 28 disciplinary hearings that resulted in 21 license revocations, five license suspensions, and two periods of probation.

In FY2015, the Board held 69 hearings regarding license denial. It recommended that 27 of the denials be upheld and granted 29 felony and 13 misdemeanor good-cause exceptions. It held 34 disciplinary hearings that resulted in 23 license revocations, nine license suspensions, and two periods of probation.

For partial FY2016, the Board has held 48 hearings regarding license denial. It recommended that 16 of the denials be upheld and granted 15 felony and 17 misdemeanor good-cause exceptions. It has held 37 disciplinary hearings that resulted in 15 license revocations, 13 license suspensions, and nine periods of probation.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The previous five-year report was approved by the Council in 2011. In the report, the Department indicated it intended to amend rules R13-12-103, R13-12-104, R13-12-105, R13-12-106 and R13-12-108 upon expiration of the Governor's rulemaking moratorium. The current Board does not intend to amend R13-12-103 through R13-12-106 and R13-12-108. The current Board determined that maintaining the current timeframes in those rules is the more appropriate decision to provide guidance to the public and to allow the Board the ability to effectively manage its cases. The Board, in an effort to relieve regulatory burden on the public when possible, often does not enforce the public's

submission timeframes rigidly. However, the Board intends to enforce the timeframes should the Board require the time to effectively manage its current or future cases. Also refer to Item 5, Agency Enforcement Policy in the individual rule analysis.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry. The primary economic burden results from the statutes creating the Board and requiring the Board to hold hearings regarding an application for a good-cause exception. The only economic burden imposed by the rules results from the information an applicant is required to submit for consideration for a good-cause exception. However, as indicated in the report, the Board does not enforce this requirement. Additionally, an applicant chooses to submit information voluntarily in hope of reaping the economic benefit of being licensed and employed as a private investigator or security guard.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend R13-12-102 to comply with the statutory requirements outlined in the individual rule analysis. The Department intends on seeking a rulemaking waiver and beginning the rulemaking process approximately 90 days following the Council's approval of this report. The rulemaking will be submitted to the Governor's

Regulatory Review Council within one and a half years after the approval of a waiver, or if the waiver is denied, when the current rulemaking moratorium ends. As the Executive Order 2016-03 is scheduled to expire on December 31, 2016, the Department anticipates submitting a rulemaking before July 1, 2018.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 1 – PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

R13-12-101. Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-102. Good-cause Exception Prerequisites

2. Objective

The objective of this rule is to specify the minimum requirements an individual must meet before being eligible to apply for a good-cause exception.

4. Consistency of the Rule with State and Federal Statutes and Other Rules

During the Fiftieth Legislature-Second Regular Session in 2012, then Governor Brewer signed House Bill 2430 into law. This bill added language to A.R.S. §§ 32-2412 and 32-2609 to allow the Board to make good-cause exception decisions on denials for misdemeanor cases, which formerly had been only available for felony cases.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-103. Application for a Good-cause Exception

2. Objective

The objective of this rule is to specify the information an individual must submit to the Board if the individual wishes to apply for a good-cause exception.

5. Agency Enforcement Policy

The Board does not enforce the timeframe and form requirement in subsection (A) of this rule in the interest of facilitating the application process and imposing the least burden on the public when possible. The Board includes information on the criteria of good-cause exception in the letter of denial and instructs the individual of the opportunity to request a good-cause exception hearing. An applicant need only inform the Board that a good-cause exception hearing is wanted.

R13-12-104. Hearing on Good-cause Exception

2. Objective

The objective of this rule is to specify the procedures the Board uses to conduct a hearing on a good-cause exception including the factors the Board considers when making its decision.

5. Agency Enforcement Policy

The Board does not enforce the timeframe in subsection (D) of this rule in the interest of facilitating the hearing process. The Board allows an applicant to bring written materials to the hearing without having submitted them before the hearing in most cases. The Board recognizes that A.R.S. §§ 32-2412(C) and 32-2609(C) require the applicant to submit to the Board any evidence the applicant will be presenting at the hearing at least

five days before the hearing; however, the Board feels that timeframe can hamper the procedure and does not want the hearing to be adversarial.

R13-12-105. Vacating, Rescheduling, or Continuing a Hearing

2. Objective

The objective of this rule is to inform an applicant of the Board's standards for vacating, rescheduling, or continuing a hearing.

5. Agency Enforcement Policy

The Board does not enforce the timeframe in subsection (B) of this rule in the interest of facilitating the hearing process. The Board allows an applicant to make an oral request that a hearing be rescheduled as late as the day of the scheduled hearing when possible.

R13-12-106. Telephonic Testimony

2. Objective

The objective of this rule is to inform an applicant of the procedure for requesting that the applicant or a witness for the applicant appear at a hearing by telephone.

5. Agency Enforcement Policy

The Board does not enforce the timeframe and cost repayment in this rule in the interest of facilitating the hearing process. The Board allows an oral request to appear by telephone to be made the day of the scheduled hearing when possible. The Board also does not charge the applicant for the costs resulting from a telephonic appearance when possible.

R13-12-107. Failure to Appear

2. Objective

The objective of this rules is to inform an applicant of the actions the Board may take if the applicant or the applicant's representative fails to appear at a scheduled hearing.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-108. Notice of Decision

2. Objective

The objective of this rule is to inform an applicant of the Board's procedure for issuing a decision following a hearing.

5. Agency Enforcement Policy

The Board enforces this rule in whole. While the rule allows for a seven business day timeframe for the Board to provide written notice to the applicant, the Board usually or routinely makes the decision at the conclusion of the hearing allowing the applicant to leave the hearing knowing whether the good-cause exception is granted or denied well in advance of the seven day timeframe.

TITLE 13. PUBLIC SAFETY

CHAPTER 12. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

(Authority: A.R.S. § 32-2405(A)(4) et seq.)

ARTICLE 1. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

Article 1, consisting of Sections R13-12-101 through R13-12-108, made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

Section
R13-12-101. Definitions
R13-12-102. Good-cause Exception Prerequisites
R13-12-103. Application for a Good-cause Exception
R13-12-104. Hearing on Good-cause Exception
R13-12-105. Vacating, Rescheduling, or Continuing a Hearing
R13-12-106. Telephonic Testimony
R13-12-107. Failure to Appear
R13-12-108. Notice of Decision

ARTICLE 1. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

R13-12-101. Definitions

The following definitions apply to this Article:

"Applicant" means an individual who meets the prerequisites in R13-12-102.

"Board" means the Private Investigator and Security Guard Hearing Board.

"Department" means the Arizona Department of Public Safety.

"Department's notice" means a notice of denial issued by the Department under A.R.S. § 32-2640, 32-2641, or 32-2459.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-102. Good-cause Exception Prerequisites

The Board shall consider an individual for a good-cause exception only if:

1. The individual:
   a. Is denied a security guard agency license under A.R.S. § 32-2640 for failure to qualify under A.R.S. § 32-2612(A)(3);
   b. Is denied an associate, security guard, or armed security guard registration certificate under A.R.S. § 32-2641 for failure to qualify under A.R.S. § 32-2622(A)(3);
   c. Is denied a private investigator agency license under A.R.S. § 32-2459 for failure to qualify under A.R.S. § 32-2422(A)(3); or
   d. Is denied a private investigator associate or employee registration certificate under A.R.S. § 32-2459 for failure to qualify under A.R.S. § 32-2441(A)(3);
2. The individual completed all terms of sentencing imposed as a result of all felony convictions; and
3. The individual completed all terms of sentencing imposed as a result of all felony convictions at least 10 years before the date on the Department's notice.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-103. Application for a Good-cause Exception

A. To apply for a good-cause exception, an applicant shall submit eight copies of the following materials to the Board within 60 days from the date on the Department's notice:

1. A good-cause exception application form, which is available from the Department, that includes the following information about the applicant:
   a. Full legal name;
   b. Any other names ever used;
   c. Date of birth;
   d. Mailing address;
   e. Home and daytime telephone numbers;
   f. List of all of applicant's felony arrests not listed on the Department's notice;
   g. Detailed description of all of applicant's felony arrests including:
      i. Circumstances leading to the arrest;
      ii. Who else was involved in the event leading to the arrest;
      iii. Where and when the event occurred;
      iv. Mitigating circumstances, if any;
      v. Disposition of the charge;
      vi. Terms of sentencing, if any; and
      vii. Whether the sentencing terms have been completed satisfactorily; and
   h. Applicant's notarized signature certifying that the information provided is true and correct;
2. Two letters of reference, on a form prescribed by the Board, that attest to the applicant's rehabilitation and meet the following requirements:
   a. Both letters of reference are from individuals who have known the applicant at least one year; and
   b. At least one letter of reference is from the applicant's current or former employer or an individual who has known the applicant at least three years;
3. If the Department's notice indicates that the Department was unable to determine the disposition of a felony charge, a copy of documents from the appropriate court showing the disposition of the felony charge or showing that records regarding the felony charge against the applicant either do not exist or have been purged; and
4. For every felony conviction, regardless of whether the conviction is listed on the Department's notice, a copy of documents from the appropriate court showing that the applicant met all judicially imposed sentencing terms or that records regarding the applicant either do not exist or have been purged.

B. An applicant may submit other documents that the applicant wants the Board to consider in determining whether to grant a good-cause exception.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-104. Hearing on Good-cause Exception

A. The Board shall schedule a hearing regarding a good-cause exception for an applicant to occur within 60 days after receiving the materials described in R13-12-103.

B. The Board shall provide the applicant with at least 30 days notice of the date, time, and location of the hearing on the applicant's application for a good-cause exception.

C. The applicant may be represented at the hearing.

D. If the applicant plans to present written evidence at the hearing that was not included with the application, the applicant shall submit the written evidence to the Board through the Department at least five days before the hearing.

E. The Board shall conduct the hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.

F. At the hearing, the applicant shall show to the Board's satisfaction that the applicant:
1. Has never been convicted of an offense listed in A.R.S. § 41-1758.03(B), and
2. Is not awaiting trial on an offense listed in A.R.S. § 41-1758.03(B).

G. At the hearing, the applicant has the burden of persuading the Board that the applicant should be granted a good-cause exception.

H. In deciding whether to grant a good-cause exception, the Board shall consider:

1. The extent of the applicant's criminal record;
2. The length of time that has elapsed since the most recent offense was committed;
3. The nature of the offense;
4. Evidence supporting any applicable mitigating circumstances;
5. Evidence supporting the degree to which the applicant participated in the offense; and
6. Evidence supporting the extent of the applicant's rehabilitation, including:
   a. Completion of probation, parole, or community supervision;
   b. Whether the applicant paid restitution or other compensation for the offense;
   c. Evidence of positive action to change criminal behavior such as completing a drug-treatment program or counseling; and
   d. Personal references attesting to the applicant's rehabilitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-105. Vacating, Rescheduling, or Continuing a Hearing

A. Vacating a hearing. If an applicant withdraws the applicant's application for a good-cause exception, the Board shall vacate the hearing regarding the application.

B. Rescheduling a hearing. The Board shall reschedule a hearing if the applicant submits a written request to the Board at least 48 hours before the scheduled hearing that demonstrates:

1. Attending the scheduled hearing is impossible using reasonable diligence or will cause undue hardship; and
2. Rescheduling the hearing will avoid prejudice.

C. Continuing a hearing. The Board shall continue a hearing if the continuance will serve administrative convenience, expedience, or economy and avoid prejudice.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-106. Telephonic Testimony

The Board shall allow an applicant or a witness for the applicant to provide telephonic testimony at the hearing on the applicant's application for a good-cause exception if:

1. The applicant submits a written request to the Board at least 48 hours before the scheduled hearing that demonstrates:
   a. Personal appearance at the hearing by the applicant or applicant's witness will cause undue hardship, and
   b. Telephonic presence will not cause prejudice, and
2. The applicant pays all costs resulting from the telephonic appearance.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-107. Failure to Appear

If an applicant or the applicant's representative fails to appear at the scheduled hearing, the Board shall:

1. Conduct the hearing and decide whether to grant or deny the good-cause exception based on the evidence previously submitted, or
2. Reschedule the hearing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

R13-12-108. Notice of Decision

A. Within seven business days after concluding the hearing regarding a good-cause exception for an applicant, the Board shall provide written notice to the applicant that the good-cause exception has been granted or denied.

B. The Board shall provide to the Department a copy of the written notice granting or denying a good-cause exception so the Department can take any needed action regarding the applicant's application for licensure.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

32-2404. Private investigator and security guard hearing board; qualifications; appointments; terms; compensation; immunity

A. The private investigator and security guard hearing board is established consisting of seven members and an alternate member who are appointed by the director.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Two members shall be qualifying parties who are licensed as provided in this chapter. Two members shall be qualifying parties who are licensed as provided in chapter 26 of this title. Two members shall be certified peace officers with a rank of at least lieutenant who are not employees of the department. One member shall be a public member who shall not have a financial interest in a private investigation or security guard agency and shall not have an immediate family member or a household member who is licensed or registered under this chapter or chapter 26 of this title or who is a certified peace officer. The alternate member shall be a public member who does not have a financial interest in a private investigation or security guard agency and does not have an immediate family member or a household member who is licensed or registered under this chapter or chapter 26 of this title or who is a certified peace officer.

C. Each member of the board shall serve for a staggered term of five years beginning and ending on the third Monday in January. The alternate member shall serve a five year term beginning and ending on the third Monday in January. A member, including the alternate member, shall not serve more than one term, except that a member appointed to fill a vacancy may be reappointed for one full term. If a qualified replacement has not been found by the end of the member's term, the director may extend the member's term for no more than six months or until a replacement is found, whichever occurs first.

D. The director shall fill a vacancy on the board occurring other than by the expiration of term by appointment of a member for the unexpired term as provided in subsection C of this section. The director, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Members of the board, including the alternate member, are eligible to receive compensation pursuant to section 38-611 for each day actually and necessarily spent in the performance of their duties.

F. Members of the board, including the alternate member, are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2405. Power and duties of hearing board

A. The board shall:

1. Submit recommendations to the director on disciplinary actions or the denial of licenses or registrations.

2. Annually elect from its membership a chairman and a secretary, who serve at the pleasure of the board.

3. Determine good cause exceptions pursuant to sections 32-2412 and 32-2609.
4. Adopt rules to establish good cause exceptions for the issuance of licenses or registrations pursuant to this chapter and chapter 26 of this title.
5. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to sections 32-2459, 32-2640 and 32-2641.
B. The board may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to an investigation or hearing.

32-2406. Hearings and special meetings
A. The board shall hold hearings at a time and place determined by the director. The board may hold special meetings the chairman determines necessary to carry out the functions of the board.
B. A majority of board members, regardless of board vacancies, constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2412. Good cause exceptions for misdemeanor and felony offenses
A. If a person shows at a hearing to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B, the board may grant a good cause exception for the following:
1. A misdemeanor offense if the person completed all terms of sentencing.
2. A felony offense if ten of more years have passed since the person completed all terms of sentencing.
B. Before granting a good cause exception at a hearing the board shall consider all of the following in accordance with board rule:
1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Evidence supporting any applicable mitigating circumstances.
5. Evidence supporting the degree to which the person participated in the offense.
6. Evidence supporting the extent of the person's rehabilitation, including:
(a) Completion of probation, parole or community supervision.
(b) Whether the person paid restitution or other compensation for the offense.
(c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
(d) Personal references attesting to the person's rehabilitation.
C. If seeking a good cause exception, at least five days before the hearing the applicant shall submit to the department any evidence the applicant will be presenting at the hearing.

32-2422. Qualification of applicant for agency license; substantiation of work experience

A. An applicant as a qualifying party for an agency license under this chapter shall:

1. Be at least twenty-one years of age.

2. Be a citizen or legal resident of the United States who is authorized to seek employment in the United States.

3. Not have been convicted of any felony or currently be under indictment for a felony.

4. Within the five years immediately preceding the application for an agency license, not have been convicted of any misdemeanor act involving:

(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.

(b) Misconduct involving a deadly weapon as provided in section 13-3102.

(c) Dishonesty or fraud.

(d) Arson.

(e) Theft.

(f) Domestic violence.

(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.

(h) Sexual misconduct.

5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.

6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.

7. Not be either of the following:

(a) Adjudicated mentally incompetent.

(b) Found to constitute a danger to self or others pursuant to section 36-540.

8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.

9. Not have been convicted of acting or attempting to act as a private investigation agency or a private investigator without a license if a license was required.

10. Have had a minimum of three years of full-time investigative experience or the equivalent of three years of full-time investigative experience that consists of actual work performed as an investigator for a private concern, for the federal government or for a state, county or municipal government.

11. Not be a registered sex offender.

B. If the applicant for an agency license is a firm, partnership, association or corporation, the qualifications required by subsection A of this section are required of the individual in active management who shall be the qualifying party of the firm, partnership, association or corporation.

C. Applicants for an agency license shall substantiate investigative work experience claimed as years of qualifying experience and provide the exact

details as to the character and nature of the experience on a form prescribed by the department and certified by the employers. On written request, an employer shall submit to the employee a written certification of prior work experience within thirty days. The written certification is subject to independent verification by the director. If an employer goes out of business, the employer shall provide all employees with a complete and accurate record of their work history. If applicants are unable to supply written certification from an employer in whole or in part, applicants may offer written certification from persons other than an employer covering the same subject matter for consideration by the department. The burden of proving the minimum years of experience is on the applicant.
D. The department may deny an agency license if the department determines that the applicant does not meet the requirements of this section.

32-2441. Qualification of applicant for associate or employee registration
An applicant for an associate or employee registration certificate shall:
1. Be at least eighteen years of age.
2. Be a citizen or legal resident of the United States who is authorized to seek employment in the United States.
3. Not have been convicted of any felony or currently be under indictment for a felony.
4. Within the five years immediately preceding the application for an associate or employee registration certificate, not have been convicted of any misdemeanor act involving:
(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.
(b) Misconduct involving a deadly weapon as provided in section 13-3102.
(c) Dishonesty or fraud.
(d) Arson.
(e) Theft.
(f) Domestic violence.
(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.
(h) Sexual misconduct.
5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.
6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.
7. Not be either of the following:
(a) Adjudicated mentally incompetent.
(b) Found to constitute a danger to self or others pursuant to section 36-540.
8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.

9. Not have been convicted of acting or attempting to act as a private investigator without a license if a license was required.
10. Not be a registered sex offender.

32-2459. Grounds for refusal to issue agency license; associate and employee registration and identification; judicial review; good cause exceptions

A. Except as provided in subsection F of this section, the department may deny an agency license or the renewal of an agency license if the applicant:
1. Committed any act that, if committed by a licensee, would be grounds for the probation of a licensee or the suspension or revocation of a license under this chapter.
2. Does not meet the requirements prescribed in section 32-2422.
3. While not licensed under this chapter, committed, or aided and abetted the commission of, any act for which a license is required by this chapter or has acted or attempted to act as a private investigator service or private investigator.
4. Knowingly made a false statement in the application.
5. Has been denied an agency license under this chapter.
6. Has been an associate of an agency that has had a license revoked.
7. Failed to provide adequate verification of required investigative experience.
B. The department may deny the issuance of an identification card to an applicant for an associate or employee registration if the applicant:
1. Fails to meet the qualifications under section 32-2441.
2. Has committed any act that would be grounds for suspension or revocation of registration pursuant to this chapter.
3. Has knowingly made any false statement on the application.
C. The denial of the issuance of an identification card or license under this article shall be in writing and shall describe the basis for the denial. A hearing to contest a denial shall be held in accordance with title 41, chapter 6, article 10.
D. Except as provided in section 41-1092.08, subsection H, final decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.
E. An applicant may petition a denial to the board for a good cause exception.
F. If the board granted a licensee or a registrant a good cause exception pursuant to section 32-2412, the department may not deny the licensee's or the registrant's renewal application based on factors already reviewed by the board when granting the good cause exception.

32-2609. Good cause exceptions for misdemeanor and felony offenses

A. If a person shows at a hearing to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B, the board may grant a good cause exception for the following:
1. A misdemeanor offense if the person completed all terms of sentencing.
2. A felony offense if ten of more years have passed since the person completed all terms of sentencing.

B. Before granting a good cause exception at a hearing the board shall consider all of the following in accordance with board rule:
1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Evidence supporting any applicable mitigating circumstances.
5. Evidence supporting the degree to which the person participated in the offense.
6. Evidence supporting the extent of the person's rehabilitation, including:
(a) Completion of probation, parole or community supervision.
(b) Whether the person paid restitution or other compensation for the offense.
(c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
(d) Personal references attesting to the person's rehabilitation.
C. If seeking a good cause exception, at least five days before the hearing the applicant shall submit to the department any evidence the applicant will be presenting at the hearing.

32-2612. Qualifications of applicant for agency license; substantiation of work experience
A. Each applicant, if an individual, or each associate, director or manager, if the applicant is other than an individual, for an agency license to be issued pursuant to this chapter shall:
1. Be at least twenty-one years of age.
2. Be a citizen or a legal resident of the United States who is authorized to seek employment in the United States.
3. Not have been convicted of any felony or currently be under indictment for a felony.
4. Within the five years immediately preceding the application for an agency license, not have been convicted of any misdemeanor act involving:
(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.
(b) Misconduct involving a deadly weapon as provided in section 13-3102.
(c) Dishonesty or fraud.
(d) Arson.
(e) Theft.
(f) Domestic violence.
(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.
(h) Sexual misconduct.
5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.

6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.
7. Not be any of the following:
(a) Adjudicated mentally incompetent.
(b) Found to constitute a danger to self or others or to be in persistent or acute disability or grave disability pursuant to section 36-540.
(c) Found incompetent pursuant to rule 11, Arizona rules of criminal procedure.
(d) Found guilty except insane.
8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.
9. Not have been convicted of acting or attempting to act as a security guard or a security guard agency without a license if a license was required.
10. Not be a registered sex offender.
B. The qualifying party for an agency license and the resident manager, if a resident manager is required pursuant to section 32-2616, shall have at least three years of full-time experience as a manager, supervisor or administrator of a security guard agency or three years of full-time supervisory experience with any federal, United States military, state, county or municipal law enforcement agency. The qualifying party for an agency license and the resident manager, if a resident manager is required pursuant to section 32-2616, must substantiate managerial work experience claimed as years of qualifying experience and provide the exact details as to the character and nature of the experience on a form prescribed by the department and certified by the employer. On written request, an employer shall submit to the employee a written certification of prior work experience within thirty calendar days. The written certification is subject to independent verification by the department. If an employer goes out of business, the employer shall provide registered employees with a complete and accurate record of their work history. If an applicant is unable to supply written certification from an employer in whole or in part, the applicant may offer written certification from persons other than an employer covering the same subject matter for consideration by the department. The burden of proving the minimum years of experience is on the applicant.
C. The department may deny an agency license if the department determines that the applicant is unfit based on a conviction, citation or encounter with law enforcement for a statutory violation.

32-2622. Qualifications of applicant for associate, security guard or armed security guard registration certificate
A. An applicant for an associate or a security guard registration certificate issued pursuant to this article shall:
1. Be at least eighteen years of age.
2. Be a citizen or legal resident of the United States who is authorized to seek employment in the United States.

3. Not have been convicted of any felony or currently be under indictment for a felony.
4. Within the five years immediately preceding the application for an associate, security guard or armed security guard registration certificate, not have been convicted of any misdemeanor act involving:
(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.
(b) Misconduct involving a deadly weapon as provided in section 13-3102.
(c) Dishonesty or fraud.
(d) Arson.
(e) Theft.
(f) Domestic violence.
(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.
(h) Sexual misconduct.
5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.
6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.
7. Not be either of the following:
(a) Adjudicated mentally incompetent.
(b) Found to constitute a danger to self or others pursuant to section 36-540.
8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.
9. Not have been convicted of acting or attempting to act as an associate security guard or armed security guard without a license if a license was required.
10. Not be a registered sex offender.
B. An applicant for an armed security guard registration certificate issued pursuant to this chapter shall:
1. Meet the requirements of subsection A of this section.
2. Successfully complete all background screening and training requirements.
3. Not be a prohibited possessor as defined in section 13-3101 or as described in 18 United States Code section 922.
4. Not have been discharged from the armed services of the United States under other than honorable conditions.
5. Not have been convicted of any crime involving domestic violence as defined in section 13-3601.

32-2640. Grounds for refusal to issue or renew an agency license; judicial review; good cause exceptions

A. Except as provided in subsection E of this section, the department may deny the issuance or renewal of an agency license if the individual applicant or, if the applicant is other than an individual, any qualifying party:
1. Does not meet the requirements prescribed in section 32-2612.
2. Has committed any act that, if committed by a licensee, would be grounds for the suspension or revocation of a license pursuant to this chapter.
3. Has been refused a license under this chapter, or had such a license revoked or has been an associate of any applicant or licensee who has been refused a license under this chapter or who has had a license revoked.
4. While not licensed under this chapter, has committed or aided and abetted the commission of any act for which a registration certificate is required by this chapter or has acted, or attempted to act, as a private security guard service or a security guard.
5. Has knowingly made any false statement in the application.
6. Failed to provide adequate verification of required experience.
B. The denial of the issuance of an agency license or identification card under this chapter shall be in writing and shall describe the basis for the denial. The denial notice shall inform the applicant that if the applicant desires a hearing by the board to contest the denial, the applicant shall submit the request in writing to the department within thirty calendar days after service of the denial. Service is complete on the mailing of the denial to the address listed on the application.
C. Except as provided in section 41-1092.08, subsection H, final decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.
D. If an applicant is denied an agency license, the applicant may petition the board for a good cause exception.
E. If the board granted a licensee a good cause exception pursuant to section 32-2609, the department may not deny the licensee's renewal application based on factors already reviewed by the board when granting the good cause exception.

32-2641. Grounds for refusal to issue a security guard identification card or registration certificate; judicial review; good cause exceptions
A. Except as provided in subsection F of this section, the department may deny the issuance of an identification card to an applicant for a security guard registration certificate or an armed security guard registration certificate if the applicant:
1. Does not meet the requirements prescribed in section 32-2622 for the appropriate type of certificate.
2. Has committed any act which would be grounds for the suspension or revocation of a security guard registration pursuant to this chapter.
3. Has knowingly made any statement which is false in the application.
B. If the director determines that an applicant's criminal history contains open arrest information, the director shall:
1. Issue a notice to the applicant allowing forty-five days for the applicant to provide documentation concerning the disposition of the arrest or arrests.

2. Send to the applicant at the applicant's last known residential address sufficient information to assist the applicant in complying with the director's request under paragraph 1 of this subsection.
C. The denial of the issuance of a registration certificate under this article shall be in writing and shall describe the basis for the denial. The denial notice shall inform the applicant that if the applicant desires a hearing by the board to contest the denial the applicant shall submit the request in writing to the department within thirty calendar days after service of the denial notice. Service is complete on the mailing of the denial to the address listed on the application.
D. Except as provided in section 41-1092.08, subsection H, final decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.
E. If an applicant is denied a registration certificate, the applicant may petition the board for a good cause exception.
F. If the board granted an applicant for a security guard registration certificate or an armed security guard registration certificate a good cause exception pursuant to section 32-2609, the department may not deny the person's renewal application based on factors already reviewed by the board when granting the good cause exception.

41-1713. Powers and duties of director; authentication of records
A. The director of the department shall:
1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude

the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
9. 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.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.
B. The director may:
1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.
3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.
13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.
B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card pursuant to this section:
1. Sexual abuse of a vulnerable adult.
2. Incest.
3. First or second degree murder.
4. Sexual assault.
5. Sexual exploitation of a minor.
6. Sexual exploitation of a vulnerable adult.
7. Commercial sexual exploitation of a minor.
8. Commercial sexual exploitation of a vulnerable adult.
9. Child prostitution as prescribed in § 13-3212.
10. Child abuse.
11. Abuse of a vulnerable adult.
12. Sexual conduct with a minor.
13. Molestation of a child.
14. Molestation of a vulnerable adult.
15. A dangerous crime against children as defined in § 13-705.
16. Exploitation of minors involving drug offenses.
17. Taking a child for the purpose of prostitution as prescribed in § 13-3206.
18. Neglect or abuse of a vulnerable adult.
19. Sex trafficking.
20. Sexual abuse.
21. Production, publication, sale, possession and presentation of obscene items as prescribed in § 13-3502.
22. Furnishing harmful items to minors as prescribed in § 13-3506.

23. Furnishing harmful items to minors by internet activity as prescribed in § 13-3506.01.
24. Obscene or indecent telephone communications to minors for commercial purposes as prescribed in § 13-3512.
25. Luring a minor for sexual exploitation.
26. Enticement of persons for purposes of prostitution.
27. Procurement by false pretenses of person for purposes of prostitution.
28. Procuring or placing persons in a house of prostitution.
29. Receiving earnings of a prostitute.
30. Causing one's spouse to become a prostitute.
31. Detention of persons in a house of prostitution for debt.
32. Keeping or residing in a house of prostitution or employment in prostitution.
33. Pandering.
34. Transporting persons for the purpose of prostitution, polygamy and concubinage.
35. Portraying adult as a minor as prescribed in § 13-3555.
36. Admitting minors to public displays of sexual conduct as prescribed in § 13-3558.
37. Unlawful sale or purchase of children.
38. Child bigamy.
39. Trafficking of persons for forced labor or services.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to § 41-619.55:

1. Manslaughter.
2. Endangerment.
3. Threatening or intimidating.
4. Assault.
5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.
6. Assault by vicious animals.
7. Drive by shooting.
8. Assaults on officers or fire fighters.
9. Discharging a firearm at a structure.
10. Indecent exposure.
11. Public sexual indecency.
12. Aggravated criminal damage.
13. Theft.
14. Theft by extortion.
15. Shoplifting.
16. Forgery.
17. Criminal possession of a forgery device.
18. Obtaining a signature by deception.

19. Criminal impersonation.
20. Theft of a credit card or obtaining a credit card by fraudulent means.
21. Receipt of anything of value obtained by fraudulent use of a credit card.
22. Forgery of a credit card.
23. Fraudulent use of a credit card.
24. Possession of any machinery, plate or other contrivance or incomplete credit card.
25. False statement as to financial condition or identity to obtain a credit card.
26. Fraud by persons authorized to provide goods or services.
27. Credit card transaction record theft.
28. Misconduct involving weapons.
29. Misconduct involving explosives.
30. Depositing explosives.
31. Misconduct involving simulated explosive devices.
32. Concealed weapon violation.
33. Possession and sale of peyote.
34. Possession and sale of a vapor-releasing substance containing a toxic substance.
35. Sale of precursor chemicals.
36. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.
37. Manufacture or distribution of an imitation controlled substance.
38. Manufacture or distribution of an imitation prescription-only drug.
39. Manufacture or distribution of an imitation over-the-counter drug.
40. Possession or possession with intent to use an imitation controlled substance.
41. Possession or possession with intent to use an imitation prescription-only drug.
42. Possession or possession with intent to use an imitation over-the-counter drug.
43. Manufacture of certain substances and drugs by certain means.
44. Adding poison or other harmful substance to food, drink or medicine.
45. A criminal offense involving criminal trespass under title 13, chapter 15.[1]
46. A criminal offense involving burglary under title 13, chapter 15.
47. A criminal offense under title 13, chapter 23.[2]
48. Child neglect.
49. Misdemeanor offenses involving contributing to the delinquency of a minor.
50. Offenses involving domestic violence.
51. Arson.
52. Kidnapping.
53. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
54. Robbery.
55. Aggravated assault.
56. Felony offenses involving contributing to the delinquency of a minor.
57. Negligent homicide.
58. Criminal damage.

59. Misappropriation of charter school monies as prescribed in § 13-1818.
60. Taking identity of another person or entity.
61. Aggravated taking identity of another person or entity.
62. Trafficking in the identity of another person or entity.
63. Cruelty to animals.
64. Prostitution.
65. Sale or distribution of material harmful to minors through vending machines as prescribed in § 13-3513.
66. Welfare fraud.

D. A person who is awaiting trial on or who has been convicted of committing or attempting to commit a misdemeanor or felony violation of § 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in another state or jurisdiction within five years from the date of applying for a fingerprint clearance card is precluded from driving any vehicle to transport employees or clients of the employing agency as part of the person's employment. The division shall place a notation on the fingerprint clearance card that indicates this driving restriction. This subsection does not preclude a person from driving a vehicle alone as part of the person's employment. This subsection does not apply to a person who is licensed pursuant to title 32, chapter 20,[3]except if the person is employed by an agency as defined in § 41-1758.

E. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to § 41-619.55, the division shall issue a fingerprint clearance card to the person.

F. If the division denies a person's application for a fingerprint clearance card pursuant to subsection C of this section and a good cause exception is requested pursuant to § 41-619.55, the division shall release, on request by the board of fingerprinting, the person's criminal history record to the board of fingerprinting.

G. A person shall be granted a fingerprint clearance card if either of the following applies:

1. An agency granted a good cause exception before August 16, 1999 and no new precluding offense is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the division in writing of the date on which the prior good cause exception was granted and the date of the conviction and the name of the offense for which the good cause exception was granted.
2. The board granted a good cause exception and no new precluding offense is identified.

H. The licensee or contract provider shall assume the costs of fingerprint checks and may charge these costs to persons who are required to be fingerprinted.

I. A person who is under eighteen years of age or who is at least ninety-nine years of age is exempt from the fingerprint clearance card requirements of this section. At all times the person shall be under the direct visual supervision of personnel who have valid fingerprint clearance cards.

J. The division shall conduct periodic state criminal history records checks and may conduct federal criminal history records checks when authorized pursuant to federal law for the purpose of updating

the clearance status of current fingerprint clearance card holders and may notify the board of fingerprinting and the agency employing the person of the results of the records check.

K. The division shall revoke a person's fingerprint clearance card on receipt of a written request for revocation from the board of fingerprinting pursuant to § 41-619.55.

L. If a person's criminal history record contains an offense listed in subsection B or C of this section and the final disposition is not recorded on the record, the division shall conduct research to obtain the disposition within thirty business days after receipt of the record. If the division cannot determine, within thirty business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit any of the offenses listed in subsection B or C of this section in this state or the same or a similar offense in another state or jurisdiction, the division shall not issue a fingerprint clearance card to the person. If the division is unable to make the determination required by this section and does not issue a fingerprint clearance card to a person, the person may request a good cause exception pursuant to § 41-619.55.

M. Except as provided in subsection N of this section, if after conducting a state and federal criminal history records check the division determines that it is not authorized to issue a fingerprint clearance card to a person, the division shall notify the agency that licenses or employs the person that the division is not authorized to issue a fingerprint clearance card. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to § 41-1750 and Public Law 92-544.

N. If, after conducting a state and federal criminal history records check on a person who requests a fingerprint clearance card pursuant to § 15-1881, the division determines that it is not authorized to issue a fingerprint clearance card to the person, the division shall not notify the agency. The division shall notify the person who requested the card that the division is not authorized to issue a fingerprint clearance card. The notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to § 41-1750 and Public Law 92-544.

O. The division is not liable for damages resulting from:

1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.
2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

P. The issuance of a fingerprint clearance card does not entitle a person to employment.

Q. Notwithstanding any law to the contrary, a person may apply for and receive a level I fingerprint clearance card pursuant to§ 41-1758.07 to satisfy a requirement that the person have a valid fingerprint clearance card issued pursuant to this section.