STATE BOARD OF EQUALIZATION
Title 16, Chapter 4, State Board of Equalization

New Article: Article 1

New Section: R16-4-101, R16-4-102, R16-4-103, R16-4-104, R16-4-105, R16-4-106, R16-4-107, R16-4-108, R16-4-109, R16-4-110, R16-4-111, R16-4-112, R16-4-113, R16-4-114, R16-115, R16-4-116, R16-4-117

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATES: July 7, 2021; August 3, 2021

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

FROM: Council Staff

DATE: July 20, 2021

SUBJECT: **STATE BOARD OF EQUALIZATION**
Title 16, Chapter 4, State Board of Equalization

New Article: Article 1

New Section: R16-4-101, R16-4-102, R16-4-103, R16-4-104, R16-4-105, R16-4-106, R16-4-107, R16-4-108, R16-4-109, R16-4-110, R16-4-111, R16-4-112, R16-4-113, R16-4-114, R16-115, R16-4-116, R16-4-117

Staff Update:

This rulemaking was previously considered at the June 29, 2021 Study Session and July 7, 2021 Council Meeting. At the July 7, 2021 Council Meeting, the Council voted to table consideration of this rulemaking to this meeting cycle for the State Board of Equalization (Board) to address several Council concerns with the proposed rule amendments.

As a reminder, this regular rulemaking from the Board seeks to add a new article to Title 16, Chapter 4, relating to the procedures for hearings before the Board, as required pursuant to A.R.S. § 42-16154(C). Specifically, in 1996, the Board implemented the required rules through an emergency rulemaking pursuant to A.R.S. § 41-1026. The Board indicates the emergency rules related to procedures for hearings expired on July 30, 1996. This rulemaking is intended to re-codify procedures for hearings before the Board.

The Council raised several concerns related to this rulemaking during the last meeting cycle, specifically rules R16-4-104(D) related to confidentiality and R16-4-110 related to the

burdens of proof. The Board informed Council staff that it is in the process of preparing responses to the Council's concerns, will be submitting supplemental documentation to address those concerns prior to the June 29, 2021 Study Session for the Council's consideration, and intends to have their AG representative present at the upcoming Study Session to present information and answer any questions the Council may have.

DOUGLAS A. DUCEY
Governor

GEORGE R. SHOOK
Acting Chairman

ARIZONA STATE BOARD OF EQUALIZATION

100 North Fifteenth Avenue, Suite 130
Phoenix, Arizona 85007
(602) 364-1600
http://www.sboe.state.az.us

May 14, 2021

Krishna Jhaveri
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste 305
Phoenix, Arizona 85007

Re: A.A.C. Title 16. Tax Appeals
Chapter 4. State Board of Equalization

Dear Mr. Jhaveri

The Arizona State Board of Equalization submits the attached final rule package to the Council for review and approval. The following information is provided for the Council's use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed February 19, 2021, following a period for public comment and oral proceeding. The rule package is being submitted within the 120 days provided by A.R.S. 41.-1024(B).

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

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

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

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

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

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

H. List of documents enclosed:

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

Sincerely,

George R. Shook
Acting Chairman

NOTICE OF FINAL RULEMAKING

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

PREAMBLE

1.	Articles, Parts, or Section Affected (as applicable)	Rulemaking Action
	Article 1	New Article
	R16-4-101	New Section
	R16-4-102	New Section
	R16-4-103	New Section
	R16-4-104	New Section
	R16-4-105	New Section
	R16-4-106	New Section
	R16-4-107	New Section
	R16-4-108	New Section
	R16-4-109	New Section
	R16-4-110	New Section
	R16-4-111	New Section
	R16-4-112	New Section
	R16-4-113	New Section
	R16-4-114	New Section
	R16-4-115	New Section
	R16-4-116	New Section
	R16-4-117	New Section

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

Authorizing statute: A.R.S. § 42-16154(C)

Implementing statute: A.R.S. §§ 42-16157, 42-16158, and 42-16159

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):

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening 26 A.A.R. 1708

Notice of Proposed Rulemaking: 26 A.A.R. 1679

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

Name:	George Shook
Address:	100 N 15th Ave, Suite 130, Phoenix, AZ 85007
Telephone:	(602) 364-1600
Fax:	(602) 364-1616
E-mail:	gshook@sboe.az.gov
Website:	https://sboe.az.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:

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. Since then, the SBOE has functioned with procedures that have not been formally promulgated as rules. In this rulemaking, the SBOE makes the required rules.

Mara Mellstrom, Policy Advisor to the Governor, provided an exemption from Executive Order EO2016-03 by e-mail dated February 8, 2017 and Trista Guzman Glover provided an exemption from Executive Order EO2020-02 by e-mail dated on May 5, 2020.

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 SBOE does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The economic impact of the rulemaking will be positive for the SBOE, petitioners, and respondents. The SBOE will become compliant with Arizona Revised Statute § 42-16154 requiring the SBOE to establish these rules. This will create efficiencies in functioning for the SBOE and eliminate uncertainty caused by failure to have the required procedural rules.

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

Subsection R16-4-101 was changed to add the definition of "Chairman"; add "(AZDOR); change wording "materials" to "evidence"; and add the definition for "SBOE Chairman" to clarify public comment.

Subsection R16-102(E) was changed by replacing the word "Board" with the word "SBOE" for clarity.

Subsection R16-104(A)(2) was changed adding the words "…the taxpayer, or…".

Subsection R16-104(D) was changed by adding the words "of equalization" and by replacing the word "Board" with the word "SBOE" for clarity and adding the word "are" for correct grammar.

Subsection R16-4-106(B) was changed by replacing the word "Board" with the word "SBOE" for clarity.

Subsection R16-4-107(A) added the words "At the request by either party, …"; striking the word "entirely"; striking the words "for the convenience of the board and"…; and adding the words "and if such hearing does not conflict with state statutes" to clarify the subsection per public comment. This is not a material change.

Subsection R16-4-107(C) was changed by replacing the word "Review" with the word "Consider" for clarity per request of public comment.

Subsection R16-4-108 was changed by replacing the word "Board" with the word "SBOE" for clarity.

Subsection R16-4-108(B)(1) was changed by adding the words "presiding SBOE member(s)" for clarity.

Subsection R16-4-108(B)(7) was added "7. Petitioner's rebuttal; and".

Subsection R16-4-108(B)(8) was changed to renumber the subsection.

Subsection R16-41-08(B)(9) was changed to renumber the subsection.

Subsection R16-4-109 was changed by replacing the word "Board" with the word "SBOE" for clarity.

Subsection R16-4-109(F) was changed by adding the word "relevance".

Subsection R16-4-109 was changed by replacing the word "Board" with the word "SBOE" for clarity.

Subsection R16-4-110 was changed removed the words "…of proof…" and inserted "… to show by clear and convincing evidence that the valuation or classification of the subject property is incorrect…" for clarity.

Subsection R16-4-115 was changed by deleting the words "Board" and adding "Arizona State Board of Equalization" for clarity.

Subsection R16-4-116 was changed by replacing the word "chairman" with the word "SBOE chairman" to conform to the definition.

Subsection R16-4-117 was changed by replacing the word "Board" with the word "SBOE" for clarity

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

The Notice of Public Rulemaking was published in the Arizona Administrative Register on July 31, 2020; the official public comment period began on September 29, 2020 and ended on October 30, 2020.

The SBOE received 17 comments and several observations regarding the proposed rulemaking. Not all comments referenced the proposed rules. Comments were received from SBOE Board members Susan Fair and Daniel Swango, and Department of Revenue employee Jolene Christopherson. Other comments were from Paul Euler, Jodi Bain, Kathryn Wiseman, Gail Sharp, Jeff Nolan, property tax agents and/or their staff. The response to the comments and observations resulted in the clarification of the proposed rules. Nothing in the Notice of Final Rulemaking is a significant change to the Proposed Rules.

The SBOE follows the dictates of Arizona laws and complies with the Open Meeting and Public Records laws § 38-431 et seq, § 39-121, §41-151. A.R.S. § 42-16161 provides that parties shall present evidence in person and that the SBOE decision will be based on evidence by the parties attending the hearings. Individual decisions are made at the conclusion of each hearing and hard copy mailed to the parties. Regardless if a party fails to attend a hearing all evidence will be considered by the SBOE. A.R.S. § 42-16161 provides allows the SBOE to accept petitions and evidence by electronic means. Evidence submitted to the SBOE becomes public information unless redacted by law. On-the-Record hearings are the result of coordination with all parties prior to being scheduled. The wording of the proposed rule has been changed to indicate all parties must agree to the On-the-Record hearing. The SBOE complies with the American Disabilities Act and attempts to accommodate individual circumstances and may allow the use of testimony by telephone.

Arizona Revised Statute § 42-16162 directs the SBOE to render a decision that is just and proper. The SBOE may reject jurisdiction for an appeal because the appeal filing is not in

compliance with Arizona Revised Statutes. The SBOE does not have the authority to determine if a property should be exempt from taxation. The SBOE cannot create exemptions. The SBOE does not have jurisdiction/authority to determine tax rates. The comments were sent to the GRRC for review.

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:

None of the rules in the rulemaking requires 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:

No federal law is applicable to the subject on any rule in this rulemaking.

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

An analysis was not submitted nor required.

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. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

Section

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

R16-4-101. Definitions

"Assessor" means the county assessor of the county in which the property at issue in an appeal is located.

"Chairman" means the presiding member of the panel of SBOE board members in a particular appeal hearing.

"Department" means the Arizona Department of Revenue (AZDOR).

"Motion" aside from parliamentary procedures, "motion" means a written or oral request to the SBOE for an order or ruling regarding an appeal.

"On-the-record" means a hearing conducted by reviewing submitted evidence rather than taking oral testimony.

"Petitioner" means a taxpayer or other person, as defined at A.R.S. § 1-215, qualified to file an appeal and appear before the SBOE and, if applicable, an authorized representative of the taxpayer.

"Respondent" means a person or entity qualified to answer an appeal filed by a petitioner.

"Review" means a quasi-judicial consideration of an appeal or petition.

"SBOE" means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE, or

A hearing officer employed by the SBOE under A.R.S. § 41-16155 to hear appeals.

"SBOE Chairman" means director of the SBOE as described in § A.R.S. 42-16154.

R16-4-102. **Jurisdiction of the SBOE**

A. The SBOE hears appeals regarding the valuation or legal classification of real and certain personal property made by the assessor or the Department.

B. The SBOE hears appeals from petitioners regarding the following:

1. A.R.S. § 42-15105. A notice from the assessor regarding valuation or legal classification of new construction, property assessment changes, or changes in use of real property;
2. A.R.S. § 42-16053. The rejection by the assessor of a petition for failure to include substantial information;
3. A.R.S. § 42-16056. The taxpayer's right to appeal the decision by the assessor for a petition for review of valuation or legal classification;
4. A.R.S. § 42-16157 or 42-16158. An appeal of the annual valuation or legal classification of property as determined by the assessor or the Department;
5. A.R.S. § 42-16252: The review of a Notice of Proposed Correction issued by the assessor or the Department regarding a property valuation or legal classification;

6. A.R.S. § 42-16254: The review of failure to agree on a Taxpayer Notice of Claim regarding an error in valuation or legal classification by the assessor or the Department;
7. A.R.S. § 42-19052: The valuation or legal classification by the assessor of personal property; and
8. A.R.S. § 42-19156: The valuation by the assessor of a mobile home.

C. The SBOE hears an appeal from an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.

D. The SBOE hears an appeal from the Department under A.R.S. § 42-16157 regarding a proposed valuation or legal classification or change in a valuation or legal classification made by the assessor.

E. If the SBOE lacks jurisdiction regarding an appeal, the SBOE shall dismiss the appeal on its own motion. The said rejection notice will be a decision by the SBOE and shall be issued in compliance with all statutory deadlines and preserving any taxpayer's rights to further appeal.

R16-4-103. **Representation before the SBOE**

The following individuals may appear before the SBOE:

1. An individual representing:
   a. The individual's interest,
   b. An estate or trust of which the individual is the legal representative,
   c. A partnership of which the individual is a partner, or
   d. A corporation of which the individual is an officer or an authorized representative,
2. An attorney licensed to practice law in Arizona;
3. A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;
4. An authorized representative from the assessor's office;
5. An authorized representative from the Department; and
6. Other individuals allowed under Arizona Supreme Court Rule 31(d)(13).

R16-4-104. **Filing a Petition; Filing Deadlines**

A. To initiate an appeal under R16-4-102(B), a petitioner shall submit a petition to the SBOE.

1. The petitioner shall use the correct petition form when initiating an appeal. The SBOE shall not accept a letter in place of the correct petition form. Except as noted, the correct petition forms are available on the Department's website and from an assessor.
   a. Under A.R.S. §§ 42-15105, 42-16053, and 42-16056, the correct petition form is ADOR 82130;
   b. Under A.R.S. § 42-16157 or § 42-16158, the correct petition form is SBOE EQ200, which is available upon request from the SBOE;
   c. Under A.R.S. § 42-16252, the correct petition form is ADOR 82179C;
   d. Under A.R.S. § 42-16254, the correct petition form is ADOR 82179C-1; and
   e. Under A.R.S. §§ 42-19052 and 42-19156, the correct petition form is ADOR 82530.
2. If the petition is made under A.R.S. § 42-15105 and is submitted to the SBOE by the taxpayer, or an authorized representative of the taxpayer, the taxpayer, or the authorized representative of the taxpayer, shall attach to the correct petition form a copy of the current form ADOR 82130AA, which is available on the Department's website;
3. The petitioner shall submit the correct petition form under subsection (A)(1) as follows:
   a. Under A.R.S. § 42-15105 or § 42-16056, by U.S. Postal Service, by hand delivery to the SBOE office, or filed online using the SBOE Appeals application;
   b. Under all other provisions, by U.S. Postal Service or hand delivery to the SBOE office.
4. The petitioner shall submit:
   a. A copy of the petition originally filed with the assessor or the Department, as applicable; and
   b. A copy of the decision by the assessor or the Department regarding the original petition.
   c. A copy of all attachments and evidence originally filed to the assessor or to the Department.
5. For a petition filed electronically to the SBOE under subsection (A)(3)(a), the petitioner shall submit a copy of all attachments and evidence originally filed to the assessor or to the Department to the SBOE within 5 days of the date of the electronically filed petition; otherwise, the petition will be denied.

6. Evidence previously submitted to the assessor or the Department is not forwarded to the SBOE. Therefore, any evidence the petitioner wants considered shall be submitted to the SBOE by U.S. postal service, hand delivered, or by electronic document upload if available, to arrive at the SBOE office three days prior to the scheduled hearing or provided at the time of hearing. The petitioner shall submit the following copies, prior to or at the hearing:

   NUMBER OF COPIES:

   a. One copy of any evidence for property that is owner-occupied legal class 3 or another legal classification with a full-cash-value less than $3 million;
   b. Three copies of any evidence for property not described under subsection (A)(6)(a) and not valued by the Department; and
   c. For property valued or classified by the Department under A.R.S. § 42-16158 (aka CVP property), at least 5 days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
      i. The petitioner shall submit one copy of the evidence to the Department, and four copies to the SBOE;
      ii. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and four copies to the SBOE.
7. In compliance with A.R.S. § 42-16056 the SBOE shall consider only issues previously raised with the assessor or the Department, as applicable (see A.R.S. 42-16051 et al for qualifying basis). The SBOE shall admit new or additional evidence only if:
   a. The evidence directly relates to an issue previously raised with the assessor or the Department, as applicable;
   b. Except as provided in subsection (A)(6)(c), a copy of the new or additional evidence is provided to the assessor or the Department, as applicable; and
   c. Amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, which are available on the Department's website, are provided to the assessor at least five days before the scheduled hearing.
8. Under the following circumstances, the SBOE will consider requests for multiple dockets or petitions to be heard together. The request must be made in writing, clearly identify all

parcel numbers to be included and identify the qualifying basis (see A.R.S. 42-16051 et al) for the type of request described below:

a. The mulitiple parcels constitute a single economic unit;

b. The mulitiple petitions being appealed are a singular argument for all parcels;

c. The petitioner desires to hear multiple petitions on a single day's agenda;

d. The assessor's decision is for multiple parcels and the petitioner wants them heard together as a single appeal.

9. The petitioner shall comply with all statutory requirements, including the time within which to file a petition.

B. To initiate an appeal under R16-4-102 (C) or (D), the Department or assessor shall submit a petition and proof of service of the appeal on the respondent to the SBOE before the date of the scheduled hearing.

C. The time-period within which to file a petition is written in the statutes. It is the petitioner's responsibility to ensure a petition is timely filed.

1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
2. The SBOE shall consider a petition timely filed if the petition is properly directed to the SBOE office and:
   a. Is received in the SBOE office before the end of the time-period;
   b. Is postmarked on or before the end of the time period; or
   c. Contains an electronic date that is on or before the end of the time-period.

D. The SBOE shall respect a designation of confidentiality previously found by the assessor, county board of equalization, or the Department, as applicable. However, both evidence and testimony provided for SBOE consideration are, upon submission, rendered public information.

R16-4-105. **Motions**

A. A party shall:

1. Serve a copy of any motion on all other parties. The party shall ensure a motion includes the factual and legal grounds supporting the motion and the requested action; and
2. Unless the motion is made at the time of a scheduled hearing, submit proof of service on the other parties to the SBOE.

B. A party may file a response stating any objection to the motion served under subsection (A).

C. The SBOE, in its discretion, shall:

1. Decide whether to allow oral argument regarding a motion; and
2. Decide whether to rule on a motion before or during a scheduled hearing. If the SBOE rules on a motion before a scheduled hearing, the SBOE shall serve the written ruling on all parties.

R16-4-106. Hearing

A. As required under A.R.S. § 42-16163, the SBOE shall mail notice of an appeal hearing to all parties at least 14 days before the hearing. The SBOE shall include in the notice the date, time, and location of the hearing.

B. Before a scheduled hearing, all members of the SBOE shall make known whether the member, as defined at A.R.S. § 38-502, has a substantial interest, as defined at A.R.S. § 38-502, in the matter to be heard by the SBOE. As required by A.R.S. § 38-509, the SBOE shall maintain the disclosure documents and make them available for public inspection.

C. When the SBOE determines it is in the interest of the parties and the state, the SBOE shall allow one or all parties to participate in a hearing telephonically.

R16-4-107. On-the-record Hearing; Failure to Appear

A. At the request by either party, the SBOE shall conduct a hearing on-the-record, only if all parties to the hearing agree and if such hearing does not conflict with state statutes.

B. If all parties agree to an on-the-record hearing, the SBOE shall review the evidence submitted by the parties, read the evidence into the record, and render a decision based on the submitted evidence.

C. If the parties do not agree regarding an on-the-record hearing, the SBOE shall:

1. Consider the evidence submitted by the parties;
2. Take oral testimony from or on behalf of the party opposing the on-the-record hearing; and read the evidence into the record beginning with testimony by the petitioner, if present, or such submitted evidence followed by the testimony by the respondent, if present, or such submitted evidence; and
3. Render a decision based on both the submitted evidence and oral testimony.

D. If a party fails to appear at a scheduled hearing, the SBOE shall conduct the hearing as described in subsection (C).

E. Consistent with R16-4-108(B), under both subsections (B) and (C), the SBOE shall ensure the petitioner's evidence is entered in the record before the respondent's evidence is entered in the record.

R16-4-108. **Hearing Procedure**

A. Unless otherwise provided by law, all SBOE hearings are open to the public.

B. At a hearing, the SBOE shall ordinarily proceed as follows:

1. Identification for the record of the docket number of the proceeding, the parcel number or account number of the property at issue, if applicable, the ownership of the subject property, the presiding SBOE member(s) and parties participating in the proceeding;
2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
3. Opening statements by all parties, if requested by the SBOE;
4. Presentation of testimony and evidence by the petitioner and witnesses;
5. Presentation of testimony and evidence by the respondent and witnesses;
6. Questions by the SBOE; final arguments, if requested by the SBOE;
7. Petitioner's rebuttal; and
8. SBOE deliberation, motion, and decision;
9. The decision of the SBOE shall include the full cash value, the applicable limited property value or limited property value rule, the legal classification or applicable legal classification allocation, and the assessment ratio. If a mixed assessment ratio is required, all parties shall agree to the allocation of the ratios.

C. The SBOE may direct a party to submit additional information in the party's possession or control. The SBOE shall allow the party a reasonable time in which to submit the additional information.

D. The SBOE may recess or continue a hearing for good cause.

E. As required by law, the SBOE shall conduct all deliberation verbally in the presence of all parties in attendance at the hearing.

R16-4-109. Rules of Evidence

A. The SBOE shall accept oral evidence only when presented under oath or affirmation.

B. The SBOE is not required to follow rules of evidence usually used in a court proceeding.

C. The SBOE shall admit evidence the SBOE determines is consistent with R16-4-104(A)(6) and relevant to the proceeding. The SBOE shall be liberal in admitting evidence and consider objections to the admission in assigning weight to the evidence.

D. At the SBOE's discretion, parties may call and examine witnesses, cross-examine witnesses, and introduce written evidence relevant to the proceeding.

E. The SBOE may call and examine a witness and may examine a witness called by a party.

F. The SBOE shall admit into evidence a copy of an original document if there is a showing of authenticity and relevance.

R16-4-110. Proof

Unless otherwise provided by law:

1. The standard of proof in a hearing before the SBOE is a preponderance of the evidence;
2. The petitioner has the burden to show by clear and convincing evidence that the valuation or classification of the subject property is incorrect; and
3. The proponent of a motion shall establish the grounds to support the motion.

R16-4-111. Subpoenas

A. The SBOE may issue subpoenas for the attendance of a witness or production of books, records, documents, or other evidence that is not confidential or privileged.

B. The SBOE may issue a subpoena at its discretion or upon written request by a party. A party shall include the following in a written request for a subpoena:

1. Identification of the property, including parcel number if applicable, at issue;
2. A list or description of all records sought;
3. A statement showing proper foundation for the request;
4. The name and address of the custodian of the records sought or all persons to be subpoenaed;
5. The date, time, and place to appear or to produce the records; and

6. The name, address, and telephone number of the party requesting the subpoena.

C. If the SBOE issues a subpoena upon the request of a party, the requesting party shall:

1. Ensure the subpoena is served no later than five business days before the time specified in the subpoena for attendance of a witness or production of records;
2. Ensure the person serving the subpoena provides proof of service to the SBOE; and
3. Pay the cost to serve the subpoena.

R16-4-112. Records of a Hearing

A. The SBOE shall make a recording of every hearing. If a person makes a request, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means, within one business day after the hearing. If the person wants a copy of the hearing recording in another format, the SBOE may charge the cost of providing the copy in the other format.

B. A party to a proceeding may, at the party's expense, record the proceeding using a recording device or court reporter.

C. Subject to the limits imposed at A.R.S. § 39-121.03, a person may submit a written request to examine or be furnished a copy of a public record in the custody of the SBOE. As allowed under A.R.S. § 39-121.01, the SBOE may charge a fee for providing a copy of a public record.

D. While examining a public record, a person shall not remove the public record from the SBOE office.

R16-4-113. Withdrawal

A. The petitioner may withdraw an appeal by providing written notice to the SBOE at least 48 hours before the scheduled start of the hearing.

B. If the petitioner submits a written notice of withdrawal to the SBOE fewer than 48 hours before the scheduled start of a hearing, the SBOE shall accept the notice of withdrawal at the hearing.

C. The petitioner may withdraw an appeal by providing written or oral notice to the SBOE at the hearing.

R16-4-114. Ex Parte Communications

A. A party shall not communicate, either directly or indirectly, with a member of the SBOE about a substantive issue in a pending appeal unless:

1. All parties are present,
2. It is during a scheduled hearing where an absent party fails to appear after proper notice, or
3. It is by written motion where a copy is provided to all parties.

B. If a member of the SBOE is determined to have received ex parte communication regarding an appeal, the member shall be recused from participating in the appeal.

R16-4-115. Arizona State Board of Equalization Decision

A. The SBOE shall issue a written decision within a reasonable time after the hearing or, as authorized under A.R.S. § 42-16164, after continuing the hearing for additional deliberation.

B. In its decision, the SBOE shall include the following:

1. Docket number of the appeal;
2. Parcel number or other identification of the property at issue;
3. Separately stated findings of fact and conclusions of law;
4. The decision regarding the property valuation or classification;
5. Other matters before the SBOE related to the appeal; and
6. The right of an aggrieved party to appeal the SBOE's decision under A.R.S. § 42-16203 or § 42-16254(G).

C. The SBOE shall mail a copy of the written decision to all parties and to the Department.

D. The SBOE's decision is final 60 days after it is mailed under subsection (C) unless an appeal is taken under A.R.S. § 42-16203 or § 42-16254(G).

R16-4-116. Review of a SBOE Decision

A. As provided under A.R.S. § 42-16164(A), the SBOE Chairman may review a SBOE decision to ensure the decision is consistent with due process for all parties. In conducting the review, the SBOE Chairman shall assess whether:

1. The findings of fact, conclusions of law, and decision are supported by the evidence or are contrary to law;

2. The hearing involved irregularity, abuse of discretion, or misconduct by a party;
3. The hearing involved accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence exists that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurred at the hearing or during the progress of the proceedings;
6. The decision was the result of passion, bias, or prejudice; or
7. The decision was arbitrary and capricious.

B. The SBOE Chairman shall complete the review provided under A.R.S. § 42-16164(A) within 30 days after the decision is issued under R16-4-115.

C. If the SBOE Chairman determines the SBOE decision is inconsistent with due process for all parties, the SBOE shall:

1. Provide written notice of this determination to all parties including the grounds listed in subsection (A) on which the determination is based;
2. Stay enforcement of the SBOE's decision issued under R16-4-115 pending further review of the decision; and
3. Within 30 days after providing the notice under subsection (C)(1), take additional testimony or review newly discovered material evidence, amend findings of fact or conclusions of law, or make new findings or conclusions, and issue a new decision.

D. Under A.R.S. § 42-16169, the written decision issued under subsection (C)(3) becomes final 60 days after it is mailed to all parties and the Department.

R16-4-117. SBOE Member Participation in Matters before the SBOE

A. A member of the SBOE shall comply with A.R.S. Title 38, Chapter 3, Article 8, regarding conflicts of interest. This requires, among other things:

1. Refraining from participating in any manner in a SBOE decision regarding property in which the member or the member's relative has a substantial interest; and
2. Refraining from participating in any manner in a SBOE decision regarding a petition submitted to the SBOE by an entity in which the member or the member's relative has a substantial interest.

B. Remedies and penalties for violating A.R.S. Title 38, Chapter 3, Article 8 are specified at A.R.S. §§ 38-506 and 38-510.

C. Members of the SBOE shall comply with the Open Meeting Laws of Arizona.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT[1]

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

1. **Identification of the rulemaking**:

   The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. Since then, the SBOE has functioned with procedures that have not been formally made as rules. In this rulemaking, the SBOE makes the required rules.

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

      Until the rulemaking is completed, the SBOE will not comply with its statutory responsibility to make rules.

   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:**

      It is not good government for a state agency to fail to comply with statute.

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

      When the rulemaking is completed, the SBOE will comply with its statutory responsibility to make rules.

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

   The SBOE expects the rulemaking to have minimal economic impact. The SBOE is simply making the rules required by statute. A taxpayer that wishes to appeal to the SBOE will incur the cost of complying with these rules when making the appeal. The rules are designed to ensure due process for all petitioners. A taxpayer that appeals to

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

the SBOE does so because the taxpayer has determined the potential benefits of appealing outweigh the costs of complying with the rules.

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: George Shook

   Address: 100 N 15th Ave, Suite 130, Phoenix, AZ 85007

   Telephone:(602) 364-1600

   Fax: (602) 364-1616

   E-mail:gshook@sboe.state.az.us

   Web site: www.sboe.state.az.us

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

   Property owners, taxpayers, may appeal the valuation or classification placed on their property by the County Assessors of Arizona or the Arizona Department of Revenue (Department). Taxpayers who appeal to the SBOE a valuation or classification of real or personal property are directly affected by, bear the costs of, and directly benefit from the rulemaking. In limited instances, a county assessor or the Department may appeal to the SBOE in the same manner as a taxpayer. The taxpayer incurs the cost of complying with the requirements in statute and rule and receives the benefit of a fair hearing regarding, and due process, regarding the valuation or classification at issue. In the past, the SBOE has conducted more than 16,000 appeal hearings in a single year. During 2020, the SBOE received 2,329 appeals and conducted 2,320 hearings. During 2020, neither an assessor nor the Department filed an appeal to the SBOE. The Chairman of the SBOE initiated two reviews of a SBOE decision under A.R.S. § 42-16164(A).

   Rulemaking also directly affects the SBOE. The SBOE incurred the expense of completing the rulemaking and will incur the expense of implementing the rules. The SBOE will have the benefit of complying with the statutory requirement that it make rules and will have rules that help ensure the fair and equitable treatment of all petitioners.

Funding for the SBOE is by the state's general fund. Its appropriation for FY2021 is $673,000. The SBOE has three FTEs. The SBOE consists of 41 members, 20 of whom are appointed by county assessors and the governor appoints 21 members.

5. **Cost-benefit analysis:**

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

   The SBOE is the only state agency directly affected by this rulemaking. It will not need to employ an additional FTE to implement and enforce the rules.

   b. **Costs and benefits to political subdivisions directly affected by the rulemaking:**

   If a county assessor appeals under A.R.S. § 42-16159 regarding an equalization order issued by the Department or the Department appeals under A.R.S. § 42-16157 regarding a proposed valuation or classification or change in a valuation or classification made by an assessor, both will bear the same costs and have the same benefits as any other petitioner.

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

   A business that owns real property may file an appeal in the same manner as any other taxpayer and will bear the same costs and have the same benefits as any other petitioner.

6. **Impact on private and public employment:**

   The SBOE expects the rulemaking to have no impact on private or public employment.

7. **Impact on small businesses[2]:**

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

   A small business that owns real property may appeal to the SBOE in the same manner as any other taxpayer.

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

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

Any taxpayer, including a small business, must file a petition to initiate an appeal with the SBOE. The taxpayer is required to submit evidence to support the petition and must comply with applicable deadlines. The taxpayer must attend the hearing unless the taxpayer chooses to have the issue decided on the record. The taxpayer has the burden of proof at a hearing.

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

The administrative and other costs required for compliance with the rulemaking are minimal and voluntarily assumed by a taxpayer, including a small business, which wishes to appeal the valuation or classification of real property. The SBOE believes the minimal costs of compliance cannot be reduced for taxpayers that are small businesses.

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

Taxpayers that appeal to the SBOE are the only private persons directly affected by the rulemaking. Their costs and benefits are described above. No consumers are directly affected by the rulemaking.

9. **Probable effects on state revenues:**

There will be no effect on state revenues.

10. **Least intrusive or less costly alternative methods considered:**

The SBOE believes the methods specified in the rulemaking are the least intrusive and least costly possible. The SBOE sought alternative methods for providing these services and found none.

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BAIN LAW FIRM PLLC
BLFAZ.COM | 520.777.3747
TAX | REAL ESTATE | BUSINESS | REGULATORY

August 30, 2020

Via Mail: certified/return receipt request
Via Email: gshook@sboe.state.az.us

Mr. George Shook
Acting Chairman Arizona State Board of Equalization
100 North 15th Avenue, Suite 130
Phoenix, AZ 85007

Re: Concerns and Constructive Criticism, for Working Draft New Agency Rules Summer 2020

Dear Mr. Shook,

This letter is provided to you regarding real concerns and criticisms relating to the State Board of Equalization ("SBOE") draft working rules with Notice of Rulemaking Docket Opening XX A.A.R. XXX August XX, 2020.

It is our understanding that the working draft provided to me is a working draft in progress. That is, it will be sent out to stake holders, etc. in the coming months for review, comment and suggestions. I would have appeared and offered comment personally or via zoom (or zoom like mechanism) but we are unaware of rule work sessions or meetings for participation at this stage. The comments and suggestions below are made with an eye towards transparency, equality between the parties, current process management and clear parameters for both parties to comprehend and follow.

For purposes of this letter, "Taxpayer" is also known as the "Petitioner" and is the party filing the petition for review. Further, the "Respondent" means the Assessor office, other governmental entity or other government representative qualified to respond to and/or answer an appeal petition by Taxpayer &/or its representative.

Please note in May 2018 we also reviewed and provided a letter to your Agency regarding the then draft rules version. Much of the same concerns continue and have not been addressed. Some examples are addressed below.

Below are some, (but not a complete list of), concerns/criticisms we ask the SBOE to address and remedy as it works to finalize its working draft of the rules. Please keep us notified on any public meetings, stake holder meeting and/or otherwise as the process moves forward.

In summary, the current 2020 draft rules:

(i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;

(ii) Increase Taxpayer costs;

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(iii) Fail to require *quid pro quo* between the Respondent Assessor and the Taxpayer Petition;

(iv) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);

(v) Respondent (Assessor) necessary and required disclosures are not addressed;

(vi) Do not reflect various current administrative filing, appeal process and hearing protocols with clarity;

(vii) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms.

For instance, is this the 'chairman of the SBOE' that certain chairman from the hearing on the day it was heard? Or, rather the Director of the SBOE as an appointed position? And, the scope is overly broad without defined terms of 'irregularity', 'accident or surprise' and/or 'error of law'. Or, who is the decision maker of an 'error of law'?).

(viii) Do not impartially allocate requirements among the parties – treats different parties differently; and

(ix) Are unclear how and when petitions, attachments and pre-hearing submittals and/or new requirements for materials are to be hard mailed, electronically mailed, uploaded via SBOE website link and/or otherwise allowed to be provided to the SBOE.

The draft rules increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations – I.E. - to disclose materials prior to hearings, participate in SBOE Hearings in a meaningful way, etc. This creates an imbalance of power and increases Taxpayer expense to enter and use the administrative hearing process.

A few concrete examples of the above are given below. We ask that the draft Rules be improved to not burden the Taxpayer further and be made clearer regarding the submittal process and particulars.

1. R16-4-101 Definitions

The Definition section appears to be missing the following, included but not limited to, words based on reading the working draft:

- ADOR – Arizona Department of Revenue?
- Affirmation – what is Affirmation?
- Authorized Assessor/Respondent Representative – County assessor appraiser?

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- Board – which board? Is this SBOE as a whole? As a sitting panel or 1 SBOE Bord member sitting?
- Board Member – which board? SBOE or otherwise?
- Chairman – of what? A hearing? Of the SBOE as a whole?
- Director - of SBOE as a whole as an appointed position?

Confusing definitions and/or wording:
Note, 'Motion' is defined by stating 'aside from parliamentary procedures' – what does this mean or reference? Robert's Rules apply to the hearings now? To the SBOE as whole?

'Review' is defined as 'quasi-judicial consideration' in the draft; What is this referring to?

'SBOE' is also defined in multiple ways: State Board of Equalization as a 'whole entity'?. Then as a member of the SBOE, and as a panel of members of the SBOE, etc. The SBOE is the State Board of Equalization as a whole. A member of the SBOE is a SBOE Board Member (for instance, etc,).

2. R16-4-102 Jurisdiction of the SBOE

- Draft language for B:
  - B.1 – 'property assessment changes' – what does this new wording mean?
  - B.6. – why was 'or an error in the tax rate' removed since the last draft in 2018'?
  - Perhaps the following is a missing items to add?- Improvements on Possessory Rights (IPRs)

3. R16-4-104 Filing a Petition; Filing deadlines

This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.

A.3.b. –
'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.

A.4.c. and A.5 –
'evidence originally' filed to the assessor is unclear. If there is an electronic filing completed for an appeal to the SBOE, it now also asks for hard copies of the electronic filing? And then the Taxpayer/Petitioner is to provide another submission in triplicate of a written briefing and the respondent government is not so required? This is not the current process and appears unbalanced between the parties and a new requirement.

A.6. New procedure in this draft –
Written brief, presentation, etc. in advance for Taxpayer/Petitioner only

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As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally prepare and submit a written briefing or submission presentation for the hearing. *This is not current practice*. It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

A.6.a, b, and c. – Evidence

New procedure in this draft - As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally submit hard copy submittals of any evidence for the property in the petition. *This is not current practice*. It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

In conversation, the SBOE personnel indicated only updated income method filings would be required to be submitted in advance of a hearing. The new rules draft wording is NOT limited to an update income filing.

A.7. – New SBOE limitation on evidence (new or additional).

This concept would be a new procedure and appears to actually limit the taxpayer/petitioner hearing information allowed to be used and 'at the discretion' of the board /hearing members.

D. SBOE respect for 'Confidentiality' designation.

The new section does not treat the parties equally. There is no mention of Taxpayer/Petitioner submittal information being or remaining confidential if it was provided and/or submittal as confidential (or noted as confidential) by the Taxpayer/Petitioner

4. R16-4-105 Motions

   See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not 'due process'. Idea - Perhaps this section should include a mechanism of oral argument request vs. 'on the record motions?

5. R16-4-106 Hearing.

   B. 'Board' – this needs to be defined.
   C. SBOE discretion to allow telephonic hearings? If the taxpayer/respondent or assessor requests this, why not? What about zoom or other electronic formats not addressed?

6. R16-4-107 'On-the-Record' Hearing; Failure to Appear

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A. What does 'for the convenience of the board' mean here?
D. Unable to follow - should this read 'in subsection (B)'?.

7. R16-4-108 Hearing Procedures

B.1. 'board members'- Is this reference to the SBOE panel member or member presiding over the hearing?

B.3. Currently, at each hearing the person or panel of the SBOE members hearing the petition do the following: (1) asks if the Assessor rep has a recommendation to the SBOE; (2) asks if there is a recommendation by the assessor - if the taxpayer/ petitioner accepts it or would like to comment and/or continue to opening remarks; (3) if no assessor recommendation to the SBOE – the taxpayer/ petitioner is asked to make their initial remarks and presentation of information/evidence and notifies the taxpayer/petitioner they will have an opportunity for rebuttal after the respondent responds to the taxpayer/petitioner initial remarks and presentation.

This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure.

C. This new paragraph is confusing. It appears to allow the SBOE presiding person or persons to require additional evidence. What is its purpose?

E. 'As required by law…' What is this referring to? This is an unclear new parameter.

8. R16-4-109 Rules of Evidence

- C. Draft language for C- IMPORTANT – reference to 'R16-4-104(A)(6)' this is a reference to allowable Evidence. See above concerns, thoughts and ideas for clarification regarding R16-4-104.

- D. Draft language for D- 'At the Board's discretion' – what does this mean? What are the parameters? What is this supposed to do?

9. R16-4-110 Proof
Burden of proof for what? To show the property is overvalued? Incorrect? Not concurrent with similar properties similarly situated per law or something else?

10. R16-4-116 Review of SBOE Decisions

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A. 'the chairman'. For what? ARS 42-16161(A) states "The chairman of the state board may review any decision to ensure due process to all parties." But this new draft rule appears to expand that scope significantly.

For instance:
Draft A.2. states 'irregularity, abuse of discretion or misconduct by a party'
Draft A.3. states 'accident or surprise that could have been prevented by ordinary prudence.'
Draft A.5. 'Errors'- various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context.

The two above examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.

Also, below are few general regulatory burden increase, inequality and confusing matters for your review and adjustment:

Regulatory & Practical Concern/Criticism:

1. Use of ambiguous and confusing language.
2. Lack of definitions in some instances.
3. Draft procedures do not represent hearing practices in place.
4. Significant new taxpayer/petitioner submittal requirements.
5. What is the respondent Assessor's obligation for filing, evidence, briefing, exchange of materials?
6. Unequal requirements between the parties.
7. R16-4-104 Filing a Petition –
    a. This new draft rule significantly deviates from the actual filing and then hearing process and protocols.
    b. A new requirement of pre-submission of materials includes Taxpayers' written materials to the SBOE in advance of the hearing **but not the Assessor Respondents. This is an unequal burden application.**

For years, the process has been that the Taxpayer brings its material to the hearing and provides it to the SBOE in 'real time' at the hearing.

The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of essentially a 'position paper' in advance upon filing and/or various days in advance of a scheduled hearing. *Respectfully, if the SBOE thinks there is some good cause for this, why is the same burden not imposed on the Assessor?*

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In addition, the draft SBOE Rules adjust notice of hearing schedule giving the Taxpayer/Petitioner fourteen (14) days notice of a SBOE hearing. This results in that the Taxpayer/Petitioner then immediately would be required to create and submit a 'position paper' and submit one, three or more copies via hard mail. The process is confusing in its wording. This is a significant deviation from current procedure and unnecessary cost to the Taxpayer.

8. Income Method Specificity - Based on our previous correspondence via email and in person, you informed me the rule to require submittal of evidence *is to only be applicable and relate to new income materials.* That is not what the draft rules indicate.

Please remember that we were told various times this new submittal requirement is only to apply to 'new income' materials to avoid confusion.

While this new language burdens the Taxpayer Petitioner the draft rules fail to place the same burden on the Assessor. - Why is the Assessor Respondent not equally burdened and required to provide the above to the Taxpayer?

Summary:

Once more, we ask in good faith that you take the above concerns and criticism of the *summer August 2020 draft Rules* into account in the redrafts. A balanced approach that does not further burden the Taxpayer with unnecessary expense and regulatory hurdles is preferred.

Fairness and equity between the Taxpayer Petitioner and Assessor Respondent should be the guidepost. The balance between the parties should be equitable; and Assessor Respondent materials and information readily accessible to the Taxpayer.

Please contact me with questions or comments. Rules are important and should be clear, equitable and understandable. We appreciate the SBOE's work on the draft to date and are available to work through the above and other wording concerns/criticisms if you are interested.

Thank you for your time and attention.

Respectfully Submitted:

Very Truly Yours,

Jodi A. Bain
Jodi A. Bain, M.A., J.D., LL.M.

6057 East Grant Road, Ste 100 | Tucson, AZ 85712 | Office: 520.777.3747 | BLFAZ.COM

Gmail George Shook <gshook@sboe.az.gov>

'oposed Rules

ıessage

ry Chandler <mzchandler3@gmail.com> Wed, Oct 7, 2020 at 9:30 AM
George Shook <gshook@sboe.az.gov>

)ear George,
Ve have discussed this many times in our sessions on the proposed rules. Petitioner's rebuttal does NOT come after FINAL arguments. In Rule R16-4-108 B Paragraph "6. Questions by the Board; final arguments, if equested by the Board;" needs to come AFTER Paragraph "7. Petitioner's rebuttal; and" We thought you had corrected this before. Now the inappropriate order has once again been incorporated in the rules. Please correct ıis. Paragraph 6 should read: "6. Petitioner's rebuttal;". Paragraph 7 should read "7. Questions by the Board; final arguments, if requested by the Board; and".
'hank you.
lary

Gmail George Shook <gshook@sboe.az.gov>

E: SBOE Proposed Rulemaking

nessage

xDetective <support@taxdetective.com> Mon, Sep 28, 2020 at 4:17 AM
George Shook <gshook@sboe.az.gov>

George,

Received and reviewed, thank you.

My comments would be, in general, to include the use of email and telephone as acceptable methods in SBOE communications and hearings statewide. Thank you for your leadership. -Paul

From: George Shook <gshook@sboe.az.gov>
Sent: Sunday, September 27, 2020 7:24 PM
To: Jodi Bain <jbain@bfaz.com>; appeals@pivotaltax.com; info@proptaxeval.com; neil_r_wolfe@yahoo.com; **William Ryan** <WILLIAM@wayfindertaxrelief.com>; **Droubie, Suzanne @ Tucson** <suzanne.droubie@cbre.com>; **TaxDetective Support** <support@taxdetective.com>; dproelke@gmail.com; rickedwards@mfpoer.com; appeals@integralpts.com; **Specht, Beth** <beth.specht@ryan.com>; **Domingos Santos** <ds@santoslawpllc.com>; carson@propertytaxrelief.com; **Naifeh** <naifeh@sagetaxappeals.com>; **Barney, Stephen** <sbarney@azdor.gov>; **Frank Boucek** <fboucek@azdor.gov>; **Frank Dudley** <FDudley@azdor.gov>; **Frankie Woodard** <woodardf@mail.maricopa.gov>
Subject: SBOE Proposed Rulemaking

Please see the attached Notice of Meeting.

The SBOE will receive public comment regarding the SBOE Proposed Rulemaking by email or in writing by October 7, 2020. A Google Meet online meeting will be held on the dates specified. The proposed rules are filed at the Secretary of State's office and at

https://sboe.az.gov/content/sboe-notice-proposed-rulemaking-2020.

Please use the following email address for comments you may want to submit. webmaster@sboe.az.gov

Thank you,

George R. Shook

Acting Chairman Arizona State Board of Equalization

Direct: 602-364-1611 Main: 602-364-1600

Gmail George Shook <gshook@sboe.az.gov>

wd: SBOE Proposed Rulemaking

nessage

lene Christopherson <jchristopherson@azdor.gov> Tue, Sep 29, 2020 at 4:28 PM
George Shook <gshook@sboe.az.gov>, Christa Rush <crush@sboe.az.gov>

fi George and Christa,

rank forwarded me a copy of the SBOE Proposed Rulemaking. I reviewed and had a question for clarification if I may ask. R16-4-107A - The SBOE shall conduct a hearing entirely on-the-record, for the convenience of the oard, and only if all parties to the hearing agree.

s this only for the purposes of COVID? Or, is it intended to be the method of delivery post COVID as well?

hanks,

Jolene Christopherson
Manager Training and Certification

Personal Property and Manuals
Arizona Department of Revenue
(602) 716-6840

onnect with ADOR:
atest News
zdor.gov
ZTaxes.gov
utorials

---------- Forwarded message ---------
rom: **Frank Boucek** <fboucek@azdor.gov>
ate: Mon, Sep 28, 2020 at 11:16 AM
ubject: Fwd: SBOE Proposed Rulemaking
o: Jolene Christopherson <jchristopherson@azdor.gov>, Jerry Fries <jfries@azag.gov>, Neuville, Lisa <Lisa.Neuville@azag.gov>, Darren Rasmussen <drasmussen@azdor.gov>

ooping in a few more people. I took a quick look and the rules looked largely the same as I remember them from the past. They include rules about hearing procedures for CVP.

rank

---------- Forwarded message ---------
rom: **George Shook** <gshook@sboe.az.gov>
ate: Sun, Sep 27, 2020 at 7:24 PM
ubject: SBOE Proposed Rulemaking
o: Jodi Bain <jbain@blfaz.com>, <appeals@pivotaltax.com>, <info@proptaxeval.com>, <neil_r_wolfe@yahoo.com>, William Ryan <WILLIAM@wayfindertaxrelief.com>, Droubie, Suzanne @ Tucson
suzanne.droubie@cbre.com>, TaxDetective Support <support@taxdetective.com>, <dproelke@gmail.com>, <rickedwards@mfpoer.com>, <appeals@integralpts.com>, Specht, Beth <beth.specht@ryan.com>, Domingos
antos <ds@santoslawplic.com>, <ccarson@propertytaxrelief.com>, Naifeh <naifeh@sagetaxappeals.com>, Barney, Stephen <sbarney@azdor.gov>, Frank Boucek <fboucek@azdor.gov>, Frank Dudley
FDudley@azdor.gov>, Frankie Woodard <woodardf@mail.maricopa.gov>

Please see the attached Notice of Meeting.

The SBOE will receive public comment regarding the SBOE Proposed Rulemaking by email or in writing by October 7, 2020. A Google Meet online meeting will be held on the dates specified. The proposed rules are filed at the Secretary of State's office and at https://sboe.az.gov/content/sboe-notice-proposed-rulemaking-2020.
Please use the following email address for comments you may want to submit. webmaster@sboe.az.gov

Thank you,

George R. Shook
Acting Chairman Arizona State Board of Equalization
Direct: 602-364-1611 Main: 602-364-1600

NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the sender named above by reply e-mail, and then delete the original e-mail. Thank you.

2 attachments

Agenda 9 27 2020.pdf
35K

Public Comment Meeting.pdf
47K

9-30-20

To: George Shook

From: Dan Swango

Re: **"Notice of Supplemental Proposed RuleMaking. Title 16. Tax Appeals. Chapter 4. State Board of Equalization"**

Specifically: **Article 1. Item R16-4-101. "Definitions"**

For terminology clarity, I suggest that consideration be given to adding the word "Chairman" to the list of definitions. This would make clear that Chairman refers to the governor appointed head of SBOE and not to the chairman of a panel of hearing officers in a hearing.

Suggested wording:

"Chairman" means the Chairman of the State Board of Equalization as defined and described in ARS 42-16154. (In these Rules the word "chairman" does *not* refer to the chairman of a panel of hearing officers conducting a hearing.)

In attendance
Gail Sharp

(Not rules related) In Cochise County the petitioner is using the telephone to attend appeal hearings. If Cochise County is using Microsoft Teams then why isn't the petitioner also using Microsoft teams?

16-4-104

GSharp: Once these rules are set and put into place that when we file a petition to the State Board, we need a copy of the assessor's decision and anything they attach to that decision or we may not get a favorable decision? It'll be different than what it's been this year, year before, so on? GS: No, I don't think that is different. Rules we are writing does not change what we are doing now. What we are experiencing now is that we are getting just 1 page of the decision and that is not complete. We accept the appeal and in the hearing room the hearing officer will vet it.

Susan Fair -

Kathryn Ann - Property Tax Evaluations
One of the concerns about submitting appeals to the State Board is the Assessor's decisiosn as well as all copies of the decision that was sent to the Assessor. In year's past we just sent page 1 of the Assessor's decision and the Agent Authroization. That's why I am concerned this year and I have questions on that very thing whether to send all the dcoumentation that was atached. Now that I understand that is the procedure going forward each year.

In the past, when the Assessor's came into the hearings and they provided all of their backup information to the Board Members. Now that they Assessor does not attend the hearing, it just leaves the petitioner on their own and then the Board Members aren't receiving all of the information from the Assessor where in the past they were directly from the Assessor when they came into the meeting. Now we will be making sure to ask the petitioner to provide all of the information to the Board. With the electronic submission, it is three days prior. Are you saying 5 days prior? GS: We are asking in the rules that the petitioner provide the Assessor's decision within 5 days of filing electronically.

Susan Fair - On the Records, they can be difficult because you have to read in the information that the petitioner has submitted and with 20 pages of evidence it is very difficult to read everything in that hearing.

Not in the Rules - GS: Sometimes the evidence does not get transmitted to all parties in time for the hearing. If the evidence is not in the hearing room then it is up to the pnel or the hearing officer to determine if the Board will allow that evidence. the petitioner that wants to add the evidence must convince the Board of its relevane and then the Board will make a decision of its relevance as well as the decision to delay the hearing, postpone the hearing or have the hearing rescheduled.

Daniel Swango: Would there be any problem with hearings that are scheduled for fairly late in the appeal season that they may not have the opportunity to have a hearing rescheduled due to the statutory deadline?

DS: Overall - Is there something in statute that covers such unique situations? There may be variances from these rules under extreme circumstances. For example, extended internet or power outages, a pandemic that may affect evidence processing.

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

(Authority: A.R.S. § 42-172.01 et seq.)

Editor's Note: Article 1, consisting of Sections R16-4-101 through R16-4-113, adopted by emergency rulemaking effective February 1, 1996. Emergency expired July 30, 1996 pursuant to A.R.S. § 41-1026(C). No rules have been filed with the Office of the Secretary of State for 16 A.A.C. 4 subsequent to the expiration of the rules (Supp. 99-3).

ARTICLE 1. EMERGENCY EXPIRED

Section

ARTICLE 1. EMERGENCY EXPIRED

R16-4-101. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-102. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-103. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-104. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-105. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-106. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-107. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-108. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-109. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-110. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-111. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-112. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-113. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

Exhibit A. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996, (Supp. 99-3).

Exhibit B. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

42-16151. Definition of state board

In this article, unless the context otherwise requires, "state board" means the state board of equalization.

42-16152. State board of equalization

The state board of equalization is established as an independent agency that is not subject to the supervision or control of the department of revenue.

42-16153. Members

A. The state board of equalization consists of:
1. Ten members who are appointed by the board of supervisors of each county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
2. Ten members who are appointed by the governor from each county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
3. An additional member who is appointed by the governor, who is designated as chairman and who serves in a full-time capacity.
B. Other than the chairman, members of the state board of equalization shall be selected on the basis of their work experience and other qualifications in at least one of the following categories:
1. Experience in at least three of the preceding eight years in property valuation, property tax appeals or appraising real property.
2. A certified general appraiser under section 32-3612.
3. A property valuation hearing officer or member of the state board of equalization, or any predecessor to the board, for at least three of the preceding eight years.
4. A member of the state bar of Arizona with at least three years of experience in property valuation or condemnation practice.
5. Experience in at least three of the preceding eight years as a real estate broker.
C. Members who are appointed by the county board of supervisors serve at the pleasure of the county board for terms that expire at the same time as the elective term of the county supervisors. Members who are appointed by the governor serve a term of five years. Members may be reappointed.
D. Except as provided in section 42-16154, subsection A, members of the state board are eligible to receive:
1. Not more than three hundred dollars per day for time spent in performing official duties, prorated for partial days spent on official duty.
2. Reimbursement for travel and other expenses as provided by law for other state officers.
E. Members who are appointed by a county shall be paid by the county. Members who are appointed by the governor shall be paid by the state.
F. A member of the state board of equalization shall not:
1. Hold any other public office under the laws of this state or a political subdivision of this state except a position on a board or commission that does not regularly interact with the state board of equalization.
2. Be a candidate for an elective office under the laws of this or any other state.
3. Hold any position of trust nor provide or engage in any occupation or business that would conflict with the duties of a member of the board.
4. Other than the chairman, have been employed by a county assessor or county attorney or by the department of revenue or the department of law within two years before appointment.
G. The governor may remove any member of the state board who was not appointed by a county board of supervisors for any of the following reasons:
1. Cause.
2. Failure to carry out the duties and responsibilities of the position.
3. Failure to follow the rules of the board.
4. Failure to follow the directions of the chairman as provided by law.

42-16154. Chairman; administration; meetings

A. The governor shall appoint the chairman of the state board who is responsible for the administration and operation of the board. The position of chairman is a full-time position. The chairman is eligible to receive compensation pursuant to section 38-611.

B. The state board shall meet at the call of the chairman as often as necessary to accomplish the duties prescribed by law and may hold meetings or hearings at any location in the counties that appoint members to the board. Members of the state board shall act under the direction of the chairman in carrying out their duties and responsibilities as provided by law and the rules of the board.

C. The members of the state board shall adopt administrative rules and rules of procedure for hearings before the board. The state board of equalization may adopt by reference judicial rules and rules of the state board of tax appeals to the extent that they apply to the proceedings of the state board of equalization. All hearings that are conducted before the state board, either by the board or a panel, a member or a hearing officer of the board, shall be conducted according to the rules.

42-16155. Hearing officers and employees

A. Subject to title 41, chapter 4, article 4, the state board of equalization may employ one or more hearing officers who must meet the same qualifications prescribed for the members of the board by section 42-16153.

B. Any training activity for hearing officers shall be held in public with notice as prescribed by title 38, chapter 3, article 3.1.

C. A hearing officer is eligible to receive up to three hundred dollars per day for time spent in performing official duties.

D. Subject to title 41, chapter 4, article 4, the state board may appoint a chief clerk and any other employees that it considers to be necessary to carry out its duties.

42-16156. Case assignment

A. The chairman or chief clerk of the state board shall assign tax cases on a random basis to members of the board to be heard as provided by this article. This subsection does not prevent the chairman or chief clerk from taking into account in assigning tax cases the availability of members, real or potential conflicts of interest of members or the convenience of petitioners or their representatives who file multiple petitions.

B. The chairman or chief clerk shall assign each case involving:

1. Appeals of property valuations that are determined by the department and equalization orders that are issued pursuant to statute to members of the board who are appointed by the governor. This paragraph does not apply to any properties that are valued by the department but would otherwise be valued by the county assessor.

2. Property listed as class three pursuant to section 42-12003 or property valued by the assessor at three million dollars or less to be heard by at least one member of the board or by a hearing officer who shall be from the county in which the property is located.

3. Any other property to a panel of either three or five members of the board, at least two of whom shall be from the county in which the property is located unless the chairman is sitting as a representative of that county. The chairman of the board shall designate a member to act as chairman of each panel. When possible, at the chairman's discretion, on any panel:

(a) Of three members, no more than one member may have been employed by a county assessor or county attorney or by the department of revenue or the department of law within four years.

(b) Of five members, no more than two members may have been employed by a county assessor or county attorney or by the department of revenue or the department of law within four years.

C. The chairman may sit on any case as a hearing officer representing any county.

42-16157. Appeal of valuation or legal classification from county assessor to state board of equalization

A. Except as provided in subsection C or D of this section, if the county assessor denies all or part of a petition under section 42-16055, and if a county board of equalization is not established in the county where the property is located, the petitioner may appeal the assessor's decision to the state board of equalization by filing with the state board, within twenty-five days after the date that the assessor's decision was mailed to the petitioner, a copy of the written basis of the decision according to the instructions on the petition.

B. The department may contest any proposed valuation or classification or any proposed change in valuation or classification before the state board. If, in the director's opinion, a decision of an assessor is erroneous, the director may appeal the assessor's decision to the state board within twenty-five days after the assessor's decision was mailed to the taxpayer and the department. In such an action the taxpayer shall raise any defense the taxpayer has to liability for the tax and any additional tax sought to be imposed. If issues other than valuation or classification are raised by either party, the action shall be tried as if it were an action pursuant to section 42-11005 or 42-11052.

C. A property owner who receives a notice of valuation under section 42-15105 may appeal the valuation or legal classification to the state board as provided in subsection A of this section within twenty-five days after the date of the assessor's notice.

D. A property owner whose petition is denied, in whole or in part, pursuant to section 42-19051 may only appeal the valuation or legal classification to the state board as provided in subsection A of this section within twenty days after the date of the assessor's notice of refusal or decision.

E. The state board may contract with any county with a population of less than five hundred thousand persons according to the most recent United States decennial census to review and hold hearings and make decisions on petitions filed under section 42-16105. These hearings shall be conducted in the county in which the property of the subject hearings is located.

42-16158. Appeal of valuation or legal classification from department to state board of equalization

A. A property owner who is not satisfied with the valuation or legal classification of the property as determined by the department may appeal to the state board by filing a petition with the state board that is postmarked on or before October 1 or within fifteen days after the department mails its decision to the property owner, whichever date is later. The state board shall prescribe the form of and procedure for filing the petition by administrative rule.

B. The state board shall notify the petitioner of the time and place of the hearing. The petitioner:

1. May appear before the state board at such time as the board may direct.
2. Is entitled to be heard at any hearing regarding the valuation or legal classification of the property.
3. Shall show cause why the valuation or legal classification should be changed.

C. If the state board orders the valuation or legal classification to be changed, it shall immediately transmit a copy of the order to the property owner and to the officers of this state and the county, city or town in charge of tax assessments who shall correct the tax roll accordingly.

42-16159. Hearing on department equalization order

A. At the request of a county assessor who receives an equalization order issued by the department under chapter 13, article 6 of this title, the state board shall hold a hearing and issue its decision within fifteen days after receipt of an appeal pursuant to section 42-13255.

B. The state board shall receive testimony from the department and the assessor on the merits of the equalization order as to:

1. The proper application of standard appraisal methods and techniques.

2. The rules and guidelines of the department as they relate to the order.
3. Any errors in the information or methodology used by the department to determine the necessity for the order, including changes in the valuation of property that were not included in the information used by the department.
4. Any other evidence relating to the validity of the order.
C. Revisions to the equalization order are effective for the valuation year in which the equalization order was issued.

42-16160. Recommendation for future equalization orders
The state board at any time may recommend to the department properties that in the state board's opinion should be included in the department's next review of property under chapter 13, article 6 of this title.

42-16161. Filings and hearings
A. If the state board maintains an electronic filing system, a party may transmit required information to the board in a format that is compatible with the board's filing system. The board's transmitted receipt is evidence that the board acknowledges that the petitions were filed for purposes of this article.
B. A person whose petition under article 2 of this chapter was denied in whole or in part and who appeals to the state board shall file with the state board:
1. A copy of the notice of the assessor's original valuation and legal classification.
2. A copy of the written basis of the assessor's subsequent decision on the petition.
C. Each hearing shall be held in the county in which the property is located. With the permission of all parties, the state board may conduct telephonic hearings when appropriate.
D. The hearing officer, board member or panel shall act on the petition, shall hear testimony presented in person at the hearing and may subpoena witnesses to testify regarding the petition. Unless all parties agree otherwise, each party shall submit evidence in person.
E. The decision shall be based on evidence presented by the parties attending the hearing.

42-16162. Decision of the state board
A. Based on the evidence presented at a hearing on an appeal, the state board shall either grant or refuse the request of the petition, in whole or in part, as the state board considers just and proper. The decision of the state board shall not exceed the assessor's noticed valuation and recommended classification. A decision by the state board does not limit a party from appealing the decision in a manner prescribed by law. The state board may increase individual parcels within an economic unit in a multiple parcel appeal when considering the equitable valuation of an economic unit not to exceed the total aggregate valuation of the multiple parcel appeal on the agreement of both parties.
B. In considering any petition filed by any person, the state board shall review and consider all competent evidence relating to full cash value, including, if presented, the valuation of similar property that is similarly situated.

42-16163. Hearing notices
Unless otherwise provided by law, all notices of hearings on appeals before the state board shall be mailed at least fourteen days before the hearing.

42-16164. Decisions

A. The hearing officer, board member or panel shall issue its decision at the conclusion of the hearing, except that in appropriate cases, the chairman of the state board may authorize the hearing to be continued for additional deliberation. The chairman of the state board may review any decision to ensure due process to all parties.
B. The board shall issue the decision in writing to each party and, in all cases, to the department by mail.

42-16165. Deadlines for issuing decisions

The state board shall complete all hearings and issue all decisions under this article on or before October 15 of each year, except for:
1. Cases involving property valued by the department, in which case the decisions shall be issued on or before November 15.
2. An appeal under section 42-16157, subsection C, which shall be completed on or before the third Friday in November of the calendar year preceding the year in which the taxes are levied.
3. In the case of a personal property appeal under section 42-19052, the state board of equalization shall complete the hearing and issue a decision on or before December 1 of the calendar year in which the taxes are levied.

42-16166. Transmitting changes in valuations or legal classifications

On or before the fourth Friday in November of each year the state board shall transmit to:
1. The assessor of each county a statement of changes, if any, that it has made in the valuation or legal classification of any property in the county that is valued by the county assessor.
2. The department a statement of changes, if any, that it has made in the valuation or legal classification of:
(a) Any property that is valued by the department.
(b) Property of taxpayers who pay their taxes to the department, except that in the case of private car companies, the statement shall be transmitted on or before October 31.

42-16167. Entry of changes and completion of roll

If the board of supervisors makes any changes to valuations ordered by the state board of equalization it shall:
1. Add up on the roll the entries of:
(a) Valuation of each description of property.
(b) Valuation of each class of property, as valued.
(c) Total valuations.
2. Enter all totals on the roll.

42-16168. Appeal to court

A. Any party, or the department, that is dissatisfied with the valuation or classification of property reviewed by the state board may appeal to court as provided by section 42-16203.
B. Appeals from all other orders and decisions of the state board shall be as provided by law.

42-16169. Finality of decision

Any decision of the state board of equalization pertaining to the valuation or classification of property is final when an appeal has not been taken within the time prescribed by section 42-16203. No person may plead such a decision in any proceeding as a bar to raising any valuation or classification issue relating to any other year.

42-16203. Appeal from state board of equalization to court

A. Any party, or the department, that is dissatisfied with the valuation or classification of property reviewed by the state board of equalization may appeal to court as provided by this article.

B. The department or a county assessor who is dissatisfied with the determination by the state board of an equalization order under section 42-16159 may appeal to the court as provided by this article.

C. An appeal to court shall be taken within sixty days after the date of mailing of the state board's final decision.

D. Appeals resulting from a change in value due to correcting a property tax error pursuant to article 6 of this chapter shall be filed within sixty days after the date of mailing of the state board's decision.

42-15105. Supplemental notice and appeal of valuation or classification in case of new construction, changes to assessment parcels and changes in use

For property that is valued by the assessor, in the case of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use that occur after September 30 of the preceding year and before October 1 of the valuation year:

1. The assessor shall notify the owner of the property of any change in the valuation or legal classification on or before September 30 of the valuation year.
2. Within twenty-five days after the date of the assessor's notice, the property owner may appeal the valuation or legal classification to the state board of equalization if the property is located in a county with a population of five hundred thousand persons or more or to the county board of equalization if the property is located in any other county.

42-16053. Rejection of petition for failure to include substantial information; amended petition; appeal

If the county assessor rejects a petition because it fails to include substantial information required by sections 42-16051 and 42-16052, and if the notice of rejection is mailed:

1. On or before June 15, the petitioner may file an amended petition with the assessor within fifteen days after the notice of rejection is mailed.
2. After June 15, the petitioner may appeal within fifteen days to:

(a) The county board of equalization as provided by article 3 of this chapter, if a county board is established in the county.
(b) The state board of equalization, if a county board is not established in the county.

42-16056. Appellate rights

A. If the assessor grants the requested relief, the petitioner may not appeal the ruling.
B. If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting, both parties shall sign the agreement, and both parties waive the right to further appeal.
C. If all or part of the petitioner's request is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the requested

change with a copy of the petition. Within twenty-five days after the assessor's decision is mailed, a petitioner whose request is denied may appeal to:
1. The county board of equalization, if a county board is established in the county, as provided by article 3 of this chapter.
2. The state board of equalization, if a county board is not established in the county, as provided by article 4 of this chapter.
3. Superior court as provided by article 5 of this chapter.
D. A person who owns, controls or possesses property that is valued by the county assessor may not appear before the county or state board of equalization without first having filed a petition with the assessor as provided by this article unless otherwise authorized by law. A person shall not raise any issue if the issue was not included in the petition filed under this article.

42-16158. Appeal of valuation or legal classification from department to state board of equalization
A. A property owner who is not satisfied with the valuation or legal classification of the property as determined by the department may appeal to the state board by filing a petition with the state board that is postmarked on or before October 1 or within fifteen days after the department mails its decision to the property owner, whichever date is later. The state board shall prescribe the form of and procedure for filing the petition by administrative rule.
B. The state board shall notify the petitioner of the time and place of the hearing. The petitioner:
1. May appear before the state board at such time as the board may direct.
2. Is entitled to be heard at any hearing regarding the valuation or legal classification of the property.
3. Shall show cause why the valuation or legal classification should be changed.
C. If the state board orders the valuation or legal classification to be changed, it shall immediately transmit a copy of the order to the property owner and to the officers of this state and the county, city or town in charge of tax assessments who shall correct the tax roll accordingly.

42-16252. Notice of proposed correction; response; petition for review; appeal
A. Subject to the limitations and conditions prescribed by this article, if a tax officer determines that any real or personal property has been assessed improperly as a result of a property tax error, the tax officer shall send the taxpayer a notice of proposed correction at the taxpayer's last known address by:
1. Certified mail, return receipt requested, if correction of the error results in an increase in the full cash value or change in legal classification of the property.
2. First class mail or, at the taxpayer's written request, delivery by common carrier or electronic transmittal, if correction of the error does not result in an increase in the valuation of the property.
B. The notice shall:
1. Be in a form prescribed by the department.
2. Clearly identify the subject property by tax parcel number or tax roll number and the year or years for which the correction is proposed.
3. Explain the error, the reasons for the error and the proposed correction of the error.
4. Inform the taxpayer of the procedure and deadlines for appealing all or part of the proposed determination before the tax roll is corrected.
C. Within thirty days after receiving a notice of proposed correction, the taxpayer may file a written response to the tax officer that sent the notice to either consent to or dispute the proposed correction of the error and to state the grounds for disputing the correction. A failure to file a written response within thirty days constitutes consent to the proposed correction. A taxpayer may file a request for an extension of time within thirty days after receiving the notice of proposed correction. The extension of time may not exceed thirty days. If an extension is granted, any response that is not filed within the extended due date constitutes consent to the proposed correction.

D. The taxpayer may appeal any valuation or legal classification issue that arises from the proposed correction as provided in this section.
E. If the taxpayer consents to the proposed correction, or consents to the proposed correction but disputes the proposed valuation or legal classification as provided on the form prescribed by the department, the tax roll shall be promptly corrected to allow property taxes to be levied and collected in all subsequent tax years, but no additional tax, interest or penalty may be imposed for the current tax year or any tax year preceding the date of the notice of proposed correction.
F. If the taxpayer disputes the proposed correction or the proposed valuation or legal classification, the tax officer shall meet with the taxpayer or the taxpayer's representative in any case in which the taxpayer has timely filed a written response to discuss the proposed correction. If after the meeting the tax officer and the taxpayer reach an agreement on all or part of the proposed correction, the tax officer and the taxpayer shall each sign an agreement and the tax roll must be promptly corrected to the extent agreed on.
G. If after the meeting the parties fail to agree on all or part of the proposed correction, the tax officer shall serve a notice on the taxpayer by certified mail within thirty days after the meeting date advising the taxpayer that the tax roll will be corrected to the extent agreed on. The taxpayer may file a petition on a form prescribed by the department with the board of equalization within thirty days after the date of the notice or it is barred. On receiving the petition, the board shall hold a hearing on the disputed issues in the proposed correction within thirty days and shall issue a written decision pursuant to the board's rules.
H. A party that is dissatisfied with the decision of the board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter.

42-16254. Notice of claim; response; petition for review; appeal
A. If a taxpayer believes that the taxpayer's property has been assessed improperly as a result of a property tax error, the taxpayer shall file a notice of claim with the appropriate tax officer, either personally or by certified mail, as follows:
1. If the alleged error concerns the valuation or classification of property by the county assessor, the notice shall be filed with the assessor. On receiving the notice, the assessor shall immediately transmit a copy to the department.
2. If the alleged error concerns the valuation or classification of property by the department, the notice shall be filed with the department.
3. If the alleged error concerns the imposition of any tax rate, the notice shall be filed with the county board of supervisors. The clerk of the board of supervisors shall notify each affected taxing entity to allow the entity to file a response to the claim.
B. The notice shall:
1. Be in a form prescribed by the department.
2. Clearly identify the subject property by tax parcel number or tax roll number and the year or years for which the correction is proposed.
3. State the claim and the evidence to support the claim for correcting the alleged error.
C. Within sixty days after receiving a notice of claim, the tax officer may file a written response to the taxpayer to either consent to or dispute the error and to state the grounds for disputing the error. A failure to file a written response within sixty days constitutes consent to the error, and the board of supervisors shall direct the county treasurer to correct the tax roll on the taxpayer's written demand supported by proof of the date of the notice of claim and the tax officer's failure to timely dispute the error.
D. If the tax officer disputes the error, the tax officer shall notify the taxpayer of a time and place for a meeting between a representative of the tax officer and the taxpayer or the taxpayer's representative within sixty days to discuss the basis for the dispute.
E. If, after the meeting, the parties agree on all or part of the notice of claim, the tax roll must be corrected promptly to the extent agreed on and any taxes that have been overpaid shall be refunded pursuant to section 42-16259.

F. If the parties fail to agree on all or part of the notice of claim, the taxpayer may file a petition with the board of equalization on a form prescribed by the department and shall send a copy to the tax officer by certified mail. The petition must be filed with the board within ninety days after the date of the meeting or it is barred. On receiving the petition, the board shall hold a hearing on the disputed issues in the notice of claim within thirty days and shall issue a written decision pursuant to the board's rules.
G. A party that is dissatisfied with the decision of the board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter. In addition, in order for a taxpayer to recover a refund for taxes paid in a preceding tax year as a result of an error, all taxes that were levied and assessed against the property for the tax year must be paid before delinquency in order for the court to retain jurisdiction of the matter.

42-19052. Appeal from assessor
A. A person who appeals to the assessor pursuant to section 42-19051 may appeal to:
1. The county board of equalization, if a county board has been established in the county, within twenty days after the date of the assessor's notice of refusal or decision. The appeal shall be in the same manner as prescribed by chapter 16, article 3 of this title.
2. The state board of equalization, if a county board has not been established in the county, within twenty days after the date of the assessor's notice of refusal or decision. The appeal shall be in the same manner as prescribed by chapter 16, article 4 of this title.
B. Any party that is dissatisfied with the decision of the board may appeal the decision to court as prescribed in chapter 16, article 5 of this title.

NOTICE OF FINAL RULEMAKING

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

PREAMBLE

1.	**Articles, Parts, or Section Affected (as applicable)**	**Rulemaking Action**
	Article 1	New Article
	R16-4-101	New Section
	R16-4-102	New Section
	R16-4-103	New Section
	R16-4-104	New Section
	R16-4-105	New Section
	R16-4-106	New Section
	R16-4-107	New Section
	R16-4-108	New Section
	R16-4-109	New Section
	R16-4-110	New Section
	R16-4-111	New Section
	R16-4-112	New Section
	R16-4-113	New Section
	R16-4-114	New Section
	R16-4-115	New Section
	R16-4-116	New Section
	R16-4-117	New Section

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

Authorizing statute: A.R.S. § 42-16154(C)

Implementing statute: A.R.S. §§ 42-16157, 42-16158, and 42-16159

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):

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening 26 A.A.R. 1708

Notice of Proposed Rulemaking: 26 A.A.R. 1679

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

Name:	George Shook
Address:	100 N 15th Ave, Suite 130, Phoenix, AZ 85007
Telephone:	(602) 364-1600
Fax:	(602) 364-1616
E-mail:	gshook@sboe.az.gov
Website:	https://sboe.az.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:

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. Since then, the SBOE has functioned with procedures that have not been formally promulgated as rules. In this rulemaking, the SBOE makes the required rules.

Mara Mellstrom, Policy Advisor to the Governor, provided an exemption from Executive Order EO2016-03 by e-mail dated February 8, 2017 and Trista Guzman Glover provided an exemption from Executive Order EO2020-02 by e-mail dated on May 5, 2020.

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 SBOE does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The economic impact of the rulemaking will be positive for the SBOE, petitioners, and respondents. The SBOE will become compliant with Arizona Revised Statute § 42-16154 requiring the SBOE to establish these rules. This will create efficiencies in functioning for the SBOE and eliminate uncertainty caused by failure to have the required procedural rules.

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

R16-4-101 was changed to add the definition of "Chairman" as the presiding officer of a hearing panel; add "(ADOR)"; revise the definition of “motion” for clarity; revise the definition of "On-the-Record" to improve clarity; revise the definition of “petitioner” to remove an incorrect statute citation; remove the definition of “review” since the common

meaning is sufficient; and, add the definition for "SBOE Chairman" for additional clarity requested in public comment.

R16-4-102(B), (C), and (D) were changed to correct grammatical errors for clarity and simplification.

R16-4-102(E) was changed by replacing "Board" with "SBOE" for clarity and the last sentence was removed as unnecessary because the subject matter is precisely covered by statute.

R16-4-103(1)(c) was changed to add an authorized representative of a partnership.

R16-4-103(2) was changed to replace “licensed” with “authorized” to account for out-of-state attorneys that are permitted to practice before the SBOE under Arizona Supreme Court Rule 39.

R16-4-103(3) was changed for clarity.

R16-4-103(6) was changed to reference the Supreme Court rule more generally.

R16-4-104(A)(1) was changed by moving the statutory citation to A.R.S. § 42-16157 from sub-paragraph b to sub-paragraph a.

R16-4-104(A)(2) was changed by substituting "petitioner" for "taxpayer or authorized representative of the taxpayer" for consistency.

R16-4-104(A)(6) was changed to reorder the means of submitting petitioner evidence to the SBOE. The method of submitting evidence in person at the hearing was placed first for clarity; add “**business**”; The method “by electronic document upload if available” was removed since the SBOE staff is unable to accommodate this delivery method.

R16-4-104(A)(6)(c) was changed to remove "aka CVP property" for consistency with terminology used in the referenced statute.

R16-4-104(A)(7) was changed to replace “shall” with “may” to be more accurately reflect the practice of the SBOE and R16-4-104(A)(7)(b) was removed since it was incorrect and the following item was re-lettered.

R16-4-104(A)(9) was changed to add “and respondent”; add “or respond to” based on the request of a comment.

R16-4-104(D) was changed to emphasize that SBOE hearings are public and that confidentiality does not attach unless required by law or court order.

R16-4-106(B) was changed by replacing "Board" with "SBOE" for clarity.

R16-4-107(A) was changed to more simply introduce "On-the-Record" hearings. The phrase "for the convenience of the board" was removed per request in public comment and “shall” was replaced with “may” to more accurately reflect the practice of the SBOE.

R16-4-107(B) was changed to replace “read the evidence into the record” with “orally summarize the evidence for the record” for clarity. This is consistent with current practice.

R16-4-107(C) was changed by replacing "Review" with "Consider" for clarity per request in public comment.

R16-4-108 was changed by replacing "Board" with "SBOE" throughout for clarity.

R16-4-108(B)(1) was changed by adding "presiding SBOE member(s)" for clarity.

R16-4-108(B)(3) was amended by request in public comment.

R16-4-108(B)(6) and R16-4-108(B)(7) were reordered to correct an error identified in public comment.

R16-4-108(B)(8) was changed to include the announcement of the decision for clarity.

R16-4-108(B)(9) was changed by removing the requirement that all parties agree to a mixed ratio because it is unnecessary and some appeals are made on the basis of the allocation of legal classification.

R16-4-108(C) and R16-4-108(E) were deleted. R16-4-108(C) was confusing and is addressed elsewhere in this rule. R16-4-108(E) was made redundant in R16-4-108(A) and R16-4-108(B).

R16-4-108(D) was re-lettered in sequence as R16-4-108(C).

R16-4-109 was changed by replacing "Board" with "SBOE" throughout for clarity.

R16-4-109(C) was changed to simplify the rule and remove an incorrect citation.

R16-4-109(F) was changed by adding "relevance."

R16-4-110(1) through R16-4-110(3) were changed to letter references to conform to the lettering convention used in other rules.

R16-4-110(A) was changed to add references to other standards set by statute or law. A citation was given to an existing statute requiring a higher standard of proof.

R16-4-110(B) was changed to add a statutory citation and to clearly describe the petitioner's burden of proof as requested in public comment.

R16-4-112(C) was changed to correct a statutory reference from A.R.S. § 39-121.01 to A.R.S. § 39-121.03(A).
R16-4-113 was simplified for clarification and the requirement for notice to the respondent was added to comply with R16-4-114.

R16-4-114(B) was simplified for clarity.

R16-4-115 was changed by replacing "Board" with "SBOE" in the heading for clarity.

R16-4-115(A) was simplified for clarity.

R16-4-116 was removed as being unnecessarily complicated and repetitious of A.R.S. 42-16164(A) and due to public comment.

R16-4-117 was renumbered to R16-4-116 due to the removal of the previous R16-4-116.

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

The Notice of Public Rulemaking was published in the Arizona Administrative Register on July 31, 2020. The official public comment period began on September 29, 2020 and ended on October 30, 2020.
The SBOE received comments regarding its draft rules, supplemental rulemaking and final rulemaking and several observations regarding the proposed rulemaking. Not all comments referenced the proposed rules. Comments were received from SBOE Board members Mary Chandler, Susan Fair and Daniel Swango, and Department of Revenue employee Jolene Christopherson. Other comments were from Paul Euler, Jodi Bain, Kathryn Wiseman, Gail Sharp, Jeff Nolan, property tax agents and/or their staff. The response to the comments and observations resulted in the clarification of the proposed final rules. Nothing in the Notice of Final Rulemaking is a significant change to the proposed rules.
The SBOE follows the dictates of Arizona laws and complies with the Open Meeting and Public Records laws A.R.S. § 38-431 et seq,, § 39-121 et seq., and §41-161 et seq. Arizona Revised

Statutes § 42-16161 provides that parties shall present evidence in person and that the SBOE decision will be based on evidence by the parties attending the hearings. Decisions are announced at the conclusion of each hearing and hard copies are mailed to the parties. If a party fails to attend a hearing, all evidence will be considered by the SBOE. A.R.S. § 42-16161 allows the SBOE to accept petitions and evidence by electronic means. Evidence submitted to the SBOE for consideration in the public hearing becomes public information, unless restricted by statute or court order. All hearings are public hearings. On-the-Record hearings are the result of coordination with all parties prior to being scheduled. The wording of the proposed rule has been changed to indicate all parties must agree to the On-the-Record hearing. The SBOE complies with the American Disabilities Act and attempts to accommodate individual circumstances and may allow the use of testimony by telephone.

Arizona Revised Statutes § 42-16162(A) directs the SBOE to render a decision that is just and proper. The SBOE may reject jurisdiction of an appeal for non-compliance with Arizona Revised Statutes. The SBOE has jurisdiction to determine if a property's use or occupancy qualifies for a tax exemption under the error-correction statutes. See A.R.S. § 42-16251(3)(b); Lyons v State Board of Equalization, 209 Ariz. 497, 104 P.3d 867 (Ariz. App. 2005)(concludes that the SBOE has jurisdiction to determine if an assessor made an error in determining whether an exemption applies). The SBOE does not have jurisdiction over exemptions at valuation hearings because these hearings are conducted in the year before tax exemptions are determined by an assessor. The SBOE does not have jurisdiction/authority to determine tax rates. See A.R.S. § 42-16254(A)(3).

In April 2020, the SBOE placed a notice of its COVID-19 Statement on the SBOE's website. The SBOE updates this statement when new information is available. Temporary, emergency procedures were put in place by the SBOE to comply with the Governor's Executive Orders regarding COVID-19 mitigation. These procedures include remote hearings by video and telephone, plus the submission of evidence at least three days in advance of the hearing to the SBOE and the other party. Copies of evidence are made by the SBOE for panel members' use during the hearing. The SBOE staff assist parties with any difficulties in electronically delivering evidence to the correct party. Any additional costs and burdens placed on the taxpayer, the respondent, and the SBOE by these temporary, emergency procedures will cease when in-person hearings resume and these temporary, emergency procedures are no longer in

effect. A comment asked if the SBOE should include a rule dealing with emergency procedures for future, exigent circumstances. The SBOE will respond to any future emergency orders issued under emergency powers in A.R.S. § 26-301, et seq. Therefore, creating a rule for future emergencies is unnecessary.

The public and stakeholder comments and specific agency responses were sent to the GRRC for review. In this review, all submitted public comments were to have been addressed. For gravity and organization, some public comments are consolidated in the attached Public Comment document.

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:

None of the rules in the rulemaking requires 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:

No federal law is applicable to the subject on any rule in this rulemaking.

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

An analysis was not submitted nor required.

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. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

Section

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

R16-4-101. Definitions

"Assessor" means the county assessor of the county in which the property at issue in an appeal is located.

"**Chairman" means the presiding member of the panel of SBOE board members in a particular appeal hearing.**

"Department" means the Arizona Department of Revenue (**ADOR**).

"Motion," aside from parliamentary procedures, means a written or oral request to the SBOE for an order or ruling regarding an appeal.

"On-the-Record" means a hearing conducted by reviewing submitted documents without taking oral testimony or argument.

"Petitioner" means a taxpayer or other person qualified to file an appeal and appear before the SBOE and, if applicable, an authorized representative of the taxpayer.

"Respondent" means a person or entity qualified to answer an appeal filed by a petitioner.

"SBOE" means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE, or

A hearing officer employed by the SBOE under A.R.S. § 41-16155 to hear appeals.

"SBOE Chairman" means director of the SBOE as described in § A.R.S. 42-16154.

R16-4-102. Jurisdiction of the SBOE

A. The SBOE hears appeals regarding the valuation or legal classification of real and certain personal property made by the assessor or the Department.

B. The SBOE hears appeals by petitioners regarding:

1. **A.R.S. § 42-15105. A notice from the assessor pertaining to the valuation or legal classification of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use;**
2. **A.R.S. § 42-16053. The rejection by the assessor of a petition for failure to include substantial information;**
3. **A.R.S. § 42-16056. The decision by the assessor on a petition for review of valuation or legal classification;**
4. **A.R.S. § 42-16157 or 42-16158. The decision by the assessor or the Department on a petition for review of valuation or legal classification;**

5. **A.R.S. § 42-16252: A Notice of Proposed Correction decision issued by the assessor or the Department;**
6. **A.R.S. § 42-16254: The decision made by the assessor or the Department regarding an error as described in A.R.S. § 42-16251(3) in a Notice of Claim;**
7. **A.R.S. § 42-19052: The decision by the assessor pertaining to the valuation or legal classification of personal property; and**
8. **A.R.S. § 42-19156: The decision by the assessor pertaining to the valuation of a mobile home.**

C. The SBOE hears an appeal by an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.

D. The SBOE hears an appeal by the Department under A.R.S. § 42-16157 regarding a proposed valuation or legal classification or change in a valuation or legal classification made by the assessor.

E. If the **SBOE** lacks jurisdiction regarding an appeal, the **SBOE** shall dismiss the appeal on its own motion.

R16-4-103. Representation before the SBOE

The following individuals may appear before the SBOE:

1. An individual representing:
   a. The individual's interest,
   b. An estate or trust of which the individual is the legal representative,
   c. **A partnership of which the individual is a partner**, or
   d. A corporation of which the individual is an officer or an authorized representative,
2. An attorney **authorized** to practice law in Arizona;
3. **A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;**
4. An authorized representative from the assessor's office;
5. An authorized representative from the Department; and
6. **Other individuals allowed under Arizona Supreme Court Rule 39**.

R16-4-104. Filing a Petition; Filing Deadlines

A. To initiate an appeal under R16-4-102(B), a petitioner shall submit a petition to the SBOE.

1. The petitioner shall use the correct petition form when initiating an appeal. The SBOE shall not accept a letter in place of the correct petition form. Except as noted, the correct petition forms are available on the Department's website and from an assessor.
   a. Under A.R.S. §§ 42-15105, 42-16053, 42-16056, and **42-16157**, the correct petition form is ADOR 82130;
   b. Under A.R.S. § 42-16158, the correct petition form is SBOE EQ200, which is available upon request from the SBOE;
   c. Under A.R.S. § 42-16252, the correct petition form is ADOR 82179C;
   d. Under A.R.S. § 42-16254, the correct petition form is ADOR 82179C-1; and
   e. Under A.R.S. §§ 42-19052 and 42-19156, the correct petition form is ADOR 82530.
2. If the petition is made under A.R.S. § 42-15105 and is submitted to the SBOE, the **petitioner** shall attach to the correct petition form a copy of the current form ADOR 82130AA, which is available on the Department's website;
3. The petitioner shall submit the correct petition form under subsection (A)(1) as follows:
   a. Under A.R.S. § 42-15105 or § 42-16056, by U.S. Postal Service, by hand delivery to the SBOE office, or filed online using the SBOE Appeals application;
   b. Under all other provisions, by U.S. Postal Service or hand delivery to the SBOE office.
4. The petitioner shall submit:
   a. A copy of the petition originally filed with the assessor or the Department, as applicable, including any attachments; and
   b. A copy of the decision by the assessor or the Department regarding the original petition, including any attachments.
5. For a petition filed electronically to the SBOE under subsection (A)(3)(a), the petitioner shall submit a copy of all attachments and evidence originally filed to the assessor or to the Department to the SBOE within 5 days of the date of the electronically filed petition; otherwise, the petition will be denied.
6. Evidence previously submitted to the assessor or the Department is not forwarded to the SBOE. Any evidence that the petitioner wants considered must be submitted in person at

the hearing or by U.S. postal service or hand delivered to arrive at the SBOE office three **business** days prior to the scheduled hearing:

NUMBER OF COPIES:

a. One copy of any evidence for property that is owner-occupied legal class 3 or another legal classification with a full-cash-value less than $3 million;
b. Three copies of any evidence for property not described under subsection (A)(6)(a) and not valued by the Department; and
c. For property valued or classified by the Department under A.R.S. § 42-16158 at least 5 days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
    i. The petitioner shall submit one copy of the evidence to the Department, and four copies to the SBOE;
    ii. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and four copies to the SBOE.

7. In compliance with A.R.S. § 42-16056. the SBOE **may** consider only issues previously raised with the assessor (see A.R.S. § 42-16051 et seq. for qualifying bases). The SBOE may admit new or additional evidence only if:
    a. The evidence directly relates to an issue previously raised with the assessor and
    b. Amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, which are available on the Department's **website**, are provided to the assessor at least five days before the scheduled hearing.
8. Under the following circumstances, the SBOE will consider requests for multiple dockets or petitions to be heard together. The request must be made in writing, clearly identify all parcel numbers to be included and identify the qualifying basis (see A.R.S. 42-16051 et seq.) for the type of request described below:
    a. The mulitiple parcels constitute a single economic unit;
    b. The mulitiple petitions being appealed are a singular argument for all parcels;
    c. The petitioner desires to hear multiple petitions on a single day's agenda;
    d. The assessor's decision is for multiple parcels and the petitioner wants them heard together as a single appeal.

9. The petitioner **and respondent** shall comply with all statutory requirements, including the time within which to file **or respond to** a petition.

B. To initiate an appeal under R16-4-102 (C) or (D), the Department or assessor shall submit a petition and proof of service of the appeal on the respondent to the **SBOE** before the date of the scheduled hearing.

C. The time-period within which to file a petition is written in the statutes. It is the petitioner's responsibility to ensure a petition is timely filed.

1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
2. The SBOE shall consider a petition timely filed if the petition is properly directed to the SBOE office and:
   a. Is received in the SBOE office before the end of the time-period;
   b. Is postmarked on or before the end of the time period; or
   c. Contains an electronic date that is on or before the end of the time-period.

D. Evidence and testimony provided for SBOE consideration are, upon submission, rendered public information, unless restricted by statute or court order. A.R.S. §§ 38-431 et seq. and 42-2003(C)(1)(a).

R16-4-105. Motions

A. A party shall:

1. Serve a copy of any motion on all other parties. The party shall ensure a motion includes the factual and legal grounds supporting the motion and the requested action; and
2. Unless the motion is made at the time of a scheduled hearing, submit proof of service on the other parties to the SBOE.

B. A party may file a response stating any objection to the motion served under subsection (A).

C. The SBOE, in its discretion, shall:

1. Decide whether to allow oral argument regarding a motion; and
2. Decide whether to rule on a motion before or during a scheduled hearing. If the SBOE rules on a motion before a scheduled hearing, the SBOE shall serve the written ruling on all parties.

R16-4-106. Hearing

A. As required under A.R.S. § 42-16163, the SBOE shall mail notice of an appeal hearing to all parties at least 14 days before the hearing. The SBOE shall include in the notice the date, time, and location of the hearing.

B. Before a scheduled hearing, all members of the **SBOE** shall make known whether the member, as defined at A.R.S. § 38-502, has a substantial interest, as defined at A.R.S. § 38-502, in the matter to be heard by the SBOE. As required by A.R.S. § 38-509, the SBOE shall maintain the disclosure documents and make them available for public inspection.

C. When the SBOE determines it is in the interest of the parties and the state, the SBOE shall allow one or all parties to participate in a hearing telephonically.

R16-4-107. On-the-Record Hearing; Failure to Appear

A. **Upon request of either party,** the **SBOE may** conduct a hearing On-the-Record, only if all parties to the hearing agree.

B. If all parties agree to an On-the-Record hearing, the SBOE shall review the evidence submitted by the parties, **orally summarize** the evidence for the record, and render a decision based on the submitted evidence.

C. If the parties do not agree regarding an On-the-Record hearing, the SBOE shall:

1. **Consider** the evidence submitted by the parties;
2. Take oral testimony from or on behalf of the party opposing the On-the-Record hearing; and read the evidence into the record beginning with testimony by the petitioner, if present, or such submitted evidence followed by the testimony by the respondent, if present, or such submitted evidence; and
3. Render a decision based on both the submitted evidence and oral testimony.

D. If a party fails to appear at a scheduled hearing, the SBOE shall conduct the hearing as described in subsection (C).

E. Consistent with R16-4-108(B), under both subsections (B) and (C), the SBOE shall ensure the petitioner's evidence is entered in the record before the respondent's evidence is entered in the record.

R16-4-108. Hearing Procedure

A. Unless otherwise provided by law, all **SBOE** hearings are open to the public.

B. At a hearing, the **SBOE** shall ordinarily proceed as follows:

1. Identification for the record of the docket number of the proceeding, the parcel number or account number of the property at issue, if applicable, the ownership of the subject property, **the presiding SBOE member(s)** and parties participating in the proceeding;
2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
3. **The respondent will provide its recommendation for a reduction in noticed value or a change in legal class, if any; followed by opening statements by all parties, if requested by the SBOE;**
4. Presentation of testimony and evidence by the petitioner and witnesses;
5. Presentation of testimony and evidence by the respondent and witnesses;
6. **Petitioner's rebuttal; and**
7. **Questions by the SBOE; final arguments, if requested by the SBOE**; and
8. **SBOE** deliberation, motion, and **the announcement of** the decision.
9. The decision of the **SBOE** shall include the full cash value, the applicable limited property value or limited property value rule, the legal classification or applicable legal **classification allocation, and the assessment ratio**.

C. The SBOE may recess or continue a hearing for good cause.

R16-4-109. Rules of Evidence

A. The **SBOE** shall accept oral evidence only when presented under oath or affirmation.

B. The **SBOE** is not required to follow rules of evidence usually used in a court proceeding.

C. The **SBOE** shall admit evidence that is relevant and **not cumulative**. The **SBOE may** consider objections to the admission **of evidence** in assigning weight to the evidence.

D. At the **SBOE**'s discretion, parties may call and examine witnesses, cross-examine witnesses, and introduce written evidence relevant to the proceeding.

E. The **SBOE** may call and examine a witness and may examine a witness called by a party.

F. The **SBOE** shall admit into evidence a copy of an original document if there is a showing of authenticity **and relevance**.

R16-4-110. Proof

Unless otherwise provided by law:

A. The standard of proof in a hearing before the SBOE is a preponderance of the evidence, **unless, some other standard of proof is required by law or statute. See e.g., A.R.S. § 42-16251(3)(e) which requires a standard of clear and convincing evidence;**

B. The decision made by the assessing agency is presumed to be correct. **A.R.S. § 42-16212(B). The petitioner has the burden to prove that the valuation and/or legal classification of the subject property is incorrect.**

R16-4-111. Subpoenas

A. The SBOE may issue subpoenas for the attendance of a witness or production of books, records, documents, or other evidence that is not confidential or privileged.

B. The SBOE may issue a subpoena at its discretion or upon written request by a party. A party shall include the following in a written request for a subpoena:

1. Identification of the property, including parcel number if applicable, at issue;
2. A list or description of all records sought;
3. A statement showing proper foundation for the request;
4. The name and address of the custodian of the records sought or all persons to be subpoenaed;
5. The date, time, and place to appear or to produce the records; and
6. The name, address, and telephone number of the party requesting the subpoena.

C. If the SBOE issues a subpoena upon the request of a party, the requesting party shall:

1. Ensure the subpoena is served no later than five business days before the time specified in the subpoena for attendance of a witness or production of records;
2. Ensure the person serving the subpoena provides proof of service to the SBOE; and
3. Pay the cost to serve the subpoena.

R16-4-112. Records of a Hearing

A. The SBOE shall make a recording of every hearing. If a person makes a request, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means,

within one business day after the hearing. If the person wants a copy of the hearing recording in another format, the SBOE may charge the cost of providing the copy in the other format.

B. A party to a proceeding may, at the party's expense, record the proceeding using a recording device or court reporter.

C. Subject to the limits imposed at A.R.S. § 39-121.03, a person may submit a written request to examine or be furnished a copy of a public record in the custody of the SBOE. As allowed under **A.R.S. § 39-121.03(A)**, the SBOE may charge a fee for providing a copy of a public record.

D. While examining a public record, a person shall not remove the public record from the SBOE office.

R16-4-113. Withdrawal

A. The petitioner may withdraw an appeal by providing written notice to the SBOE **with a copy delivered to the respondent** at least **two business days** prior to the scheduled hearing.

B. If the petitioner submits a written notice of withdrawal to the SBOE **fewer than two business days prior** to the hearing or if the petitioner submits **a written or oral notice of withdrawal** at the hearing, **the SBOE shall treat the request as a motion**.

R16-4-114. Ex Parte Communications

A. A party shall not communicate, either directly or indirectly, with a member of the SBOE about a substantive issue in a pending appeal unless:

1. All parties are present,
2. It is during a scheduled hearing where an absent party fails to appear after proper notice, or
3. It is by written motion where a copy is provided to all parties.

B. If a member of the SBOE **has received** ex parte communications regarding an appeal, the member shall **not participate** in the appeal.

R16-4-115. SBOE Decision

A. The SBOE shall mail a written copy of the decision within a reasonable time after the conclusion of the hearing. A.R.S. § 42-16164

B. In its decision, the SBOE shall include the following:

1. Docket number of the appeal;
2. Parcel number or other identification of the property at issue;
3. Separately stated findings of fact and conclusions of law;
4. The decision regarding the property valuation or classification;
5. Other matters before the SBOE related to the appeal; and
6. The right of an aggrieved party to appeal the SBOE's decision under A.R.S. § 42-16203 or § 42-16254(G).

C. The SBOE shall mail a copy of the written decision to all parties and to the Department.

R16-4-116. SBOE Member Participation in Matters before the SBOE

A. A member of the SBOE shall comply with A.R.S. Title 38, Chapter 3, Article 8, regarding conflicts of interest. This requires, among other things:

1. Refraining from participating in any manner in a SBOE decision regarding property in which the member or the member's relative has a substantial interest; and
2. Refraining from participating in any manner in a SBOE decision regarding a petition submitted to the SBOE by an entity in which the member or the member's relative has a substantial interest.

B. Remedies and penalties for violating A.R.S. Title 38, Chapter 3, Article 8 are specified at A.R.S. §§ 38-506 and 38-510.

C. Members of the SBOE shall comply with the Open Meeting Laws of Arizona.

SBOE RULES NFR PUBLIC COMMENTS COLLATED

	COMMENTER	RULE	COMMENT	AGENCY RESPONSE
1	Jeffrey Nolan	N/A	Are our previous comments still part of the record or do we have to do through them again?	Comments previously made during the drafting of the rules were received by the SBOE and addressed in the current proposed rules and the final rulemaking. Stakeholder comments and public comments are hereby addressed.
2	Jeffrey Nolan	N/A	Request that all decisions be made available to the general public on the website.	The current practice is decisions are made available to the public in compliance with state laws. Persons desiring copies of decisions may request information via the FOIA. A Public Request form has been posted to the internet.
3	Jeffrey Nolan	R16-4-103(7)	R16-4-103(7): Is there an exchange of information for all parties before the hearing similar to what you are doing with COVID-19. We would like to see in the rule a mutual exchange of all parties either at the Assessor level or prior to the hearing.	Incorrect citing of rule. Should be citing R16-4-104(6)(c). This rule pertains to statutorily valued property by the Department of Revenue. Any request mandating early disclosure in all cases should be addressed to the legislature. Currently, state law has distinguished between complex cases involving the ADOR and locally-assessed cases.
4	Jeffrey Nolan	R16-4-107(D):	R16-4-107(D): If for whatever reason someone submits evidence but they fail to appear, the Board should treat it as an On-the-Record hearing and they shall review any evidence that has been submitted. R16-4-107(A): The SBOE shall conduct a hearing entirely On-the-Record, for the convenience of the board, and only if all parties to the hearing agree. Is this only for the purposes of COVID-19? Or, is it intended to be the method of delivery post COVID-19 as well? What does 'for the convenience of the board' mean here? D. Unable to follow - should this read 'in subsection (B)'?.	The SBOE does not have the authority to deny the party that does appear the opportunity to present its evidence and testimony at the hearing. This would be a denial of that party's due process. R16-4-107(A) was revised to provide on-the-record hearings only at the request of a party and if all parties agree. This comports with current procedure and it is not a COVID-19 specific, emergency procedure. In an on-the-record hearing, evidence must be summarized in the record by the SBOE in sufficient detail to identify the evidence considered and its relevance to the appeal. The recording must provide a record of the evidence considered, the decision, and the reasoning that the SBOE used to arrive at the decision.
5	Jeffrey Nolan	R16-4-102(E)	What does it mean when the Board rejects jurisdiction and dismisses an appeal for lacking jurisdiction? Is that a decision that the time clock is in place to go forward?	That is not in the Board Rules. Are you asking to have that included in our Rules? The Board will issue a decision for all appeals properly filed to the Board. The staff does not have the authority to reject an appeal but if the appeal is not perfected then staff will contact the petitioner to assist with getting the appeal perfected. See A.R.S. §§ 42-16051, 42-16157 and 42-16158. We are unable to answer the second question since that would be rendering legal advice.
6	Jeffrey Nolan	R16-4-104(A)(5)	R16-4-104(A)(5): On electronic filing, can you upload all documents that need to be filed with the appeal?	A.R.S. § 42-16161 allows the Board to create an electronic means for filing an appeal. The current application does not allow document upload. At present a new appeals application is under development and will accommodate uploading of documents but only when filing an appeal. Otherwise, documents have to be sent to the SBOE as stated in the rules at R16-4-104(A)(6).

7	Jeffrey Nolan	R16-4-106(C)	R16-04-106(C) I think it should be if any party wants to call in telephonically for whatever reason the SBOE should allow any party to do so. I'm not sure that should be in the rules but the way that I read it it's at the Boards discretion.	Current practice is for all hearings to be in person. In-person hearings are more effective and efficient than telephonic hearings. The SBOE will accommodate all request in compliance with the Americans Disabilities Act, ADA. Due to the COVID-19 pandemic, hearings have been conducted virtually and by telephone. (See On-the Record hearings)
8	Jeffrey Nolan	N/A	By statute its valuation and classification that the Board has jurisdiction on but I have a question specifically related to exemptions. Of whether or not the Board takes jurisdiction on exemptions that maybe they are denied or there is a dispute of how much of the property should be exempt? NOLAN	The SBOE has jurisdiction to determine if a property's use or occupancy qualifies for a tax exemption under the error-correction statutes. See A.R.S. § 42-16251(3)(b); Lyons v State Board of Equalization, 209 Ariz. 497, 104 P.3d 867 (Ariz. App. 2005)(concludes that the SBOE has jurisdiction to determine if an assessor made an error in determining whether an exemption applies). The SBOE does not have jurisdiction over exemptions at valuation hearings because these hearings are conducted in the year before tax exemptions are determined by an assessor.
9	Jeffrey Nolan	N/A	In general, any of the rules and the definitions that are already covered by statute are redundant and to make sure that they avoid inadvertently exceeding statutory authority. I don't have any specific items. NOLAN	The SBOE does not present any rule that exceeds its statutory authority.
10	Jolene Christopherson	R16-4-107(A)	R16-4-107(A): The SBOE shall conduct a hearing entirely On-the-Record, for the convenience of the board, and only if all parties to the hearing agree. Is this only for the purposes of COVID-19? Or, is it intended to be the method of delivery post COVID-19 as well?	On-the-Record hearings are not conducive for all appeals. Since work year 2000, OTR hearings provide the SBOE the ability to facilitate unique time constraints for petitioners and ADA compliance. It also accommodates hearings that are mechanical in nature for correcting assessor records. For these reasons the OTR hearings will continue.
11	Paul Euler	R16-4-107(A)	My comments would be, in general, to include the use of email and telephone as acceptable methods in SBOE communications and hearings statewide.	An official record must be kept regarding SBOE communication and all hearings. All forms of communication are employed by the SBOE to accomplish its mission. (See comment #7)
12	Dan Swango	R16-4-101	R16-4-101: "Definitions" For terminology clarity, I suggest that consideration be given to adding the word "Chairman" to the list of definitions. This would make clear that Chairman refers to the governor appointed head of SBOE and not to the chairman of a panel of hearing officers in a hearing. Suggested wording: "Chairman" means the Chairman of the State Board of Equalization as defined and described in A.R.S. § 42-16154. (In these Rules the word "chairman" does not refer to the chairman of a panel of hearing officers conducting a hearing.) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms	The proposed rule R16-4-116(A) has been removed. Rule R16-4-101, Definitions, has been changed to identify role of the "Chairman" of a SBOE hearing panel and the chairman of the Arizona State Board of Equalization (A.R.S. § 42-16154) as "SBOE Chairman".

13	Jodi Bain	N/A	(i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;	The SBOE website link as referenced in the comment was made available only during the pandemic as a temporary avenue for petitioners to provide documentation to the SBOE in preparation for virtual hearings. This was a short-term process or solution. The SBOE will eventually return to in-person hearings where documentation submission requirements will be supported as outlined in R16-4-104 (3).
14	Jodi Bain	N/A	(ii) Increase Taxpayer costs;	The SBOE does not present any rule that exceeds its statutory authority. The board has reviewed this comment and did not discover any rule that would unduly increase the cost to the petitioner's objective to file the petition and participate in a hearing.
15	Jodi Bain	N/A	(iii) Fail to require quid pro quo between the Respondent Assessor and the Taxpayer Petition;	During in-person hearings and On-the-Record hearings there is no requirement of either party “to disclose materials prior to hearings” as outlined in R16-4-104(A)(6).
16	Jodi Bain	N/A	(iv) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. General comments without reference to numbered rules are vague and limit the agencies ability to address specific concerns. In an effort to address this comment R16-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
17	Jodi Bain	N/A	(v) Respondent (Assessor) necessary and required disclosures are not addressed;	R16-4-104(A)(6) was changed to apply to petitioner and respondent. During in-person hearings, as well as On-the-Record hearings, there is no requirement on either party to disclose materials prior to hearings. R16-4-110 was changed to clarify burden of proof.
18	Jodi Bain	N/A	(vi) Do not reflect various current administrative filing, appeal process and hearing protocols with clarity;	Previously addressed above, see comment number 12 (ix). The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq.
19	Jodi Bain	R16-4-101	(vii) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms.	R16-4-116 was removed as being unnecessarily complicated and repetitious of A.R.S. § 42-16164(A) and due to public comment.).
20	Jodi Bain	N/A	(viii) Do not impartially allocate requirements among the parties – treats different parties differently; and	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. General comments without reference to numbered rules are vague and limit the agencies ability to address specific concerns. In an effort to address this comment R16-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
21	Jodi Bain	N/A	(ix) Are unclear how and when petitions, attachments and pre-hearing submittals and/or new requirements for materials are to be hard mailed, electronically mailed, uploaded via SBOE website link and/or otherwise allowed to be provided to the SBOE.	R16-4-104 outlines current administration for the submittal of petitions and evidence reflects the change in the processes due to the COVID-19 pandemic. The SBOE conducts virtual hearings and must ensure participants to the hearings possess the same documents prior to the commencement of a hearing. The logistics are dynamic and are different for in-person hearings. See preamble item 10 for changes to the proposed and final rules. These changes reflect the differences from the draft rules.

22	Jodi Bain	N/A	(x) The draft rules increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations – I.E. - to disclose materials prior to hearings, participate in SBOE Hearings in a meaningful way, etc. This creates an imbalance of power and increases Taxpayer expense to enter and use the administrative hearing process.	See preamble item 10 for changes to the proposed and final rules. Petitioner and respondents are held to the same requirements of Arizona Revised Statutes.
23	Jodi Bain	N/A	We ask that the draft Rules be improved to not burden the Taxpayer further and be made clearer regarding the submittal process and particulars.	See preamble item 10 for changes to the proposed and final rules. These changes reflect the differences from the draft rules.
24	Jodi Bain	R16-4-101	The Definition section appears to be missing the following, included but not limited to, words based on reading the working draft: ADOR – Arizona Department of Revenue?	R16-4-101. Changed to include Department of Revenue.
25	Jodi Bain	R16-4-101	Affirmation – what is Affirmation?	R16-4-108, R16-4-109: The practice of the SBOE is to have participating petitioner, respondent and witnesses swear or affirm to their testimony is the truth.
26	Jodi Bain	R16-4-101	Authorized Assessor/Respondent Representative – County assessor appraiser?	Various rules cite participants to the hearing. Current practice of the SBOE is to vet the authenticity of the participants who will provide evidence and testimony.
27	Jodi Bain	R16-4-102	Board – which board? Is this SBOE as a whole? As a sitting panel or 1 SBOE Bord member sitting?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
28	Jodi Bain	R16-4-103	Board Member – which board? SBOE or otherwise?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
29	Jodi Bain	R16-4-104	Chairman – of what? A hearing? Of the SBOE as a whole?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
30	Jodi Bain	R16-4-106	Director - of SBOE as a whole as an appointed position?	"Director" does not appear in R16-4-106. See rule R16-4-101 Definitions. Reference is to A.R.S. § 42-16154.
31	Jodi Bain	R16-4-106	Note, 'Motion' is defined by stating 'aside from parliamentary procedures' – what does this mean or reference? Robert's Rules apply to the hearings now? To the SBOE as whole?	See preamble item 10 for changes to R16-4-101 which removed extraneous words. Reference is to the typical procedures and protocol used in a judicial hearings.

32	Jodi Bain	R16-4-106	'Review' is defined as 'quasi-judicial consideration' in the draft; What is this referring to?	"Review" removed from R16-4-101, Definitions, in response to public comment.
33	Jodi Bain	R16-4-106	'SBOE' is also defined in multiple ways: State Board of Equalization as a 'whole entity'?. Then as a member of the SBOE, and as a panel of members of the SBOE, etc. The SBOE is the State Board of Equalization as a whole. A member of the SBOE is a SBOE Board Member (for instance, etc.,).	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
34	Jodi Bain	R16-4-102	R16-4-102: Jurisdiction of the SBOE - B.1 – 'property assessment changes' – what does this new wording mean?	R16-4-102 "property assessment changes" revised to "additions to, deletions from or splits or consolidations of assessment" as referenced in A.R.S. § 42-15105.
35	Jodi Bain	R16-4-102	B.6. – why was 'or an error in the tax rate' removed since the last draft in 2018'?	Accordingly, A.R.S. § 42-16154.A.3 - If the alleged error concerns the imposition of any tax rate, the notice shall be filed with the county board of supervisors. This does not apply to the SBOE.
36	Jodi Bain	R16-4-102	Perhaps the following is a missing items to add?- Improvements on Possessory Rights (IPRs)	Assessment of possessory improvements on government property is covered by A.R.S. § 42-15301 et seq.
37	Jodi Bain	R16-4-104	R16-4-104: Filing a Petition; Filing deadlines - This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.	Bulk filings are not included in the Final Rules. Bulk filing of appeals in electronic format limits the ability of the petitioner to include the basis and remarks initially filed to the assessor. The SBOE must confirm the basis for an appeal and the filing deadline. County assessors' electronic data systems do not capture the basis and remarks from the original petition. If the petitioner desires to file petitions electronically in bulk, the petitioner must submit a copy of the original petition to the SBOE.
38	Jodi Bain	R16-4-104	A.3.b. – 'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.	The Board does not allow filings via email. Email requires strict effort for quality control to ensure statutory compliance and deadlines are met . Not all appeals can be filed online due to compliance with current statues. Petitions emailed to the SBOE would place an undue burden on the SBOE staff and budget.
39	Jodi Bain	R16-4-104	A.4.c. and A.5 – 'evidence originally' filed to the assessor is unclear. If there is an electronic filing completed for an appeal to the SBOE, it now also asks for hard copies of the electronic filing? And then the Taxpayer/Petitioner is to provide another submission in triplicate of a written briefing and the respondent government is not so required? This is not the current process and appears unbalanced between the parties and a new requirement.	The SBOE must confirm the basis for an appeal and filing deadlines. County assessors electronic data systems do not capture the basis and remarks from a petition. A.R.S. § 42-16161 allows the Board to create an electronic means for filing an appeal. The current application does not allow document upload. At present a new appeals application is under development and will accommodate uploading of documents but only when filing an appeal. Otherwise, documents have to be sent to the SBOE as stated in the rules at R16-4-104(A)(6). The current process is identified in rule R16-4-104. For in-person hearings 3 copies of evidence are required for a panel of three and one copy for an individual hearing officer. During the pandemic, the SBOE must ensure all parties have exchange of evidence to be able to facilitate virtual hearings.

40	Jodi Bain	R16-4-104	A.6.a, b As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally prepare and submit a written briefing or submission presentation for the hearing. *This is not current practice*. It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. Rule R16-4-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 was changed to clarify burden of proof as referenced in Arizona Revised Statutes.
41	Jodi Bain	R16-4-104	A.7. – New SBOE limitation on evidence (new or additional). This concept would be a new procedure and appears to actually limit the taxpayer/petitioner hearing information allowed to be used and 'at the discretion' of the board /hearing members.	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. Rule R16-4-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
42	Jodi Bain	R16-4-104.D	D. SBOE respect for 'Confidentiality' designation. The new section does not treat the parties equally. There is no mention of Taxpayer/Petitioner submittal information being or remaining confidential if it was provided and/or submittal as confidential (or noted as confidential) by the Taxpayer/Petitioner	See preamble item 10 for change to R16-4-104(D). SBOE hearings are public, and that confidentiality does not attach unless required by law or court order.
43	Jodi Bain	R16-4-105	See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not 'due process'. Idea - Perhaps this section should include a mechanism of oral argument request vs. 'on the record motions?	See rule R16-4-108(B)(3). This was changed and sequenced to allow opening argument.
44	Jodi Bain	R16-4-106	B. 'Board' – this needs to be defined.	Rule 116-4-106 was changed to indicate " Board" was replaced with "SBOE" throughout for clarity.
45	Jodi Bain	R16-4-106.C	C. SBOE discretion to allow telephonic hearings? If the taxpayer/respondent or assessor requests this, why not? What about zoom or other electronic formats not addressed?	On-the-Record (OTR) hearings are not conducive for all appeals. Since work year 2000, OTR hearings provide the SBOE the ability to facilitate unique time constraints for petitioners and for ADA compliance. It also accommodates hearings that are mechanical in nature to correcting assessor records. For these reasons the OTR hearings will continue. If an emergency exists that requires use of remote video hearings, the system used by the SBOE or County Board of Equalization for video conferencing should be used. The only requirement is that all participants to the hearing must possess the same evidence and be able to hear each other. This will satisfy open meeting law requirements.
46	Jodi Bain	R16-4-107	What does 'for the convenience of the board' mean here?	R16-4-107(A) was changed to more simply introduce "On-the-Record" hearings. The phrase "for the convenience of the board" was removed.
47	Jodi Bain	R16-4-107	D. Unable to follow - should this read 'in subsection (B)'?.	No, (B) refers to On-the Record hearing requests in which both parties agree. (C) refers to on-the record hearing requests in which both parties do not agree. Since (D) is describing the hearing process for on-the record hearing requests in which both parties do not agree, the reference to (C) is correct..
48	Jodi Bain	R16-4-108	R16-4-108: Hearing Procedures - B.1. 'board members'- Is this reference to the SBOE panel member or member presiding over the hearing?	Yes. See R16-4-108(B)(1).

49	Jodi Bain	R16-4-108	R16-4-108: Hearing Procedures - B.3. Currently, at each hearing the person or panel of the SBOE members hearing the petition do the following: (1) asks if the Assessor rep has a recommendation to the SBOE; (2) asks if there is a recommendation by the assessor - if the taxpayer/ petitioner accepts it or would like to comment and/or continue to opening remarks; (3) if no assessor recommendation to the SBOE – the taxpayer/ petitioner is asked to make their initial remarks and presentation of information/evidence and notifies the taxpayer/petitioner they will have an opportunity for rebuttal after the respondent responds to the taxpayer/petitioner initial remarks and presentation. This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure. This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure.	This comment is addressed by the insertion of additional language "the respondent will provide its recommendation for a reduction in noticed value or a change in legal class, if any." Implicit in the request for any recommendation is the petitioner's acceptance or rejection and the SBOE's examination of the offer for a sufficient basis in fact and law. See rule R16-4-108(B).
50	Jodi Bain	R16-4-108	C. This new paragraph is confusing. It appears to allow the SBOE presiding person or persons to require additional evidence. What is its purpose?	This rule was removed as it was unnecessary and unclear.
51	Jodi Bain	R16-4-108.E	E. 'As required by law…' What is this referring to? This is an unclear new parameter.	This rule was removed as it was unnecessary and unclear.
52	Jodi Bain	R16-4-109	R16-4-109: Rules of Evidence C. Draft language for C- IMPORTANT – reference to 'R16-4-104 (A)(6)' this is a reference to allowable Evidence. See above concerns, thoughts and ideas for clarification regarding R16-4-104.	This rule was simplified and clarified. The SBOE agrees that the citation of R16-4-104(A)(6) was incorrect and the citation was removed.
53	Jodi Bain	R16-4-109	D. Draft language for D- 'At the Board's discretion' – what does this mean? What are the parameters? What is this supposed to do?	R16-4-109(C) describes the discretion of the SBOE to determine if evidence is admissible as relevant and is not cumulative. It is customary for hearings to be informal where narrative testimony and argument are allowed during the case in chief by both parties and during the rebuttal by the petitioner. If the circumstances require a more formal hearing process, such as when the issues and evidence are complicated, direct and cross examination of witness by each party's counsel may be requested. This is the case for hearings involving the Department.
54	Jodi Bain	R16-4-110	R16-4-110: Proof - Burden of proof for what? To show the property is overvalued? Incorrect? Not concurrent with similar properties similarly situated per law or something else?	This rule was changed to clarify the difference between standard of proof and burden of proof. There is a presumption that an assessor's or the Department's valuation is presumed to be correct. It is the petitioner's burden to prove that it is not correct. If the petitioner overcomes this presumption, the evidence is reviewed to determine the correct value by a preponderance of the evidence. As described in the rule, a determination of certain errors requires clear and convincing evidence.

55	Jodi Bain	R16-4-116	A. 'the chairman'. For what? A.R.S. § 42-16161(A) states "The chairman of the state board may review any decision to ensure due process to all parties." But this new draft rule appears to expand that scope significantly. For instance: --Draft A.2. states 'irregularity, abuse of discretion or misconduct by a party'; --Draft A.3. states 'accident or surprise that could have been prevented by ordinary prudence.'; --Draft A.5. 'Errors'- various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context. The two above examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.	This rule was removed based upon it being unnecessarily complicated and repetitious of A.R.S. § 42-16164(A) and due to public comment.
56	Jodi Bain	N/A	3. Draft procedures do not represent hearing practices in place.	The temporary, emergency procedures were put in place by the SBOE to comply with the Governor's Executive Orders regarding COVID-19 mitigation. These procedures included remote hearings by video and telephone, plus the submission of evidence at least three business days in advance of the hearing to the SBOE. The SBOE will respond to any future emergency orders due to emergency powers in A.R.S. § 26-301, et seq. These rules address hearing practices in place without the need for temporary, emergency procedures as explained.
57	Jodi Bain	N/A	4. Significant new taxpayer/petitioner submittal requirements.	Previously addressed above, see comment numbers 14, 16 and 20.
58	Jodi Bain	N/A	5. What is the respondent Assessor's obligation for filing, evidence, briefing, exchange of materials?	Previously addressed above, see comment number 16.
59	Jodi Bain	N/A	6. Unequal requirements between the parties.	Previously addressed above, see comment number 16.
60	Jodi Bain	R16-4-104	7. R16-4-104 Filing a Petition - a. This new draft rule significantly deviates from the actual filing and then hearing process and protocols.	In response to public comment the rule was modified to reflect current statute and filing instructions as documented in Department petition/filing forms.
61	Jodi Bain	R16-4-104	b. A new requirement of pre-submission of materials includes Taxpayers' written materials to the SBOE in advance of the hearing but not the Assessor Respondents. This is an unequal burden application.	Previously addressed above, see comment number 16.
62	Jodi Bain	R16-4-104	For years, the process has been that the Taxpayer brings its material to the hearing and provides it to the SBOE in 'real time' at the hearing. The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of essentially a 'position paper' in advance upon filing and/or various days in advance of a scheduled hearing. Respectfully, if the SBOE thinks there is some good cause for this, why is the same burden not imposed on the Assessor?	See R16-4-104(A)(6). The SBOE does not present any rule that exceeds its statutory authority. The board has reviewed this comment and did not discover any rule that would unduly increase the cost to the petitioner's objective to file the petition and participate in a hearing.

63	Jodi Bain	R16-4-104	In addition, the draft SBOE Rules adjust notice of hearing schedule giving the Taxpayer/Petitioner fourteen (14) days notice of a SBOE hearing. This results in that the Taxpayer/Petitioner then immediately would be required to create and submit a 'position paper' and submit one, three or more copies via hard mail. The process is confusing in its wording. This is a significant deviation from current procedure and unnecessary cost to the Taxpayer.	See A.R.S. § 42-16163. The SBOE strictly complies with this law providing all participants at least a 14-day notice of the scheduled hearing date. Rule R16-4-104(6) was changed to include that evidence may "also be submitted in person at the hearing" which is the current practice.
64	Gail Sharp	N/A	(Not rules related) In Cochise County the petitioner is using the telephone to attend appeal hearings. If Cochise County is using Microsoft Teams then why isn't the petitioner also using Microsoft teams?	If an emergency exists that requires use of remote video hearings, the system used by the SBOE or County Board of Equalization for video conferencing should be used. The only requirement is that all participants to the hearing must possess the same evidence and be able to hear each other. This will satisfy open meeting law requirements.
65	Kathryn Wiseman	R16-4-104	R16-4-104(A)(4): One of the concerns about submitting appeals to the State Board is the Assessor's decision as well as all copies of the decision that was sent to the Assessor. In year's past we just sent page 1 of the Assessor's decision and the Agent Authorization. That's why I am concerned this year and I have questions on that very thing whether to send all the documentation that was attached. Now that I understand that is the procedure going forward each year. In the past, when the Assessor's came into the hearings and they provided all of their backup information to the Board Members. Now that the Assessor does not attend the hearing, it just leaves the petitioner on their own and then the Board Members aren't receiving all of the information from the Assessor where in the past they were directly from the Assessor when they came into the meeting. Now we will be making sure to ask the petitioner to provide all of the information to the Board. With the electronic submission, it is three days prior. Are you saying 5 days prior?	The emergency procedure for submission of evidence in advance is temporary due to SBOE's conduct of video hearings as a result of the COVID-19 pandemic. Once in-person hearings resume, the submission of evidence 3 days prior to the hearing will no longer be necessary. R16-4-104(A)(4) describes the regular procedure used for in-person hearings. The attachments to the petition filed with the assessor is part of the petition. R16-4-104(A)(4)(a) clarifies requirements set out in A.R.S. §§ 42-16051 and 42-16161. R16-4-104 (A)(4)(b) clarifies requirements set out in A.R.S. § 42-16161(B).
66	Susan Fair	R16-4-107	R16-4-107: On the Records, they can be difficult because you have to read in the information that the petitioner has submitted and with 20 pages of evidence it is very difficult to read everything in that hearing.	In an On-the-Record hearing, evidence must be summarized in the recording by the SBOE in sufficient detail to identify the evidence considered and its relevance to the appeal, not read verbatim as the documentary evidence is already part of the record. The recording must provide a record of the evidence considered, the decision, and the reasoning that the SBOE used to arrive at the decision.
67	Dan Swango	N/A	Would there be any problem with hearings that are scheduled for fairly late in the season, say within a week of the October 15th, problem with them not getting the same chance to get information in as if it was earlier or is it just the luck of the draw with when you are scheduled?	Comment made by Dan Swango during rules public comment oral proceeding: If the evidence is not in the hearing room then it is up to the panel or the hearing officer to determine if the Board will allow that evidence. The party that wants to add the evidence must convince the Board of its relevance and then the Board will make a decision of its relevance as well as the decision to delay the hearing, postpone the hearing or have the hearing rescheduled. That will need to be addressed on a case-by-case basis and meet statutory deadlines.

68	Dan Swango	N/A	Would it be helpful to have any provision for that there may be variance for these rules in extenuating circumstances such as pandemics, national emergencies, state declared emergencies, extended internet or power outages which would give you the flexibility to have temporary rewrite and the authority to overwrite these rules.	The temporary, emergency procedures were put in place by the SBOE to comply with the Governor's Executive Orders regarding COVID-19 mitigation. These procedures included remote hearings by video and telephone, plus the submission of evidence at least three days in advance of the hearing to the SBOE and the other party. The SBOE will respond to any future emergency orders due to emergency powers in A.R.S. § 26-301, et seq. Therefore, creating a rule for future emergencies is unnecessary.
69	Mary Chandler	R16-4-108(B)	Petitioner's rebuttal does NOT come after FINAL arguments. In Rule R16-4-108 B Paragraph "6. Questions by the Board; final arguments, if requested by the Board;" needs to come AFTER Paragraph "7. Petitioner's rebuttal; and" We thought you had corrected this before. Now the inappropriate order has once again been incorporated in the rules. Please correct this. Paragraph 6 should read: "6. Petitioner's rebuttal;". Paragraph 7 should read "7. Questions by the Board; final arguments, if requested by the Board; and".	See change to Rule R16-4-108(B)(6) and (7). These items were interchanged to reflect current board practice and does not materially change the rule.
70	Gail Sharp	R16-4-104	Once these rules are set and put into place that when we file a petition to the State Board, we need a copy of the assessor's decision and anything they attach to that decision or we may not get a favorable decision? It'll be different than what it's been this year, year before, so on?	R16-4-104(A)(4)(B) clarifies that the Assessor's decision encompasses any and all pages included/attached to the Assessor's decision as provided to the petitioner in response to an appeal. The entire Assessor's decision must be submitted to the SBOE with the petition. The comment is in reference to the Pima County decision. The new Pima County assessor is reviewing the statement that appears on the Pima County decision.

BOARD OF MANUFACTURED HOUSING
Title 4, Chapter 34, Board of Manufactured Housing

Amend: R4-34-204, R4-34-607, R4-34-701, R4-34-703, R4-34-705, R4-34-802, R4-34-805

Repeal: R4-34-504

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 14, 2021

SUBJECT: **BOARD OF MANUFACTURED HOUSING**
Title 4, Chapter 34, Board of Manufactured Housing

Amend: R4-34-204, R4-34-607, R4-34-701, R4-34-703, R4-34-705, R4-34-802, R4-34-805

Repeal: R4-34-504

Summary:

This regular rulemaking from the Board of Manufactured Housing (Board) seeks to amend seven (7) rules in Title 4, Chapter 34, Articles 2, 6, 7, and 8 and repeal one rule in Article 5. Specifically, due to statutory issues identified and explained in more detail in the Preamble to the Board's Notice of Final Rulemaking, R4-34-204 as currently written, which establishes the scope of work for various categories of installer, does not address installation of commercial factory-built buildings (FBBs). The Board states this has resulted in no state agency licensing installers of commercial FBBs and places consumers of commercial FBBs at risk because if there is an issue regarding installation of a commercial FBB, the consumer does not have recourse provided by a Department-administered regulation. In this rulemaking, the Board seeks to add commercial FBBs to the scope of work of master installers. Additionally, the Board seeks to create a master installer license with a scope of work that includes installation of accessory structures, to add installation of accessory structures to the scope of work of general installers,

and to add installation of accessory structures attached to commercial FBBs to the scope of work of master installers.

This rulemaking also seeks to remove the phrase "single-family" when used in conjunction with "residential" to make the rules consistent with the definition of "residential" at A.R.S. § 41-4001(34).

Finally, this rulemaking seeks to repeal R4-34-504, requiring the purchase of HUD labels from the Board as the Board determined manufacturers purchase HUD labels directly from HUD rather than the Board. The Board also states it recently removed HUD requirements from the rules. Therefore, the Board indicates the Board is making the rules more user friendly by including a cross reference to the HUD requirements in this rulemaking.

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

Yes. The Board cites both general and specific statutory authority for the rules. Generally, the Board cites to A.R.S. § 41-4010(A)(13) which states the Board shall "[a]dopt such other rules as the board deems necessary for the department to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this chapter." Specifically, the Board cites to A.R.S. § 41-4010(A)(8) which authorizes the Board to "[e]stablish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer."

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

The rules do not establish a new fee or contain a fee increase. Instead, the Board is eliminating a fee for issuing an HUD label by repealing R4-34-504.

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

The Board did not review or rely on any study in conducting this rulemaking.

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

To protect the public, the Board is updating the scope of work for individuals licensed to install manufactured homes, mobile homes, factory built buildings (FBBs), and accessory structures to ensure all the work of installers is covered by the rules.

The Board believes the rulemaking will benefit installers for whom the scope of work is updated and makes the rules consistent with statute. The Board notes that adding installation of

accessory structures to the scope of work for a general installer license may have a negative impact on those licensed as an installer of accessory structures only.

The Board currently licenses 20 category I-10C installers, 12 category I-10D accessory structure installers, and 81 category I-10G master installers. When the rulemaking goes into effect the Board estimates that only 11 of the currently licensed master installers will be qualified to perform the new scope of work. Any currently licensed master installer not qualified to install commercial FBBs will be issued a general installer license without application or cost.

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

The Board believes the rulemaking is neither intrusive nor costly. No alternative method was considered.

6. What are the economic impacts on stakeholders?

Currently licensed installers and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

Some of the currently licensed general installers may need to participate in training regarding installation of accessory structures. The Board intends to provide the training.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. The Board will have the benefit or rules that address the entire scope of work involved installing manufactured homes and FBBs.

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

The Board indicates, in the first sentence of R4-34-204(A)(3), the words "commercial or" and reference to subsection (A)(2) were removed because the Board determined they were redundant. Council staff does not believe this constitutes a substantial difference pursuant to A.R.S. § 41-1025.

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

The Board indicates it received no comments regarding the rulemaking and no one attended oral proceedings regarding this rulemaking on April 28, 2021.

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

R4-34-204 requires an installer of manufactured homes, mobile homes, FBBs, and accessory structures to be licensed. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board indicates that the licenses issued are not general permits as defined at A.R.S. § 41-1001(11). However, the Board states the licenses fall under exception A.R.S. § 41-1037(A)(2), because the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute. Specifically, the Board states under A.R.S. § 41-4002, the purpose of the Office of Manufactured Housing is to maintain and enforce standards for installation of manufactured and mobile homes, FBBs, and accessory structures. Under A.R.S. § 41-4010(A)(8), the Board indicates it is required to establish and maintain licensing standards for all installers of manufactured homes, mobile homes, and accessory structures. Under R4-34-204(B), the Board states an individual who wishes to be licensed as an installer is required to provide evidence of meeting the standards established by the Board.

Given an alternative type of license is authorized by statute, a general permit is not required, and the Board is in compliance with A.R.S. § 41-1037.

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

The Board indicates the rules are not more stringent than corresponding federal law. Specifically, the following federal laws apply: 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288. The Board indicates, under a contract with HUD, the Board enforces the federal law.

11. Conclusion

This regular rulemaking from the Board seeks to amend seven (7) rules in Title 4, Chapter 34, Articles 2, 6, 7, and 8 and repeal one rule in Article 5. In this rulemaking, the Board seeks to add commercial FBBs to the scope of work of master installers. Additionally, the Board seeks to create a master installer license with a scope of work that includes installation of accessory structures, to add installation of accessory structures to the scope of work of general installers, and to add installation of accessory structures attached to commercial FBBs to the scope of work of master installers. This rulemaking also seeks to remove the phrase “single-family” when used in conjunction with “residential” to make the rules consistent with the definition of “residential" at A.R.S. § 41-4001(34). Finally, this rulemaking seeks to repeal R4-34-504, requiring the purchase of HUD labels from the Board as the Board determined manufacturers purchase HUD labels directly from HUD rather than the Board. The Board also states it recently removed HUD requirements from the rules. Therefore, the Board indicates the

Board is making the rules more user friendly by including a cross reference to the HUD requirements in this rulemaking.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

DOUGLAS A. DUCEY
Governor

THOMAS M. SIMPLOT
Director

STATE OF ARIZONA
DEPARTMENT OF HOUSING
1110 WEST WASHINGTON, SUITE 280
PHOENIX, ARIZONA 85007

(602) 771-1000 WWW.AZHOUSING.GOV
FAX: 602-771-1002

May 7, 2021

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

Re: A.A.C. Title 4. Professions and Occupations
Chapter 34. Board of Manufactured Housing

Dear Ms. Sornsin:

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

A. Close of record date: The rulemaking record was closed on April 30, 2021, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

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

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

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

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

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

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

H. List of documents enclosed:

1. Cover letter signed by the Assistant Deputy Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Tara Brunetti

Tara Brunetti
Assistant Deputy Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-34-204	Amend
R4-34-504	Repeal
R4-34-607	Amend
R4-34-701	Amend
R4-34-703	Amend
R4-34-705	Amend
R4-34-802	Amend
R4-34-805	Amend

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

Authorizing statute: A.R.S. § 41-4010(A)(13)

Implementing statute: A.R.S. § 41-4010(A)(8)

3. The effective date for the rules:

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 435, March 12, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 453, March 19, 2021

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

Name: Tara Brunetti, Assistant Deputy Director
Address: Office of Manufactured Housing, Arizona Department of Housing
1110 W. Washington Street, Ste. 280
Phoenix, AZ 85007
Telephone: (602) 771-1000
Fax: (602) 771-1002
E-mail: tara.brunetti@azhousing.gov
Website: www.housing.az.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:

To protect the public, the Board is updating the scope of work for individuals licensed to install manufactured homes, mobile homes, factory built buildings (FBBs), and accessory structures to ensure all the work of installers is covered by the rules.

Two entities, the Board of Manufactured Homes and the Office of Manufactured Homes, are involved in making and enforcing rules regarding manufactured homes. Under A.R.S. § 41-4002, the purpose of the Office of Manufactured Housing is to maintain and enforce standards for installation of manufactured and mobile homes, FBBs, and accessory structures. Under A.R.S. § 41-4010(A)(8), the Board is required to establish and maintain licensing standards for all installers of manufactured homes, mobile homes, and accessory structures. The two statutes are inconsistent regarding FBBs. However, A.R.S. § 41-4010(A)(13) authorizes the Board to make rules not authorized by other provisions of A.R.S. § 41-4010(A) and necessary to interpret, clarify, administer, or enforce the statutes regarding manufactured homes. The Board has read the three provisions (A.R.S. §§ 41-4002, 41-4010(A)(8) and (A)(13)) cited to provide authority for the Board to establish and maintain licensing standards for all installers of manufactured homes including FBBs.

A.R.S. § 41-4001(17)(a) provides, in relevant part, that an FBB means a commercial building. A.R.S. § 41-4001(20) provides that installation includes actions regarding an FBB, which by the previous definition of FBB, includes a commercial building. However, A.R.S. § 41-4001(21) provides that an installer is a person who engages in performing installations of residential FBBs. A.R.S. § 41-4001(21) does not provide that an installer performs installations of commercial FBBs. Reading these provisions together provides that an FBB includes a commercial building, installation includes

actions regarding an FBB, but an installer performs installations of only residential FBBs. The statutes do not indicate who is to install a commercial FBB.

Because of the statutory issues identified above, R4-34-204 as currently written, which establishes the scope of work for various categories of installer, does not address installation of commercial FBBs. This has resulted in no state agency licensing installers of commercial FBBs and places consumers of commercial FBBs at risk because if there is an issue regarding installation of a commercial FBB, the consumer does not have recourse provided by a Department-administered regulation. In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add commercial FBBs to the scope of work of master installers.

A.R.S. § 41-4001(20) indicates that installation means placing new or used mobile or manufactured homes, accessory structures, or FBBs on foundation systems. However, the definition of installer at A.R.S. § 41-4001(21) does not include installation of accessory structures. At A.R.S. § 41-4001(22) there is a definition of installer of accessory structures and consistent with that definition, the Office issues a license with a scope limited to installation of accessory structures (See R4-34-204(A)(2)). To avoid creating regulatory burdens for the industry or consumers, the Board has relied on the authority provided by A.R.S. § 41-4010(A)(13) to create a master installer license with a scope of work that includes installation of accessory structures (See R4-34-204(A)(3)). In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add installation of accessory structures to the scope of work of general installers.

As previously noted, A.R.S. § 41-4001(17)(a) indicates an FBB includes a commercial building. A.R.S. § 41-4001(21) indicates an installer installs residential single-family FBBs and A.R.S. § 41-4001(1) indicates an accessory structure is attached to a residential single-family FBB. Because the definitions of installer and accessory structure are limited to residential single-family FBBs, the statutes appear to suggest that commercial FBBs do not have accessory structures. They do. In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add installation of accessory structures attached to commercial FBBs to the scope of work of master installers.

Throughout the rulemaking, the phrase “single-family” has been removed when used in conjunction with “residential.” This change is consistent with the definition of residential at A.R.S. § 41-4001(34).

The Board is repealing R4-34-504 because it determined manufacturers purchase HUD labels directly from HUD rather than the Department.

Because the Board recently removed HUD requirements from the rules, the Board is making the rules more user friendly by including a cross reference to the HUD requirements in this rulemaking. An exemption from Executive Order 2020-02 was provided for this rulemaking by Grace Appelbe, of the Governor's Office, by e-mail dated November 17, 2020.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board expects the rulemaking to benefit installers for whom the scope of work is updated. Removing the word "single family" from the rule makes the rule consistent with A.R.S. §§ 41-4001(34) and 41-4002 and means installers may install duplexes, town homes, and other non-single-family residential FBBs. Adding installation of accessory structures to the scope of work for a general installer license makes that license duplicative of the current master installer license. However, installation of commercial FBBs and attached accessory structures has been added to the scope of work for master installer licenses, making the new scope of work consistent with A.R.S. § 41-4002.

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

In the first sentence of R4-34-204(A)(3), the words "commercial or" and reference to subsection (A)(2) were removed because the Board determined they were redundant.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on April 28, 2021.

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

None

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

R4-34-204 requires an installer of manufactured homes, mobile homes, FBBs, and accessory structures to be licensed. However, the license is not a general permit as defined at A.R.S. § 41-1001because statute requires an individualized license be issued. Under A.R.S. § 41-4002, the purpose of the Office of Manufactured Housing is to maintain and enforce standards for installation of manufactured and mobile homes, FBBs, and accessory structures. Under A.R.S. § 41-4010(A)(8), the Board is required to establish and maintain licensing standards for all installers of manufactured homes, mobile homes, and accessory structures. Under R4-34-204(B), an individual who wishes to be licensed as an installer is required to provide evidence of meeting the standards established by the Board.

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 rules are not more stringent than federal law. Federal law applies to the subject of the rules (See 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288). Under a contract with HUD, the Board enforces the 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 analysis was submitted.

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

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:

None of the rules in this rulemaking was made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

ARTICLE 2. LICENSING

Section

ARTICLE 5. FEES

Section

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Section

ARTICLE 7. PLAN APPROVALS

Section

ARTICLE 8. PERMITS AND INSTALLATION

Section

ARTICLE 2. LICENSING

R4-34-204. Installers

A. Installers' license applications fall into one of the following license classes:

1. I-10C General installer of manufactured homes, mobile homes, or residential ~~single-family~~ FBBs:
   a. Installs manufactured homes, mobile homes, or residential ~~single-family~~ FBBs on foundation systems;
   b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;
   c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
   d. Installs HVAC and evaporative cooler systems, including electrical wiring, gas connections, and ductwork on manufactured homes, mobile homes, or residential ~~single-family~~ FBBs. ~~including providing~~ Provides roof jack to cooler ducts, ~~installing~~ installs exterior duct work, ~~providing~~ provides electrical service and controls to cooler from nearest supply source, ~~providing~~ provides water to the cooler from nearest fresh water source, and ~~performing~~ performs cooler repair work. An I-10C installer does not provide service, maintenance, repair, discharging, adding, or reclaiming refrigerants, or other work that requires certification;
   e. Installs accessory structures attached to manufactured homes, mobile homes, or residential FBBs, including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment;
   ~~e.~~f. Performs repair work, replaces or newly installs to existing mobile homes, manufactured homes, and residential ~~single-family~~ FBBs items in subsections (A)(1)(a) through ~~(d)~~ (e); and
   ~~f.~~g. May subcontract to a properly licensed entity for installation of a manufactured home, mobile home, or residential ~~single-family~~ FBB or installation of an accessory structure in conjunction with installation of a home.
2. I-10D Installer of accessory structures attached to manufactured homes, mobile homes, or residential ~~single-family~~ FBBs including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment. An I-10 Installer may subcontract, as needed, to a properly licensed installer or contractor for installation of any accessory-structure item under this subsection.
3. I-10G Master installer of manufactured homes, mobile homes, or residential ~~single-family~~ FBBs is permitted to perform the work described under ~~subsections~~ subsection (A)(1) ~~and (2) and installs HVAC systems including electrical wiring, gas connections, and ductwork~~. Additionally,

an I-10G Master installer is permitted to perform all activities listed in subsection (A)(1) on a commercial FBB. An I-10G Master installer does not provide service, maintenance, repair, ~~or~~ discharging, adding, or reclaiming refrigerants, or any other work requiring certification. ~~An I-10G Master installer may subcontract to a properly licensed entity for installation of any item under this subsection.~~

B. Installer applicants. To be qualified for an installer I-10C, I-10D, or I-10G license, an applicant shall:

1. Have a minimum of three years practical or field management experience in the specific type of installation, a related construction field, or the equivalent, for which the applicant is applying. At least two of the three years' experience shall be within 10 years of the date of application. The applicant may substitute technical training in the specific type of installation, a related construction field, or the equivalent, from an accredited college or university or from a Department of Housing workshop for no more than one year of the three years' experience required in this subsection;
2. Supply a written, notarized statement from each employer or other individual familiar with the applicant's employment or other work experience, which includes the name, address, and telephone number of the individual making the statement, the dates of the applicant's employment or other work experience, a description of the position the applicant held, and a signature indicating the signer vouches for the truthfulness of the statement as proof the applicant meets the experience requirement in subsection (B)(1); and
3. Supply a certified copy of each official transcript or certificate, demonstrating successful completion of any technical training the applicant wishes the Department to consider as proof of meeting the experience requirement in subsection (B)(1).

ARTICLE 5. FEES

R4-34-504. ~~HUD Label Administration~~ Repealed

~~In addition to the fees required under R4-34-501(C), a manufacturer of manufactured homes shall pay $5 to the Department for each label issued in this state.~~

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-607. Manufacturing Inspection and Certification

A. The Department shall conduct manufactured home plant certification under ~~R4-34-102~~ applicable HUD requirements.

B. Before issuing Certificates, the Department shall certify that a manufacturing facility of FBBs is capable of manufacturing the FBBs to the specifications in the approved drawings and procedures in the approved compliance assurance manual required under R4-34-702.

C. A manufacturer of FBBs and reconstructed FBBs shall certify compliance with approved plans by affixing a Modular Manufacturer Certificate or Reconstruction Certificate, as appropriate, to each FBB before delivery to a retailer.

D. Records and reporting: By the 15th of each month:

1. A manufacturer of manufactured homes shall ~~report to the Department affixing HUD labels, complete any other required reports, and~~ establish and maintain records and submit to the Department reports required under ~~R4-34-102~~ applicable HUD requirements; and
2. An FBB manufacturer shall report to the Department affixing Arizona Modular and Reconstruction Certificates during the previous month.

E. The Department may decertify a manufacturing facility if:

1. A serious defect exists in more than one FBB;
2. An inspector identifies three or more failures to comply with specifications in the approved plans, standards, or compliance assurance manual;
3. An in-state licensee fails to produce approved units for more than six consecutive months; or
4. An out-of-state licensee fails to file quarterly inspection reports for six consecutive months.

F. Before resuming production, a decertified manufacturing facility shall be recertified by the Department. When the manufacturer successfully completes the recertification process, the Department shall issue Certificates or Labels to the manufacturer.

G. The Department may conduct regular inspections of retailer lots to ensure compliance with approved plans, standards, and A.R.S. § 41-4048.

ARTICLE 7. PLAN APPROVALS

R4-34-701. General

A. Before construction of ~~a manufactured home or~~ an FBB, a manufacturer shall submit to the office:

1. The compliance assurance manual required by R4-34-702, and
2. The drawings and specifications required by R4-34-703.

B. Before performing one of the following, a person shall obtain plan approval:

1. Under R4-34-704(A) for an alteration,
2. Under R4-34-704(B) for a reconstruction,
3. Under R4-34-705 to install an attached accessory structure, and
4. Under R4-34-706 to install an FBB.

C. Within 20 business days after receiving a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require the licensee to provide a complete plan submittal. Within 20 business days after receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

D. A person that submits a plan under subsection (B) shall ensure the plan conforms to the following standards:

1. Each page is at least 8 1/2 X 11 inches and printed to the scale referenced on the drawing;
2. The font is at least eight point;
3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;
4. The plan and all details and calculations are sealed by an Arizona registered engineer; and
5. The plan is consistent with all applicable standards referenced at R4-34-102.

R4-34-703. Drawings and Specifications

~~**A.** A manufacturer of manufactured homes shall submit to the Department drawings and specifications that comply with applicable standards in R4-34-102.~~

B. A manufacturer of FBBs or FBB subassemblies shall submit to the Department plans that comply with the applicable standards in R4-34-102. The manufacturer shall ensure the plans provide or have the following information or format attributes:

1. Dimensioned drawings and details identifying process descriptions, component specification lists, shop drawings, and other documents that specify and identify each component, process, assembly operation, and manufacturing step. Include electrical, plumbing, gas, and HVAC systems;
2. A traceable identification for each component and subassembly listed;
3. Design analysis calculations for all loads and systems;
4. The location and process for stamping the permanent serial or identification number on the FBB or subassembly;
5. The location of the Modular Manufacturer Certificate; and
6. Dimensional plans and details identifying all components and construction to be field installed.

R4-34-705. Accessory Structures

A. For manufactured homes, mobile homes, and FBBs, a properly licensed entity or person shall comply with R4-34-102 and applicable HUD requirements when preparing attached accessory structure plans. The plans shall include the following:

1. Dimensioned drawings and details identifying all applicable components and specification lists. Electrical, plumbing, gas, and HVAC systems, as applicable, shall be addressed;
2. Design-analysis calculations for all loads and systems; and
3. Method of attachment to the manufactured home, mobile home, or FBB.

B. The Department may approve a design that does not comply with subsection (A) based on a demonstration by an Arizona registered engineer that the design meets standards at least equivalent to those in subsection (A).

C. A properly licensed entity or person shall submit plans, which are sealed by an Arizona registered engineer, for all attached accessory structures except skirting systems that have manufacturer installation instructions and HVAC systems.

ARTICLE 8. PERMITS AND INSTALLATION

R4-34-802. General Installation

A. A properly licensed entity shall complete and affix an Arizona Installation Certificate to a manufactured home, mobile home, or FBB at the end of the unit opposite the hitch and adjacent to the manufacturer certificate or HUD label. The properly licensed entity shall affix the Arizona Installation Certificate before calling the Department for an inspection.

B. A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).

C. Before beginning an installation, a properly licensed entity shall check with the local jurisdiction regarding frost-line requirements governing permanent foundations or utilities.

D. A properly licensed entity shall install all new manufactured homes, used manufactured homes, and mobile homes according to the applicable materials referenced in R4-34-102, HUD requirements, and manufacturer requirements.

E. Before installing a unit, a properly licensed entity shall perform or contract with a qualified party to assess the site and soil, ensure required permits are obtained, and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or FBB to be installed. The entity that actually prepares the site has primary responsibility for the work performed. The entity that contracts to have the site preparation done, if different, has secondary responsibility for the work performed.

F. Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

R4-34-805. Accessory Structures

An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards referenced in R4-34-102, HUD requirements, and manufacturer requirements.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

1. Identification of the rulemaking:

To protect the public, the Board is updating the scope of work for individuals licensed to install manufactured homes, mobile homes, factory built buildings (FBBs), and accessory structures to ensure all the work of installers is covered by the rules.

Two entities, the Board of Manufactured Homes and the Office of Manufactured Homes, are involved in making and enforcing rules regarding manufactured homes. Under A.R.S. § 41-4002, the purpose of the Office of Manufactured Housing is to maintain and enforce standards for installation of manufactured and mobile homes, FBBs, and accessory structures. Under A.R.S. § 41-4010(A)(8), the Board is required to establish and maintain licensing standards for all installers of manufactured homes, mobile homes, and accessory structures. The two statutes are inconsistent regarding FBBs. However, A.R.S. § 41-4010(A)(13) authorizes the Board to make rules not authorized by other provisions of A.R.S. § 41-4010(A) and necessary to interpret, clarify, administer, or enforce the statutes regarding manufactured homes. The Board has read the three provisions (A.R.S. §§ 41-4002, 41-4010(A)(8) and (A)(13)) cited to provide authority for the Board to establish and maintain licensing standards for all installers of manufactured homes including FBBs.

A.R.S. § 41-4001(17)(a) provides, in relevant part, that an FBB means a commercial building. A.R.S. § 41-4001(20) provides that installation includes actions regarding an FBB, which by the previous definition of FBB, includes a commercial building. However, A.R.S. § 41-4001(21) provides that an installer is a person who engages in performing installations of residential FBBs. A.R.S. § 41-4001(21) does not provide that an installer performs installations of commercial FBBs. Reading these provisions together provides that an FBB includes a commercial building, installation includes actions regarding an FBB, but an installer performs installations of only residential FBBs. The statutes do not indicate who is to install a commercial FBB.

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

Because of the statutory issues identified above, R4-34-204 as currently written, which establishes the scope of work for various categories of installer, does not address installation of commercial FBBs. This has resulted in no state agency licensing installers of commercial FBBs and places consumers of commercial FBBs at risk because if there is an issue regarding installation of a commercial FBB, the consumer does not have recourse provided by a Department-administered regulation. In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add commercial FBBs to the scope of work of master installers.

A.R.S. § 41-4001(20) indicates that installation means placing new or used mobile or manufactured homes, accessory structures, or FBBs on foundation systems. However, the definition of installer at A.R.S. § 41-4001(21) does not include installation of accessory structures. At A.R.S. § 41-4001(22) there is a definition of installer of accessory structures and consistent with that definition, the Office issues a license with a scope limited to installation of accessory structures (See R4-34-204(A)(2)). To avoid creating regulatory burdens for the industry or consumers, the Board has relied on the authority provided by A.R.S. § 41-4010(A)(13) to create a master installer license with a scope of work that includes installation of accessory structures (See R4-34-204(A)(3)). In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add installation of accessory structures to the scope of work of general installers.

As previously noted, A.R.S. § 41-4001(17)(a) indicates an FBB includes a commercial building. A.R.S. § 41-4001(21) indicates an installer installs residential single-family FBBs and A.R.S. § 41-4001(1) indicates an accessory structure is attached to a residential single-family FBB. Because the definitions of installer and accessory structure are limited to residential single-family FBBs, the statutes appear to suggest that commercial FBBs do not have accessory structures. They do. In this rulemaking, the Board relies on the authority provided by A.R.S. § 41-4010(A)(13) to add installation of accessory structures attached to commercial FBBs to the scope of work of master installers.

Throughout the rulemaking, the phrase “single-family” has been removed when used in conjunction with “residential.” This change is consistent with the definition of residential at A.R.S. § 41-4001(34).

The Board is repealing R4-34-504 because it determined manufacturers purchase HUD labels directly from HUD rather than the Department.

Because the Board recently removed HUD requirements from the rules, the Board is making the rules more user friendly by including a cross reference to the HUD requirements in this rulemaking.

a. The conduct and its frequency of occurrence that the rule is designed to change:
   Until the rulemaking is completed, important work done by installers of manufactured homes, mobile homes, FBBs, and accessory structures will not be covered by the Board's rules. As currently written, the rules do not include installation of a commercial FBB in the scope of work of any installer.
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:
   Failure to address installation of commercial FBBs puts the public at risk.
c. The estimated change in frequency of the targeted conduct expected from the rule change:
   When the rulemaking is completed, the scope of work for installers will address all potential installations.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:
   The Board believes the rulemaking to benefit installers for whom the scope of work is updated. Removing the word "single family" from the rule makes the rule consistent with A.R.S. §§ 41-4001(34) and 41-4002 and means installers may install duplexes, town homes, and other non-single-family residential FBBs. Adding installation of accessory structures to the scope of work for a general installer license makes that license duplicative of the current master installer license. However, installation of commercial FBBs and attached accessory structures has been added to the scope of work for master installer licenses, making the new scope of work consistent with A.R.S. § 41-4002. Adding installation of accessory structures to the scope of work for a general installer license may have a negative impact on those licensed as an installer of accessory structures only.
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: Tara Brunetti, Assistant Deputy Director
   Address: Office of Manufactured Housing, Arizona Department of Housing

1110 W. Washington Street, Ste. 280
Phoenix, AZ 85007
Telephone: (602) 771-1000
Fax: (602) 771-1002
E-mail: tara.brunetti@azhousing.gov
Website: www.housing.az.gov

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

Currently licensed installers and the Department will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Department currently licenses 20, category I-10C general installers; 12, category I-10D accessory structure installers, and 81, category I-10G master installers. When this rulemaking goes into effect, because of the addition of commercial FBBs to the scope of work for a master installer, the Department estimates that only 11 of the currently licensed master installers will be qualified to perform the new scope of work. Any currently licensed master installer not qualified to install commercial FBBs will be issued a general installer license without application or cost. While this is a change in the name of the license issued to these installers, the new scope of work for general installers is the same as the previous scope of work for a master installer. These installers will be able to continue to perform all work they currently perform.

The rulemaking will expand the scope of work for currently licensed general installers to include installation of accessory structures. Some of the currently licensed general installers may need to participate in training regarding installation of accessory structures. The Department intends to provide the training. Because the currently licensed installers of accessory structures only are highly specialized, the Department believes adding installation of accessory structures to the scope of work for a general installer license will not impact those licensed as an installer of accessory structures only.

During the last year, the Department issued 1,605 permits for installation of a manufactured home and 324 permits for installation of an FBB. Three hundred twenty of the FBB permits

were for a commercial FBB even though installation of commercial FBBs was outside the scope of work for any installer licensed by the Department.[2]

The Department incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. The Department will have the benefit of rules that address the entire scope of work involved in installing manufactured homes and FBBs.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
    The Department is the only state agency directly affected by the rulemaking. Its costs and benefits are addressed in item 4. The Department will not require a new FTE to implement and enforce the rules in the rulemaking.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:
    No political subdivision is directly affected by the rulemaking.
    c. Costs and benefits to businesses directly affected by the rulemaking:
    Installers are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.
6. Impact on private and public employment:
    The Board expects there to be no impact on private or public employment.
7. Impact on small businesses[3]:
    a. Identification of the small business subject to the rulemaking:
    Installers are small businesses subject to the rulemaking.
    b. Administrative and other costs required for compliance with the rulemaking:
    The cost of compliance falls on the Department, which will issue a new general installer license to the 70 currently licensed master installers who are not qualified for the new master installer scope of work.
    c. Description of methods that may be used to reduce the impact on small businesses:
    All installers are small businesses. The Department believes the impact of this rulemaking will be beneficial to the installers.

[2] This issue was identified only recently. The Department issued the permits for installation of a commercial FBB to installers licensed by the Registrar of Contractors. The ROC licensees worked outside the scope of the ROC license when installing a commercial FBB. The Department anticipates some of the current ROC licensees may choose to obtain a master installer license from the Department.
[3] Small business has the meaning specified in A.R.S. § 41-1001(21).

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

   The rulemaking does not directly affect private persons and consumers. It provides an indirect benefit to consumers of manufactured homes and FBBs by including all installation work within the scope of work of licensed installers.

9. Probable effects on state revenues:

   There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

    The Department believes the rulemaking is neither intrusive nor costly. No alternative method was considered.

Arizona Administrative CODE

4 A.A.C. 34 Supp. 21-1

www.azsos.gov

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

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

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Due to an error when codifying R4-34-801 in Supp. 20-3, subsection R4-34-801(G) was not published. This subsection was identified as “no change” at 26 A.A.R. 1509 and has been included in Supp. 21-1. No other changes have been made to this Chapter since Supp. 20-4.

Questions about these rules? Contact:

Name:	Tara Brunetti, Assistant Deputy Director
Address:	Office of Manufactured Housing Arizona Department of Housing 1110 W. Washington St., Suite 280 Phoenix, AZ 85007
Telephone:	(602) 771-1000
Fax:	(602) 771-1002
E-mail:	tara.brunetti@azhousing.gov
Website:	www.housing.az.gov

The release of this Chapter in Supp. 21-1 replaces Supp. 20-4, 1-15 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

(Authority: A.R.S. § 41-2141 et seq.)

ARTICLE 1. GENERAL

Article 1, consisting of Sections R4-34-101 through R4-34-104, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 1, consisting of Sections R4-34-101 through R4-34-107, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section

ARTICLE 2. LICENSING

Article 2, consisting of Sections R4-34-201 through R4-34-204, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 2, consisting of Sections R4-34-201 through R4-34-205, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

Article 3, consisting of Sections R4-34-301 through R4-34-303, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 3, consisting of Sections R4-34-301 through R4-34-309, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 3, consisting of Sections R4-34-301 through R4-34-304, renumbered to Article 7, Sections R4-34-701 through R4-34-704, effective July 3, 1991 (Supp. 91-3).

New Article 3, consisting of Sections R4-34-301 through R4-34-306, renumbered from Article 7, Sections R4-34-701 through R4-34-706, effective July 3, 1991 (Supp. 91-3).

Section

ARTICLE 4. SURETY BONDS

Article 4, consisting of Sections R4-34-401 and R4-34-402, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 4, consisting of Sections R4-34-401 through R4-34-404, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 4, consisting of Sections R4-34-401 through R4-34-403, renumbered to Article 5, Sections R4-34-501 through R4-34-503, effective July 3, 1991 (Supp. 91-3).

New Article 4, consisting of Sections R4-34-401 through R4-34-404, renumbered from Article 9, Sections R4-34-901 through R4-34-904, effective July 3, 1991 (Supp. 91-3).

Section

ARTICLE 5. FEES

Article 5, consisting of Sections R4-34-501 through R4-34-506, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 5, consisting of Sections R4-34-501 through R4-34-503, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 5, consisting of Sections R4-34-501 and R4-34-502, renumbered to Article 8, Sections R4-34-801 and R4-34-802, effective July 3, 1991 (Supp. 91-3).

New Article 5, consisting of Sections R4-34-501 through R4-34-503, renumbered from Article 4, Sections R4-34-401 through R4-34-403, effective July 3, 1991 (Supp. 91-3).

Section

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Article 6, consisting of Sections R4-34-601 through R4-34-607, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 6, consisting of Sections R4-34-601 through R4-34-610, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

ARTICLE 7. PLAN APPROVALS

Article 7, consisting of Sections R4-34-701 through R4-34-706, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 7, consisting of Sections R4-34-701 through R4-34-704, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 7, consisting of Sections R4-34-701 through R4-34-706, renumbered to Article 3, Sections R4-34-301 through R4-34-306, effective July 3, 1991 (Supp. 91-3).

New Article 7, consisting of Sections R4-34-701 through R4-34-704, renumbered from Article 3, Sections R4-34-301 through R4-34-304, effective July 3, 1991 (Supp. 91-3).

ARTICLE 8. PERMITS AND INSTALLATION

Article 8, consisting of Sections R4-34-801 through R4-34-805, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 8, consisting of Sections R4-34-801 and R4-34-802, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 8, consisting of Sections R4-34-801 through R4-34-804, repealed effective July 3, 1991 (Supp. 91-3).

New Article 8, consisting of Sections R4-34-801 and R4-34-802, renumbered from Article 5, Sections R4-34-501 and R4-34-502, effective July 3, 1991 (Supp. 91-3).

ARTICLE 9. REPEALED

Article 9, consisting of Section R4-34-901, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 9, consisting of Sections R4-34-901 through R4-34-904, renumbered to Article 4, Sections R4-34-401 through R4-34-404, effective July 3, 1991 (Supp. 91-3).

New Article 9, consisting of Section R4-34-901, renumbered from Article 10, Section R4-34-1001, effective July 3, 1991 (Supp. 91-3).

ARTICLE 10. ADMINISTRATIVE PROCEDURES

Article 10, consisting of Section R4-34-1001, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Former Article 10, consisting of Section R4-34-1001, renumbered to Article 9, Section R4-34-901, effective July 3, 1991 (Supp. 91-3).

Article 10, consisting of Section R4-34-1001, adopted effective April 4, 1985.

ARTICLE 11. RENUMBERED

Article 11, consisting of Section R4-34-1101, renumbered to 4 A.A.C. 36, R4-36-201 (Supp. 95-4).

Article 11, consisting of Section R4-34-1101, adopted as a permanent rule effective November 16, 1988.

Article 11, consisting of Section R4-34-1101, adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

ARTICLE 1. GENERAL

R4-34-101. Definitions

The definitions in A.R.S. §§ 41-4001, and 41-4008 apply to this Chapter. Additionally, in this Chapter:

1. "Act" means the Manufactured Housing Improvement Act of 2000, which is Title VI of the American Homeownership and Economic Opportunity Act of 2000.
2. "Agency" means the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson's licensed and employing retailer.
3. "Agency disclosure" means a document that specifies the person a licensed salesperson or licensed retailer represents in a brokered transaction.
4. "Agent" means a licensed retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.
5. "Attached" means an accessory is fastened or affixed to a regulated structure in a manner that imposes a load on the structure.
6. "Branch location" means a satellite office, in addition to the principal office, where business may be transacted.
7. "Brokered transaction" means a transaction in which a licensed broker acts as an agent for the seller, purchaser, or both.
8. "Certificate" means an Arizona Insignia with which a licensee certifies all work performed complies with applicable law, including this Chapter, relating to modular manufacture and reconstruction, installation of modular, manufactured, and mobile homes, or rehabilitation work and construction.
9. "Co-brokered transaction" means a transaction in which the listing retailer and the selling retailer are not the same person.
10. "Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.
11. "FBB" means factory-built building.
12. "Field installed" means components, equipment, and/or construction that is to be completed or installed at the site. Field installed does not include reconstruction.
13. "HVAC" means heating, ventilation, and air conditioning.
14. "Modular" means a type of FBB built in a factory and transported in three-dimensional sections to an installation site.
15. "New" means a unit not previously sold, bargained, exchanged, or given away to a purchaser.
16. "Panelized" means a type of commercial FBB built in a factory using closed construction, including partly or fully finished walls, floors, or roof panels, and transported in two-dimensional condition to an assembly site.
17. "Permanent foundation" means a system of support and perimeter enclosure, with or without crawl space, that is:
    a. Constructed of durable materials;
    b. Developed in accordance with the manufacturer's installation instructions or designed by an Arizona registered engineer;
    c. Attached in a manner that effectively transfers all vertical and horizontal design loads that could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as applicable, to the underlying soil or rock; and
    d. Designed to exclude unwanted elements and varmints, ensure sufficient ventilation, and provide adequate access to the building.
18. "Purchase contract in a brokered transaction" means a written agreement between a purchaser and seller of a used home that indicates the sales price and terms of the sale.
19. "Repair" means work performed on a manufactured home, mobile home, or FBB to restore the building to a habitable condition but does not impact the original structure, electrical, plumbing, HVAC, mechanical, use occupancy, or energy design.
20. "Retailer" means a broker or dealer as prescribed at A.R.S. § 41-4001(5) and (10).
21. "Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.
22. "Site work" means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.
23. "Standards" means the materials referenced in R4-34-102.
24. "Supplement" means a submittal noting change of a floor plan design, system, component, or configuration, and is incorporated as part of an originally approved plan.
25. "Used home" means a previously titled manufactured home, mobile home, or FBB designed for use as a residential dwelling.

Historical Note

Former Section R4-34-101 renumbered to R4-34-102, new Section R4-34-101 adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 3582, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-102. Materials Incorporated by Reference

The following materials are incorporated by reference, apply to this Chapter, include no later amendments or editions, and are available on the Board's website. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. International Building Code (IBC), 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
2. International Residential Code (IRC), 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
3. International Mechanical Code (IMC), 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
4. International Plumbing Code (IPC), 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
5. International Fuel Gas Code (IFGC), 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
6. International Energy Conservation Code (IECC), 2018 edition, available from the International Code Council,

4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;

7. National Electrical Code (NEC), 2017 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169 or nfpa.org; and
8. Protecting Manufactured Homes from Floods and Other Hazards, publication 85, second edition, November 2009, available from the Federal Emergency Management Agency, 500 C. St. SW, Washington, D.C. 20472 or www.fema.gov.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 28, 1980 (Supp. 80-3). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-102 renumbered to R4-34-103, new Section R4-34-102 renumbered from R4-34-101 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 3327, effective January 31, 2021 (Supp. 20-4).

R4-34-103. Exceptions

A. The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:

1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
   a. Is not more than 6 feet long,
   b. Is of the rated size necessary to supply the total demand of the unit, and
   c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and
2. International Residential Code. Exclude Section R313, Automatic Fire Sprinkler Systems.

B. Under A.R.S. § 41-4010(D), a local jurisdiction may petition the Board for an exception to a standard. If the Board grants a local jurisdiction an exception to a standard, the local jurisdiction shall be bound by any conditions in the exception order issued by the Board. The local jurisdiction shall ensure the petition for an exception:

1. Specifies the standard sections affected;
2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
3. Specifies the boundaries of the area affected by the local conditions;
4. States why the exception is necessary to protect the health and safety of the public; and
5. Provides an estimate of the economic impact the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.

C. An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception.

D. An exception order is effective on the date specified in the order, which will be at least 60 days after a Departmental Substantive Policy Statement has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective December 13, 1979 (Supp. 79-6). Amended subsection (A), paragraph (5) effective September 17, 1980 (Supp. 80-5). Amended effective October 20, 1981 (Supp. 81-5). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Former Section R4-34-103 renumbered to R4-34-104, new Section R4-34-103 renumbered from R4-34-102 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-104. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective February 18, 1981 (Supp. 81-1). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Amended subsection (A)(2)(d) effective July 18, 1984 (Supp. 84-4). Former Section R4-34-104 renumbered to R4-34-105, new Section R4-34-104 renumbered from R4-34-103 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective April 12, 1994 (Supp. 94-2). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-105. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Former Section R4-34-105 renumbered to R4-34-106, new Section R4-34-105 renumbered from R4-34-104 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-106. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective April 23, 1981 (Supp. 81-2). Amended effective October 20, 1981 (Supp. 81-5). Correction, subsection (A) (Supp. 81-6). Amended by adding subsection (C) effective April 30, 1982 (Supp. 82-2). Former Section R4-34-106 renumbered to R4-34-107, new Section R4-34-106 renumbered from R4-34-105 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-107. Repealed

Historical Note
Adopted as an emergency effective May 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Permanent rule adopted effective August 13, 1985 (Supp. 85-4). Section R4-34-107 renumbered from R4-34-106 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 2. LICENSING

R4-34-201. General

A. Within five business days following receipt, the Department shall perform an administrative review of an application. If the Department determines the application is incomplete, the applicant will be provided an opportunity to complete the application. Within 14 business days following receipt of a completed application and after the applicant has passed any required license examination, the Department shall issue a conditional license.

B. Corporate applicants shall submit a copy of their organizational documents, including articles of incorporation or organization, with all amendments, filed with the state, as applicable, and a certificate of good standing to transact business in this state.

C. An exemption from any applicable examination requirement may be granted if a new license application identifies the same license classification and the same qualifying party listed on a previously held license, provided the previous license was in good standing before it expired.

D. A licensee will be given notice that a conditional license is automatically effective as a permanent license to transact business within the scope of the license following review and approval by the Department of the licensee's criminal background analysis.

E. Unless otherwise stated in the purchase contract, a retailer selling a mobile home, manufactured home, or FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the retailer is obligated to provide for the delivery or installation of the unit.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 9, 1980 (Supp. 80-3). Amended subsection (B) effective January 20, 1981. Amended subsection (B) effective February 18, 1981 (Supp. 81-1). Amended subsection (B) effective April 23, 1981 (Supp. 81-2). Amended effective October 20, 1981 (Supp. 81-5). Correction, subsection (B)(6)(a) 1979 Edition (Supp. 81-6). Former Section R4-34-201 renumbered and amended as Section R4-34-202, new Section R4-34-201 adopted effective September 15, 1982 (Supp. 82-5). Amended subsection (A), paragraph (2) effective August 11, 1986. Amended by adding subsection (F) effective August 25, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-202. Manufacturers

Manufacturers' license applications fall into one of the following license classes:

1. M-9A Manufacturer of FBBs manufactures or reconstructs FBBs;
2. M-9C Manufacturer of manufactured homes manufactures or reconstructs manufactured homes; and
3. M-9E Master Manufacturer performs work within the scope of classes M-9A and M-9C.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (C) effective February 18, 1981 (Supp. 81-1). Amended subsections (C) and (D) effective May 20, 1981 (Supp. 81-3). Amended subsections (B) and (D) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-202 renumbered and amended as Section R4-34-203, former Section R4-34-201 renumbered and amended as Section R4-34-202 effective September 15, 1982 (Supp. 82-5). Amended subsections (B)(3), (B)(4)(b), and (B)(5)(a), by updating the Codes from 1979 Edition to 1982 Edition effective July 8, 1983 (Supp. 83-4). Amended by adding subsection (B)(6)(ii) effective February 14, 1984 (Supp. 84-1). Amended subsection (B)(6)(b) effective November 27, 1984 (Supp. 84-6). Amended effective April 4, 1986 (Supp. 86-2). Amended subsection (B) effective August 11, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective April 12, 1994 (Supp. 94-2). Amended effective November 1, 1995 (Supp. 95-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-203. Retailers

Retailers' license applications fall into one of the following license classes:

1. D-8 Retailer of manufactured homes or mobile homes:
   a. Buys, sells, or exchanges new or used manufactured homes and used mobile homes;
   b. May sell new or used accessory structures included in a sales agreement;
   c. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes including existing or new accessory structures included in a sales agreement;
   d. Makes alterations to new manufactured homes before a sale to a purchaser; or
   e. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.
2. D-8B Broker of manufactured homes or mobile homes:
   a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes that may include existing or new accessory structures included in a sales agreement;
   b. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.
3. D-10 Retailer of FBBs:
   a. Buys, sells, or exchanges new or used FBBs;
   b. Acts as an agent for the sale or exchange of new or used FBBs;

c. Makes alterations to new FBBs before sale to a purchaser; or
d. Contracts with licensed installers or contractors holding an appropriate license issued by the Registrar of Contractors for the installation of FBBs including any existing or new accessory structures included in a sales agreement.

4. D-12 Master Retailer: Performs work within the scope of classes D-8, D-8B, and D-10.

Historical Note

Former Section R4-34-202 renumbered and amended as Section R4-34-203 effective September 15, 1982 (Supp. 82-5). Amended subsections (A)(1), (A)(2), and (A)(3) by updating the Codes from 1979 Edition to the 1982 Edition effective July 8, 1983 (Supp. 83-4). Amended subsection (A)(4) effective November 27, 1984 (Supp. 84-6). Amended by adding subsection (D) with Exhibits 1, 2, and 3 effective January 2, 1985 (Supp. 85-1). Amended subsection (D) effective April 4, 1986 (Supp. 86-2). Amended subsection (B) effective August 11, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-204. Installers

A. Installers' license applications fall into one of the following license classes:

1. I-10C General installer of manufactured homes, mobile homes, or residential single-family FBBs:
   a. Installs manufactured homes, mobile homes, or residential single-family FBBs on foundation systems;
   b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;
   c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
   d. Installs evaporative cooler systems on manufactured homes, mobile homes, or residential single-family FBBs including providing roof jack to cooler ducts, installing exterior duct work, providing electrical service and controls to cooler from nearest supply source, providing water to the cooler from nearest fresh water source, and performing cooler repair work;
   e. Performs repair work, replaces or newly installs to existing mobile homes, manufactured homes, and residential single-family FBBs items in subsections (A)(1)(a) through (d); and
   f. May subcontract to a properly licensed entity for installation of a manufactured home, mobile home, or residential single-family FBB or installation of an accessory structure in conjunction with installation of a home.
2. I-10D Installer of accessory structures attached to manufactured homes, mobile homes, or residential single-family FBBs including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment. An I-10 Installer may subcontract, as needed, to a properly licensed installer or contractor for installation of any accessory-structure item under this subsection.
3. I-10G Master installer of manufactured homes, mobile homes, or residential single-family FBBs is permitted to perform the work described under subsections (A)(1) and (2) and installs HVAC systems including electrical wiring, gas connections, and ductwork. An I-10G Master installer does not provide service, maintenance, repair, or discharging, adding, or reclaiming refrigerants or any other work requiring certification. AnI-10G Master installer may subcontract to a properly licensed entity for installation of any item under this subsection.

B. Installer applicants. To be qualified for an installer I-10C, I-10D, or I-10G license, an applicant shall:

1. Have a minimum of three years practical or field management experience in the specific type of installation, a related construction field, or the equivalent, for which the applicant is applying. At least two of the three years' experience shall be within 10 years of the date of application. The applicant may substitute technical training in the specific type of installation, a related construction field, or the equivalent, from an accredited college or university or from a Department of Housing workshop for no more than one year of the three years' experience required in this subsection;
2. Supply a written, notarized statement from each employer or other individual familiar with the applicant's employment or other work experience, which includes the name, address, and telephone number of the individual making the statement, the dates of the applicant's employment or other work experience, a description of the position the applicant held, and a signature indicating the signer vouches for the truthfulness of the statement as proof the applicant meets the experience requirement in subsection (B)(1); and
3. Supply a certified copy of each official transcript or certificate, demonstrating successful completion of any technical training the applicant wishes the Department to consider as proof of meeting the experience requirement in subsection (B)(1).

Historical Note

Adopted effective November 27, 1984 (Supp. 84-6). Repealed effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 3582, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-205. Repealed

Historical Note

Adopted effective February 8, 1991 (Supp. 91-1). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

R4-34-301. Transaction Copies

A retailer shall maintain a record of all transaction documents. In every transaction:

1. The retailer shall provide the purchaser with a copy of all completed and signed documents;
2. If a purchaser is unrepresented, the listing retailer shall provide the purchaser with a copy of all completed and signed documents; and
3. If a transaction is co-brokered, the listing retailer shall provide a copy of the listing agreement to the selling retailer, and the selling retailer shall provide a copy of all completed and signed documents to the listing retailer.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (D) effective April 20, 1982 (Supp. 82-2). Former Section R4-34-301 renumbered to R4-34-701, new Section R4-34-301 renumbered from R4-34-701 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-302. Advertising

A. A retailer shall include the retailer's licensed business name in all advertising.

B. A retailer shall not advertise or market a used home for more than the listed price.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective March 17, 1981 (Supp. 81-2). Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-302 renumbered to R4-34-702, new Section R4-34-302 renumbered from R4-34-702 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-303. Brokered Transactions

A. A broker shall provide a copy of the agency disclosure to the party or parties the broker represents.

B. A seller's retailer shall place all earnest money deposits received in connection with the sales transaction in the retailer's trust or escrow account in accordance with A.R.S. § 41-4030 except as provided in the exception provision.

C. Upon consummation of a brokered transaction, the seller's broker shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro rations, and all credits.

D. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission.

E. The seller's broker shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller's signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date the seller signs the addendum to the listing agreement.

F. If the seller or broker elects to finance the unpaid balance reflected on the offer to purchase or purchase contract, the broker shall:

1. Maintain evidence of the original portion of the purchase price being financed by the seller or broker, and
2. Maintain evidence the title has been transferred into the name of the purchaser and the lienholder's position has been secured on the title.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective March 17, 1981 (Supp. 81-2). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-303 renumbered to R4-34-703, new Section R4-34-303 renumbered from R4-34-703 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-304. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Amended effective April 30, 1982 (Supp. 82-2). Former Section R4-34-304 renumbered to R4-34-704, new Section R4-34-304 renumbered from R4-34-704 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-305. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-305 renumbered to R4-34-705, new Section R4-34-305 renumbered from R4-34-705 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-306. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective November 19, 1980 (Supp. 80-6). Amended effective October 20, 1981 (Supp. 81-5). Amended effective October 8, 1982 (Supp. 82-5). Former Section R4-34-306 renumbered to R4-34-706, new Section R4-34-306 renumbered from R4-34-706 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-307. Repealed

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-308. Repealed

Historical Note

Adopted effective February 8, 1991 (Supp. 91-1). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4).

Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-309. Repealed

Historical Note
Adopted effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 4. SURETY BONDS

R4-34-401. Surety Bond Forms

A. Manufacturers, installers, and retailers (except those with a D-8B license classification), shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.

B. A rider to the bond is required for the following changes:
1. Location of the licensee's principal place of business,
2. Business name,
3. Branch address,
4. License classification, or
5. Bond amount.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective October 20, 1981 (Supp. 81-5). Amended subsection (B) effective April 30, 1982 (Supp. 82-2). Former Section R4-34-401 renumbered to R4-34-501, new Section R4-34-401 renumbered from R4-34-901 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-402. Cash Deposits

A. Unless exempt under R4-34-401, an applicant or licensee posting cash in lieu of a commercial surety bond shall pay by:
1. Cash. A cash deposit is not transferable and shall be made in the name of the applicant or licensee as the name appears on the license application or issued license; or
2. Certified or cashier's check or bank or postal money order made payable to the Arizona State Treasurer.

B. Upon receipt of an order from a court of competent jurisdiction directing payment of funds on deposit, the Director shall make payment as directed and suspend the license under A.R.S. § 41-4029. To reinstate the license, the licensee shall return the cash deposit to the required balance or file a commercial surety bond for the full amount, and pay all applicable reinstatement fees.

C. A cash deposit may be withdrawn by the applicant, licensee, or someone having authority to act on behalf of the applicant or licensee, under the following circumstances:
1. A license is not issued to the applicant;
2. The license has been terminated, expired, revoked, or voluntary canceled for at least two years, and there are no outstanding claims; and
3. Two years after the licensee files a commercial surety bond that replaces the cash deposit if there are no outstanding claims.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Former Section R4-34-402 renumbered to R4-34-502, new Section R4-34-402 renumbered from R4-34-902 effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-403. Repealed

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-403 renumbered to R4-34-503, new Section R4-34-403 renumbered from R4-34-903 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-404. Repealed

Historical Note
R4-34-904 adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (B) effective October 20, 1981 (Supp. 81-5). Editor's correction, subsection (B)(2) (Supp. 85-2). Former Section R4-34-904 renumbered to R4-34-404 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 5. FEES

R4-34-501. General

A. The Board shall establish a fee schedule before May 15 for the coming fiscal year.

B. The Director shall notify all licensees of the established fee schedule before June 1 of each year and post the fee schedule on the Department's website.

C. Licensees shall pay fees for the following services:
1. Manufacturer license,
2. Retailer license,
3. Installer license,
4. Salesperson license,
5. Inspection and technical service,
6. Plans and supplements,
7. Installation permits and insignias, and
8. Administrative functions.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended M-9B, M-9C, and M-9E effective October 20, 1981 (Supp. 81-5). Amended by adding M-9F effective April 30, 1982 (Supp. 82-2). Former Section R4-34-501 renumbered to R4-34-801, new Section R4-34-501 renumbered from R4-34-401 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-502. License Bond Amounts

A. An applicant shall submit the license bond amount listed for each license class.

License Class	Bond Amount
M-9A	$10,000

M-9C	$65,000
M-9E	$100,000
D-8	$25,000
D-10	$25,000
D-12	$25,000
I-10C	$2,500
I-10D	$1,000
I-10G	$5,000

B. The Board shall not renew a license unless and until the licensee's surety bond is in full force and effect or the full cash deposit is made or in place.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended D-8, D-8A, D-9, D-12 and added D-8B effective October 20, 1981 (Supp. 81-5). Amended D-8 effective January 31, 1983 (Supp. 83-1). Former Section R4-34-502 renumbered to R4-34-802, new Section R4-34-502 renumbered from R4-34-402 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-503. Repealed

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended I-10D effective August 21, 1981 (Supp. 81-4). Amended effective October 20, 1981 (Supp. 81-5). Correction, I-10G (Supp. 81-6). Former Section R4-34-503 renumbered to R4-34-803, new Section R4-34-503 renumbered from R4-34-403 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-504. HUD Label Administration
In addition to the fees required under R4-34-501(C), a manufacturer of manufactured homes shall pay $5 to the Department for each label issued in this state.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-505. Plans and Supplements
If a licensee submits a plan or supplement that is not complete and correct, the Department shall provide written notice the plan or supplement is not acceptable and provide 60 days from the date on the notice for the licensee to submit a complete and correct plan or supplement. If the licensee fails to submit a complete and correct plan or supplement within the time provided, the Department shall return the submitted plan or supplement and treat the submittal fee paid as forfeited. To resubmit a plan or supplement, the licensee shall pay a new submittal fee.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-506. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-601. Repealed

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (C) effective October 20, 1981 (Supp. 81-5). Amended by adding M-9F effective April 30, 1982 (Supp. 82-2). Amended subsection (C) effective June 18, 1982 (Supp. 82-3). Amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-602. Repealed

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1).

R4-34-603. FBBs

A. A manufacturer shall construct an FBB according to the applicable standards in R4-34-102 and:
1. Provide a complete set of drawings and specifications to the Department under R4-34-703(B);
2. Affix a permanent serial or identification number to each module or panel during the first stage of manufacturing. If an FBB has multiple sections, the manufacturer shall ensure each module or panel is separately identified. The serial or identification number location and application method shall be shown in the plans required under R4-34-703; and
3. Affix a Modular Manufacturer's Certificate to each completed module of each modular building where indicated in the plan required under R4-34-703(B)(5). A Modular Manufacturer's Certificate is not required for a panelized building.

B. The Department may require a manufacturer of an FBB that is produced and shipped before plan approval to remove the FBB from this state and remove the Modular Manufacturer's Certificate based on the Department's assessment of the following factors:
1. Probable harm to public safety and welfare,

2. Previous violations of a similar nature, and
3. Manufacturer's failure to comply with plan submittal and requirements.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-604. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective June 13, 1980 (Supp. 80-3). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-605. Reconstruction of FBBs

A manufacturer shall ensure reconstruction of an FBB is consistent with applicable standards prescribed in R4-34-102 and:

1. Existing construction, systems (electrical, plumbing, HVAC, energy, etc.), and components are structurally and otherwise sound and compliant with standards governing at the time of manufacture;
2. New construction, systems, and components comply with applicable standards in R4-34-102;
3. A permanent serial or identification number is affixed to each reconstructed FBB as required under R4-34-603(A);
4. An Arizona Reconstruction Certificate is affixed to each module;
5. The reconstructed FBB complies with R4-34-102.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective April 21, 1982 (Supp. 82-2). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-606. Rehabilitation of Mobile Homes

A. A rehabilitation permit shall be obtained from the Department before any modification of a mobile home.

B. The following requirements shall be met for a mobile home to be issued a certificate of compliance:

1. A smoke detector shall be installed in each sleeping room and outside each separate sleeping area in the immediate vicinity of the sleeping rooms. Each smoke detector shall be installed in accordance with its manufacturer's instructions;
2. The walls, ceilings, and doors of each gas-fired furnace and water-heater compartment shall be lined with gypsum board that is a minimum of 5/16 inches except a door to the compartment that opens to the exterior of the mobile home and is of all metal construction. All exterior compartments shall seal to the interior of the mobile home;
3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or an approved exit device. The window or exit shall have a minimum clear width dimension of 22 inches, a minimum clear opening of five square feet, and the bottom of the exit is not more than 36 inches above the floor;
4. The electrical system is tested for continuity to ensure metallic parts are properly bonded, tested for operation to demonstrate all equipment is connected and in working order, and given a polarity check to determine connections are proper. The electrical system shall have proper overcurrent protection for the required amperage load. If aluminum conductors are used, all receptacles and switches rated 20 amperes or less and directly connected to the aluminum conductors shall be marked CO/ALR. Conductors of dissimilar metals (Copper/Aluminum/or Copper Clad Aluminum) shall be connected in accordance with the National Electrical Code referenced at R4-36-102. Ground Fault Circuit Interrupter protection shall be provided in compliance with the National Electrical Code referenced in R4-36-102; and
5. Gas piping shall be tested with methods incorporated at R4-36-102. All gas furnaces and water heaters shall be installed in compliance with materials incorporated at R4-36-102. If a rehabilitated mobile home is to be relocated following rehabilitation, the gas tests required under this subsection may be performed and inspected at the time of installation at the new location.

C. The rehabilitated mobile home shall be inspected by the Department to ascertain compliance with subsection (B).

D. The Department shall issue a certification of compliance for each rehabilitated mobile home in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.

E. If the Department determines a rehabilitated mobile home does not comply with subsection (B), the Department shall serve a correction notice and require the person served to make corrections within the time specified in the notice. The Department shall determine the time for correction based on the severity of the hazard or violation and the time reasonably needed to make the correction. The Department shall allow at least 30 days for correction unless an imminent safety hazard is found or the correction has been unreasonably delayed, in which case, the Department shall serve an Order to Vacate to the person occupying the rehabilitated mobile home.

F. The Department shall serve an Order to Vacate on a person occupying a non-rehabilitated mobile home within five days after an inspection of the non-rehabilitated mobile home finds an imminent safety hazard.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective August 13, 1980 (Supp. 80-4). Amended effective October 20, 1981 (Supp. 81-5). Amended effective January 31, 1986 (Supp. 86-1). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R.

464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-607. Manufacturing Inspection and Certification

A. The Department shall conduct manufactured home plant certification under R4-34-102.

B. Before issuing Certificates, the Department shall certify that a manufacturing facility of FBBs is capable of manufacturing the FBBs to the specifications in the approved drawings and procedures in the approved compliance assurance manual required under R4-34-702.

C. A manufacturer of FBBs and reconstructed FBBs shall certify compliance with approved plans by affixing a Modular Manufacturer Certificate or Reconstruction Certificate, as appropriate, to each FBB before delivery to a retailer.

D. Records and reporting: By the 15th of each month:
1. A manufacturer of manufactured homes shall report to the Department affixing HUD labels, complete any other required reports, and establish and maintain records required under R4-34-102; and
2. An FBB manufacturer shall report to the Department affixing Arizona Modular and Reconstruction Certificates during the previous month.

E. The Department may decertify a manufacturing facility if:
1. A serious defect exists in more than one FBB;
2. An inspector identifies three or more failures to comply with specifications in the approved plans, standards, or compliance assurance manual;
3. An in-state licensee fails to produce approved units for more than six consecutive months; or
4. An out-of-state licensee fails to file quarterly inspection reports for six consecutive months.

F. Before resuming production, a decertified manufacturing facility shall be recertified by the Department. When the manufacturer successfully completes the recertification process, the Department shall issue Certificates or Labels to the manufacturer.

G. The Department may conduct regular inspections of retailer lots to ensure compliance with approved plans, standards, and A.R.S. § 41-4048.

Historical Note

Adopted effective June 23, 1980 (Supp. 80-3). Amended effective October 20, 1981 (Supp. 81-5). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-608. Repealed

Historical Note

Adopted effective January 20, 1981 (Supp. 81-1). Amended effective October 20, 1981 (Supp. 81-5). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-609. Repealed

Historical Note

Adopted effective July 3, 1984 (Supp. 84-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-610. Repealed

Historical Note

Adopted effective July 3, 1984 (Supp. 84-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 7. PLAN APPROVALS

R4-34-701. General

A. Before construction of a manufactured home or FBB, a manufacturer shall submit to the office:
1. The compliance assurance manual required by R4-34-702, and
2. The drawings and specifications required by R4-34-703.

B. Before performing one of the following, a person shall obtain plan approval:
1. Under R4-34-704(A) for an alteration,
2. Under R4-34-704(B) for a reconstruction,
3. Under R4-34-705 to install an attached accessory structure, and
4. Under R4-34-706 to install an FBB.

C. Within 20 business days after receiving a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require the licensee to provide a complete plan submittal. Within 20 business days after receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

D. A person that submits a plan under subsection (B) shall ensure the plan conforms to the following standards:
1. Each page is at least 8 1/2 X 11 inches and printed to the scale referenced on the drawing;
2. The font is at least eight point;
3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;
4. The plan and all details and calculations are sealed by an Arizona registered engineer; and
5. The plan is consistent with all applicable standards referenced at R4-34-102.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective December 13, 1979 (Supp. 79-6). Amended by adding subsection (K) effective July 8, 1981 (Supp. 81-4). Amended subsections (A), (G), and (K), and added subsection (L) effective October 20, 1981 (Supp. 81-5). Correction, subsection (G)(3) (Supp. 81-6). Amended subsection (C) effective January 31, 1983 (Supp. 83-1). Amended subsection (B) effective May 23, 1983 (Supp. 83-3). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-701 renumbered to R4-34-301, new Section R4-34-701 renumbered from R4-34-301 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1).

Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-702. Compliance Assurance Manuals

A manufacturer of FBBs shall prepare a compliance assurance manual that has all of the following:

1. An 8 1/2 X 11 inch format with page numbers and revision traceability;
2. The manufacturer's name and address of the factory to which the manual applies;
3. A table of contents that identifies key elements in the quality and compliance control process;
4. An organizational chart that shows titles and functions of all positions responsible for any aspect of quality and compliance control;
5. A description of the design-document control process and procedures for ensuring the current approved design package or building plans are available to production, quality, and compliance personnel;
6. A description of procedures for handling materials, including treatment and disposal of rejected materials, in compliance with standards;
7. A description of the FBB-identification system including a unique identifier, such as a serial or identification number, that is permanently affixed to each module or panel of the FBB at the beginning of manufacturing and where the unique identifier is located on the FBB;
8. A drawing showing the layout of the factory and location of the work area for each step in the manufacturing sequence with a description of the scope of work performed at each work area, including off-line processes;
9. An inspection checklist, keyed to the drawing required in subsection (8), that identifies the inspections and tests to be performed at each step in the manufacturing sequence and title of the position responsible for ensuring inspections and tests are performed;
10. A list that includes step-by-step procedures for ensuring all required tests are performed, the equipment needed to perform each test, and procedures for maintaining test equipment;
11. A description of procedures for maintaining control of certificates, installing certificates on FBBs, and making the monthly report of certificates and title of the position responsible for ensuring these tasks are performed;
12. A description of the procedures for storing completed FBBs at the facility including the manner in which stored FBBs are protected from the elements and other sources of potential damage; and
13. A description of procedures for ensuring building documents are retained and title of the position responsible for ensuring document retention.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 9, 1980 (Supp. 80-3). Amended subsections (B), (C), (D) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (E) effective January 20, 1982 (Supp. 82-1). Amended by adding subsection (C), paragraph (3) and subsection (D), paragraph (3) effective April 30, 1982 (Supp. 82-2). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-702 renumbered to R4-34-302, new Section R4-34-702 renumbered from R4-34-302 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-703. Drawings and Specifications

A. A manufacturer of manufactured homes shall submit to the Department drawings and specifications that comply with applicable standards in R4-34-102.

B. A manufacturer of FBBs shall submit to the Department plans that comply with the applicable standards in R4-34-102. The manufacturer shall ensure the plans provide or have the following information or format attributes:

1. Dimensioned drawings and details identifying process descriptions, component specification lists, shop drawings, and other documents that specify and identify each component, process, assembly operation, and manufacturing step. Include electrical, plumbing, gas, and HVAC systems;
2. A traceable identification for each closed panel component listed;
3. Design analysis calculations for all loads and systems;
4. The location and process for stamping the permanent serial or identification number on the FBB;
5. The location of the Modular Manufacturer Certificate; and
6. Dimensional plans and details identifying all components and construction to be field installed.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective December 13, 1979 (Supp. 79-6). Amended effective May 9, 1980. Amended effective June 23, 1980 (Supp. 80-3). Amended subsection (G) effective July 29, 1980 (Supp. 80-4). Amended effective October 20, 1981 (Supp. 81-5). Amended subsection (B)(1) effective July 20, 1984 (Supp. 84-4). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-703 renumbered to R4-34-303, new Section R4-34-703 renumbered from R4-34-303 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-704. Reconstruction Plans

A. A manufacturer shall comply with the standards in R4-34-102 when preparing a reconstruction plan.

B. A manufacturer preparing a reconstruction plan shall ensure the plan contains the following:

1. A depiction of the configuration before reconstruction;
2. The serial or identification number of the unit;

3. Dimensioned drawings and details identifying all components and specification lists affected by the reconstruction. Electrical, plumbing, gas, and HVAC systems, as applicable, shall be addressed; and
4. Design-analysis calculations for all loads and systems affected by the reconstruction.

C. A manufacturer shall include with a reconstruction plan a certification statement regarding existing components, construction, and systems indicating they are structurally sound, functional, and do not pose a life safety threat.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (F) effective August 28, 1980 (Supp. 80-4). Amended effective October 20, 1981 (Supp. 81-5). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-704 renumbered to R4-34-304, new Section R4-34-704 renumbered from R4-34-304 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-705. Accessory Structures

A. For manufactured homes, mobile homes, and FBBs, a properly licensed entity or person shall comply with R4-34-102 when preparing attached accessory structure plans. The plans shall include the following:
1. Dimensioned drawings and details identifying all applicable components and specification lists. Electrical, plumbing, gas, and HVAC systems, as applicable, shall be addressed;
2. Design-analysis calculations for all loads and systems; and
3. Method of attachment to the manufactured home, mobile home, or FBB.

B. The Department may approve a design that does not comply with subsection (A) based on a demonstration by an Arizona registered engineer that the design meets standards at least equivalent to those in subsection (A).

C. A properly licensed entity or person shall submit plans, which are sealed by an Arizona registered engineer, for all attached accessory structures except skirting systems that have manufacturer installation instructions and HVAC systems.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-706. FBB Installation

A properly licensed entity or person shall include the following in installation plans submitted to the Department:

1. A site plan that includes the location of the building and all utility lines;
2. A foundation plan that includes:
   a. A description of the soil class and the soil bearing pressure;
   b. A description of footings and other foundation supports designed to meet the minimum bearing pressure at the depth required;
   c. A complete set of drawings indicating dimensions and details of the foundation footing and anchoring; and a complete list of materials with a cross-identification of how materials will be used, in the appropriate view; and
   d. Calculations, prepared by an Arizona registered engineer, for all load conditions including wind loads for horizontal loads, uplift loads, and overturning; and horizontal and torsional earthquake effects on foundations.
3. Electrical drawings, including the isometric one-line diagram required by R4-34-102, that contain the following information:
   a. Size and type of conductors, conduit materials for feeder wires, length of feeders, and all amperage;
   b. Dimensions of gutterways and raceways;
   c. Complete details of panelboards, switchboards, distribution centers with calculated loads, and fault current calculations; and
   d. All grounding and bonding connections.
4. Plumbing drawings, including one-line diagrams required by R4-34-102 that contain the following information:
   a. Location of sewer tap, water meter, and gas meter;
   b. Size, length, and all materials for sewer, water, and gas lines;
   c. Location of all cleanouts and grade of sewer line; and
   d. Fixture unit calculations for plumbing and gas fixtures.
5. Fastening and closure details for connection of multiple modules or panels.
6. Dimensional plans and details for all components and construction to be field installed.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-707. Designated Flood-prone Area Installation

Before installing a manufactured home, mobile home, or FBB in a designated flood-prone area, an installer shall submit and obtain Department approval of an installation plan that includes the following:

1. A site plan showing the location of the manufactured home, mobile home, or FBB;
2. A copy of the designated flood-use permit or flood design conditions issued by the local enforcement agency showing the flood zone type and regulatory and base flood elevations;
3. A site-specific foundation plan that is prepared by an Arizona registered engineer and includes:

a. A complete set of drawings indicating dimensions and details of the foundation system and anchoring to prevent floatation, collapse, or lateral movement of the structure;
b. A complete list of materials cross identified to the drawings in subsection (3)(a) showing how the materials will be used;
c. An indication of how to place to the structure to ensure the bottom frame of the structure is at or above the regulatory flood elevation;
d. An indication of where to place external utilities and equipment to ensure they are at or above the regulatory flood elevation;
e. If the structure has an enclosed foundation, an indication of where to place flood vents or other openings; and
f. All calculations used to determine all load conditions; and

4. Written approval of the information in subsections (1) through (3) from the local flood-district administrator having authority.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 8. PERMITS AND INSTALLATION

R4-34-801. Permits

A. A properly licensed entity or person shall obtain a permit for the installation of a manufactured home, mobile home, FBB, or attached accessory structure, or rehabilitation of a mobile home.

B. The Department shall issue or deny a permit within seven business days after the application is received. If a permit is denied, corrections to the application shall be submitted to the Department within 20 business days after the denial.

C. A properly licensed entity or person shall obtain all required permits, such as zoning, flood plain, and installation, from the Department or local jurisdiction before beginning any site work except the assessment required under R4-34-802(E). All permits shall be posted in a conspicuous location onsite. The properly licensed entity or person who contracts to perform the installation and a licensed installer who subcontracts to perform the installation shall verify that all required permits have been obtained from the Department and local jurisdiction before beginning the installation.

D. A local jurisdiction that has entered into agreement with the Department may issue installation permits and conduct inspections.

E. The Department or a local jurisdiction participating in the installation inspection program shall charge the permit fee expressly authorized under A.R.S. § 41-4010(A)(4). The fee charged by the local jurisdiction shall not exceed the amount established by the Board.

F. Every permit, except a special-use permit, expires six months after the permit is issued. The Department may extend the permit for good cause if a written request is made to the Department before the permit expires and the fee established by the Board under A.R.S. § 41-4010(A)(4) is paid again.

G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a manufactured home, mobile home, or FBB.

H. The permit holder, owner, contractor, or designated responsible party identified on the permit shall request all required inspections.

I. At the time of a scheduled inspection, the permit holder, owner, contractor, or designated responsible party identified on the permit shall ensure all work to be inspected is accessible (opened) and no work is performed beyond the point indicated for each successive inspection without first obtaining approval from the Department.

J. The permit holder, owner, contractor, or designated responsible party identified on the permit shall ensure approved plans and all applicable manuals are available onsite.

K. A special-use permit for an FBB used for an event of 45 days or less shall be obtained from the Department. The special-use permit expires 45 days from the date of issuance. The holder of a special-use permit shall remove the FBB from the site when the permit expires.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-801 repealed, new Section R4-34-801 renumbered from R4-34-501 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3). Due to an error when codifying R4-34-801 in Supp. 20-3, subsection R4-34-801(G) was not published. This subsection was identified as “no change” at 26 A.A.R. 1509. Subsection (G) has been published as last amended at 24 A.A.R. 1499 (Supp. 21-1).

R4-34-802. General Installation

A. A properly licensed entity shall complete and affix an Arizona Installation Certificate to a manufactured home, mobile home, or FBB at the end of the unit opposite the hitch and adjacent to the manufacturer certificate or HUD label. The properly licensed entity shall affix the Arizona Installation Certificate before calling the Department for an inspection.

B. A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).

C. Before beginning an installation, a properly licensed entity shall check with the local jurisdiction regarding frost-line requirements governing permanent foundations or utilities.

D. A properly licensed entity shall install all new manufactured homes, used manufactured homes, and mobile homes according to the materials referenced in R4-34-102.

E. Before installing a unit, a properly licensed entity shall perform or contract with a qualified party to assess the site and soil, ensure required permits are obtained, and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or FBB to be installed. The entity that actually prepares the site has primary responsibility for the work performed. The entity that contracts to have the site preparation done, if different, has secondary responsibility for the work performed.

F. Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A), (D), (F), and (L) effective October 20, 1981 (Supp. 81-5).Former Section R4-34-802 repealed, new Section R4-34-802 renumbered from R4-34-502 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8,

1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

R4-34-803. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-804. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-805. Accessory Structures
An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards referenced in R4-34-102.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3).

Exhibit 1. Repealed

Historical Note
Exhibit 1 repealed by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

ARTICLE 9. REPEALED

R4-34-901. Repealed

Historical Note
Adopted effective April 4, 1985 (Supp. 85-2). Former Section R4-34-901 renumbered to R4-34-401, new Section R4-34-901 renumbered from R4-34-1001 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 10. ADMINISTRATIVE PROCEDURES

R4-34-1001. Rehearing or Review

A. A party may amend a motion for rehearing or review filed under A.R.S. § 41-4038 at any time before it is ruled on by the Director. The opposing party may file a response within 15 days after the date the motion or amended motion is filed. The Director may require the parties to file written briefs explaining the issues raised in the motion and provide for oral argument.

B. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in A.R.S. § 41-4038(D). An order modifying the decision or granting a rehearing shall specify with particularity the grounds on which the modification or rehearing is granted, and any rehearing shall cover only those matters.

C. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party or the Attorney General may, within 10 days after service, serve opposing affidavits.

D. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director's own initiative for any reason for which the Director might have granted relief on the motion of a party. The Director may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 11. RENUMBERED

R4-34-1101. Renumbered

Historical Note
Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-34-1101 renumbered to R4-36-201 (Supp. 95-4).

41-4001. 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 housing 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" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but before 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 acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-4028.

6. "Certificate" means a numbered or serialized label or seal that is issued by the director as certification of compliance with this chapter.

7. "Closed construction" means any building, building component, assembly or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage or destruction.

8. "Commercial" means a building with a use-occupancy classification other than single-family dwelling.

9. "Component" means any part, material or appliance that is built-in as an integral part of the unit during the manufacturing process.

10. "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.

11. "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, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Consummation of sale does not include warranties.

12. "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, manufactured homes or mobile homes except as exempted in section 41-4028. 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.

13. "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.

14. "Department" means the Arizona department of housing.

15. "Director" means the director of the department.

16. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

17. "Factory-built building":

(a) Means a residential or commercial building that is:

(i) Either wholly or in substantial part manufactured using closed construction at an off-site location and transported for installation or completion, or both, on-site.

(ii) Constructed in compliance with adopted codes, standards and procedures.

(iii) Installed temporarily or permanently.

(b) Does not include a manufactured home, recreational vehicle, panelized commercial building using open construction, panelized residential building using open or closed construction or domestic or light commercial storage building.

18. "HUD" means the United States department of housing and urban development.

19. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

20. "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.

21. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.

22. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

23. "Listing agreement" means a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, 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.

24. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

25. "Manufactured home" means a structure built in accordance with the act.

26. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

27. "Mobile home" means a structure built before 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. Mobile home does not include recreational vehicles and factory-built buildings.

28. "Office" means the office of manufactured housing within the department.

29. "Open construction" means any building, building component, assembly or system manufactured in such a manner that all portions can be readily inspected at the building site without disassembly, damage or destruction.

30. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

31. "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.

32. "Reconstruction" 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.

33. "Recreational vehicle" means a vehicular type unit that is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls that 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.

34. "Residential" means a building with a use-occupancy classification of a single-family dwelling or as governed by the international residential code.

35. "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.

36. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

37. "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.

38. "Statutory agent" means a person who is on file with the corporation commission as the statutory agent.

39. "Title transfer" means a true copy of the application for title transfer that is stamped or validated by the appropriate government agency.

40. "Unit" means a manufactured home, mobile home, factory-built building or accessory structures.

41. "Used unit" means any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

42. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

41-4002. Office of manufactured housing; purpose

The purpose of the office of manufactured housing within the department is to maintain and enforce standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and accessory structures and installation of manufactured and mobile homes, factory-built buildings and accessory structures. The affairs of the office of manufactured housing shall be conducted consistently with minimum standards of the United States department of housing and urban development so as to be designated the "state inspector" for manufactured homes and related industries. The office shall implement all existing laws and regulations mandated by the federal government, its agencies and this state for such purposes.

41-4004. Powers and duties of department; work by unlicensed person; inspection agreement; permit

A. The department shall:

1. Establish a state inspection and design approval bureau within the department.

2. Enter into reciprocity agreements and compacts with other states or private organizations that adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article on determining that such standards are

being enforced. The director may void such agreements on determining such standards are not being maintained.

3. Issue a certificate to indicate compliance with the construction and installation requirements of this article.

4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by the director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated this chapter or the rules adopted pursuant to this chapter.

5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the director is monitoring their performance to be consistent with the installation standards of the office.

6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.

7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.

8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

9. Verify written complaints filed with the office by purchasers within one year after the date of purchase or installation of units. Complaints shall be accepted from consumers that allege violations by any dealer, broker, salesperson, installer or manufacturer of this chapter or the rules adopted pursuant to this chapter.

10. On verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.

11. Provide to the board every six months the year-to-date fund balance of and a listing of the year-to-date revenues and expenditures from the mobile home relocation fund established by section 33-1476.02. The information shall be updated and posted on the department's website.

B. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection A, paragraph 10 of this section. Failure to respond is grounds for disciplinary action pursuant to section 41-4039.

C. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

D. The director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the director is monitoring their performance to be consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office. If the director determines that the person's or organization's performance is not consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

E. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days after receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours after the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days after its receipt, the director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.

41-4005. Submission of construction, reconstruction or alteration plans by manufacturers; approval; revocation

A. Before the construction of any new model of factory-built building, each manufacturer who intends to manufacture for delivery or sell such unit in this state shall submit to the director for approval detailed plans of each model and shall have obtained such approval.

B. Before reconstruction of any factory-built building, including those for which the director has not approved plans before construction, the licensee shall submit to the director for approval detailed plans of the factory-built building that indicate conformance with this state's adopted codes as certified by an engineer who is registered pursuant to title 32, chapter 1.

C. Before installation of a factory-built building or accessory structure, each licensee who intends to accomplish the construction shall submit to the director for approval detailed plans for each project and shall obtain the director's approval.

D. The office or a third-party inspector who is authorized by the director to verify compliance with the approved plans shall inspect the factory-built building.

E. A plan approval may be immediately suspended by the written notice of the director if the director has reasonable cause to believe that the licensee is not complying with the plan as approved or that the licensee has used inferior materials or workmanship in construction. This notice shall be served by personal service to an in-state licensee and by certified mail to an out-of-state licensee. Service of process by certified mail is complete after forty-eight hours from the time of deposit in the mail.

41-4006. Preemption of local building codes; responsibility for maintenance of utility connections

A. No building code or local enforcement agency or its adopted building codes may require, as a condition of entry into or sale in any county or municipality, that any unit that has been certified pursuant to this chapter be subjected to any local enforcement inspection to determine compliance with any standard covering any aspect of the unit that is inspected pursuant to this article.

B. Except where a local enforcement agency participates in the office permit and certificate issuance program for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures and inspection of such installations, no local enforcement agency shall subject any unit installed to any local inspections or charge a fee for any services provided pursuant to this article.

C. A local enforcement agency in any county or municipality shall recognize the minimum standards of the act as equal to any nationally accepted or locally adopted building code standard.

D. Nothing in subsection A, B or C of this section shall prevent the application of local codes and ordinances governing zoning requirements, fire zones, building setback, maximum area and fire separation requirements, site development and property line requirements and requirements for on-site utility terminals for factory-built buildings, manufactured homes and mobile homes.

E. Notwithstanding any other provision of this section, the owner of a manufactured home or mobile home located in a park subject to title 33, chapter 11 is responsible for the maintenance of utility connections from any outlets furnished by the landlord pursuant to section 33-1434 to the unit, except that the landlord is responsible for the maintenance of connections for any distance greater than twenty-five feet to the point at which the utility connections are the property of the providing utility company if the outlet is located outside the lot line of the owner's unit and is more than twenty-five feet from the unit. A local enforcement agency that determines that local code requirements are not being met or that maintenance or safety activities are needed for utility connections may not require anyone except the responsible party to perform or pay for such activities.

41-4007. Notification and correction of defects by manufacturer; notice to purchaser

A. Every manufacturer of units shall furnish notification of any defect in any unit produced by such manufacturer which he determines, in good faith, relates to a construction or safety standard adopted pursuant to this chapter or contains a defect which constitutes an imminent safety hazard to the purchaser of such unit, within sixty days after such manufacturer has discovered the defect. Every manufacturer of units shall maintain a record of the names and addresses of the purchaser of each unit for the purposes of this section. Such information shall be provided by the dealer or broker upon purchase of each unit and reported monthly to the manufacturer.

B. The notification required by subsection A shall contain a clear description of such defect or failure to comply with such construction or safety standards, an evaluation of the risk to the occupants' safety reasonably related to such defect and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect will be corrected at no cost to the purchaser of the unit or at the expense of the purchaser.

41-4008. Costs of complying with standards; reimbursement from relocation fund; definition

A. The costs of bringing a mobile home into compliance with the requirements of this article may be reimbursed to the owner from the mobile home relocation fund established by section 33-1476.02 if all of the following are true:

1. The mobile home is moved from one mobile home park in this state to another mobile home park in this state.

2. The household income of the owner of the mobile home is at or below one hundred per cent of the current federal poverty level guidelines as published annually by the United States department of health and human services.

3. The mobile home is not being relocated as the result of a judgment in a forcible detainer or special detainer action requiring the owner to vacate the mobile home park in which the mobile home is located.

B. The amount of the reimbursement pursuant to this section shall not exceed one thousand five hundred dollars for the costs related to any mobile home.

C. The fund shall have a claim for reimbursement of sums received under this section by an individual who fails to reside in the mobile home for six months following its relocation, unless the failure was due to the death or disability of a resident.

D. For the purposes of this section, "owner" means an individual whose primary residence has been the mobile home continuously for the six-month period preceding an application for reimbursement, or an individual who has purchased the mobile home and who intends to reside in the mobile home as the individual's primary residence after the relocation.

41-4009. Board of manufactured housing; members; meetings

A. The board of manufactured housing is established. The board shall consist of nine members appointed by the governor pursuant to section 38-211. One member shall represent the manufacturers of manufactured homes, one shall represent the installer industry, one shall represent manufactured home park owners, one shall represent financial institutions, one shall represent the manufacturers of residential factory-built buildings, one shall represent the dealers and brokers and three members of the public, at least one of whom has as his residence a mobile or manufactured home and is a resident of a mobile home park or manufactured home park, shall represent the consumers of this state. Each member shall be appointed for a term of three years. The governor may remove any member from the board for incompetency, improper conduct, disability or neglect of duty. Members are eligible to receive compensation pursuant to section 38-611 and are eligible for reimbursement for expenses incurred while attending meetings called by the board pursuant to title 38, chapter 4, article 2.

B. The board annually shall select from its membership a chairperson for the board.

C. The board shall meet on call of the chairperson or on the request of at least four members.

41-4010. Powers and duties of board

A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings and components thereof that are reasonably consistent with nationally recognized and accepted publications or generally accepted manufacturing practices pertinent to the construction and safety standards for such item to be manufactured. These standards shall include minimum requirements for the safety and welfare of the public.

2. Adopt rules imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for manufactured homes that are consistent with the rules and regulations for construction and safety standards adopted by the United States department of housing and urban development.

3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, reconstruction and installation of units or accessory structures as deemed necessary by the board to carry out this chapter.

4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, for inspections, licenses, permits, plan reviews, administrative functions and certificates so that the total annual income derived from such fees will not be less than ninety-five percent and not more than one hundred five percent of the anticipated expenditures for the administration of the activities described in this subsection.

5. Adopt rules relating to the inspection throughout the state by the department of the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a manufactured home, mobile home or factory-built building or included in an agreement to move a manufactured home, mobile home or factory-built building.

6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes and factory-built buildings regulated pursuant to this chapter.

7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes and factory-built buildings thereof who sell or arrange the sale of such products within this state.

8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and

certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.

9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.

10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.

11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.

12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.

13. Adopt such other rules as the board deems necessary for the department to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a used mobile home, new or used manufactured home or new or used factory-built building or part of an agreement to move a used mobile home, new or used manufactured home or new or used factory-built building. This paragraph does not apply to:

(a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.

(b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.

(c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.

17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3 of this section, the board shall consider for adoption any amendments to the codes and standards referred to in subsection A, paragraphs 1 and 2 of this section. If the board adopts the amendments to such codes and standards, the department shall notify the manufacturers licensed pursuant to article 4 of this chapter ninety or more days before the effective date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4 of this section.

D. Rules adopted pursuant to subsection A, paragraph 14 of this section shall be standard throughout this state and may be enforced by the local enforcement agencies on installation to ensure a standard of safety. The board may make an exception to the standard if, on petition by a local jurisdiction participating in the installation inspection program, local conditions justify the exemption or it is necessary to protect the health and safety of the public. On its own motion, the board may revise or repeal any exception.

41-4025. Qualifications and requirements for license

A. A manufacturer, dealer, broker, salesperson or installer license shall be issued by the director.

B. The director shall:

1. Qualify applicants for a license.

2. Conduct such investigations as the director deems necessary.

3. Establish and administer written examinations for the applicable license classifications.

C. The director may establish experience requirements for installers of manufactured homes, mobile homes, residential factory-built buildings and accessory structures.

D. To obtain a license pursuant to this article, the applicant shall submit to the director a notarized application on forms prescribed by the department together with the required license fee. Such application shall contain the following information:

1. A designation of the classification of license sought by the applicant.

2. The name, birth date and address of an individual applicant.

3. If the applicant is a partnership, the name, birth date and address of all partners with a designation of any limited partners.

4. If the applicant is a corporation, association or other organization, the names, birth dates and addresses of the president, vice president, secretary and treasurer.

5. For all licenses, except those for salespersons, the name, birth date and address of the qualifying party. The qualifying party must reside within the state of the principal place of the licensee's business and shall not act in the capacity of a qualifying party for more than one license in the same classification.

6. If the applicant is a corporation, association or other organization, evidence that the corporation, association or other organization is in good standing with the Arizona corporation commission.

7. Whether the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, all officers, if the applicant is a corporation or other type of association, the managers or managing members, if the applicant is a limited liability company, the general partner, if the applicant is a limited partnership, or the individual, if the applicant is a salesperson, has ever been charged or convicted of a felony, or has ever received an adverse final decision in a civil action alleging fraud or misrepresentation, and, if so, the nature of the action and the final disposition of the case.

8. For corporations, the name and address of a statutory agent appointed by the licensee on whom legal notices, summonses or other processes may be served, which service shall be deemed personal service on the licensee.

9. If it is an application for a salesperson's license, the applicant shall designate an employing dealer or broker and the application shall include the signature of the qualifying party or the qualifying party's designee.

10. Other information as the director may deem necessary.

E. Before the issuance of any license pursuant to this article, the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, the general partner, if the applicant is a limited partnership, the president, vice president, secretary, and treasurer, if the applicant is a corporation or other type of association,

the manager or managing members, if the applicant is a limited liability company, the individual, if the applicant is a salesperson, and the qualifying party shall be of good character and reputation and shall submit a fingerprint card for background analysis. Lack of good character and reputation may be established by showing that such person has committed any act that, if committed by any licensee, would be grounds for suspension or revocation of such license.

F. To obtain a license pursuant to this article, a person shall not have had a license refused or revoked within one year before the date of the application nor have engaged in the business without first having been licensed nor shall a person act as a licensee between the filing of the application and actual issuance of the license. For the purposes of this subsection, "person" means an applicant, an individual, a qualifying party, any partner of a partnership, any manager or managing member of a limited liability company, or any officer, director, qualifying party or owner of forty percent or more of the stock or beneficial interest of a corporation.

G. Before issuance of a dealer, broker or installer license, the qualifying party, in addition to meeting the requirements provided in subsection D of this section, shall successfully show, by written examination within three attempts, qualification in the kind of work or business in which the applicant proposes to engage. Before the issuance of an installer license, the qualifying party shall also provide the department with evidence of successful completion of the online installer course that is administered by the manufactured housing educational institute and proof of three years of practical or field experience or training that is deemed acceptable by the department.

H. A license shall not be issued to a minor or to any partnership in which one of the partners is a minor.

I. Every salesperson who holds an active license shall maintain on file with the department a current residence address and shall notify the department within five working days of any change of address, of any discontinued employment, and where, if anywhere, the salesperson is currently working.

J. The license of a salesperson who is no longer employed by the dealer of record is deemed inactive. The salesperson shall turn the license into the department until the salesperson is employed by another dealer and a written notification of the change has been received by the department. On notification, the department shall return the license to the salesperson.

COMMISSION FOR THE DEAF AND HARD OF HEARING
Title 9, Chapter 26, Commission for the Deaf and Hard of Hearing

Amend: R9-26-501, R9-26-507

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 14, 2021

SUBJECT: **COMMISSION FOR THE DEAF AND HARD OF HEARING**
Title 9, Chapter 26, Commission for the Deaf and Hard of Hearing

Amend: R9-26-501, R9-26-507

Summary:

This regular rulemaking from the Commission for the Deaf and Hard of Hearing (Commission) seeks to amend two rules in Title 9, Chapter 26, Article 5 related to the licensing requirement to take a performance examination. Specifically, the rulemaking seeks to postpone the deadline for licensed Legal A interpreters and Provisional interpreters to take their required performance examinations.

As a result of COVID-19, the Commission indicates it has challenged interpreters in class Legal A and Provisional to take the performance examination required by rule. Furthermore, the Commission indicates the two entities, Registry of Interpreters for the Deaf and Board for Evaluation of Interpreters, which provide performance examinations, have only recently resumed providing the examination after more than a year and many interpreters remain reluctant to travel to an examination site during the pandemic.

An emergency rulemaking which was filed with the Secretary of State on March 31, 2021, provided a postponement of the consequences of the Commission's licensing rules. The emergency rulemaking is set to expire on September 27, 2021. As such, the Commission states

that this regular rulemaking is needed so currently licensed Legal A interpreters will continue to be licensed at their current classification level and Provisional interpreters will continue to be licensed until they are able to take the performance examination. The Commission states, without this rulemaking, Arizona's deaf, hard of hearing, and DeafBlind community will be deprived of needed interpreters, licensed interpreters will experience economic burdens, and court proceedings involving deaf or hard of hearing individuals will be negatively impacted.

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

Yes. The Commission cites both general and specific statutory authority for the rules.

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

No. This rulemaking does not establish a new fee or contain a fee increase.

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

The Commission did not review or rely on any study in conducting this rulemaking.

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

This rulemaking will give currently licensed interpreters additional time to take the required performance examination to continue providing interpreting services for the deaf, hard of hearing, and DeafBlind community. There are currently 24 Legal A interpreters that need to take the performance examination to maintain their current classification level and 3 licensed provisional interpreters that need to take the performance examination to avoid losing licensure.

The Commission expects that the rulemaking will have a positive economic impact for these 27 interpreters who will gain additional time to take the required performance examination and as a result will be able to continue to provide interpreting services at their current classification level. The rulemaking will also benefit Arizona's deaf, hard of hearing, and DeafBlind community that relies on interpreting services, and ensure court proceedings involving deaf, hard of hearing, or DeafBlind individuals are not delayed.

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

The Commission states the rulemaking is not intrusive or costly. No less intrusive or less costly alternative method was considered.

6. What are the economic impacts on stakeholders?

The rulemaking will directly affect currently licensed class Legal A and Provisional interpreters who have not taken the required performance examination and the Commission. The rulemaking imposes no costs on affected interpreters and the Commission incurs the cost of doing this rulemaking and implementing it.

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

The Commission indicates that there were no changes to the rules between the Notice of Proposed Rulemaking filed on April 30, 2021 and the Notice of Final Rulemaking.

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

The Commission indicates it received several written and oral comments related to this rulemaking which are summarized in Section 11 of the preamble of the Notice of Final Rulemaking along with the Commission's responses. Council staff believes the Commission has adequately addressed the comments.

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

The amendments at issue relate to rules which deal with the issuance of interpreter licenses by the Commission. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Commission indicates the licenses issued by the Commission to interpreters are not general permits as defined at A.R.S. § 41-1001(11). Specifically, the Commission states, under A.R.S. § 36-1946(3), the Commission is required to establish standards and procedures for the qualification and licensure of each classification of interpreters. The Commission states the standards must include an assessment of each individual's education, examination, and work history. *See* A.R.S. § 36-1971(B). As such, the Commission argues that it meets the exceptions to the general permit requirement in that the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute and the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(2) and (3). Council staff believes that the licenses issued by the Commission fall under the exceptions to the general permit requirement and the Commission is in compliance with A.R.S. § 41-1037.

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

While the Commission indicates the Americans with Disabilities Act applies to individuals who are deaf, hard of hearing, or DeafBlind, no federal law is directly applicable to the subject of any rule in this rulemaking.

11. Conclusion

This regular rulemaking from the Commission seeks to amend two rules in Title 9, Chapter 26, Article 5 related to the licensing requirement to take a performance examination. Specifically, the rulemaking seeks to postpone the deadline for licensed Legal A interpreters and Provisional interpreters to take their required performance examinations.

The Commission is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(1) and (4). Specifically, the Commission states an immediate effective date for this rulemaking will preserve public health and safety and benefit the public without an associated penalty. The Commission indicates an immediate effective date for this rulemaking will provide Arizona's deaf, hard of hearing, and DeafBlind community with needed interpreters and facilitate court proceedings involving deaf, hard of hearing, or DeafBlind individuals without incurring a penalty for anyone. Council staff believes the Commission has provided adequate justification for an immediate effective date for these rules.

Council staff recommends approval of this rulemaking.

Douglas A. Ducey
Governor

Sherri L. Collins
Executive Director

Arizona Commission
for the deaf and the hard of hearing

100 N 15th Avenue Suite 104 Phoenix, AZ 85007
acdhh.org

June 11, 2021

Ms. Nicole Sornsin
Chair, The Governor's Regulatory Review Council
100 N 15th Ave Suite 305
Phoenix, AZ 85007

Dear Ms. Sornsin,

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

A. Close of record date: The rulemaking record was closed on June 11, 2021, following a

period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. $ 41-1024(B).

As required under paragraph 2 of Executive Order 2021-02, the Commission obtained final approval from Trista Guzman Glover of the Governor's to submit the final rule package to the Council. The final approval was provided in an e-mail dated June 11, 2021.

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

to a five-year-review report.

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

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

E. Immediate effective date: As explained in item 3 of the Preamble to the Notice of Final

Rulemaking, an immediate effective date is requested under A.R.S. & 41-1032(AX1) and (A)(4).

F. Certification regarding studies: I certify that the preamble accurately discloses the Board

did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking

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

H. List of documents enclosed:

1. Cover letter signed by the Executive Director, 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text; 3. Economic, Small Business, and Consumer Impact Statement.

Respectfully,

Sherri Collins, M.Ed.

Executive Director

Arizona Commission for the Deaf and the Hard of Hearing

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

PREAMBLE

1.	**Articles, Parts, and Sections Affected**	**Rulemaking Action**
	R9-26-501	Amend
	R9-26-507	Amend

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

Authorizing statute: A.R.S. § A.R.S. § 36-1946(1)

Implementing statute: A.R.S. §§ 36-1946(3) and 36-1974

3. The effective date for the rules:

When filed with the Office of the Secretary of State

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

The Commission respectfully requests under A.R.S. § 41-1032(A)(1) and (A)(4) that the rulemaking have an immediate effective date to preserve public health and safety and to benefit the public without an associated penalty. Although both the Registry of Interpreters for the Deaf and Board for Evaluation of Interpreters, the two entities that provide performance examinations for interpreters, have resumed providing the performance examinations, many interpreters are understandably reluctant to travel to an examination site during a pandemic. The emergency rulemaking, which went into effect on March 31, 2021 (See 27 A.A.R. 549, April 9, 2021), provided relief from the rule provision requiring the performance examination for Legal A interpreters to maintain their current license classification and Provisional interpreters to maintain any licensure. An immediate effective date for this rulemaking will provide Arizona's deaf, hard of hearing, and DeafBlind community with needed interpreters and facilitate court proceedings involving deaf, hard of hearing, or DeafBlind individuals. These benefits to the public and interpreters will occur without a penalty for anyone.

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

Not applicable

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

Notice of Emergency Rulemaking: 27 A.A.R. 549, April 9, 2021

Notice of Rulemaking Docket Opening: 27 A.A.R. 555, April 9, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 641, April 30, 2021

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

Name: Carmen Green Smith, Deputy Director

Address: Commission for the Deaf and the Hard of Hearing
100 N. 15th Ave., Suite 104
Phoenix, AZ 85007

Telephone: (602) 542-3362

E-mail: C.green@acdhh.az.gov

Website: https://www.acdhh.org

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 current COVID19 pandemic has challenged interpreters in class Legal A and Provisional to take the performance examination required by rule. The two entities, Registry of Interpreters for the Deaf and Board for Evaluation of Interpreters, which provide performance examinations, have only recently resumed providing the examination after more than a year. Many interpreters understandably remain reluctant to travel to an examination site during the pandemic. An emergency rulemaking, which will expire on September 27, 2021, provided a postponement of the consequences of the Commission's licensing rules. This rulemaking is needed so currently licensed Legal A interpreters will continue to be licensed at their current classification level and Provisional interpreters will continue to be licensed until they are able to take the performance examination. Without this rulemaking, Arizona's deaf, hard of hearing, and DeafBlind community will be deprived of needed interpreters, licensed interpreters will experience economic burdens, and court proceedings involving deaf or hard of hearing individuals will be negatively impacted. In this rulemaking, the Commission extends the deadline for taking the required performance examinations. An exemption from Executive Order 2021-02 was provided for this rulemaking by Trista Guzman Glover of the Governor's Office by e-mail dated March 16, 2021. As required under paragraph 2 of Executive Order 2021-02, the

Commission obtained final approval from Trista Guzman Glover of the Governor's to submit the final rule package to the Council. The final approval was provided in an e-mail dated June 11, 2021.

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 did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The rulemaking will have positive economic impact for interpreters who will gain additional time to take the required performance examination and as a result able to continue to provide interpreting services at their current license classification level. This will also benefit Arizona's deaf, hard of hearing, and DeafBlind community that relies on interpreting services and ensure court proceedings involving deaf, hard of hearing, or DeafBlind individuals are not delayed.

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

No changes were made between the proposed and final rulemaking.

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

The Commission received written and oral comments from five individuals who hold a Class Legal A license. They are Heather Donnel, Leann Smith, Marie Tavormina, Cindy Volk, and Raymond Baesler. Comments were also received from Robert Hahn, a law and mental-health trained professional, and David Svoboda, Language Access Coordinator at the Arizona Supreme Court Administrative Offices of the Court. Commissioner Benton read the written comments into the record of the oral proceeding. The comments fell into four categories, summarized as follows:

COMMENT	ANALYSIS	RESPONSE
Ms Donnel, Smith, Tavormina, and Volk oppose extending the deadline for Class Legal A	The Commission acknowledges that the 24 Class Legal A interpreters affected by this	No change

interpreters to obtain legal certification from an acceptable certifying entity. They argue the requirement for legal certification was added in 2016 so there has been enough time for those to whom the requirement applies to obtain the necessary certification. They argue further that being unable to maintain a Class Legal A license does not mean the affected individuals cannot work as interpreters in a non-court or community setting or in a court setting when paired with a Class Legal A interpreter. They conclude that interpreters are to do no harm and not having appropriate training or certifications has the potential to do harm.	rulemaking have had almost five years in which to meet the requirement for legal certification. However, there is no way to know why these interpreters did not take the certification test sooner and no one could have predicted a pandemic that would effectively shut down travel and force the certification entities to cancel testing. Because the time for obtaining certification ran into the pandemic, the Commission believes it is reasonable and in the best interest of both the state and its deaf, hard of hearing, and DeafBlind community to extend the deadline as proposed.	
Mr. Baesler and Hahn argue that those who have a Class Legal A certification should be "grandfathered" and not have to obtain a legal certification. Individuals who are performing competently should be allowed to continue to do so. Continuing to require the additional certification will reduce the number of Class Legal A	The requirement regarding obtaining a legal certification to maintain Class Legal A licensure was added in 2016. It is not at issue in this rulemaking. Mr. Baesler is correct that Class Legal C licensure is for interpreters without the necessary legal certification.	No change

interpreters and cause harm to the deaf community.		
Mr. Svoboda supported extending the time for Class Legal A interpreters to obtain the required legal certification. He said the number of Class Legal A interpreters is already very limited, which makes it difficult for courts to locate interpreters they need to comply with federal and state laws regarding accommodations for and effective communication with those who are disabled. If the date for obtaining the legal certification is not extended, the courts will face even greater difficulty obtaining interpreters.	The Commission was authorized to license interpreters, in part, to address the needs of the courts (See A.R.S. § 12-242). The Commission believes it is in the best interest of the state and its deaf, hard of hearing, and DeafBlind community to extend the time for current Class Legal A interpreters to obtain the required legal certification.	No change
Ms. Tavormina spoke in favor of the extra time for Provisional licensees to take the necessary performance test.	The Commission appreciates the support.	No change

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

None

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

The licenses issued by the Commission to interpreters are not general permits as defined at A.R.S. § 41-1001. Under A.R.S. § 36-1946(3) the Commission is required to establish standards and procedures for the qualification and licensure of each classification of interpreters. The standards must include an assessment of each individual's education, examination, and work history (See

A.R.S. § 36-1971(B)).

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 Americans with Disabilities Act applies to individuals who are deaf, hard of hearing, or DeafBlind. However, no federal law is directly applicable to the subject of any rule in this rulemaking.

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

No analysis was submitted

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

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:

Both rules in this rulemaking were previously amended in an emergency rulemaking, which was published at 27 A.A.R. 549, April 9, 2021. The text at R9-26-"Class A legal interpreter" and R9-26-507(B)(5) in this final rulemaking differs from the text in the emergency rulemaking.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

Section

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9-26-501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than ~~January 1, 2021~~ the individual's renewal date, as specified in R9-26-507(A), in 2023.

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

The requirements of A.R.S. § 12-242,
The structure of the judiciary system of this state,
The judiciary process of this state,
Administrative adjudicatory procedures,
Law enforcement procedures, or
Commonly used legal terms.

"Level III, IV, or V" means a certification issued by BEI.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"License year" means the days between the date of license issuance and the date of license expiration.

“Mentor” means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

“MCSC” means master comprehensive skills certificate, a certification issued by RID.

“NAD” means the National Association of the Deaf.

“NAD III (generalist),” means a certification issued by NAD.

“NAD IV (advanced),” means a certification issued by NAD.

“NAD V (master),” means a certification issued by NAD.

“NIC” means National Interpreter Certification.

“NIC Advanced” means a certification issued by NAD-RID.

“NIC Certified” means a certification issued by NAD-RID.

“NIC Master” means a certification issued by NAD-RID.

“OC:B” means oral certificate: basic, a certification issued by BEI.

“OC:C” means oral certificate: comprehensive, a certification issued by BEI.

“OIC” means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

“Oral transliteration” means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

“OTC” means oral transliteration certificate, a certification issued by RID.

“Platform or performance setting” means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

“Provisional interpreter” means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

“Class A provisional interpreter” means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

"Class B provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

R9-26-507. License Renewal

A. Renewal of a generalist or legal interpreter license.

1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Home or business address;
   d. E-mail address;
   e. Home, business, or mobile telephone number;
   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
   g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
   i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;

j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;

k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;

n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;

o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and

p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.

2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:

a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;

b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and

c. The fee required under R9-26-508.

3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.

1. A provisional interpreter license expires one year after the date of issuance.
2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
   a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;
   b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and
   c. The fee required under R9-26-508;
   d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and
   e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or
   f. If a Class C provisional licensee wishes to move to a Class B provisional license:
      i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and
      ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or
      iii. A score of at least 4.0 on the EIPA performance test.
4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license

within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime except that if an interpreter is unable to pursue RID, NAD, or BEI certification because the testing necessary for certification is unavailable due to the COVID-19 pandemic, the Commission shall renew the provisional interpreter license of any interpreter who:
   a. Complies fully with this subsection;
   b. Held a valid provisional interpreter license in its final renewal year on December 30, 2020; and
   c. Obtains certification by RID, NAD, or BEI no later than the interpreter's renewal date, as specified in subsection (B)(1), in 2023.

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT [1]
TITLE 9. HEALTH SERVICES
CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

1. Identification of the rulemaking:

The current COVID19 pandemic has challenged interpreters in class Legal A and Provisional to take the performance examination required by rule. The two entities, Registry of Interpreters for the Deaf and Board for Evaluation of Interpreters, which provide performance examinations, have only recently resumed providing the examination after more than a year. Many interpreters understandably remain reluctant to travel to an examination site during the pandemic. An emergency rulemaking, which will expire on September 27, 2021, provided relief from the consequences of the Commission's licensing rules. This rulemaking is needed so currently licensed Legal A interpreters will continue to be licensed at their current classification level and Provisional interpreters will continue to be licensed until they are able to take the performance examination. Without this rulemaking, Arizona's deaf, hard of hearing, and DeafBlind community will be deprived of needed interpreters, licensed interpreters will experience economic burdens, and court proceedings involving deaf, hard of hearing, or DeafBlind individuals will be negatively impacted. In this rulemaking, the Commission extends the deadline for taking the required performance examinations. An exemption from Executive Order 2021-02 was provided by Trista Guzman Glover of the Governor's Office by e-mail dated March 16, 2021.

a. The conduct and its frequency of occurrence that the rule is designed to change:
Without the rulemaking and because of the challenges continuing from the COVID19 pandemic, the licensure of currently licensed Legal A and Provisional interpreters will be at risk because they are unable to take the required performance examination.

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:
Currently licensed interpreters are unable to take the required performance examination, harm is caused not only to the interpreters but also to the deaf, hard of hearing, and DeafBlind community and court proceedings that rely on interpreters.

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

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

When the rulemaking goes into effect, currently licensed interpreters will have additional time in which to take the required performance examination and able to continue providing interpreting services for the deaf, hard of hearing, and DeafBlind community.

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

   The rulemaking will have positive economic impact for interpreters who will gain additional time to take the required performance examination and as a result able to continue to provide interpreting services at their current classification level. This will also benefit Arizona's deaf, hard of hearing, and DeafBlind community that relies on interpreting services and ensure court proceedings involving deaf, hard of hearing, or DeafBlind individuals are not delayed.

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: Carmen Green Smith, Deputy Director

   Address: Commission for the Deaf and the Hard of Hearing
   100 N. 15th Ave., Suite 104
   Phoenix, AZ 85007

   Telephone: (602) 542-3362

   E-mail: C.green@acdhh.az.gov

   Website: https://www.acdhh.org

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

   Currently licensed class Legal A and Provisional interpreters who have not taken the required performance examination and the Commission will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

   There are currently 52 licensed legal interpreters and 41 provisional interpreters in Arizona. Of these, 24 (46%) Legal A interpreters need to take the performance examination to maintain their current classification level. Three (7%) licensed Provisional interpreters need to take the performance examination to avoid losing licensure. These 27 interpreters will be directly affected by and benefit from having additional time in which to take the performance examination. The additional time to take the performance examination imposes no costs on affected interpreters. The Commission incurred the cost of doing this rulemaking and will incur the cost of implementing it. The Commission will benefit from enabling interpreters to continue providing services to Arizona's deaf, hard of hearing, and DeafBlind community.

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

       The Commission is the only state agency directly affected by the rulemaking. Its costs and benefits are listed in item 4. The Commission will not need an additional full-time employee to implement and enforce the rules.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:

       No political subdivision is directly affected by the rulemaking. Arizona's court system is indirectly affected by the rulemaking.
    c. Costs and benefits to businesses directly affected by the rulemaking:

       Interpreters are businesses directly affected by the rulemaking. Their costs and benefits are listed in item 4.
6. Impact on private and public employment:

   There will be no impact on private or public employment.
7. Impact on small businesses[2]:
    a. Identification of the small business subject to the rulemaking:

       Affected interpreters are small businesses subject to the rulemaking.
    b. Administrative and other costs required for compliance with the rulemaking:

       The rulemaking imposes no administrative or other costs for compliance. The requirement to take a performance examination currently exists. The rulemaking simply provides additional time in which to take the required performance examination.
    c. Description of methods that may be used to reduce the impact on small businesses:

       Because all affected interpreters are small businesses and because the impact of the rulemaking is positive, there is no method to reduce the impact on small businesses.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   No private persons or consumers are directly affected by the rulemaking. Arizona's deaf, hard of hearing, and DeafBlind community and court systems are indirectly affected.
9. Probable effects on state revenues:

   There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

The rulemaking is not intrusive or costly. No less intrusive or less costly alternative method was considered.

WRITTEN COMMENT (30 days) – end May 30, 2021

`via email:

To Whom It May Concern:

We are writing in opposition to extending the deadline for Class A legal interpreters to 2023. While it is true that due to the pandemic, both RID and BEI were unable to test in 2020, Legal A interpreters have known about the requirement of obtaining either the SC:L or CIC for at least 5 years prior to 2020 in order to keep the Legal A license. Failing to do so, does not mean those same interpreters can no longer work. They will still hold Legal licenses B or C allowing them to work in court with a Legal A interpreter or solo in other legal situations. Also, they are able to work in the community for non-legal assignments. The economic impact on interpreters are minimal compared to the impact on Deaf community members in the court systems. Not holding the appropriate certifications of SC:L or CIC but still wanting to work in courts shows a disrespect for the RID CPC and to the Deaf community. CPC number one tenet is "to do no harm". Not having the appropriate training or certifications has the potential to "do harm".

The deadline of January, 2021 was challenged a few years ago but the ACDHH moved forward to keep the deadline of January, 2021 because of compelling arguments regarding the impact lesser qualified interpreters have on Deaf people's access to the court system and legal entities. The original intent of the deadline was to ensure all Legal A licensed interpreters had the appropriate training and certifications to work in court assignments. Knowing the deadline, some interpreters did test and received the required certification prior to the January, 2021 deadline. Now here we are again, putting the needs of interpreters over the needs of Deaf people, who are at a linguistic and cultural disadvantage when navigating through the judicial system.

We strongly request that the ACDHH Commission keeps the original regulations in tact with no 2 year extension.

Respectfully submitted,

Heather Donnel
Leann Smith
Marie Tavormina
Cindy Volk

ORAL COMMENT – (one day) – June 2, 2021

`via ZOOM/YOUTUBE

LEGAL A SECTION

>>Commissioner Benton: So at this time, we have some written comments that I will be reading.

So the first one that I will read is from Raymond Baesler.

And these are the written comments related specifically to the Legal A proposed language.

Hello, my name is Raymond Baesler.

I am a licensed interpreter in Arizona, and I have held my Legal A license since 2017.

I want to raise my concerns as I have for many years, regarding the proposed change to Legal A licensing requirements.

I earned Legal A license under the rules that existed in 2017 that allowed interpreters with certain RID certifications who completed numerous hours of additional legal training to obtain a Legal A license without an additional legal certification.

The most recent change to the rules for Legal A licensure added an additional certification requirement for those who were already licensed and successfully doing legal interpreting work in Arizona.

While the current proposed change extends the deadline for obtaining that legal certification, it does not address what I believe to be the larger issues.

The additional requirement of legal certification places an unnecessary burden on interpreter who is have already obtained Legal A licensure under the previous rules.

This includes the cost of additional testing.

Because RID no longer offers a legal certificate, the need to maintain continuing education units in an additional certification system.

A more important consideration is the impact this change will have on the Deaf community across Arizona.

Many interpreters who hold Legal A licensure will be reduced to a Legal C license after the proposed deadline.

For various reasons, many are unable or unwilling to pursue additional certification.

As a result, the already-small pool of Legal A interpreters in the state will be further reduced.

I urge the Commission to use this rulemaking opportunity to add a grandfather clause allowing those who already hold a Legal A license to keep that license without additional requirements so they can continue to provide communication access in legal matters for the Deaf community in this state.

So I would like to thank Raymond Baesler for submitting his comment.

And your comments are duly noted.

The next comment that has been received is from Robert Hahn.

As both a law-trained and mental health-trained professional, it concerns me that steps are being taken to limit significantly the number of legal interpreters that would be able to provide services to Deaf residents of Arizona.

Acquaintances and clients have expressed concerns regarding the due process issues of not having interpretive services on a timely basis as well as the anxiety and distress of knowing that there may be delays in the resolution of legal issues.

It is rare that professional organizations and governing bodies choose not to grandfather in professionals that are already competently providing services during rule changes.

I personally have seen grandfathering occur in several instances including here in Arizona in the board of behavioral health changed from certification to licensure.

I would strongly urge the Commission to reconsider their direction in this matter.

Thank you very much, Robert Hahn, for submitting your comment.

Again, those comments will also be duly noted.

At this time, we have David Svoboda who is present.

So if he could present his own comments then at this time.

>> Yes, good morning, and thank you very much for the opportunity to present my comments.

My name is David Svoboda, and I am the Language Access Coordinator at the Arizona Supreme Court Administrative Offices of the Court.

We have found that courts throughout the State of Arizona, particularly those located outside the Tucson and the Phoenix metro areas have a difficult time locating Legal A-licensed interpreters.

There are a limited number of those interpreters available to the courts, and the licensing changes which were to take effect in January of this year would have cut that number of interpreters in half at a time when the newly required exams were not being held due to the COVID-19 pandemic.

Renewing the Legal A licenses for those who were not able to test during the pandemic would help avoid this dramatic reduction in interpretive resources.

It will better enable the courts to comply with federal and state laws as they relate to accommodations and effective communication.

And it would allow time for a greater number of interpreters to meet the new licensing requirements.

I am supportive of the proposal to renew licenses.

And as risks from new variants of the COVID-19 virus continue to be evaluated, I would urge the Commission to continue to renew licenses until such time as the new required exams can be routinely offered in a safe and secure manner, travel to and from those exam sites can be achieved safely for those most susceptible to the virus, and sufficient time has passed to know the results of those exams.

Again, thank you very much for allowing me to present this comment.

And I would also like to extend my thanks to Mr. Hassen who made sure that we were able of this opportunity here this morning.

>>Commissioner Benton: Thank you very much, David Svoboda.

Marie Tavormina?

>> How do I do this?

Just talk?

>>Commissioner Benton: Marie, can you turn your video on?

>> I wasn't able to before.

>>Commissioner Benton: Thank you.

>> Well, first of all, thank you very much for giving us an opportunity to discuss the proposed extension of the regulations.

First, can I just ask a question?

When did these regulations initially go into effect?

Was it 2017 or was it before that?

Because I think we have, like, five years to get the appropriate certifications, correct?

>>Carmen Green Smith: Marie, this is Carmen.

The language with the January 1st, 2021 deadline was initiated, I believe, October 1st, 2016, was the date that the language went into effect -- or the rule went into effect.

>> That means we've had at least five years.

And, yes, granted last year we had a pandemic.

I'm just concerned about the quality of interpreters working in the legal system.

I've always had an issue with the number of training hours that were required.

I think it's 20.

And just my -- I've been interpreting in the legal system since the '90s.

And I am concerned about extending this out to 2023.

I hear the concerns that there's not enough interpreters, but I distinctly remember when the regs originally went in place in 2016 that same argument was said then, that we were concerned if we require Legal A license, there would be not enough interpreters.

But that didn't happen.

And I think as professionals, if we know that we're required to have a certain license or certification, it is on us to do no harm to the people that we serve.

That's the RID CPC, do no harm, right?

And so I think we should be diligent and seek the training that we need and the certifications that we need to fulfill the requirements that are required by the state.

And the other concern I have is that people were saying there's additional requirements.

Yes, you know, we're a profession.

We have to pay for licensure.

We have to pay for certifications.

That's just part of the job.

And I understand that the rural areas may have a more difficult time.

But as COVID has taught all of us, there's individual now.

And so we can provide interpretation online, which many of us have been doing in courts in Arizona.

So I just, I guess -- I would just, again -- I submitted some written comments as well.

We're asking just to keep it in place.

I'd be curious to know how many interpreters are actually impacted by this regulation.

And the other point I'd like to make is these interpreters are still able to work in the courts.

Right?

I mean, they have to work with a Legal A-licensed interpreter just in the courts, but in other legal settings, I believe they can still interpret.

And they also have opportunities to work out in the community and other venues besides interpreting.

Again, I'm just thinking we set these regulations in effect in 2016 to protect the Deaf community, to make sure that when they're in a legal system where they're already at a disadvantage, that they have interpreters that are appropriately trained and certified and licensed.

So, again, I'm just asking the Commission to not extend it.

And now the world is opening up, so people are going to be able to take the -- at least their BEI COC -- or CIC, sorry, CIC.

And so once they get it, then they can apply for the Legal A.

So, again, I don't see the impact it has on interpreters.

And I don't think it's really going to impact the courts like we're hearing because, again, courts are opening up very slowly.

And they're not up to speed right now.

And so, again, I am just asking you to keep it in place.

Thank you.

>>Commissioner Benton: Thank you, Marie.

We have one other individual, Heather Donnel would also like to make a comment regarding the Legal A-proposed language.

>> Hi.

Thank you for your time.

I agree with Marie.

I just wanted to second her comments.

And I believe several of us sent in a written comment.

There were four of our names on one comment that wasn't read.

I feel like that was a lot more prepared.

I'm not prepared to speak today, so it's going to be off-the-cuff, which I feel like our comment was much more professional.

It was researched.

I feel like it explained our concerns much more professionally, accurately, concisely.

But, again, I would just like to support the comments that Marie said.

We've all had -- I am also a Legal A interpreter.

I have had my legal license for 10, 12 years.

And I agree with Marie and the other -- two of us who participated in the written comment that we've all known for at least five years -- and I believe, I could be incorrect, but I believe there was

actually a recommendation prior to that even to postpone the requirements to '16. And now it's being proposed to postpone another three years.

With that five-year notice -- and, again, as Marie said, we understand there's been COVID and everything has been pretty much on hiatus for the last year, almost year and a half. But the other 3 1/2 years, what happened in those 3 1/2 years to the people who had the provisional prior?

I understand anyone who is new, they have not been able to get that time in this year and a half.

But also as Marie said, we make a lot of money.

We are very fortunate in our profession.

We can take extra work whether it's legal or not.

We have the opportunity to take on freelance to make enough money to take the test, to spend money on training.

There's a plethora of training online.

Most of my training has been online this year because there's not the opportunity for in-person.

There's plenty of legal training, very reputable, well-known, respected training.

And I think that's just an argument that's just not -- in my opinion, is not valid because we've all been stuck.

We still have requirements, whether it's for licensure, for other certifications.

We have to meet those hours.

Additionally -- my point with that is we earn enough money to pay for the testing.

Then, lastly, as well as Marie has already said, as COVID has shown, we can provide remote interpreting.

I personally have done several jobs through the court from home.

It's difficult but I think if we are able to -- specifically for rural areas where the comment is it's difficult to find legal interpreters to be able to provide access there, set up a task force, set up a committee, let's go educate the courts.

Talk to their court coordinators -- or interpreter coordinators.

There are ways to provide access.

And I just think that the concern -- I understand some people are at health risks.

It's difficult to get to some of the areas.

But the access that we have now with remote interpreting, I just think that, again, that pretty much negates that argument.

So I agree, I would support not postponing and giving more time because I feel like, again, we have to look at the quality, professionalism.

And if you want to continue working in a certain field, you have to meet the requirements.

I think if we keep putting it off, people get used to it thinking I don't have to do it, it is just going to get postponed again.

I think we need to recognize the professionalism for the profession.

Thank you again.

>>Commissioner Benton: Thank you, Heather.

PROVISIONAL SECTION

So are there any individuals who are present who would like to give public comment?

Marie?

>> Hello again.

I think this is a very fair proposed change to the provisional since there is no way that interpreters have been able to get certified this past year, no fault of their own.

And they really don't have other options if they lose their provisional licensure.

So I wholeheartedly support this recommendation.

>>Commissioner Benton: Thank you very much.

Any other comments?

SUBMITTED WRITTEN COMMENT FOR ORAL COMMENT (Commissioner Benson read this during the oral meeting – the below is copy and pasted comment as submitted electronically:

Raymond Baesler

Hello, my name is Raymond Baesler. I am a licensed interpreter in Arizona, and I have held a Legal-A license since 2017. I want to raise my concerns (as I have for many years) regarding the proposed change to Legal-A licensing requirements. I earned Legal-A license under the rules that existed in 2017 that allowed interpreters with certain RID certifications who completed numerous hours of additional legal training to obtain a Legal-A License without an additional legal certification.

The most recent change to the rules for Legal-A licensure added an additional certification requirement for those who were already licensed and successfully doing legal interpreting work in

Arizona. While the current proposed change extends the deadline for obtaining that legal certification, it does not address what I believe to be larger issues.

- The additional requirement of legal certification places an unnecessary burden on interpreters who have already attained Legal-A licensure under the previous rules. This includes the cost of additional testing and, because RID no longer offers a legal certificate, the need to maintain continuing education units in an additional certification system.
- A more important consideration is the impact this change WILL have on the deaf community across Arizona. Many interpreters who hold Legal-A licensure will be reduced to a Legal-C license after the proposed deadline. For various reasons, many are unable or unwilling to pursue additional certification. As a result, the already small pool of Legal-A interpreters in the state will be further reduced.

I urge the commission to use this rule making opportunity to add a grandfather clause allowing those who already hold a Legal-A license to keep that license without additional requirements so they can continue to provide communication access in legal matters for the Deaf community in this state.

Robert Hahn

As both a law trained and mental health trained professional, it concerns me that steps are being taken to limit significantly the number of legal interpreters that would be able to provide services to deaf residents of Arizona. Acquaintances and clients have expressed concerns regarding the due process issues of not having interpretative services on a timely basis as well as the anxiety and distress of knowing that there may be delays in the resolution of legal issues.

It is rare that professional organizations and governing bodies choose not to grandfather in professionals that are already competently providing services during rule changes. I personally have seen "grandfathering" occur in several instances including here in Arizona when the Board of Behavioral Health changed from certification to Licensure. I would strongly urge the commission to reconsider their direction in this matter.

David Svoboda- Would like to comment live

Courts throughout the state of Arizona, particularly those outside of Tucson and the Phoenix metro area, have a difficult time locating Legal A interpreters. There are a limited number of these

interpreters available to the courts and the changes to the licensure rules which were to take effect on January 1, 2021 would have cut that number in half at a time when the new required exams were not being held due to the COVID-10 pandemic. Renewing Legal A licenses for those who were not able to test due to the pandemic would help avoid this dramatic reduction in interpreting resources, better enable the courts to continue to comply with federal and state laws related to accommodations and effective communication, and also allow time for a greater number of interpreters to meet the new licensing requirements. I am supportive of the proposal to renew licenses and, as the risks from new variants of the COVID-19 virus continue to be evaluated, I urge the ACDHH to continue to renew licenses until such time as the new required exam(s) can be routinely offered in a safe and secure manner, travel to and from exam sites can be achieved safely for those most susceptible to the virus, and sufficient time has passed to know the results of those exams. Thank you.

2007 (Supp. 07-4).

R9-26-402. Expired

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-403. Repealed

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

EMERGENCY RULEMAKING

R9-26-501. Definitions
In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than January 1, 2021, unless the individual is unable to meet the certification requirement under R9-26-504(A)(1)(a) for reasons related to the COVID-19 pandemic. If an individual was licensed by the Commission as a Class A legal interpreter on December 30, 2020, but was unable to meet the certification requirement under R9-26-504(A)(1)(a) for reasons related to the COVID-19 pandemic, the Commission may renew the individual's Class A legal interpreter license even if the individual has not met the certification requirement under R9-26-504(A)(1)(a).

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:
The requirements of A.R.S. § 12-242,
The structure of the judiciary system of this state,
The judiciary process of this state,
Administrative adjudicatory procedures,
Law enforcement procedures, or
Commonly used legal terms.

"Level III, IV, or V" means a certification issued by BEI.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"License year" means the days between the date of license issuance and the date of license expiration.

"Mentor" means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provi-

sional licensee providing interpreting services and providing feedback.

"MCSC" means master comprehensive skills certificate, a certification issued by RID.

"NAD" means the National Association of the Deaf.

"NAD III (generalist)," means a certification issued by NAD.

"NAD IV (advanced)," means a certification issued by NAD.

"NAD V (master)," means a certification issued by NAD.

"NIC" means National Interpreter Certification.

"NIC Advanced" means a certification issued by NAD-RID.

"NIC Certified" means a certification issued by NAD-RID.

"NIC Master" means a certification issued by NAD-RID.

"OC:B" means oral certificate: basic, a certification issued by BEI.

"OC:C" means oral certificate: comprehensive, a certification issued by BEI.

"OIC" means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

"Oral transliteration" means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

"OTC" means oral transliteration certificate, a certification issued by RID.

"Platform or performance setting" means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

"Provisional interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

"Class A provisional interpreter" means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

"Class B provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

Historical Note

Section R9-26-501 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1).

R9-26-501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than January 1, 2021.

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

The requirements of A.R.S. § 12-242,
The structure of the judiciary system of this state,
The judiciary process of this state,
Administrative adjudicatory procedures,
Law enforcement procedures, or
Commonly used legal terms.

"Level III, IV, or V" means a certification issued by BEI.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"License year" means the days between the date of license issuance and the date of license expiration.

"Mentor" means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

"MCSC" means master comprehensive skills certificate, a certification issued by RID.

"NAD" means the National Association of the Deaf.

"NAD III (generalist)," means a certification issued by NAD.

"NAD IV (advanced)," means a certification issued by NAD.

"NAD V (master)," means a certification issued by NAD.

"NIC" means National Interpreter Certification.

"NIC Advanced" means a certification issued by NAD-RID.

"NIC Certified" means a certification issued by NAD-RID.

"NIC Master" means a certification issued by NAD-RID.

"OC:B" means oral certificate: basic, a certification issued by BEI.

"OC:C" means oral certificate: comprehensive, a certification issued by BEI.

"OIC" means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

"Oral transliteration" means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

"OTC" means oral transliteration certificate, a certification issued by RID.

"Platform or performance setting" means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

"Provisional interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

"Class A provisional interpreter" means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

"Class B provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-502. License Application

A. An applicant for an original license shall submit to the Commission the following information, on an application form provided by the Commission:

1. Applicant's full name;
2. Applicant's Social Security number;
3. Applicant's home or business address;
4. Applicant's e-mail address;
5. Applicant's home, business, or mobile telephone number;
6. Applicant's birth date;
7. Any name by which the applicant has ever been known;
8. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
9. Category of licensure for which application is made and if applicable, the class of legal or provisional interpreter license for which application is made;
10. Name of any state or foreign country in which the applicant is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued, date of expiration, and a statement whether the license or certificate is or was the subject of discipline and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
11. A statement of whether the applicant has ever been denied a license or certificate to practice as an interpreter by a government licensing authority and if the answer is yes, a complete explanation of the denial including date, name of the government licensing authority, and reason for denial;
12. A statement of whether the applicant has ever been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction and if the answer is yes, a complete explanation of the charge and place and date of conviction;
13. A statement of whether the applicant has been adjudicated insane or incompetent and if the answer is yes, a complete explanation including date and place of adjudication;
13. A statement of whether the applicant's NAD, RID, or BEI certification lapsed and if so, a complete explanation including date of and reason for the lapse;
15. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed and if so, a complete explanation including date of and reason for the lapse;
16. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any;
17. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any; and
18. A statement signed by the applicant verifying the truthfulness of the information provided and affirming that the

applicant will comply with the NAD-RID Code of Professional Conduct;

B. In addition to the form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf the following:
1. Documentation of name change if the applicant is applying under a name different from the name on any of the documents required under this Article;
2. A photocopy of the applicant's:
   a. High school diploma or GED or a transcript, official or unofficial, showing the degree awarded and date; or
   b. Diploma from an accredited college or university or a transcript, official or unofficial, showing the degree awarded and date;
3. If the answer to any item in subsections (A)(9) through (A)(15) is yes, a copy of any relevant order;
4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
5. Two identical passport-size photographs of the applicant that:
   a. Are in color, and
   b. Are taken no more than six months before the date of application; and
6. The fee required under R9-26-508.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-503. Application for Generalist Interpreter License

To apply for a generalist interpreter license, an applicant shall:
1. Comply with R9-26-502; and
2. Submit a photocopy of current documentation showing that the applicant holds one or more of the following certifications:
   a. Hearing interpreters: NAD III, IV, or V; RID CI, CSC, CT, IC, MCSC, RSC, SC:L, SC:PA, or TC; NIC Certified, Advanced, or Master; or BEI Levels III, IV, or V, Basic, Advanced, Master, Trilingual Advanced, Trilingual Master, CIC, or other certification deemed appropriate by the Commission;
   b. Deaf interpreters: RID CDI, CLIP-R, or SC:L; BEI Intermediary Level III or V, CDI, or other certification deemed appropriate by the Commission; or
   c. Oral interpreters: RID OIC or OTC, BEI OC:B or OC:C, or other certification deemed appropriate by the Commission.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-504. Application for Legal Interpreter License

A. To apply for a legal interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:
1. Certification by RID, NAD, or BEI.
   a. For a Class A legal interpreter license, RID SC:L, BEI CIC, or other legal specialist certification deemed appropriate by the Commission is required;
   b. For a Class C legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC, or BEI Levels IV or V, Advanced, Master, Trilingual Advanced or Master, or other certification deemed appropriate by the Commission is required; and
   c. For a Class D legal interpreter license, RID CDI, CLIP-R, OIC, or OTC or BEI OC:B, OC:C, Intermediary Levels III or V, or CDI, or other certification deemed appropriate by the Commission is required;
2. Hours of paid interpreting after initial certification by RID, NAD, or BEI.
   a. For a Class C legal interpreter license, 10,000 hours are required; and
   b. For a Class D legal interpreter license, 500 hours are required;
3. Hours of legal training. For a Class C or Class D legal interpreter, 50 hours obtained during the five years before the date of application are required.

B. The Commission shall accept the following documentation:
1. RID, NAD, or BEI certification.
   a. A photocopy of current documentation provided by RID, NAD, or BEI. If an applicant's documentation expires during the application process, the Commission shall not complete the licensure process until the applicant submits current documentation of certification; and
   b. A photocopy of the certificate provided by RID, NAD, or BEI or a copy of the letter received from RID, NAD, or BEI at the time of initial certification;
2. Hours of paid interpreting.
   a. An applicant shall submit an affidavit affirming that the applicant provided the number of hours of paid interpreting required under subsection (A)(2) after initial certification by RID, NAD, or BEI; and
   b. Within the time provided under R9-26-509(F) and upon receipt of a comprehensive written request for documentation of the hours of paid interpreting provided, an applicant shall submit evidence that demonstrates the truthfulness of the affirmation provided under subsection (B)(2)(a).
3. Hours of legal training. A photocopy of documentation from the organization providing the legal training that includes the information required under R9-26-510 (B).

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-505. Application for Provisional Interpreter License

A. To apply for a provisional interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:
1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID, NAD, or BEI:
   a. Class A or D provisional license: 40 hours; and
   b. Class B or C provisional license: 80 hours;

2. Examination. Pass the written portion of the RID, NAD, or BEI examination; and
3. Work experience. The following hours of interpreting for which a license is not required under A.R.S. § 36-1971:
   a. Class A provisional license: 24 hours;
      i. A score of at least 4.0 on the EIPA performance test;
      ii. ACCI certification; or
      iii. A state-issued certification or certificate of competency in good standing;
   c. Class C provisional license: 80 hours; and
   d. Class D provisional license: 40 hours.

B. In addition to the documentation required under subsection (A), an applicant for a Class B provisional license shall:
1. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:
   a. Act as a mentor to the applicant if the applicant is granted a provisional license;
   b. Observe the provisional licensee providing interpreting services at least once each month;
   c. Provide feedback to the provisional licensee following each observation; and
   d. Provide 30-days' notice to the provisional licensee and the Commission before terminating the mentoring relationship; and
2. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
   a. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided;
   b. Make the record maintained under subsection (B)(2)(a) available to the Commission annually at license renewal; and
   c. Provide 30 days' notice to the Commission and the mentor before terminating the mentoring relationship; or
3. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
   a. Team with an individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b) for at least eight hours each month;
   b. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and
   c. Make the journal maintained under subsection (B)(3)(b) available to the Commission annually upon license renewal.

C. The Commission shall accept the following documentation of the criteria in subsection (A):
1. Education. A photocopy of documents showing that the applicant completed the hours required under subsection (A)(1);
2. Examination. A photocopy of the letter provided by RID, NAD, or BEI indicating that the applicant passed the written portion of the RID, NAD, or BEI examination;
3. Work experience.
   a. One or more letters, each of which is signed by an individual or a representative of an entity for whom the applicant provided interpreting, indicating:
      i. The name of the applicant,
      ii. The dates on which interpreting was provided, and
      iii. The hours of interpreting provided by the applicant; or
   b. One or more paystubs, each of which indicates:
      i. The name of the applicant,
      ii. The job title of the applicant,
      iii. The dates on which interpreting was provided by the applicant, and
      iv. The hours of interpreting provided by the applicant, and
   c. For an applicant for a Class B provisional license:
      i. A photocopy of the letter provided by EIPA indicating the applicant's score on the EIPA performance test,
      ii. A photocopy of the applicant's ACCI certificate, or
      iii. A photocopy of the applicant's state-issued certification or certificate of competency in good standing.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 35, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-506. Short-term Registration of an Interpreter

A. To register with the Commission to provide interpreting in Arizona in a non-legal situation for fewer than 20 days in a year, an interpreter shall submit the following information in writing to the Commission:
1. Interpreter's name;
2. Interpreter's residential and e-mail addresses;
3. Interpreter's mobile telephone number;
4. Dates on which interpreting will be provided;
5. Name, address, and contact information of the person or event for which interpreting services will be provided; and
6. Date of most recent short-term registration with the Commission, if any.

B. In addition to complying with subsection (A), the interpreter shall submit a copy of current documentation from RID, NAD, or BEI showing the interpreter's certification is in good standing or a copy of the interpreter's license from another state's interpreter licensing authority.

C. An interpreter who makes application under subsections (A) and (B) for a short-term registration shall not provide interpreting services in Arizona until the Commission provides notice the registration has been granted.

D. Within five days after providing interpreting services under a short-term registration, the interpreter shall submit a report to the Commission that provides the dates on and persons or events for which interpreting services were provided.

E. The Commission shall not issue more than two short-term registrations to an interpreter during the interpreter's lifetime.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

EMERGENCY RULEMAKING

R9-26-507. License Renewal

A. Renewal of a generalist or legal interpreter license.

1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Home or business address;
   d. E-mail address;
   e. Home, business, or mobile telephone number;
   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
   g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
   i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;
   j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;
   k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;
   n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;
   o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and
   p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.
2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:
   a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;
   b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and
   c. The fee required under R9-26-508.
3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.
1. A provisional interpreter license expires one year after the date of issuance.
2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
   a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;
   b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and
   c. The fee required under R9-26-508;
   d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and
   e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or
   f. If a Class C provisional licensee wishes to move to a Class B provisional license:
      i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and
      ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed

under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or

iii. A score of at least 4.0 on the EIPA performance test.

4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime except that if an interpreter is unable to pursue RID, NAD, or BEI certification because the testing necessary for certification is unavailable due to the COVID-19 pandemic, the Commission may renew the provisional interpreter license of any interpreter who complies fully with this subsection and held a valid provisional interpreter license in its final renewal year on December 30, 2020.

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

Historical Note

Section R9-26-507 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1).

R9-26-507. License Renewal

A. Renewal of a generalist or legal interpreter license.

1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Home or business address;
   d. E-mail address;
   e. Home, business, or mobile telephone number;
   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
   g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
   i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;
   j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;
   k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;
   n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;
   o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and
   p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.
2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:
   a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;
   b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and
   c. The fee required under R9-26-508.
3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the

former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.

1. A provisional interpreter license expires one year after the date of issuance.
2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
   a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;
   b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and
   c. The fee required under R9-26-508;
   d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and
   e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or
   f. If a Class C provisional licensee wishes to move to a Class B provisional license:
      i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and
      ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or
      iii. A score of at least 4.0 on the EIPA performance test.
4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime.

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-508. Fees and Charges

A. Under the authority provided by A.R.S. §§ 36-1973(A) and 36-1974(C), the Commission establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. Generalist or legal license application fee, $125;
2. Generalist or legal license renewal application fee, $50;
3. Provisional license application fee, $25;
4. Provisional license renewal application fee, $25; and
5. Penalty for late license renewal, $100.

B. The Commission shall charge $25 to:

1. Replace an identification badge,
2. Issue a duplicate license.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-509. Procedures for Processing Applications; Time Frames

A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing time frames:

1. Administrative completeness review time frame: 30 days;
2. Substantive review time frame: 60 days; and
3. Overall time frame: 90 days.

B. The administrative completeness review time frame listed in subsection (A)(1) begins on the date the Commission receives a license application or license renewal application. During the administrative completeness review time frame, the Commission shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.

C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall time frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.

D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review time frame in subsection (A)(1).

E. The substantive review time frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).

F. If the Commission determines during the substantive review time frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the

request. Both the substantive review and overall time frames are suspended from the date on the Commission's request until the date the Commission office receives the additional information.

G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of extension to the Commission before expiration of the time to respond that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date established under subsection (C) or (F).

H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

I. Within the time listed in subsection (A)(3), the Commission shall:
1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.

J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:
1. The reason for the denial with citations to supporting statutes or rules,
2. The applicant's right to appeal the denial and have a hearing,
3. The time for appealing the denial, and
4. The applicant's right to request an informal settlement conference.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete

A. Continuing education is required as a condition of licensure renewal.
1. A generalist interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI. If the certification of a generalist interpreter is suspended or revoked by NAD, RID, or BEI because the generalist interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the generalist interpreter's license.
2. A Class A legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain legal certification by NAD, RID, or BEI. If the certification of a Class A legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class A legal interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
3. A Class C or D legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI including at least 20 hours of legal training. If the certification of a Class C or D legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class C or D legal interpreter failed to complete the required continuing education or if the Class C or D legal interpreter fails to complete the required hours of legal training, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
4. When renewing a license under R9-26-507(B), a provisional interpreter shall submit the evidence required under subsection (B) showing completion of 12 hours of continuing education. The Commission shall accept continuing education:
   a. Designed to enhance the provisional licensee's skill and ability to provide quality interpreting to the deaf and hard-of-hearing community;
   b. Approved by RID, NAD, or BEI, as applicable, for certification maintenance;
   c. Provided by an accredited institution of higher education; or
   d. Provided by an entity involved with the deaf and hard-of-hearing community; and

B. A provisional licensee shall obtain from the provider of a continuing education attended by the licensee documentation that includes:
1. Licensee's name,
2. Name of the continuing education provider,
3. Name of the continuing education,
4. Number of hours of attendance, and
5. Date of the continuing education.

C. Waiver of continuing education requirement.
1. To obtain a waiver of the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
   a. The period for which the waiver is requested,
   b. Continuing education completed during the current license year and the documentation required under subsection (B), and
   c. Reason a waiver is needed and supporting documentation:
      i. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
      ii. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
      iii. For disability. A letter from the licensee's treating physician stating the nature of the disability; and
      iv. For circumstances beyond the licensee's control. A letter from the licensee stating the nature of the circumstances and documentation that provides evidence of the circumstances.
2. The Commission shall grant a request for waiver of the continuing education requirement that:
   a. Is based on a reason listed in subsection (C)(1)(c),
   b. Is supported by the required documentation,
   c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
   d. Will promote the safe and professional practice of interpreting in this state.

D. Extension of time to complete continuing education requirement.
1. To obtain an extension of time to complete the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
   a. Ending date of the requested extension,
   b. Continuing education completed during the current license year and the documentation required under subsection (B),

c. Proof of registration for additional continuing education that is sufficient to enable the provisional licensee to complete all continuing education required for license renewal before the end of the requested extension, and
d. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.

2. The Commission shall grant a request for an extension that:
a. Specifies an ending date no more than three months from the current license expiration date,
b. Includes the required documentation and attestation,
c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
d. Will promote the safe and professional practice of interpreting in this state.

E. Except as provided in subsection (D), a provisional licensee shall report only hours of continuing education obtained during the license year immediately preceding license renewal. A licensee shall not carry over hours in excess of those required under subsection (A)(4) to a subsequent license year.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-511. Video Remote Interpreting

A. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article is authorized to provide VRI only for individuals who are located in Arizona.
B. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article and provides VRI shall comply fully with the requirements of this Article.
C. An interpreter who is located outside of Arizona shall not provide VRI for an individual located in Arizona before being licensed under A.R.S. Title 36, Chapter 17.1 and this Article.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section repealed; new Section made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-512. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-512 renumbered to R9-26-301 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-513. Reserved

R9-26-514. Reserved

R9-26-515. Identification Badge Required

A. To protect the public, a licensee shall have and present on request, an identification badge issued by the Commission whenever the licensee provides interpreting services.
B. A licensee who loses or damages the identification badge required under subsection (A) may obtain a replacement identification badge by submitting a request to the Commission and paying the charge specified under R9-26-508.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-515 renumbered to R9-26-302; new Section R9-26-515 made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-516. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-303 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-517. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-304 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-518. Required Notices to the Commission

A. If a licensee's certification by RID, NAD, BEI, or other acceptable certifying entity is suspended, revoked, or subject to other disciplinary action by RID, NAD, BEI, or the other acceptable certifying entity, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.
B. If a licensee's state-issued certification submitted as qualification for a Class B provisional license is suspended, revoked, or subject to other disciplinary action by the state that issued the certification, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.
C. The Commission shall communicate with a licensee or applicant using the name and address provided to the Commission by the licensee or applicant. To ensure timely receipt of communication from the Commission, a licensee or applicant shall notify the Commission of any change in the licensee's or applicant's name or address.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

36-1946. Interpreters for the deaf and the hard of hearing; certification; licensure

The commission shall:

1. Adopt rules necessary to achieve the purposes of section 12-242.

2. By rule, classify interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that person.

3. By rule, establish standards and procedures for the qualification and licensure of each classification of interpreters.

4. Help establish partnerships with colleges and universities in this state to provide interpreter and support service provider training and degree programs.

5. By rule, establish standards and procedures to certify sign language teachers to teach American sign language.

6. Beginning on September 1, 2007, license interpreters for the deaf and the hard of hearing pursuant to article 2 of this chapter.

36-1974. Issuance and renewal of license; continuing education

A. The executive director shall issue a license if the applicant has satisfied all of the requirements for licensure under this article.

B. A license issued pursuant to this article is subject to renewal one year after the date it was issued and terminates thirty days after the renewal date unless it is renewed.

C. Each licensee shall renew the license not earlier than sixty days before and not later than thirty days after the license expires by submitting the renewal fee and a completed renewal form. A licensee who does not renew a license as required by this article must also pay a penalty fee as prescribed by the commission for late renewal. A person who practices interpreting in this state after that person's license has expired is in violation of this article.

D. A person whose license terminates shall submit an application and application fee as an original applicant for licensure.

E. The commission by rule may prescribe continuing education requirements as a condition of license renewal.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 5, Rabies Control

Amend: R9-6-502

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 12, 2021

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 5, Rabies Control

Amend: R9-6-502

Summary:

This Notice of Final Expedited Rulemaking from the Department of Health Services (Department) seeks to amend R9-6-502 (Management of Exposed Animals). As part of the Department's recent Five Year Review Report (5YRR) for these rules, the Department identified that current standards call for an animal that is not currently vaccinated against rabies to either be euthanized or to be confined for 120 days, rather than 180 days as currently stated in the rule. The Council approved the 5YRR in February 2020.

The Department seeks to amend this rule and reduce the time from 180 days to 120 days, implementing a course of action proposed in the 5YRR.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

Yes. This expedited rulemaking qualifies pursuant to A.R.S. § 41-1027(A)(6) because it "[a]mends, or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government." Although the rulemaking implements a course of

action proposed in a 5YRR, the rulemaking falls outside the timeframe specified in (A)(7) (180 days) due to when the Department received an exception from the rulemaking moratorium.

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

Yes. The Department cites both general and specific statutory authority for this rule.

3. 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.

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

The Department did not receive any comments in conducting this expedited rulemaking.

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

No. The Department did not make any changes to the rule between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

There is no corresponding federal law to this rule.

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

This rule does not require the issuance of a regulatory permit.

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

The Department did not review or rely on any study in conducting this expedited rulemaking.

9. Conclusion

This expedited rulemaking seeks to amend a rule that would reduce the amount of time that an animal not vaccinated against rabies needs to be confined. In amending this rule, the Department is reducing a regulatory burden and implementing a course of action

proposed in a 5YRR. If approved, this expedited rulemaking would be effective immediately upon the Department filing its Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

June 3, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 5, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: June 1, 2021

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends a rule with an outdated standard, as specified in A.R.S. § 41-1027(A)(6), and reduces the regulatory burden on the owners of unvaccinated animals exposed to rabies, saving them hundreds of dollars in boarding fees, as well as saving the lives of animals that would otherwise be euthanized. The rulemaking adopts changes identified in a five-year-review report, but falls outside the time specified in A.R.S. § 41-1027(A)(7) due to when an exception from the rulemaking moratorium was granted.

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. 6, Article 5, relates to a five-year-review report approved by the Council on February 4, 2020.

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on August 3, 2021.

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.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 5. RABIES CONTROL

PREAMBLE

1.	Article, Part, of Section Affected (as applicable)	Rulemaking Action
	R9-6-502	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. §§ 11-1003 and 36-136(I)(1)

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

4. Citations to all related notices published in the *Register* that pertain to the record of the final expedited rulemaking:

Notice of Docket Opening: 27 A.A.R. 722, May 7, 2021

Notice of Proposed Expedited Rulemaking: 27 A.A.R. 741, May 14, 2021

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

Name: Ken Komatsu, State Epidemiologist

Address: Arizona Department of Health Services
Public Health Preparedness
150 N. 18th Ave., Suite 100
Phoenix, AZ 85007-3248

Telephone: (602) 364-3587

Fax: (602) 364-3199

E-mail: Ken.Komatsu@azdhs.gov

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules

150 N. 18th Ave., Suite 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, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." A.R.S. § 11-1003 requires the Department to regulate "the handling and disposition of animals other than livestock that have been bitten by a rabid or suspected rabid animal or are showing symptoms suggestive of rabies." The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 5. As part of the five-year-review report for 9 A.A.C. 6, Article 5, the Department identified that current standards call for an animal that is not currently vaccinated against rabies to either be euthanized or to be confined for 120 days, rather than 180 days as stated in the rules. After receiving an exception from the Governor's rulemaking moratorium, the Department is revising the rule by expedited rulemaking to make this change.

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

The Department did not receive public or stakeholder comments about the 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:

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

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

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

Federal laws do not apply to the rule.

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 such analysis was submitted.

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

None

14. Whether the rule was previously made, amended, or repealed as an emergency rules. 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:

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 5. RABIES CONTROL

Section

ARTICLE 5. RABIES CONTROL

R9-6-502. Management of Exposed Animals

A. An animal control agency shall manage an exposed dog, cat, or ferret as follows:

1. If the exposed dog, cat, or ferret is currently vaccinated, the animal control agency shall:
    a. Revaccinate the animal with an approved rabies vaccine within seven days after the date that the animal is exposed; and
    b. Confine and observe the animal in the owner's home or, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, for 45 days after the animal is exposed; or
2. If the exposed dog, cat, or ferret is not currently vaccinated, the animal control agency shall:
    a. Euthanize the animal; or
    b. At the owner's request, confine the animal for ~~180~~ 120 days, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, and vaccinate the animal with an approved rabies vaccine 28 days before it is released from confinement.

B. An animal control agency that is aware of an exposed animal, other than a cat, dog, ferret, or livestock, shall:

1. Make every effort to capture the exposed animal as soon as it is identified, and
2. Euthanize the animal as soon as it is captured.

C. An animal control agency shall release from confinement a dog, cat, or ferret exposed to a suspect case when the animal control agency receives a negative rabies report on the suspect case from the Department.

D. Livestock shall be handled according to A.A.C. R3-2-408.

ARTICLE 5. RABIES CONTROL

R9-6-501. Definitions

In this Article, unless otherwise specified:

1. "Animal control agency" means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that has the responsibility for controlling rabies in animals in a particular geographic area.
2. "Approved rabies vaccine" means a rabies vaccine authorized for use in this state by the state veterinarian under A.A.C. R3-2-409.
3. "Cat" means an animal of the genus species *Felis domesticus*.
4. "Currently vaccinated" means that an animal was last immunized against rabies with an approved rabies vaccine:
    a. At least 28 days and no longer than one year before being exposed, if the animal has only received an initial dose of approved rabies vaccine;
    b. No longer than one year before being exposed, if the approved rabies vaccine is approved for annual use under A.A.C. R3-2-409; or
    c. No longer than three years before being exposed, if the approved rabies vaccine is approved for triennial use under A.A.C. R3-2-409.
5. "Dog" means an animal of the genus species *Canis familiaris*.
6. "Euthanize" means to kill an animal painlessly.
7. "Exposed" means bitten by or having touched a rabid animal or an animal suspected of being rabid.
8. "Ferret" means an animal of the genus species *Mustela putoriu*s.
9. "Not currently vaccinated" means that an animal does not meet the definition of "currently vaccinated."
10. "Rabid" means infected with rabies virus, a rhabdovirus of the genus *Lyssavirus*.
11. "Suspect case" means an animal whose signs or symptoms indicate that the animal may be rabid.

R9-6-502. Management of Exposed Animals

A. An animal control agency shall manage an exposed dog, cat, or ferret as follows:

1. If the exposed dog, cat, or ferret is currently vaccinated, the animal control agency shall:
    a. Revaccinate the animal with an approved rabies vaccine within seven days after the date that the animal is exposed; and

b. Confine and observe the animal in the owner's home or, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, for 45 days after the animal is exposed; or

2. If the exposed dog, cat, or ferret is not currently vaccinated, the animal control agency shall:

a. Euthanize the animal; or

b. At the owner's request, confine the animal for 180 days, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, and vaccinate the animal with an approved rabies vaccine 28 days before it is released from confinement.

B. An animal control agency that is aware of an exposed animal, other than a cat, dog, ferret, or livestock, shall:

1. Make every effort to capture the exposed animal as soon as it is identified, and
2. Euthanize the animal as soon as it is captured.

C. An animal control agency shall release from confinement a dog, cat, or ferret exposed to a suspect case when the animal control agency receives a negative rabies report on the suspect case from the Department.

D. Livestock shall be handled according to A.A.C. R3-2-408.

R9-6-503. Suspect Cases

A. An animal control agency shall ensure confinement of a dog, cat, or ferret that is a suspect case until:

1. The animal dies,
2. The animal is euthanized, or
3. A veterinarian determines that the animal is not rabid.

B. When an animal control agency euthanizes a suspect case, the animal control agency shall avoid damaging the brain, so that rabies testing can be performed.

R9-6-504. Animal Control Agency Reporting Requirements

By April 30 of each year, an animal control agency shall submit a report to the Department that contains the number of animal bites to humans reported as occurring in the animal control agency's jurisdiction during the preceding calendar year and a breakdown of the bites by:

1. Species of animal,
2. Age of victim, and
3. Month of occurrence.

Statutory Authority
9 A.A.C. 6, Article 5. Rabies Control

11-1003.Powers and duties of department of health services

A. The department of health services shall regulate the handling and disposition of animals other than livestock that have been bitten by a rabid or suspected rabid animal or are showing symptoms suggestive of rabies.

B. The department of health services may require the county enforcement agent to submit a record of all dog licenses issued and in addition any information deemed necessary to aid in the control of rabies.

36-132.Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

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 this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with 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 schoolchildren, 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 this 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 I, 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 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136.Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. 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.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for 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. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health

services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

GAME AND FISH COMMISSION
Title 12, Chapter 4, Articles 1, 2, and 3, Game and Fish Commission

Amend: R12-4-301, R12-4-303

Repeal: R12-4-111, R12-4-209, R12-4-214

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 13, 2021

SUBJECT: **GAME AND FISH DEPARTMENT**
Title 12, Chapter 4, Articles 1-3, Game and Fish Commission

Amend: R12-4-301, R12-4-303

Repeal: R12-4-111, R12-4-209, R12-4-214

Summary:

This regular rulemaking from the Game and Fish Department (Department) relates to rules in Title 12, Chapter 4, Articles 1-3. The Department seeks to repeal rules in Articles 1 (Definitions and General Provisions) and 2 (Licenses; Permits; Stamps; Tags) and amend rules in Article 3 (Taking and Handling of Wildlife).

In Article 3, the Department seeks to amend R12-4-301 (Definitions) to remove a definition ("Live action trail camera") and replace it with a new definition ("Trail camera"). The Department seeks to define "trail camera" as "any device that is not held or manually operated by a person and is used to capture images, video, or location, time, or date data of wildlife." The Department also seeks to amend R12-4-303 (Taking and Handling of Wildlife) to restrict the use of "trail cameras."

The Department received approval to proceed with this rulemaking on November 9, 2020 and to submit the final rulemaking June 22, 2021.

The Department is requesting a delayed effective date of January 1, 2022 for this rulemaking. The Department states this would provide the Department the time needed to conduct public outreach activities and ensure affected publications and Internet pages are revised before the rulemaking becomes effective. Council staff notes that if this rulemaking is approved, the Department demonstrates good cause for the later effective date and that a delayed effective date would not harm the public interest pursuant to A.R.S. § 41-1032(B).

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

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

2. 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.

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

The Department did not review or rely on a study in conducting this rulemaking.

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

The Department anticipates prohibiting the use of trail cameras for taking or aiding in the taking of wildlife may have a negative impact on persons who currently use trail cameras for the purpose of taking wildlife. The Department anticipates the proposed prohibition may have a minimal impact on businesses that manufacture or sell trail cameras; however, the Department believes any impact will be insignificant as the cameras may be and are used for many purposes, not just for locating wildlife for the purpose of hunting. The Department anticipates the proposed prohibition may have a negative impact on businesses that provide guide or outfitter services as they will no longer be able to guarantee they can guide a client to a specific animal; guides advertise their business through promotion of trail camera photographs of prize animals. The Department anticipates the impact may be minimal to moderate depending on the guide or outfitter service's current use of cameras; some may place between ten and twenty trail cameras on the landscape, while others may place hundreds.

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

The Department states that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Department states that the benefits of the proposed rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The amendments will benefit the Department by providing it with the necessary authority and resources to more effectively manage the taking and handling of wildlife. The Department does not anticipate additional costs associated with prohibiting the use of trail cameras. While the amendments place additional enforcement duties on Department officers, the Department indicates that these amendments will not require additional full-time employees. The Department will benefit from the repeal of the Community Fishing License and the repeal of the Apprentice License.

The Department does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

The Department anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures.

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

No. The Department indicates that it made revisions to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. For R12-4-301 (Definitions), the Department further clarified the definition of trail camera. For R12-4-303 (Unlawful Devices, Methods, and Ammunition), the Department made minor grammatical changes to increase consistency with rule language.

Upon review of the changes the Department made, Council staff finds that the changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025

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

Yes. As the Department states in Item 11 of the Notice of Final Rulemaking, the Department conducted extensive outreach regarding this rulemaking. Further, it received more than 2,000 public and stakeholder comments, with the majority of them being form letters. In addition, Council staff received comments directly. The Department includes a summary of the comments it received and its response(s) thereto in Item 11.

Note: The Department forwarded the comments it received from the public and stakeholders to Council staff. Due to file size limitations, they are not included herein. The comments will be sent to the Council Members separately. Members of the public that wish to view these comments may do so by contacting Council staff at grrc@azdoa.gov. The comments that Council staff received directly are included with these materials for the Council Members' review.

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

The rules do not require a permit.

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

The Department states that for R12-4-303 (Unlawful Devices, Methods, and Ammunition), the applicable federal regulation is 50 C.F.R. 20.21. This federal regulation establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Department states that its rule is not more stringent than the corresponding federal regulation.

11. Conclusion

Council staff finds that this rulemaking meets the requirements of A.R.S. § 41-1052 and R1-6-201. Council staff encourages the Council to review the materials submitted, the public comments, and discuss the substantive issues raised in this rulemaking with the Department and any interested parties in considering whether to approve or return this rulemaking.

June 23, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Game and Fish Department, 12 A.A.C. 4, Article 1. Definitions and General Provisions, Article 2. Licenses; Permits; Stamps; Tags, and Article 3. Taking and Handling of Wildlife, Regular Rulemaking

Dear Nicole Sornsin:

1. **The close of record date:** June 11, 2021
2. **Does the rulemaking activity relate to a Five Year Review Report:** No
   a. **If yes, the date the Council approved the Five Year Review Report:** NA
3. **Does the rule establish a new fee:** No
   a. **If yes, what statute authorizes the fee:** NA
4. **Does the rule contain a fee increase:** No
5. **Is an immediate effective date requested pursuant to A.R.S. 41-1032:** No

The Arizona Game and Fish Department certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. The Arizona Game and Fish Department certifies that the preamble states it did no**t** rely on any study relevant to the rule in the Department's evaluation of or justification for the rule.

The Arizona Game and Fish Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule (none).

The following documents are enclosed:

1. **Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;**
2. **An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;**
3. **If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;**
4. **If applicable: Material incorporated by reference;**
5. **General and specific statutes authorizing the rules, including relevant statutory definitions; and**

RE: Arizona Game and Fish Department, 12 A.A.C. 4, Article 1. Definitions and General Provisions, Article 2. Licenses; Permits; Stamps; Tags, and Article 3. Taking and Handling of Wildlife, Regular Rulemaking

6. **<u>If applicable</u>: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.**

Sincerely,

Ty E. Gray
Director

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1.	**Article, Part, or Section Affected (as applicable)**	**Rulemaking Action**
	R12-4-111	Repeal
	R12-4-209	Repeal
	R12-4-214	Repeal
	R12-4-301	Amend
	R12-4-303	Amend

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-251, 17-301, 17-302, 17-305, and 17-309

3. The effective date of the rules:

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

Not applicable.

b. If the agency selected a date later than the 60 days 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 earlier effective date as provided in A.R.S. § 41-1032(A)(B):

The Commission requests the rules become effective on January 1, 2022. This delayed effective date provides the Department the time needed to conduct public outreach activities and ensure affected publications and Internet pages are revised before rulemaking becomes effective.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 13, January 1, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 5, January 1, 2021

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

Name: Celeste Cook, Rules and Policy Manager

Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.

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

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife. Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on active management and sound science. When establishing wildlife management policy, all of the following is taken into consideration: economics, empirical data, professional judgment, scientific data (biological and social), stakeholder input, political landscape, and public values.

As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by

the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to repeal the definition of "live-action trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition).

The Commission proposes to define "trail camera to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

R12-4-303. Unlawful Devices, Methods, and Ammunition

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent

interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

In addition to fair chase concerns identified above, the use of trail cameras has become an increasing source of conflict between and amongst hunters. Trail cameras are believed to cause increased traffic in the field during hunts. Hunters and guides who have placed cameras interrupt other persons hunt by checking their trail camera during prime hunting hours. Hunters have expressed their frustration about the proliferation of cameras at Department catchments and other water sources, as compromising their opportunities and overall quality of the hunting experience. Some have shared stories of aggressive hunters and/or guides trying to chase other hunters away from waters that have "their cameras."

Trail cameras negatively affect wildlife, both directly and indirectly. Trail cameras are visited regularly to change SD cards, batteries, etc. and this human activity disturbs and displaces animals at water sources and other focal areas where cameras are placed. Camera-related disturbance is impacting many wildlife water developments (especially those maintained by the Department) as well as other water sources, many of which have multiple cameras and are visited, sometimes daily, throughout the year. Given the long-term drought and changing climate affecting Arizona, impacts of these disturbances are exacerbated as natural water sources diminish and wildlife become increasingly dependent on developed waters.

Trail cameras are significantly and adversely impacting the equity and quality of the hunting experience for the many of Arizona big game hunters. The proliferation of cameras, particularly by guides who place dozens or hundreds in prime hunting areas, unfairly robs opportunity from hunters who cannot or choose not to use cameras. Some of these hunters may wait a decade or more to get a prime tag. However, once afield, their odds of finding and harvesting a highly-desired animal are infinitely smaller than those who have used camera data to find and map animals prior to the hunt. This bias is likewise wholly incompatible with the equal access tenet of the North American Model. In addition, the potential monetization of game cameras to include services to place, monitor, check and sell camera images, and if those services increase, the numbers of cameras and their use for take could dramatically increase.

Placement and maintenance of trail cameras has unacceptable secondary impacts to wildlife habitat, rangeland infrastructure, land management partners and public access. The number of trail cameras deployed statewide is unknown, though certainly numbers in the thousands. Each of these units is visited regularly, often by users who travel cross-country or on unauthorized routes, causing resource damage and fostering a broader public perception that hunters and hunting are damaging our public lands. Persons placing cameras may cut

fences, leave gates open, and disturb or damage livestock management infrastructure. These impacts affect livestock operators and private property owners across the state and erode their willingness to support public access. Livestock operators are concerned that frequent visits to set and/or check trail cameras are negatively affecting livestock operations.

Members of the public have expressed concern over the use of their images that were taken in the field without their permission by a hunter's trail camera. They believe it's an invasion of privacy because they went into the outdoors to enjoy some privacy and solitude.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. This change is in response to customer comments received by the Department.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

The Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase and address the concerns and complaints voiced by hunters over the use of trail cameras for the purpose of hunting; for example: conflicts over a hunt unit, litter left behind (discarded broken or damaged trail cameras, batteries, cables, wrappers, equipment/accessories used to mount the camera, etc.), theft and destruction of other persons trail cameras, etc.

The Commission anticipates the proposed repeal of the apprentice license will impact persons who have applied for apprentice licenses numerous times in the past as they will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller

percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is “fair chase.” "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking may have a negative impact on small businesses such as those that sell trail cameras or images from a trail camera for the purpose of hunting, or outfitter or guide services that use trail cameras to assist paying clients with their hunts. However, because the use of trail cameras varies from business to business with some relying heavily on their use and others not using them at all, it is difficult to quantify the impact on small businesses.

The Commission has determined prohibiting the use of trail cameras will have no impact on federal funding. The Pittman-Robertson Federal Aid in Wildlife Restoration Act is funded through a 10% excise tax on handguns, ammunition, and accessories as well as an 11% excise tax on archery equipment. Trail cameras and their related equipment are not included in the Pittman-Robertson Federal Aid in Wildlife Restoration Act, thus they do not contribute to wildlife restoration funds.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no impact to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

R12-4-301, the definition of trail camera was further clarified.

R12-4-303, minor grammatical changes were made to increase consistency between rule language.

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

During the rulemaking process to further encourage public participation in the rulemaking process, the Department issued press releases and published information regarding the proposed changes to regulate the use of trail cameras for the take of wildlife. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 1, 2021; the official public comment period began January 1, 2021 and ended on February 1, 2021, see Notice of Proposed Rulemaking: 27 A.A.R. 5, January 1, 2021.

In addition to the above, at the December 2020, January, February, March, April, and May 2021 Commission meetings, under the Call to the Public agenda item, the public could comment on the proposed rule packages and numerous persons did afford themselves the opportunity to do so.

During the formally noticed June 11th Commission meeting, the Commission formally accepted additional oral comments in person, by telephone, and from public stakeholders who wished to comment about the proposed rules virtually from any of the six Game and Fish regional offices.

It is important to note, to further encourage public participation in the rulemaking process, the Department issued multiple press releases and published information regarding the proposed changes to regulate the use of trail cameras for the take of wildlife. In addition, Commission members appeared in other media, broadcasts, and conservation organization meetings.

In all, the Department received over 2,000 public and stakeholder comments in response to the proposed rulemaking with the majority of them being form letters; of these, 254 were duplicate comments. "Duplicate comments" are multiple separate comments submitted by one person during the same public comment period. Regardless of the number of separate comments a person may submit, they are all considered to be one comment. Due to the volume of comments received, with much of them repeating similar beliefs and many simply voicing their support or opposition to the rulemaking, it is necessary to summarize the majority of comments rather than attempting to respond to each comment individually. Comments that were not related to the trail camera proposal were placed in the rule record for consideration by the appropriate rule review or rulemaking team, whichever occurs next.

It is important to note, all comments submitted in response to the proposed rulemaking were provided to the Commission and the Governor's Regulatory Review Council for their consideration.

The Department received the following comments in support of the proposed rulemaking. A number of those comments simply provided a statement to ban the use of trail cameras and provided no additional information in support of their position. Of those comments that included information in support of their position, the

following summary is provided:

a. A number of comments state trail cameras provide an unfair advantage to persons who use them and violate the public trust doctrine that wildlife belongs to all people and all future generations.

b. A number of comments state trail cameras are ethically and ecologically indefensible.

c. A number of comments state trail cameras violate fair chase ethics and trivialize the value of wildlife.

d. A number of comments state trail cameras cast the sport of hunting in a bad light to non-hunters.

e. A number of comments state trail cameras are not a legitimate form of hunting because they allow a hunter to locate wildlife without acquiring necessary hunting skills or competency.

f. A number of comments state trail cameras are a blight on the landscape due to the litter left behind (discarded broken or damaged trail cameras, batteries, cables, wrappers, equipment/accessories used to mount the camera, etc.).

g. A number of comments state trail cameras are a source of conflict between hunters and/or hunters and guides because the person or guide/outfitter that placed them either exhibits a sense of entitlement to the location where they placed their trail camera or the wildlife featured in the photographs taken by their trail camera.

h. A number of comments state trail cameras are a source of conflict between hunters and/or hunters and guides because the person/guide/outfitter who placed the trail camera interrupts the person's hunt by checking their trail camera during prime hunting hours.

i. A number of comments state the human presence that goes along with trail camera placement, maintenance, and monitoring prevent wildlife from visiting waters which is especially distressing during the extended drought.

j. A number of comments state trail camera use negatively impacts wildlife and wildlife habitat due to the increased year-round human traffic resulting from trail camera placement, maintenance, and monitoring, which is greater than the increased human activity resulting from scouting just prior to or during the hunting season.

k. A number of comments state the increasing reliance on the use of trail cameras for the purpose of

hunting has taken the "hunt" out of hunting; that hunters should scout for big game instead of relying on trail cameras to locate game.

l. A number of comments state guides and outfitters abuse the use of trail cameras by placing hundreds of cameras in the field and then hiring cheap labor to check them daily.

m. A number of comments state the presence of trail cameras has gotten to the point where it is hard to find a place in the outdoors where one is not "under surveillance." This is seen as egregious because most people visit the outdoors to enjoy some privacy and solitude.

n. A number of comments state the use trail cameras is detrimental to wildlife habitat and the landscape. Trail cameras are nailed, bolted, or cabled to trees, brush, and fences or posts are driven into the ground in order to place a trail cameras in specific locations.

o. A number of comments state persons who use the trail cameras leave batteries behind which then contaminate the soil.

p. A number of comments state trail camera used for the purpose of hunting brings more human traffic into a hunt unit than would otherwise be there because the number of trail camera users outnumber the valid tag holders.

Agency Response: The Department appreciates support of the proposed rule amendment prohibiting the use of trail cameras for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. The proposed rule would be in place on all lands in the state of Arizona with the exception of tribal reservation lands, and is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting.

The Commission has a unique charter to manage more than 800 species of wildlife in the State. The Commission considered topics from many perspectives including statutes, regulations, fair chase, ethics and public perception, and, first and foremost, the North American Model for Wildlife Conservation. Fair Chase is a cornerstone of the North American Model which is the ethics upon which hunting and angling is based. If action isn't taken now, before it becomes so pervasive on the landscape, technology will continue to overwhelm and the true hunting skills and ethos of future generations will be lost in the State of Arizona.

Arizona follows the ethos of the North American Model of Wildlife Conservation. Regardless of whether one chooses to actively participate in hunting or angling, people interested in wildlife and its future should understand the conservation role sportsmen play. Hunting and angling are the cornerstones of the North

American Model of Wildlife Conservation. These activities continue to be the primary source of funding for conservation efforts in North America. Through self-imposed excise tax on hunting, angling and shooting sports equipment, hunters and anglers have generated more than $10 billion toward wildlife conservation since 1939.

The North American Model has been around for decades and hunters learned to be successful long before the invention of trail cameras. The Commission recognizes that public support for the manner in which wildlife is pursued and taken is of critical importance to the survival of hunting and angling. The Commission affirms that hunting and angling are the cornerstones of the North American Model of Wildlife Conservation and are the primary source of funding for conservation efforts in North America. Accordingly, it is the Commission's policy that the pursuit and taking of wildlife be managed to conform to the highest ethical standards of Fair Chase. The Commission defines Fair Chase as the ethical, sportsmanlike, and lawful pursuit and taking of free ranging Arizona wildlife in a manner that does not give a hunter or angler improper or unfair advantage over such wildlife. The Commission recognizes that new or evolving technologies and practices may provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage. Improper advantage includes conditions such as:

A technology or practice that allows a hunter or angler to locate or take wildlife without acquiring necessary hunting and angling skills or competency.

A technology or practice that allows a hunter or angler to pursue or take wildlife without being physically present and pursuing wildlife in the field.

A technology or practice that makes harvesting wildlife almost certain when the technology or practice prevents wildlife from eluding take.

Furthermore, improvements in trail camera technology has resulted in trail cameras that perform better and cost less which has caused in an increase in their use for the purpose of take. The never ending increases in technology for hunting devices brings new challenges to the notion of fair chase. Of all the available technology, none are as far reaching and significant as the trail camera. A high number of wildlife developed water sources and other focal areas used by big game can have up to a dozen trail cameras nailed, bolted, or locked onto nearby posts, trees, bushes, and fences. As a consequence, animals are often located and patterned long before the season begins.

In addition, since mid-2010, the Commission has consistently received comments from the public asking them to regulate the use of trail cameras for the purpose of hunting:

The public voiced concerns over the use of trail cameras as it relates to Fair Chase. Commission Policy on Fair Chase includes: "…new or evolving technologies and practices that provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public

perception of an improper or unfair advantage…" applies to areas where water is primarily point source water and game cannot escape detection. When combined with an array of "helpers" using cell phones, it is almost impossible for game to escape detection from the guide services that use trail cameras for the purpose of commercial benefit. Guide services that use trail cameras will often post or distribute photographs of exceptional wildlife in an effort to entice hunters to use their services.

The public voiced concerns that the use of trail cameras has become an increasing source of conflict amongst hunters; including the sense of ownership over a water source and/or hunting area. The Department has received many comments from hunters who were sitting on hunting area when a guide or hunter confronted them and in one manner or another claimed the spot "belonged" to them because they placed a trail camera in the nearby area.

The public voiced concerns that the frequent visits made by guides or hunters who were setting and/or checking trail cameras results in significant disturbance to wildlife during extended dry periods. Any hunter or guide who places a trail camera in an area will consistently visit that spot to check the trail camera on a somewhat frequent basis; check for photographs, check the SD card, check the batteries, check the camera placement, check to see if the trail camera was stolen or damaged, etc. The same route is often used when checking a trail camera. The frequency of these visits depends on the wildlife in the area, the time of year, and who is using the trail camera. There are hunters who walk into the area once or twice a month; there are guide services who have an interest in an animal in a particular unit and they may have "helpers" checking the trail camera every other day. The guide service may have placed a large number of trail cameras on the landscape in pursuit of this animal, so it is necessary for the "helpers" to use off-road vehicles to go quickly from trail camera to trail camera. This unnecessary traffic damages the environment through surface soil disruption, which increases wind and water erosion, and compaction, which increases runoff. Revegetation is inhibited by lower soil moisture and higher soil density. Soil compaction and displacement, noise conflicts with other users, wildlife disturbance during mating seasons, wildlife and livestock harassment, and the possibility of effects on biogeochemical aspects of water and aesthetics of water quality are some of the negative impacts of continuous frequent travel. Further wildlife impacts include compaction of the forest bed or soil layer which reduces the numbers of small mammals, frequent noise from the off-road vehicles may cause nesting birds to desert their nest. Damage to previously unharmed landscape increases with the number of subsequent passes over the same area.

Livestock operators voiced concerns that frequent visits to set and/or check trail cameras were negatively affecting livestock operations. Negative impacts include loss of livestock (due to escape after barriers were cut/removed to provide a better view for the trail camera), litter, vandalism, and destruction of habitat.

The public voiced concerns over the potential biological effects of trail cameras being present on point source waters, especially during the ongoing drought. As mentioned above, trail cameras are visited regularly for many reasons. This human activity disturbs and displaces wildlife at water sources and

other focal areas where trail cameras are placed. Camera-related disturbance is impacting most, if not all, wildlife water catchments (including those maintained by the Department) as well as other water sources, many of which have multiple cameras and are visited frequently (sometimes daily) throughout the year. Given the long-term drought and changing climate affecting Arizona, impacts of these disturbances are exacerbated as natural water sources diminish and wildlife become increasingly dependent on developed waters.

The public voiced concerns over photos being taken of them or other people in the field by trail cameras. Some felt the presence of trail cameras leaves them feeling uneasy when they should be enjoying a peaceful communion with nature. While it is true, people are on camera most all the time (business surveillance cameras, doorbell cameras, cell phones, etc., the commenters say they enjoy getting out in nature to get away from such scrutiny.

The public voiced concerns over the high numbers of trail cameras on the landscape and water sources now and into the future. The number of trail cameras deployed statewide is unknown, though certainly the numbers are in the thousands, if not tens of thousands. It is certain their numbers will continue to increase as the State's population continues to grow and technology continues to improve (prices go down and availability increases). Each of the game units are visited regularly, often by users who travel cross-country or on unauthorized routes, causing resource damage and fostering a broader public perception that hunters, guide services, and hunting are damaging our public lands. Hunters or guide services who are placing cameras may cut fences, leave gates open, and disturb or damage rangeland infrastructure. These impacts affect livestock operators and private property owners across the state and erode their willingness to support public access.

The public voiced concerns over the potential monetization of game cameras to include services to place, monitor, check, and sell camera images and if those services increase, the numbers of cameras and their use for take could dramatically increase.

The public voiced concerns over damage to and theft of trail cameras. It is a risk a person takes when they leave personal property in a public place. Theft and damage to a trail camera may cause a guide service or hunter to place a trail camera for the purpose of providing security for another trail camera the hunter or guide service placed. This results in an even greater number of trail cameras on the landscape, which in turn multiplies the detrimental effect the use of trail cameras has on wildlife, wildlife habitat, livestock operations, private property owners, recreationists, and hunting.

Most all of the concerns listed above impact federal and state government agencies. Land-owning and -managing agencies must expend resources to mitigate damage to the landscape such as repairing damage to equipment, fencing and gates, removing and replanting damaged vegetation, minimizing habitat damage by removing broken cameras, discarded batteries, and posts associated with camera placement, etc. Law enforcement agencies expend resources responding to reports of criminal damage and/or physical altercations resulting from the concerns listed above.

The State's population continues to steadily grow. When combined with technological advances designed to make trail cameras more accurate, easier to operate, and less costly, it is reasonable to expect the number of cameras on the landscape to increase. Which, in turn, will increase the frequency and severity of the concerns identified above along with the increases that have and will continue to pressure wildlife from the increasing number of people enjoying outdoor recreational activities.

For these reasons, the Commission is pursuing rulemaking to establish regulatory measures to prohibit the use of trail cameras, as they relate to the 'take of wildlife.'

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts, and would represent a failure of the Commission to fulfill its duty to preserve wildlife for the beneficial use of present and future generations.

The Department received the following comments opposing the proposed rulemaking. The majority of comments that opposed the rulemaking simply provided a statement that they oppose the regulation of trail cameras and provided no additional information in support of their position. Of those comments that included information in support of their position, the following summary is provided:

a. A number of comments state the Commission lacks the authority to regulate the use of trail cameras.

Agency Response: The Department disagrees. Under A.R.S. § 17-231(A)(3), "The Commission shall establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the Commission shall not limit or restrict the magazine capacity of any authorized firearm.

The Commission, through the Department, is responsible for the lawful management of Arizona's diverse wildlife. This is done through laws and rules that govern seasons, weapon types, lawful and unlawful methods of take, which includes devices. Trail cameras are a technological device that can be used to aid in the take of wildlife and when used for such purpose is entirely under the Commission's authority to regulate. Trail cameras used for general wildlife viewing, research, and/or home or camp security are not affected by this rulemaking.

b. A number of comments state that either 1) a rule prohibiting the use of trail cameras for the take of wildlife should not be adopted because it is based on social influences rather than scientific or wildlife management needs and trail cameras help manage or conserve wildlife by allowing the hunter to select mature animals; or 2) that it should be adopted only if there are scientific, biological, or wildlife management needs.

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Limiting the use of trail cameras as suggested above would do nothing to alleviate the concerns regarding the use of trail cameras for hunting. It is necessary and appropriate to use both biological and social science when establishing wildlife management policy and take into consideration all of the following: economics, empirical data, professional judgment, scientific data, stakeholder input, political landscape, and public values.

c. A number of comments state the Department will lose revenue due to trail camera users not purchasing hunting licenses and tags; and lose resources in enforcing the proposed trail camera prohibition.

Agency Response: The proposed rule is intended to preserve hunting. It will not apply to the lawful, regulated hunting of wildlife. The Department does not anticipate a significant decline in hunting license sales as a result. The proposed rule will provide the Department with the necessary authority and resources to more effectively manage the taking and handling of wildlife. The Department does not anticipate additional costs associated with prohibiting the use of trail cameras. While the proposed rule places additional enforcement duties on Department officers, the Commission has determined that proposed rule will not require additional full-time employees.

d. A number of comments state the rule is unenforceable.

Agency Response: The Department disagrees. Part of the rulemaking process is ensuring that any new rule is enforceable. The enforcement of this rule may not be as clear-cut as other rules, but the Department is confident that wildlife managers will use good judgment and discretion in how this rule is enforced. There is no doubt that the Department and Commission will also count heavily on voluntary compliance by the sportsmen and women whom we have counted on to follow the rules and have a great track record at doing so; statewide compliance with existing game and fish laws is typically 96% or higher. Public and stakeholder comment indicate trail cameras are regularly visited to check the camera for damage, view photographs, reposition if necessary, and replace batteries and SD cards, making enforcement easier. A thorough investigation will be conducted by a Department officer prior to making the decision to issue a trail camera citation. The officer in the field is responsible for conducting an investigation, collecting evidence, and, when determined valid, issuing a citation. A major focus of the investigation will be to identify who placed the trail camera. Every time a citation is written by any officer, it is based on the totality of facts and the situation at hand that causes the issuance of the citation. As a final point, the officer is part of the judicial process, but does not usurp the court‘s final authority.

e. A number of comments are directed to who the Commission should or should not listen to in its

decision-making. Some argue that the Commission should listen to only those who buy hunting and fishing licenses and who therefore support the Department financially. Some feel that the Commission is being non-supportive of hunters if it adopts a rule restricting or prohibiting the use of trail cameras for the take of wildlife. There are also arguments that the Commission should not listen to non-hunters; they do not want "extremists and radicals" telling Arizonans how to vote on matters which apply to Arizona wildlife and hunters.

Agency Response: The Department disagrees. Under A.R.S. §17-102, wildlife are property of the state and are held in the public trust. Public trust thinking is a philosophy that emphasizes concepts of trusteeship to frame responsibilities for conserving wildlife resources for the benefit of current and future generations, without privileging particular individuals or groups. It holds that certain resources are not suitable for exclusive private ownership and it is the government's responsibility to manage these resources as an endowment of natural wealth in perpetuity. To fulfill public trust responsibilities, the Department and Commission must consider the full range of social values relative to wildlife, changes in land use, and changing ecological conditions. In addition, Arizona law does not limit who can submit comments for or against a proposed rulemaking.

f. A number of comments state regulating trail cameras for hunting is a government overreach that infringes on citizens' rights or violates a constitutional right; that the Commission is being pressured by anti-hunter/anti-gun groups to stop hunters and outdoorsman from using a viable tool; that the rulemaking is just a step towards eliminating the sport of hunting.

Agency Response: The Department disagrees. Under A.R.S. § 17-201(A), the laws of the state relating to wildlife shall be administered by the Game and Fish Department; control of the Department is vested in the Commission.

Under A.R.S. § 17-231(A)(1), the Commission is required to "adopt rules . . . to carry out the provisions and purposes of this title." The purpose of these agencies is "to manage wildlife and wildlife habitat in this State as provided by law.

Under A.R.S. § 17-231(A)(3), the Commission shall establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife.

Under A.R.S. § 17-102, since wildlife is considered to be the property of the State, it "may be taken at such times, in such places, in such a manner and with such devices as provided by law or rule of the Commission." The term "take" includes activities, such as hunting, trapping and fishing, which may result in the capture or killing of wildlife.

The proposed rule is intended to address the divisive and social aspects of trail cameras used as a method of take for the purpose of hunting. To the extent the use of trail cameras, especially when used for a commercial purpose, reflect on the overall hunting community, clashes over their use for hunting has the potential to threaten hunting as a legitimate wildlife management function.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts, and would represent a failure of the Commission to fulfill its duty to preserve wildlife for the beneficial use of present and future generations.

g. A number of comments state the same logic being applied to trail cameras should also be applied to fish finders.

Agency Response: The Department disagrees. A fish finder is a temporary method to locate fish. A fish finder uses sonar technology to detect the presence of fish and can only give the operator information on what is nearby. A fish finder uses simulated images of fish and structures; it cannot help an angler identify a particular fish or species of fish. In actuality, a fish finder is more comparable to a pair binoculars than a trail camera.

h. A number of comments state the use of trail cameras by hunters results in important data being provided to Department biologists; prohibiting the use of trail cameras for the purpose of hunting will remove a valuable tool from the Department's tool box that could be used to not only save the Department money, but would also help manage wildlife better.

Agency Response: The Department has received data obtained from trail cameras used by hunters, and while this data may provide some benefit, it is not a reliable or consistent method to use for wildlife management.

i. A number of comments state the use of trail cameras benefit the State and local economies, and small businesses because persons who are placing or checking trail cameras also purchase food, lodging, sporting goods, and out-of-state hunters purchase nonresident licenses.

Agency Response: The proposed rule is intended to preserve hunting. While the State and local economies may be negatively impacted by the regulation of trail cameras and because the use of trail cameras varies from location to location, it is difficult to quantify the impact on small businesses. However, the Commission believes any impact the rule may have on small businesses will be insignificant.

To the extent the use of trail cameras reflect on the overall hunting community, clashes over their use for

hunting has the potential to threaten hunting as a legitimate wildlife management function.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts, and would represent a failure of the Commission to fulfill its duty to preserve wildlife for the beneficial use of present and future generations.

j. A number of comments state the Department should conduct more research or an environmental impact study before pursuing rulemaking.

Agency Response: The Department agrees it is necessary and appropriate to use both biological and social science when establishing wildlife management policy and take into consideration all of the following: economics, empirical data, professional judgment, scientific data, stakeholder input, political landscape, and public values.

In 2013, the Commission directed the Department to evaluate rule language and make recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device.

In 2014, the Department's Fair Chase committee was formed to monitor and evaluate emerging and evolving technologies and practices and make recommendations for statute or rule changes when it is determined the technology or practice had the potential to provide an unfair advantage and trail cameras were identified as fast becoming a growing trend with hunters using them to aid in the take of wildlife.

In 2016, the Department tasked a team of subject matter experts to conduct benchmarking with other states and provinces to determine which states regulate the use of trail cameras.

In 2017, the Article 3 Five-year Review Report recommended prohibiting the use of live-action cameras state-wide and passive trail cameras within one fourth mile of a developed water source.

In 2018, the Department presented several options designed to regulate the use of trail cameras; at that time the Commission voted to prohibit the use of live-action cameras for the purpose of hunting.

In addition, to date research conducted on the use of trail camera for the purpose of hunting is indeterminate when it comes to the positive or negative impacts trail cameras have on wildlife. Because the proposed rule is intended to address the divisive and social aspects, including fair chase, of trail cameras used for the purpose of hunting, the Commission has determined there is no need to conduct more research or an environmental impact study.

k. A number of comments state the rule could make violators out of hunters who use trail cameras for pleasure, not for hunting.

Agency Response: The Department disagrees. A thorough investigation will be conducted by a Department officer prior to making the decision to issue a trail camera citation. The officer in the field is responsible for conducting an investigation, collecting evidence, and, when determined valid, issuing a citation. A major focus of the investigation will be to identify who placed the trail camera. Every time a citation is written by any officer, it is based on the totality of facts and the situation at hand that causes the issuance of the citation. The officer is part of the judicial process, but does not usurp the court's final authority.

l. A number of comments state the use of trail cameras for hunting is a legitimate sport, is a necessary activity, and has positive social consequences. Advocates state placing and checking trail cameras and viewing the photographs that were taken is an enjoyable family activity.

Agency Response: The proposed rule is intended to preserve hunting. Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts, and would represent a failure of the Commission to fulfill its duty to preserve wildlife for the beneficial use of present and future generations.

The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. The rule does not prohibit any other type of lawful activity that a person or family may conduct outdoors, such as bird watching, boating, camping, hiking, kayaking, using trail cameras for non-hunting purposes, wildlife viewing, etc.

m. A number of comments state the use of trail cameras for the purpose of hunting should remain lawful on private property.

Agency Response: The Department disagrees. The concerns related to this issue apply regardless of land ownership. The Commission maintains the authority to regulate the manner and method of take on public and private land.

n. A number of comments state pictures from trail cameras instill a desire to go and look for that 'one' big game animal.

Agency Response: The proposed rule will make it unlawful to use a trail camera for the purpose of hunting. Viewing images taken with a trail camera for the purpose of nonconsumptive recreation will remain lawful.

o. A number of comments state trail cameras are used for reasons that are not related to hunting, such as research, wildlife watching, camp or home security, etc.

Agency Response: The proposed prohibition only applies to trail cameras that are used for the purposes of take as defined under A.R.S. § 17-101(20). The general use of a trail camera will remain legal as long as no images or data are used to aid in the take of wildlife. General uses include, but are not limited to, the use of trail cameras for camp and/or home security, individual photography, research, and wildlife management.

p. A number of comments state regulating trail cameras for hunting discriminates against disabled and elderly hunters.

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. For this reason, it is not reasonable to allow select hunters to use a trail camera for the purpose of hunting. In addition, the Department offers a Challenged Hunter Access/Mobility Permit (CHAMP) and Crossbow Permit; both afford persons with a disability the opportunity to participate in hunting.

q. A number of comments state trail cameras do not help a hunter harvest an animal; while other comments state trail cameras increase their odds of taking an animal.

Agency Response: The Department takes no position on this issue. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting.

r. A number of comments state trail cameras relieve pressure on the habitat by reducing the number of hunters scouting in the field prior to their hunt.

Agency Response: The Department disagrees. Pressure on the habitat is a concern, but just one of them. The potential for conflict over the use of trail cameras and concerns over fair chase will continue to be an issue.

s. A number of comments state guides and outfitters abuse the use of trail cameras; the average hunters only uses a few trail cameras. The rule should only limit guides and outfitters use of trail cameras for hunting.

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Prohibiting their use by a specific group of persons will be confusing to the public and may result in even more social discord on the landscape.

t. A number of comments state trail cameras help the Department catch poachers and other wildlife law violators.

Agency Response: The Department has received data obtained from trail cameras used by hunters, and while this data may provide some benefit, it is not a reliable or consistent method for convicting wildlife law violators.

u. A number of comments state the person purchased any number of trail cameras and, if the proposed rulemaking is approved, will not be able to use them.

Agency Response: The Department disagrees. The proposed prohibition only applies to trail cameras that are used for the purposes of take as defined under A.R.S. § 17-101(20). The general use of a trail camera will remain legal as long as no images or data are used to aid in the take of wildlife. General uses include, but are not limited to, the use of trail cameras for camp and/or home security, individual photography, research, and wildlife management. They may also be used for the purpose of hunting in states that do not prohibit or have not yet prohibited the use of trail cameras for the purpose of hunting.

v. A number of comments state because trail cameras are used for the purpose of hunting, the sale of trail cameras and their related equipment/accessories contribute to the federal excise tax which in turn is distributed to the various states for wildlife conservation.

Agency Response: The Department disagrees. The Pittman-Robertson Federal Aid in Wildlife Restoration Act is funded through a 10% excise tax on handguns, ammunition, and accessories as well as an 11% excise tax on archery equipment. Trail cameras and their related equipment are not included in the Pittman-Robertson Federal Aid in Wildlife Restoration Act, thus they do not contribute to either wildlife restoration fund.

w. The Department should conduct an education campaign on the fair and ethical use of trail cameras instead of regulating trail cameras.

Agency Response: The Department disagrees. Education campaigns are an effective means of promoting an idea when they include communicating with openness in an evidence-informed way; creating safe spaces to encourage audience dialogue; fostering community partnerships; and countering misinformation.

Because many guides and hunters who are using trail cameras for the purpose of hunting do not see any fault with their use, conducting a successful education campaign on the fair and ethical use of trail cameras will be problematic and may never achieve the same results as the rulemaking.

Because many of the comments indicate the person who submitted them is not open to hearing any message on the ethical use of trail cameras, the Department anticipates there will be multiple challenges on social media, including misinformation, anti-education campaign sentiment, a complex trail camera proponent narrative and anti-regulation advocates. This is evident with the most recent federal and state public health campaigns promoting the use of face masks for public health and safety; messages that were disregarded by a large number of persons who simply did not agree with or believe the reasoning behind the campaign's messaging.

In addition, public education campaigns rely on voluntary compliance and the desired results are not achieved for years. Because improvements in trail camera technology have resulted in better trail cameras that cost less, their use for hunting has increased over time and will continue to do so. Delaying regulatory action now to run what will most certainly be an unsuccessful public education campaign will only make it more difficult to regulate the use of trail cameras for the purpose of hunting in the future.

x. A number of comments state the trail cameras are only a problem in particular units; they should only be regulated in those areas of the State that have a problem.

Agency Response: The Department disagrees. Prohibiting the use of trail cameras for the purpose of hunting in select areas is confusing and would only serve to concentrate these problems in other areas of the State.

y. A number of comments state Arizona will be the first or only state to prohibit the use of trail cameras for hunting.

Agency Response: The Department disagrees. The following states currently prohibit or regulate the use of trail cameras for hunting: Colorado, Indiana, Kansas, Maine, Montana, Nevada, New Mexico, New Hampshire, North Dakota, Wisconsin, and Wyoming. It is possible other states will be added to the list as there are still a number of states that have not responded to our inquiry.

The Department received the following comments proposing the Commission pursue other regulatory measures to address the issue. For these comments, the following summary is provided:

a. A number of comments state the Commission should allow the use of live-action cameras; if the monitoring and maintaining a "passive" trail camera is causing concerns, then allowing a person to "check" their camera remotely should "fix" the problem.

Agency Response: The Department disagrees. Currently, trail cameras that are capable of transmitting

images to an electronic device are prohibited when used for locating and/or taking wildlife. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter improper or unfair advantage over such wildlife.

The Fair Chase Committee determined live-action trail cameras allow a hunter or angler to locate or take wildlife without being physically present and pursuing wildlife in the field. The Commission does not intend to allow the use of live-action trail cameras for the purpose of hunting.

b. A number of comments state trail cameras should be regulated by the Department (i.e., permanently mark trail camera with user's information, limit number of trail cameras person may use by permit, establish user pay registration system, etc.).

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Implementing a registration process would not address the concerns surrounding the use of trail cameras for the purpose of hunting and would also result in the Department expending additional resources to establish and maintain a registration or permitting system, as well as any associated administration costs.

For these reasons, it is not reasonable to establish a registration or permitting system that allows paying hunters to use a trail camera for the purpose of hunting.

c. A number of comments state the use of trail cameras for hunting should be limited to hunters who possess a valid hunt permit-tag for a specific game unit; lawful in hunt areas with an open season; or lawful for Special Big Game License tag hunts.

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Limiting the use of trail cameras as suggested above would do nothing to alleviate the concerns regarding the use of trail cameras for hunting.

Implementing a registration process would not address the concerns surrounding the use of trail cameras for the purpose of hunting and would also result in the Department expending additional resources to establish and maintain a registration or permitting system, as well as any associated administration costs.

Currently, the number of hunters using trail cameras in a given hunt unit typically outnumber the valid tag holders; allowing their use in certain locations would not address concerns over conflicts between hunters and trail camera users. This could be confusing to the public and may result in even more social discord on the landscape.

The State's population continues to steadily grow. When combined with technological advances designed to make trail cameras more accurate, easier to operate, and less costly, it is reasonable to expect the number of cameras on the landscape to increase. Which, in turn, will increase the frequency and severity of the concerns identified above along with the increases that have and will continue to pressure wildlife from the increasing number of people enjoying outdoor recreational activities.

For these reasons, it is not reasonable to continue to allow the use of trail cameras for hunting.

d. A number of comments state a person should only check their trail camera(s) before or after daylight.

Agency Response: The Department disagrees. The proposed rule is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Limiting the use of trail cameras as suggested above would do nothing to alleviate the concerns regarding the use of trail cameras for hunting.

e. A number of comments state the trail camera prohibition should only apply when in proximity to water sources.

Agency Response: The Department disagrees. Prohibiting the use of trail cameras for the purpose of hunting within proximity to water sources would only serve to concentrate these problems in other areas.

f. A number of comments state the Department was not transparent in regards to the reason(s) behind the rulemaking.

Agency Response: The Department disagrees. A rulemaking moratorium has been in place, either through an Executive Order or statute since 2009. As with all rulemaking efforts, the Department follows the rulemaking procedures prescribed in statute and rule, and the applicable Governor's Executive Order that establishes exemptions from the rulemaking moratorium.

The Department provided the reasoning for the rulemaking through both presentations to the Commission at the December 2020 and February 2021 public meetings, as well as additional public notices made though social media and press releases. In addition, Game and Fish Commissioners were also guests on several podcasts and spoke to the proposed rulemaking during the process.

g. A number of comments state the time and resources spent on this rulemaking would have been better spent on active wildlife management issues or fixing the draw process which facilitates Department funding and wildlife management programs.

Agency Response: The Department disagrees. The Commission has determined there is a need to evaluate and establish regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic.

h. A number of comments state the prohibition on the use of trail cameras should also apply to the use of trail cameras for photography purposes.

Agency Response: The Department disagrees. The Commission authority to regulate the use of trail cameras is limited to their use for the purpose of taking wildlife. Because photography does not meet the definition of take, it will continue to be a lawful activity.

i. A number of comments state the prohibition on the use of trail cameras will make their use illegal for the purposes of monitoring their traps.

Agency Response: The Commission's intent is to prohibit the use of a trail camera for the take, or assisting in the take, of wildlife. Under A.R.S. § 17-101(2), "take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife. The use of a trail camera for the sole purpose of monitoring the security of a trap would remain lawful under this rule. It is important to note, the use of a trail camera will not satisfy the requirement to check individual traps on a daily basis as prescribed under A.R.S. § 17-361(B).

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

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

The rule does not require a general 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:

For R12-4-303, Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Commission has determined the rule is not more stringent than the corresponding federal law.

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

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-111. ~~Identification Number~~ Repeal

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

Section

R12-4-209. ~~Community Fishing License~~ Repeal

R12-4-214. ~~Apprentice License~~ Repeal

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-301. Definitions

R12-4-303. Unlawful Devices, Methods, and Ammunition

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-111. ~~Identification Number~~ Repeal

~~A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:~~

~~1. Full name,~~

~~2. Any additional names the person has lawfully used in the past or is known by,~~

~~3. Date of birth, and~~

~~4. Mailing address.~~

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

R12-4-209. ~~Community Fishing License; Exemption~~ Repeal

~~**A.** A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.~~

~~**B.** The community fishing license is valid for one year from:~~

~~1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or~~

~~2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.~~

~~**C.** A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A community fishing license applicant shall provide the following information on the application:~~

~~1. The applicant's:~~

~~a. Name;~~

~~b. Date of birth,~~

~~c. Physical description, to include the applicant's eye color, hair color, height, and weight;~~

~~d. Department identification number, when applicable;~~

~~e. Residency status and number of years of residency immediately preceding application, when applicable;~~

~~f. Mailing address, when applicable;~~

~~g. Physical address;~~

~~h. Telephone number, when available; and~~

~~i. E-mail address, when available; and~~

2. ~~Affirmation that the information provided on the application is true and accurate; and~~

3. ~~Applicant's signature and date.~~

D. ~~In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:~~

1. ~~In person shall pay the applicable fee required under R12-4-102.~~

2. ~~Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.~~

E. ~~In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.~~

R12-4-214. ~~Apprentice License~~ Repeal

A. ~~An apprentice license authorizes the taking of small game, fur bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.~~

B. ~~An apprentice license is:~~

1. ~~A complimentary license,~~

2. ~~Valid for any two consecutive days; and~~

3. ~~Issued to a person only once per calendar year.~~

C. ~~The apprentice license is not valid for the take of big game animals.~~

D. ~~The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.~~

E. ~~An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:~~

1. ~~Be a resident of Arizona,~~

2. ~~Be 18 years of age or older,~~

3. ~~Possess an appropriate and valid Arizona hunting license, and~~

4. ~~Provide the apprentice with instruction and supervision on safe and ethical hunting practices.~~

5. ~~A short-term license does not meet the license requirement of this subsection.~~

F. ~~A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:~~

1. ~~The mentor's:~~

   a. ~~Name;~~

   b. ~~Arizona hunting license number and effective date of the license; and~~

2. ~~The applicant's:~~

   a. ~~Name;~~

   b. ~~Age;~~

   c. ~~Date of birth;~~

~~d. Telephone number, when available;~~

~~e. Department identification number, when applicable;~~

~~f. E-mail address, when available;~~

~~g. Physical description, to include the applicant's eye color, hair color, height, and weight;~~

~~f. Mailing address, when applicable;~~

~~g. Physical address; and~~

~~h. Residency status.~~

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-301. Definitions

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to apply a drug directly to wildlife by injection, inhalation, ingestion, or any other means.

"Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance, including unmanned aircraft systems also known as drones.

"Artificial flies and lures" means man-made devices intended as visual attractants to catch fish. Artificial flies and lures does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.

"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Device" has the same meaning as provided under A.R.S. § 17-101.

"Dip net" means any net, excluding the handle, that is no greater than three feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the person.

"Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.

"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.

"Foothold trap" means a device designed to capture an animal by the leg or foot.

"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.

"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

"Land set" means any trap used on land rather than in water.

~~"Live action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.~~

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, and loaded with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading shotgun" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.

"Paste-type bait" means a partially liquefied substance used as a lure for animals.

“Pneumatic weapon” means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.

"Pre-charged pneumatic weapon" means an air gun or pneumatic weapon that is charged from a high compression source such as an air compressor, air tank, or internal or external hand pump.

"Prohibited possessor" has the same meaning as provided under A.R.S. § 13-3101.

"Prohibited weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Rifle" means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.

"Shotgun" means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.

"Sight-exposed bait" means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.

"Simultaneous fishing" means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures per line.

“Single-point barbless hook” means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.

"Sinkbox" means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

“Smart device” means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

<u>"Trail camera" means any device that is not held or manually operated by a person and is used to capture images, video, or location, time, or date data of wildlife.</u>

"Trap flag" means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

"Water set" means any trap used and anchored in water rather than on land.

R12-4-303. Unlawful Devices, Methods, and Ammunition

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
    a. Fully automatic firearms, including firearms capable of selective automatic fire.
    b. Tracer or armor-piercing ammunition designed for military use.
    c. Any smart device as defined under R12-4-301.
    d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
3. A person shall not use or possess any of the following while taking wildlife:
    a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
    b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
    c. Any lure, attractant, or cover scent containing any cervid urine.
    d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
4. A person shall not by any means:

a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.

b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the take of wildlife.

c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.

d. Place any substance in a manner intended to attract bears.

e. Use a manual or powered jacking or prying device to take reptiles or amphibians.

f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.

g. Take migratory game birds, except Eurasian collared-doves:

i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.

ii. Using electronically amplified bird calls or baits.

iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.

iv. Activities described under subsections (g)(i) through (g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:

i. Arrow or bolt,

ii. Hybrid device, or

iii. Pneumatic weapon .35 caliber or larger.

5. A person shall not ~~use a live-action trail camera, or images from a live-action trail camera, for the purpose of:~~

~~a. Taking or aiding in the take of wildlife, or~~

~~b. Locating wildlife~~ place, maintain, or use a trail camera, or images, video, to include location, time, or date data from a trail camera, for the purpose of taking or aiding in the take of wildlife or locating wildlife for the purpose of taking or aiding in the take of wildlife.

6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:

a. Taking or aiding in the take of wildlife, or

b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.

c. This subsection does not prohibit the use of mapping systems or programs.

7. A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
   a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or
   b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
8. Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.
9. For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:
   a. Water.
   b. Salt.
   c. Salt-based materials produced and manufactured for the livestock industry.
   d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

B. It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.

C. Wildlife taken in violation of this Section is unlawfully taken.

D. This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-111, R12-4-209, R12-4-314, R12-4-301 and R12-4-303

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife. Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on active management and sound science. When establishing wildlife management policy, all of the following is taken into consideration: economics, empirical data, professional judgment, scientific data (biological and social), stakeholder input, political landscape, and public values.

As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory

amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to repeal the definition of "live-action trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition).

The Commission proposes to define "trail camera to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

R12-4-303. Unlawful Devices, Methods, and Ammunition

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

In addition to fair chase concerns identified above, the use of trail cameras has become an increasing source of conflict between and amongst hunters. Trail cameras are believed to cause increased traffic in the field during hunts. Hunters and guides who have placed cameras interrupt other persons hunt by checking their trail camera during prime hunting hours. Hunters have expressed their frustration about the proliferation of cameras at Department catchments and other water sources, as compromising their opportunities and overall quality of the hunting experience. Some have shared stories of aggressive hunters and/or guides trying to chase other hunters away from waters that have "their cameras."

Trail cameras negatively affect wildlife, both directly and indirectly. Trail cameras are visited regularly to change SD cards, batteries, etc. and this human activity disturbs and displaces animals at water sources and other focal areas where cameras are placed. Camera-related disturbance is impacting many wildlife water developments (especially those maintained by the Department) as well as other water sources, many of which have multiple cameras and are visited, sometimes daily, throughout the year. Given the long-term drought and changing climate affecting Arizona, impacts of these disturbances are exacerbated as natural water sources diminish and wildlife become increasingly dependent on developed waters.

Trail cameras are significantly and adversely impacting the equity and quality of the hunting experience for the many of Arizona big game hunters. The proliferation of cameras, particularly by guides who place dozens or hundreds in prime hunting areas, unfairly robs opportunity from hunters who cannot or choose not to use cameras. Some of these hunters may wait a decade or more to get a prime tag. However, once afield, their odds of finding and harvesting a highly-desired animal are infinitely smaller than those who have used camera data to find and map animals prior to the hunt. This bias is likewise wholly incompatible with the equal access tenet of the North American Model. In addition, the potential monetization of game

cameras to include services to place, monitor, check and sell camera images, and if those services increase, the numbers of cameras and their use for take could dramatically increase.

Placement and maintenance of trail cameras has unacceptable secondary impacts to wildlife habitat, rangeland infrastructure, land management partners and public access. The number of trail cameras deployed statewide is unknown, though certainly numbers in the thousands. Each of these units is visited regularly, often by users who travel cross-country or on unauthorized routes, causing resource damage and fostering a broader public perception that hunters and hunting are damaging our public lands. Persons placing cameras may cut fences, leave gates open, and disturb or damage livestock management infrastructure. These impacts affect livestock operators and private property owners across the state and erode their willingness to support public access. Livestock operators are concerned that frequent visits to set and/or check trail cameras are negatively affecting livestock operations.

Members of the public have expressed concern over the use of their images that were taken in the field without their permission by a hunter's trail camera. They believe it's an invasion of privacy because they went into the outdoors to enjoy some privacy and solitude.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. This change is in response to customer comments received by the Department.

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

Since mid-2010, the Commission has consistently received comments from the public asking them to regulate the use of trail cameras for the purpose of hunting.

The public voiced concerns over the use of trail cameras as it relates to Fair Chase. Commission Policy on Fair Chase includes: "…new or evolving technologies and practices that provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage…" applies to areas where water is primarily point source water and game cannot escape detection. When combined with an array of "helpers" using cell phones, it is almost impossible for game to escape detection from the guide services that use trail cameras for the purpose of commercial benefit. Guide services that use trail cameras will often post or distribute photographs of exceptional wildlife in an effort to entice hunters to use their services.

The public voiced concerns that the use of trail cameras has become an increasing source of conflict amongst hunters; including the sense of ownership over a water source and/or hunting area. The Department has received many comments from hunters who were sitting on hunting area when a guide or hunter confronted them and in one manner or another claimed the spot "belonged" to them because they placed a trail camera in the nearby area.

The public voiced concerns that the frequent visits made by guides or hunters who were setting and/or checking trail cameras results in significant disturbance to wildlife during extended dry periods.

Any hunter or guide who places a trail camera in an area will consistently visit that spot to check the trail camera on a somewhat frequent basis; check for photographs, check the SD card, check the batteries, check the camera placement, check to see if the trail camera was stolen or damaged, etc. The same route is often used when checking a trail camera. The frequency of these visits depends on the wildlife in the area, the time of year, and who is using the trail camera. There are hunters who walk into the area once or twice a month; there are guide services who have an interest in an animal in a particular unit and they may have "helpers" checking the trail camera every other day. The guide service may have placed a large number of trail cameras on the landscape in pursuit of this animal, so it is necessary for the "helpers" to use off-road vehicles to go quickly from trail camera to trail camera. This unnecessary traffic damages the environment through surface soil disruption, which increases wind and water erosion, and compaction, which increases runoff. Revegetation is inhibited by lower soil moisture and higher soil density. Soil compaction and displacement, noise conflicts with other users, wildlife disturbance during mating seasons, wildlife and livestock harassment, and the possibility of effects on biogeochemical aspects of water and aesthetics of water quality are some of the negative impacts of continuous frequent travel. Further wildlife impacts include compaction of the forest bed or soil layer which reduces the numbers of small mammals, frequent noise from the off-road vehicles may cause nesting birds to desert their nest. Damage to previously unharmed landscape increases with the number of subsequent passes over the same area.

Livestock operators voiced concerns that frequent visits to set and/or check trail cameras were negatively affecting livestock operations. Negative impacts include loss of livestock (due to escape after barriers were cut/removed to provide a better view for the trail camera), litter, vandalism, and destruction of habitat.

The public voiced concerns over the potential biological effects of trail cameras being present on point source waters, especially during the ongoing drought. As mentioned above, trail cameras are visited regularly for many reasons. This human activity disturbs and displaces wildlife at water sources and other focal areas where trail cameras are placed. Camera-related disturbance is impacting most, if not all, wildlife water catchments (including those maintained by the Department) as well as other water sources, many of which have multiple cameras and are visited frequently (sometimes daily) throughout the year. Given the long-term drought and changing climate affecting Arizona, impacts of these disturbances are exacerbated as natural water sources diminish and wildlife become increasingly dependent on developed waters.

The public voiced concerns over photos being taken of them or other people in the field by trail cameras. Some felt the presence of trail cameras leaves them feeling uneasy when they should be enjoying a peaceful communion with nature. While it is true, people are on camera most all the time (business surveillance cameras, doorbell cameras, cell phones, etc., the commenters say they enjoy getting out in nature to get away from such scrutiny.

The public voiced concerns over the high numbers of trail cameras on the landscape and water sources now and into the future. The number of trail cameras deployed statewide is unknown, though certainly the numbers are in the thousands, if not tens of thousands. It is certain their numbers will continue to increase as the State's population continues to grow and technology continues to improve (prices go down and availability increases). Each of the game units are visited regularly, often by users who travel cross-country or on unauthorized routes, causing resource damage and fostering a broader public perception that hunters, guide services, and hunting are damaging our public lands. Hunters or guide services who are placing cameras may cut fences, leave gates open, and disturb or damage rangeland infrastructure. These impacts affect livestock operators and private property owners across the state and erode their willingness to support public access.

The public voiced concerns over the potential monetization of game cameras to include services to place, monitor, check, and sell camera images and if those services increase, the numbers of cameras and their use for take could dramatically increase.

The public voiced concerns over damage to and theft of trail cameras. It is a risk a person takes when they leave personal property in a public place. Theft and damage to a trail camera may cause a guide service or hunter to place a trail camera for the purpose of providing security for another trail camera the hunter or guide service placed. This results in an even greater number of trail cameras on the landscape, which in turn multiplies the detrimental effect the use of trail cameras has on wildlife, wildlife habitat, livestock operations, private property owners, recreationists, and hunting.

Most all of the concerns listed above impact federal and state government agencies. The damage to the landscape negatively impacts land-owning and -managing agencies because they must expend resources repairing damage to equipment, fencing and gates, removing and replanting damaged vegetation, minimizing habitat damage by removing broken cameras, discarded batteries, and posts associated with camera placement, etc. Law enforcement agencies expend resources responding to reports of criminal damage and/or physical altercations resulting from the concerns listed above.

(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:

It is certain their numbers will continue to increase as the State's population continues to grow and technology continues to improve (prices go down and availability increases). Each of the game units are visited regularly, often by users who travel cross-country or on unauthorized routes, causing resource damage and fostering a broader public perception that hunters, guide services, and hunting are damaging our public lands. Hunters or guide services who are placing cameras may cut fences, leave gates open, and disturb or damage rangeland infrastructure. These impacts affect livestock operators and private property owners across the state and erode their willingness to support public access.

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

The Commission believes that over time, through continued outreach, education, and enforcement of the rule changes identified under (A)(1), the frequency of persons using a trail camera for the

purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife will be significantly reduced.

The number of trail cameras deployed statewide is unknown, though certainly the numbers are in the thousands, if not tens of thousands. It is certain their numbers will continue to increase along with the instances of the scenarios described above if left unchecked.

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

The Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase and address the concerns and complaints voiced by hunters over the use of trail cameras for the purpose of hunting; for example: conflicts over a hunt unit, litter left behind (discarded broken or damaged trail cameras, batteries, cables, wrappers, equipment/accessories used to mount the camera, etc.), theft and destruction of other persons trail cameras, etc.

The Commission anticipates the proposed repeal of the apprentice license will impact persons who have applied for apprentice licenses numerous times in the past as they will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or

take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking may have a negative impact on small businesses such as those that sell trail cameras or images from a trail camera for the purpose of hunting, or outfitter or guide services that use trail cameras to assist paying clients with their hunts. However, because the use of trail cameras varies from business to business with some relying heavily on their use and others not using them at all, it is difficult to quantify the impact on small businesses.

The Commission has determined prohibiting the use of trail cameras will have no impact on federal funding. The Pittman-Robertson Federal Aid in Wildlife Restoration Act is funded through a 10% excise tax on handguns, ammunition, and accessories as well as an 11% excise tax on archery equipment. Trail cameras and their related equipment are not included in the Pittman-Robertson Federal Aid in Wildlife Restoration Act, thus they do not contribute to wildlife restoration funds.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no impact to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

Name: Celeste Cook, Director's Office Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

The Commission anticipates prohibiting the use of trail cameras for taking or aiding in the take of wildlife may have a negative impact on persons who currently use trail cameras for the purpose of taking wildlife. The Commission anticipates the proposed prohibition may have a minimal impact on businesses

that manufacture or sell trail cameras; however, the Commission believes any impact will be insignificant as the cameras may be and are used for many purposes, not just for locating wildlife for the purpose of take. The Commission anticipates the proposed prohibition may have a negative impact on businesses that provide guide or outfitter services as they will no longer be able to guarantee they can guide a client to a specific animal; guides advertise their business through promotion of trail camera photographs of prize animals. The Commission anticipates the impact may be minimal to moderate depending on the guide or outfitter service's current use of cameras; some may place between ten and twenty trail cameras on the landscape, while others may place hundreds.

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than $1,000
Moderate	$1,000 to $9,999
Substantial	$10,000 or more

(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.

The amendments will benefit the Department by providing it with the necessary authority and resources to more effectively manage the taking and handling of wildlife. The Department does not anticipate additional costs associated with prohibiting the use of trail cameras. While the amendment places additional enforcement duties on Department officers, the Commission has determined that these amendments will not require additional full-time employees.

The Department will benefit from the repeal of the Community Fishing License. While the Commission anticipates some persons will choose not to purchase a general fishing license, it believes most persons will purchase a general fishing license which may generate increased revenue.

The Department will benefit from the repeal of the Apprentice License. The Commission believes this license has been abused by roughly 15% of the applicants who obtain them. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

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

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

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

The Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission's intent in the proposed rulemaking is to provide the Department additional wildlife management oversight. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Except as indicated below, the Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. The Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

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

Businesses that provide hunting excursions.

Businesses that provide sporting goods.

Businesses that manufacture trail cameras.

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed amendments do not place any reporting requirements on businesses.

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

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying lawful methods for take and, in doing so, ensuring the continued integrity of and compliance with its rules.

6. Statement of the probable effect on state revenues.

The proposed rulemaking will not significantly impact state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any

costs.

8. **Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking amends rules that govern lawful methods for the taking and handling of wildlife. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Department tasked a team of subject matter experts to review and make recommendations for this rulemaking. In its review, the team considered all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team considered each recommendation from a resource perspective and determined whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

AZGFD TOTAL trail Camera Ban

Kent McClendon <kmcclendonx7@gmail.com> Sun, Jun 27, 2021 at 4:41 PM
To: grrc@azdoa.gov

To begin I am a 54 year AZ native and have been hunting AZ all my life. I am completely against the trail camera ban. I am seriously doubting the process of rule making and the power of 5 gentleman that are not held accountable for any decisions they make.

When will the GRRC actually do their job to verify actual findings that the AZGFD used to get the rule making opened back up? The trail camera issues was closed in 2018 and there was no issue as fair chase in correlation to companies that recognize trophy animals. Now you have the 5 commissioners think they are the rule makers of fair chase. BUT to open up the RULE MAKING they need permission from GRRC and say there is a public safety issue to get it opened and the GRRC DOESN'T verify anything and allows them to open it up.. WHO ARE YOU??? I am sick and tired of politicians always lying and removing freedoms from hunters here in AZ. DO YOUR JOB…. THEY LIED ABOUT IT AND YOU DID NOT DO ANYTHING… They have lied all along on many interviews and not once was mentioned it was public safety for any reason to ban trail cameras. It has always been from day one a personal opinion on trail cameras with NO scientific data to back up any of their opinions on anything they mentioned. NEVER was there ever 40 cameras on a water source, there are only 9 safety issues in 4 years over a water source and they cannot prove it was because of a trail camera but there were no altercations. Then the AZGFD state they want to follow the North American Model of Wildlife Conservation but yet they cannot give up any of the statewide auction hunts they sell each year or raffle hunts they do. Both of which are complete opposite of that model they are saying they are following.

DO YOUR JOB AND SHUT THIS RULE MAKING DOWN NOW..

Kent McClendon
602-568-2311

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Contact Us - GRRC Website

3 messages

Governor's Regulatory Review Council via Governor's Regulatory Review Council <grrc@azdoa.gov>
Reply-To: Governor's Regulatory Review Council <grrc@azdoa.gov>
To: grrc@azdoa.gov

Mon, Jul 5, 2021 at 3:25 PM

Be Aware of Potential Phishing Attacks

WARNING: The following message contains information provided by an anonymous user through an online webform. The user who submitted the webform has not been validated and may be using the form to submit unsafe content. Please treat the below message with caution, avoid clicking links, downloading attachments, or replying with personal information. If you believe this is a phishing attempt, please report to your agency's information security team or mail.review@azdoa.gov. For more information on phishing attempts please visit: https://espac.az.gov/security-awareness-videos and search the videos for "Phishing."

Submitted on Monday, July 5, 2021 - 3:25pm
Submitted by anonymous user: 70.177.161.29
Submitted values are:

Full Name: David W Enriquez
Agency:
Email: dd.enriquez@cox.net
Phone: 14806880729
Message:
Dear GRRC Staff, on June 11th, 2021, The Arizona Game and Fish Commission voted 5-0 on a very controversial subjective Rule to Enforce, (R12-4-303.5) a Total Ban on the use of trail cameras for the aid in the take of Wildlife.

I say this is Subjective to attempt to Enforce, because Possessing a Trail Camera is not illegal Contraband to possess and will make this Very Subjective "Gray Rule" extremely difficult to enforce by law enforcement as well as County Prosecutors. Simply Stated this is a very poor Gray Rule/Law subject to many legal challenges. The AZGFD stated this Rule was needed on an "Emergency Use" due to a potential Public Safety Issue and conflicts in the use of trail cameras, but provided no evidence showing this was a common occurring public safety issue. I have not seen any published fact based data backing up this assumption for this "Emergency" authorization to open up this Rule.

Also Per GRRC Rules, ARS 41-1055.B, when commenting directly during the public comment periods to AZGFD on this proposed rule, I stated several times in emails that I had not seen any published Economic Impact Statements this proposed Rule would have on Local and State Economies and businesses as well as Tax Dollars. AZGFD has thus far not shared or published with the public any Negative/Positive Costs associated with the passage of this Rule. What will the economic impacts be to Arizona Businesses that not only sell trail cameras and equipment , but the amount of gas, hiking equipment, UTV/ATV use, vehicle costs, food costs and lodging dollars as well as Tax dollars that are pumped into Arizona's Local and State Economies by Sportsman using trail cameras as Required by ARS 41-1055.B?

Based on my above comments, I urge your Council (GRRC) to review this rule prior to sending it to Governor Doug Duecy for his signature and require the

Arizona Game and Fish Department / Commission to provide you with all the scientific data on the potential negative economic impacts this Rule will have on not only Arizona's Tax Dollars but Arizona's businesses in this Tax revenue depressed year due to the negative impacts of COVID 19.

Thank you for your time and review of this matter.
Respectfully submitted by Mr. David Enriquez, Mesa, Arizona.

Please direct my message to: No preference

The results of this submission may be viewed at:
https://grrc.az.gov/node/17/submission/6903

GRRC - ADOA <grrc@azdoa.gov> Tue, Jul 6, 2021 at 8:45 AM
To: GRRC Comments - ADOA <grrccomments@azdoa.gov>

[Quoted text hidden]

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:39 AM
To: GRRC - ADOA <grrc@azdoa.gov>

[Quoted text hidden]

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Arizona Game and Fish Trail Camera Ban Comments - Against

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:43 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Thomas Mangione <mangionetm@gmail.com>
Date: Tuesday, June 29, 2021 at 9:00:29 AM UTC-7
Subject: Arizona Game and Fish Trail Camera Ban Comments - Against
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Hello,

I would like to take a minute to comment on the absolute overreach that is this proposed trail camera ban "for the purposes of taking wildlife."

First, on the most basic level, this rule specifically will impact only law abiding citizens. A simple search of the internet will show how many are already willing to claim they are just bird watching. Or capturing images for other non hunting related purposes. This rule will be easily avoidable, and entirely designed to suppress law abiding citizens.

Second, Game and Fish commissioner Kurt Davis has recently offered comments on this to Arizona Central, claiming that trail cameras potentially impact hikers and people admiring the scenery. How? Is there any evidence to support this? Primarily, the objective of trail cameras is for them to be as disguised as possible. I have yet to see one blocking a trail. Or so many set out that they manage to obscure nature. The entirety of the comments and the vote going against the what amounts to more than a 6:1 ratio of people being against the ban show that this issue isn't about the issue at all. It's about an individual leaving a legacy of some sort.

This issue appears more related to some form of personal vendetta than it is based in any real merit. If it were, this issue would be significantly more focused. Claims to date include hunter conflicts in areas where hunters are messing with each others equipment. Do we not see conflicts related to theft and tampering in every facet of our society? How about the fact some guides are paying others to check on hundreds of trail cameras? Where is this occurring? Why is it even a bad thing?

Cameras are keeping animals away from water. Again, where is the evidence? And if this is a thing (completing ignoring the fact cameras are small and people hunt out of blinds that are considerably larger and more invasive) how about we prohibit the use of Cameras at water?

Can they point to the evidence that hunters consistently kill animals they capture on camera? I myself have never ended up successfully hunting a buck I had on camera. I'd contend most hunters don't end up killing the buck they found and wanted on a camera. If Game and Fish wants to pass a rule, they should be forced to provide the evidence, publicly, that these things are occuring. Anything else is significant bureaucratic overreach.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: AZG&F Dept Trail Camera Ban

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:44 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Ryan Anderson <randrsn29@gmail.com>
Date: Tuesday, June 29, 2021 at 8:27:00 AM UTC-7
Subject: AZG&F Dept Trail Camera Ban
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I strongly oppose this ruling and wonder how the AZG&F Dept is going to enforce unnecessary rule. I urge you to please reject this ruling and send it back to AZG&F.

Ryan Anderson

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Game and Fish Commission Amend: R12-4-301, R12-4-303

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:45 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Wayne Holt <holtw50@yahoo.com>
Date: Tuesday, June 29, 2021 at 7:42:09 AM UTC-7
Subject: Game and Fish Commission Amend: R12-4-301, R12-4-303
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I am commenting about my concerns with this rule change. I think it is a very poorly thought out change and will be very difficult to enforce. I also think that it will be costly to enforce with little or no benefits in return for the use of limited resources. I am also concerned that thru the entire public input period the Game and Fish did nothing to address concerns or even questions about enforcement. It's my fear that many people who are using trail cameras for non-hunting purposes will be mistakenly cited and have to prove their innocence in court.

Sent from Mail for Windows 10

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Game and Fish trail camera ban

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:41 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Chris Ames <chris.m.ames@gmail.com>
Date: Tuesday, June 29, 2021 at 11:28:20 AM UTC-7
Subject: Game and Fish trail camera ban
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Good morning,

It is absolutely asinine that they banned cameras. A couple of points I'd like to make:

1. Game and fish says that using cameras goes against fair chase. Everybody knows this is a lie. They've already banned cameras that transmit real-time images and videos which most people are okay with. Most trail cameras are checked days/weeks/months after they're hung and just because you saw an animal on there yesterday does not mean that you're guaranteed to see them again. Take me for example; in 2019 I had bull elk at my hunting spot the same time twice per day, every day leading up to the hunt. Once the hunt happened I went two weeks without me or my camera catching even a glimpse of a bull. I went two weeks and didn't see anything so I went home without filling my tag. It's not real time so it gives you no advantage regarding fair chase.

2. Game and fish says that having multiple cameras at one spit scares the animals away. That's great! Scare them my way where my camera is the only camera! Any hunter's goal is to not scare the animals away, it sort of defeats the purpose of hunting so I'm not buying the lie! If hunters are concerned about a ton of people being on their spit then find a new spot. Take the cameras away and you'll have 50 dudes standing around the water hole scouting which will certainly scare the animals more than the cameras.

3. Cameras get stolen. Yep, they sure do. This is a horrible reason to ban cameras. Bikes get stolen from the front of stores so should we ban bikes? Lock the cameras up and understand that if they're left unattended outside then there's a great chance they will get stolen.

Not all of us live in the area we hunt. I lived in Yuma and hunt Payson. I'm not a professional scout so my full time job is not hunting. Cameras help me by just giving me a good starting point as to where to find the animals. If I'm unable to use the cameras, I'm going to be doing much more walking and scaring far more animals than I would if I'm able to use the cameras.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Game Camera Ban proposed by Arizona Game & Fish Commission

2 messages

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:40 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Danny Mehaffey <romper4x4@gmail.com>
Date: Saturday, July 3, 2021 at 4:16:24 PM UTC-7
Subject: Game Camera Ban proposed by Arizona Game & Fish Commission
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear Arizona Governor's Regulatory Review Council,

I am shocked by the proposed all out Game Camera ban proposed by the Arizona Game & Fish Commission. This all out ban is a huge over reach by the government. The use of "cellular" game cameras have already banned for use durring hunts which I agree with. The Commission claims fair chase, but there is NEVER any guarantee that a one specific animal is going to show up at the same time, same place, on a certain day. The use of the game cameras does not guarantee any individual to bag a wild game, little alone a certain animal that someone was able to get a photo of.

One of the main reasons for the banning of trail cameras is because they violate the Fair Chase Doctrine, which "pays respect to the traditions of hunting and angling by emphasizing the development of an individual's skills rather than reliance on practices or technologies that overwhelm the quarry's ability to elude detection or take," according to the Arizona Game and Fish Department

If this statement is true, where does the banning of technology or practices end? Will the Arizona Game & Fish Commission recomend banning GPS units, fish finders, range finders, atvs, utvs, cover scent, blinds, tree stands and ect?

In closing I am against the game camera ban. My children will no longer be able to see images of Arizona's wild game that you just don't see even if you are out hiking or hunting. Thank you!

Danny Mehaffey

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:40 AM
To: GRRC - ADOA <grrc@azdoa.gov>

[Quoted text hidden]

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Recent Game and Fish rule changes.

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Jun 28, 2021 at 10:14 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Devin Beck <beck.devin@gmail.com>
Date: Sunday, June 27, 2021 at 2:53:17 PM UTC-7
Subject: Recent Game and Fish rule changes.
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

To whom it may concern,

I am very disgusted with how the current commission of the AZ Game and Fish has gone about making a rule change regarding motion cameras. It is very apparent and clear that they opened a special rule making process based on “public safety”. I requested the reports regarding this. Turns out there is no “threat”. Under 10 reports in the last ten years. Then ,as per the rules, the Game and Fish opened public comment periods to hear what sportsmen had to say and how the Commission should vote. Turns out, in several different public comment periods, the majority of sportsmen were against any rule changes or bans on motion cameras. Despite all of this, the commissioners stated that under the guise of “fair chase” they were banning motion cameras. At no time in any of their meetings did they state the “real” reason or address the original reason that this rule making period was opened in the first place. Apparently that is due to the fact that this reason is not valid.

Because of this, the new proposed rules in regards to motion cameras should be dropped and not passed. Majority of Sportsmen are against this. An investigation into how the current AZGFD commission can propose special rule changes and then not even have evidence or approach such rule changes with these stated problems for opening such process should take place.

Thank you

Devin Beck

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: rule change, trail cameras

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:42 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: curtislindner@hotmail.com <curtislindner@hotmail.com>
Date: Tuesday, June 29, 2021 at 9:29:48 AM UTC-7
Subject: Fwd: rule change, trail cameras
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: curtislindner@hotmail.com <curtislindner@hotmail.com>

As a 69year northern Arizona resident and hunter, I support the ban on trail cameras for hunting. Protecting wildlife habitat over conflicts at water holes by outfitters and hunters has gotten really bad. The rule change is very enforceable as hunters understand and will help officers get the word out.
Thank you
Curt Lindner

--
Sent from Tohsoft.Mail for mobile

--
Sent from Tohsoft.Mail for mobile

----Forwarded Message---- From: curtislindner@hotmail.com To: grrcccomments@azdoa.gov Date: 10:02 AM Subject: rule change, trail cameras

> As a 69year northern Arizona resident and hunter, I support the ban on trail cameras for hunting. Protecting wildlife habitat over conflicts at water holes by outfitters and hunters has gotten really bad. The rule change is very enforceable as hunters understand and will help officers get the word out.
> Thank you
> Curt Lindner
>
> --
> Sent from Tohsoft.Mail for mobile

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail cam rule

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:40 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: chad <chad@mossback.com>
Date: Thursday, July 1, 2021 at 5:10:43 PM UTC-7
Subject: Trail cam rule
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Hello,
I'm asking the GRRC does not support the ban of trail cameras in Arizona.
1) the rule is completely unenforceable. How do the AZGFD wildlife managers tell if a camera aidded in the rake of wildlife when they do not know who ownes the camera and what it is being used for.
2) the state is very short of wildlife managers and they do not need to be trying to chace trail cameras around when our wildlife population is suffering from lack of water, extreme temperature, lack of food and shelter due to the fires.
3) the way the law is written the state will spend huge amounts of money and time fighting with people who like to run trail cameras.
4) the proposed rule is written very poorly. How could someone ever get prosecuted for using a camera for aid in take? They would have to have proof that the camera is why someone killed that animal and that is impossible.
5) what good does this rule really due for the state of Arizona. It will cut down on camera sales, batteries sales, fuel sales, SD card sales. Tire sales, truck repair cost etc....which all cuts sales tax and monies out of lots of local business.
6) alot of families i know spend time out in the forest running trail cameras for somthing to do to get out together and get kids away from video games and all the other bad stuff kids get into easy now days.
Thank you!
Chad woodruff
928 814 2117

Sent from my Verizon, Samsung Galaxy smartphone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail camera ban passed by AZ G&F

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Jun 28, 2021 at 10:16 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Brian Bitter <bitter24@gmail.com>
Date: Sunday, June 27, 2021 at 7:25:28 PM UTC-7
Subject: Trail camera ban passed by AZ G&F
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

To whom it concerns,

When this new rule/regulation is being reviewed by the GRRC, a few facts need to be carefully looked at. Arizona Game and Fish passed a complete ban on trail camera usage in Arizona for the take and pursuit by hunters. This hearing shouldn't of even been up for discussion per Game and Fish's own procedures until 2022, when the 5 year cycle was over. Though Game and Fish was able to get an emergency hearing to revisit this topic prior to that through the governors office due to "public safety".

That is all facts, now for more facts the Game and Fish never once mentioned public safety or any kind of threat during the meeting/public outreach/comment period/etc. They violated the governors permission for emergency hearing by lying to the governors off and Arizona's citizens. This should easily make any ruling enacted by Game and Fish null and void due to those facts. Game and Fish presented this proposed rule change to the public in direct violation of the terms of the governors office permission for an emergency hearing.

This needs to be done correctly and not for personal reasons, corruption by Game and Fish, or backroom deals. Every agency needs to be held accountable for their actions and it is your job to do that. This is a clear and obvious breach of public trust, breach of the terms per governors letter, and appears like corruption. Arizona Game and Fish needs to be held accountable for their actions, and their vote to ban trail cameras needs to be overturned due to these facts.

Have a good day,

Brian Bitter

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail camera ban passed by AZ G&F

2 messages

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Have a good day,

Brian Bitter

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:46 AM
To: GRRC - ADOA <grrc@azdoa.gov>

[Quoted text hidden]

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail camera Ban

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:42 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Loren Ennes <LEnnes@laron.com>
Date: Tuesday, June 29, 2021 at 9:01:05 AM UTC-7
Subject: Trail camera Ban
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

All

I am sending this e-mail in regards to the AZGF recommendations to ban trail cameras.

First and foremost this rule was recommended without any scientific proof or study that indeed cameras will change the daily habit of both wildlife or livestock.

I ask this board how would this rule be enforced, How can a wildlife officer determine if a animal was photo'd and then killed by a camera owner? The officer would have to make a judgement call. If a citation was issued just on his judgment (how else could he/she write a citation other than based off of what??? His/her judgement) would only open up many lawsuits.

This rule is stupid and an officer should not spend their time with this matter.

Please remember that anyone can still use cameras for wildlife viewing and the use of them will not stop!

I do not support this rule and I hope that this committee can see this rule as it is unenforceable , waste of officers time and a legal burden to the State of Arizona.

Thank you

LARON

Loren Ennes

3550 South 16th Street • Phoenix, AZ 85040

928-303-9222 - Mobile

602-232-2112 – Fax

LEnnes@laron.com • **www.laron.com**

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail Camera Ban

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:41 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: pbcormany@aol.com <pbcormany@aol.com>
Date: Wednesday, June 30, 2021 at 4:21:03 PM UTC-7
Subject: Trail Camera Ban
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

RE: GAME AND FISH COMMISSION Title 12, Chapter 4, Articles 1, 2, and 3, Game and Fish Commission Amend: R12-4-301, R12-4-303 Repeal: R12-4-111, R12-4-209, R12-4-214
Game and Fish Commission Amend: R12-4-301, R12-4-303, commonly referred to as the Trail Camera Ban.

The Commission is considering regulating trail cameras as a result of documented public concerns:
o The use of trail cameras as it relates to Fair Chase.
▪ Commission Policy on Fair Chase includes: "…new or evolving technologies and practices that provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage…" applies to areas where water is primarily point source water and game cannot escape detection.
o The use of trail cameras has become an increasing source of conflict between and amongst hunters including the sense of ownership over a water source and hunting area.
o Frequent visits to set/check trail cameras are creating a significant disturbance to wildlife during extended dry periods of the year.
o Livestock operators are concerned that frequent visits to set/check trail cameras are negatively affecting livestock operations.
o The potential biological effects of setting/checking trail cameras on point source waters, especially during the ongoing drought.
o Invasion of privacy when trail cameras photograph other people in the field.
o The high number of trail cameras on the landscape and water sources.
o The high number of trail cameras that may be on the landscape in the future (as technology continues to improve, prices go down and availability increases).
o As the state population continues to grow, the number of cameras continue to steadily increase as do complaints.
o The potential monetization of game cameras to include services to place, monitor, check and sell camera images, and if those services increase, the numbers of cameras and their use for take could dramatically increase.

I could make an argument against all of the concerns listed above, but I will limit my remarks to issues that should be important the GRRC.

With regard to the potential monetization of game cameras, the vast majority of trail camera usage takes place on national forest lands and lands administered by the Bureau of Land Management. These agencies require a permit for the commercial use of the lands they administer which includes photography and videography. A Game & Fish regulation banning the use of trail cameras would be in conflict with established federal regulations.

With regard to the invasion of privacy, recreationists on public lands have no reasonable expectation of privacy in an open air setting. Game & Fish proposes no restriction on the use of traditional cameras or cell phone cameras in direct contradiction of this concern. A ban on trail cameras would necessitate a ban on traditional cameras and cell phone cameras to prevent discrimination against a class of outdoor recreationists.

With regard to disturbance to wildlife, and livestock operations and potential biological effects, the Game & Fish Commission was asked to cite the studies leading to these conclusions. The Commission was unable to do so because no studies have been conducted and the Commission refused to request such studies prior to acting on the proposed regulatory changes. The Commission proposes a restriction that adversely impacts a class of outdoor recreation public based on pure speculation.

The regulation proposed by the Game & Fish Commission has no restriction on the use of trail cameras outside of the take of game. Recreationists are free to place cameras wherever and whenever they please and have no restriction on the frequency of visiting the camera locations. This lack of restriction is in direct contradiction to all of the "reasons" for banning the use of trail cameras for the purposes of taking game.

With regard to enforceability, determining the use of a trail camera for the purpose of the take of game versus other recreational activities is difficult, if not impossible, to prove. How can a law enforcement officer be expected to determine the state of mind of the person viewing a picture from a trail camera, especially when such viewing can take place at a location other than the location of the taking of game?

With regard to necessity and effectiveness, the Game & Fish Commission has not made a request for any study nor can the Commission cite any study which demonstrates a need for the proposed regulation. Without any quantifiable benchmarks as the result of thorough study, the effectiveness, or lack thereof, cannot be determined.

Finally, outdoorsman have retained counsel and will be challenging the regulation if allowed to become law. Any persons charged with an offense under the proposed regulation will request a jury trial and will be acquitted. The legal challenge and fruitless prosecutions will be costly to the taxpayers of the state.

I urge the Committee to reject the proposed regulation due to the lack of necessity, the inability to determine the benefits and effectiveness, and the adverse impact on the public.

Respectfully,

Paul Cormany
Wittmann, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail Camera Comments

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:39 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Kathy Tory Brock <brocks@kanab.net>
Date: Tuesday, July 6, 2021 at 11:00:18 AM UTC-7
Subject: Trail Camera Comments
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

July 6, 2021

To Whom it May Concern:

I hope you take a close look at the proposed trail camera law that the Commission has set forth. It is irresponsible and dangerous for the public, I believe there will be confrontations with people running trail cameras for fun and people that don't know it is legal to run them if you don't intend to hunt/guide in that unit. In my opinion, it will have inevitable consequences that will cause confrontations and possible bodily harm for an **unenforceable** law!

Thank you for your consideration.

Tory Brock

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail camera review

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:43 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Doug Boykin <doug.boykin@yahoo.com>
Date: Tuesday, June 29, 2021 at 8:48:09 AM UTC-7
Subject: Trail camera review
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Eric Game Warden <epodoll@azgfd.gov>

Gentlemen/Ladies,
Although I do not use trail cameras personally, you all can't (or won't) even enforce the banned camera use (cameras linked to telephones) easy tracked, so what makes you think you can enforce this new proposition? Is it just another revenue generator for the ones you want to target, or is it just something else to take up time to justify someone's job or please let me know what is the reason? I certainly don't condone the use of ANY trail camera that aids ANY hunter that uses it for taking game, because in Arizona waterholes are scarce and all the wildlife uses those waterholes, but I believe this law like many others is of no use as far as game management, only another tool to impede on the freedoms of Americans life liberty and persist of happiness. Plain and simple. I vote NO just scrap it altogether and deal with the jerks that fight over waterholes, and the ones currently using phone linked live cams to aid them in taking game animals.
Thanks

Cheers,
Doug Boykin
Sent from my iPhone
307-223-6922

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail Cameras

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:42 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Rusty Walters <Rusty.Walters@okland.com>
Date: Tuesday, June 29, 2021 at 11:10:57 AM UTC-7
Subject: Trail Cameras
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

To whom it may concern,

Please reconsider the ban for “hunters” to use trail cameras. I am a avid hunter and don’t believe these cameras affect wildlife.

If you were to ban trail cameras setting them on water sources would be my only agreement.

Thanks

.....

Rusty Walters | Assistant Superintendent

OKLAND CONSTRUCTION

1700 N. McClintock Dr. | Tempe, AZ 85281

O 480.990.3330 **M** 602.525.4665

F 480.990.1633

www.okland.com | @oklandconst | Linkedin

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail Cams

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:44 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: michael chamberlain <studlyduck@gmail.com>
Date: Tuesday, June 29, 2021 at 7:54:46 AM UTC-7
Subject: Trail Cams
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

This ban on trail cams is a complete sham. There were more people against the ban then for the ban. Please repeal this ban.

It is not based on science, or facts.

THANKS

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Game camera ban

3 messages

Larry Duke <larryduke77@icloud.com> Tue, Jun 29, 2021 at 8:25 AM
To: grrc@azdoa.gov

Good morning. I'm just writing you to ask that you do NOT ALLOW the proposed Game Camera ban to go into affect. The AZGFD commissioners did not take into account the publics input. Rather, they already had their minds made up based on pressure from some select Special Interest Groups. Please review the comments, both for and against this proposed ban and you will see that the vast majority of public comment was overwhelmingly AGAINST THIS BAN, yet they proceeded with an all out ban. They easily could have modified the time frames which cameras are allowed, if they were indeed trying to protect "Fair chase" as they claim, by banning them "during any active hunting seasons", but allowing them prior to that period? Thanks for your consideration in this matter.

Sent from my iPhone

GRRC - ADOA <grrc@azdoa.gov> Tue, Jun 29, 2021 at 8:53 AM
To: GRRC Comments - ADOA <grrccomments@azdoa.gov>

[Quoted text hidden]

Krishna Jhaveri <krishna.jhaveri@azdoa.gov> Mon, Jul 19, 2021 at 10:43 AM
To: GRRC - ADOA <grrc@azdoa.gov>

[Quoted text hidden]

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Game camera ban

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Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

GRCC Study Session, Agenda Item 5

Jim Unmacht <huntttheworld2@gmail.com> Tue, Jul 27, 2021 at 9:32 AM
To: grrccomments@azdoa.gov, grrc@azdoa.gov

To the Governor's Regulatory Review Council:

Madame Chair and Members of the Council, I just learned this morning that Item 5 on your agenda would be discussed today. I thought it was set for your meeting next week on August 3rd. I have a conflict today and am unable to participate and comment on the subject.

Consequently, I would appreciate it if you would consider my January 31, 2021 comments to the AZ Game & Fish Commission (Commission) when this item comes up for discussion on the subject.

I support the Commission's action to restrict the use of cameras for the take of wildlife.

Thank you!

Jim Unmacht

New River, AZ

Comment on Commission Rulemaking for Trail Cameras - 1-31-2021.pdf
181K

January 31, 2021

Chairman Davis and Fellow Commissioners:

In 2018 the Commission recognized trail cameras were becoming problematic on several fronts. With technology increasing and at the same time costs decreasing, camera proliferation accelerated across Arizona's landscape. In some hunt units, there seemed to be more cameras than water in the drought stricken tanks.

At the Payson meeting in June of 2018, the Commission stood at the crossroads to control the onslaught of trail cameras, but they only went part way. Anticipation was high the right decision for wildlife, fair chase and all outdoor enthusiasts would be rendered. However, as the discussion ensued, the Commission acquiesced to a small vocal group in attendance, eliminating only live action cameras and leaving the balance unconstrained.

Since then, I was fortunate to draw a Strip deer tag after a 14 year wait, and an early archery bull tag after a 12 year wait. Those two hunts allowed me to witness firsthand the mess trail cameras are inflicting on the landscape.

Some issues to consider:

1. Ethics: Outdoor enthusiasts, hunters, sportsmen, sportswomen, outdoors people, or whatever you call them, need to self-govern. Respect of the opportunity to hunt, respect to the wildlife, respect to the land and respect to fellow hunters needs to be part of the education process. Checking cameras during another hunt, stealing or vandalizing cameras and cards, disrupting wildlife with squelchers, disrespecting public and private property, pursuit with night vision goggles, individually and collectively do our pastime no favors.

2. Technology: The speed with which technology moves is not slowing down and its impact is subjective. However, if it is not controlled there will be no end, other than the end of hunting as we know it. Trail cameras are a convenience that allows someone to use photo surveillance 24 hours a day, 7 days a week from the comfort of their home. On a water, nothing can get a drink without a photo, or ten, or even dozens. Is that not an advantage?

3. Landowners: Access in Arizona will continue to be one of the most critical issues facing hunters and anglers. Advocating for access is at the forefront of many legislative and administrative efforts. How many gates need to be left open, how many fences need to be cut, how much livestock will be lost, how many water tanks need to be damaged, and how much trash needs to be left on a landowner's private property or on a public land lease for that matter - before the gate is locked? Did the camera do it, no, but the person behind the camera might have been the responsible party.

4. Public land resources: How many seeps, springs and water catchments have new trails or roads leading to them so cameras can be checked? How much cover, such as bushes and trees around water have been modified or cut so the camera has a sure shot? It might not have been a hunter, but hunters will be blamed.

5. Wildlife Behavior: While maybe anecdotal, one must wonder how animal behavior (wild and domestic) is altered because of daily camera checks for multiple cameras on a water source? When hunting was free of cameras, wildlife got a reprieve from the hunt after sunset. That is no longer the case. There is no reprieve, and while a hunter might not be there in person, the date

and time is imprinted on every photograph, clearly giving the camera operator an advantage over the animal.

6. Camera locations: Water in Arizona is a magnet for animals out of necessity to survive, and consequently has become a magnet for the cameras. Some have used the argument to push cameras a distance off waters. If that would happen, you would likely have more cameras ringing that water along any access point to the source. The net result would be no positive difference.

7. Fair Chase is the bottom line. AZGFD defines Fair Chase as follows:

   > "Fair chase is the ethical, sportsmanlike and lawful pursuit and take of free-range wildlife in a manner that does not give a hunter or an angler improper or unfair advantage over such wildlife."
   >
   > The following criteria will be used to evaluate whether a new technology or practice is a fair chase issue:
   >
   > "A technology or practice that allows a hunter or angler to locate or take wildlife without acquiring necessary hunting and angling skills or competency. • A technology or practice that allows a hunter or angler to pursue or take wildlife without being physically present and pursuing wildlife in the field. • A technology or practice that makes harvesting wildlife almost certain and/or the technology or practice prevents wildlife from eluding detection and/or take. "

   Two criteria standout here; the trail camera allows the hunter to locate wildlife without acquiring necessary hunting skills or competency, and the trail camera eliminates an animal's ability to elude detection.

   An advantage has been gained to pursue and potentially take the animal. While the camera will not kill it, and the harvest is not a given, the ethos of fair chase has been violated.

8. In my mind our actions now will govern what we want hunting to look like. While most of us want to enhance and perpetuate it, others do not, and we must be wise enough to think ahead to those challenges. I think this authority needs to be with the Commission and not in the legislature, or through the ballot box.

   - Do we want to recruit new hunters and teach them traditional values, techniques, and hunting skills, or teach them how to place a camera and check a photo card?
   - Do we want to impress upon them the importance of ethics in the process as well as ethical pursuit of the quarry?
   - Do we want to have them take ownership for their actions and not only respect the landowners, but the public land we enjoy?
   - Do we self-govern our community to ensure fair chase is really fair? Technology will not stop testing the concept.

The time to put a lid on the explosion of trail cameras across our state related to the take of wildlife is now. I support the Commission's effort to curtail the use of trail cameras for the take of wildlife and urge you to proceed with the Rulemaking process.

Jim Unmacht

New River, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

FW: Request to review before voting on AZGFD trail cameras complete ban- concerned citizen and hunter of Az

bowhunter4life@cox.net <bowhunter4life@cox.net> Tue, Jul 27, 2021 at 9:32 AM
To: grrc@azdoa.gov

Hello Arizona's Governor Regulatory Review Council,

As you are aware the AZGFD commission voted unanimously, on June 11th, 2021, to ban the usage of trail cameras by hunters for the pursuit and take of wildlife in Arizona. They achieved this through an emergency rule through the Governor's office. Their reason stated that trail cameras are a Life Safety pubic concern, this was needed according to the AZGFD department to open up an Emergency Rule making within the Executive order guidelines. During each of the open comment commission meetings in January, March and June it was very apparent the commissioners presented falsified information to the Governors office to achieve the emergency rule making ability enact a rule banning a practice they consider unethical, not for "Life Safety" as originally presented. Instead it was to push their personal agenda stating fair chase as the problem. Such as these few small clips paraphrased from Commissioners, Kurk Davis stating before voting to ban while reading a prewritten statement after 3 hours of public comments by citizens, "Cameras do not respect wildlife," "Cameras improve commercialization and businesses growing to sell photos to customers," "Fair chase issue with guide services, use cameras, not ethical," "Cameras impacts an individual's quality of hunts." In addition we also have Commissioner Todd Geiler, "if we do nothing about trail cameras, the Legislative will take over the AZGFD department to manage wildlife." Or Commissioner, Bill Brake "I had a whole speech written up, people are fighting over water holes to hunt over, it is bad now and will keep getting worse as state grows," "What scares me the most, Arizona is becoming like California, Oregon, Washington and the Legislature will take over managing wildlife and not for hunters." also Commissioner James Goughnour, "Trail cameras impacts hunt quality of hunters, "Fair Chase, the AZGFD has a fair chase issue throughout Arizona and cameras are not fair chase" adding to the same statements of the other commissioners, Commissioner Clay Hernandez stated "Just came on the commission and was encouraged to understand the North American Model, what I read and understand trail cameras are not fair chase and because they are, I vote to ban."

It is difficult as a citizen and hunter within Arizona for over 40 years to witness the AZGFD commission not following their own protocols and witnessing them unethically using workarounds to ramrod through the emergency rule procedural process through the Governor Executive Order in which they expressly stated the reason for the need for an emergency rule making session was the "Life Safety of the public" yet tis was never discussed again. Witnessing the open commission meeting in person, there is no question they falsified information in order to get their emergency rulemaking open and that their "Life Safety" rational clearly had no bearing on the actual reasons for their personal agenda to ban trail cameras. From the letter to open the emergency rule making, "The use of trail cameras pose an increasing threat of breach of peace as social media surrounding the use of trail cameras indicate potential for violent confrontation between those who support their use and those opposed to such methods. Violent conflict is likely to occur when those who oppose the use of trail cameras encounter someone while placing a trail camera." Why is it the Commissioners did not address and layout these Life Safety concerns as reason to ban?

What many concerned citizens and myself have found troubling is there has been no public outreach before the October letter or throughout the process to bring public awareness of Life Safety concerns as stated by the department to open up an emergency rule making. As you can witness for yourself- when each commissioner spoke to vote on trial cameras, with statements that were pre written by each Commissioner prior to the public hearing in Payson AZGFD [azgfd.com] was twisted with excuses why trail cameras do not meet "fair chase" within their new definition. Not once did they address banning trail cameras due to public safety. Why? Was this false information used to meet Mr. Ducey's guidelines regarding emergency sessions completely fabricated as to help satisfy a personal agenda? It sure appears this is the case, as the AZGFD department has not performed public outreach to address what they call an emergency life safety imminent concern for public welfare. Additionally, within the 2021 hunting regulations the only public outreach of roles and responsibilities are everything but trail camera life safety. Please see page 14, 51, 80, 81 and 82. Why?

2021-22-Arizona-Hunting-Regulations_210604.pdf (amazonaws.com)

AZGFD

Thank you

Mike Ornoski

Arizona Native for 48 years

2 attachments

GRRC letter MO.docx
17K

AGFD- Cams.pdf
64K

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As you are aware the AZGFD commission voted unanimously, on June 11th, 2021, to ban the usage of trail cameras by hunters for the pursuit and take of wildlife in Arizona. They achieved this through an emergency rule through the Governor's office. Their reason stated that trail cameras are a Life Safety pubic concern, this was needed according to the AZGFD department to open up an Emergency Rule making within the Executive order guidelines. During each of the open comment commission meetings in January, March and June it was very apparent the commissioners presented falsified information to the Governors office to achieve the emergency rule making ability enact a rule banning a practice they consider unethical, not for "Life Safety" as originally presented. Instead it was to push their personal agenda stating fair chase as the problem. Such as these few small clips paraphrased from Commissioners, Kurk Davis stating before voting to ban while reading a prewritten statement after 3 hours of public comments by citizens, "Cameras do not respect wildlife," "Cameras improve commercialization and businesses growing to sell photos to customers," "Fair chase issue with guide services, use cameras, not ethical," "Cameras impacts an individual's quality of hunts." In addition we also have Commissioner Todd Geiler, "if we do nothing about trail cameras, the Legislative will take over the AZGFD department to manage wildlife." Or Commissioner, Bill Brake "I had a whole speech written up, people are fighting over water holes to hunt over, it is bad now and will keep getting worse as state grows," "What scares me the most, Arizona is becoming like California, Oregon, Washington and the Legislature will take over managing wildlife and not for hunters." also Commissioner James Goughnour, "Trail cameras impacts hunt quality of hunters, "Fair Chase, the AZGFD has a fair chase issue throughout Arizona and cameras are not fair chase" adding to the same statements of the other commissioners, Commissioner Clay Hernandez stated "Just came on the commission and was encouraged to understand the North American Model, what I read and understand trail cameras are not fair chase and because they are, I vote to ban."

It is difficult as a citizen and hunter within Arizona for over 40 years to witness the AZGFD commission not following their own protocols and witnessing them unethically using workarounds to ramrod through the emergency rule procedural process through the Governor Executive Order in which they expressly stated the reason for the need for an emergency rule making session was the "Life Safety of the public" yet tis was never discussed again. Witnessing the open commission meeting in person, there is no question they falsified information in order to get their emergency rulemaking open and that their "Life Safety" rational clearly had no bearing on the actual reasons for their personal agenda to ban trail cameras. From the letter to open the emergency rule making, "The use of trail cameras pose an increasing threat of breach of peace as social media surrounding the use of trail cameras indicate potential for violent confrontation between those who support their use and those opposed to such methods. Violent conflict is likely to occur when those who oppose the use of trail cameras encounter someone while placing a trail camera." Why is it the Commissioners did not address and layout these Life Safety concerns as reason to ban?
What many concerned citizens and myself have found troubling is there has been no public outreach before the October letter or throughout the process to bring public awareness of Life Safety concerns as stated by the department to open up an emergency rule making. As you can witness for yourself- when each commissioner spoke to vote on trial cameras, with statements that were pre written by each Commissioner prior to the public hearing in Payson AZGFD [azgfd.com] was twisted with excuses why trail cameras do not meet "fair chase" within their new definition. Not once did they address banning trail cameras due to public safety. Why? Was this false information used to meet Mr. Ducey's guidelines regarding emergency sessions completely fabricated as to help satisfy a personal agenda? It sure appears this is the case, as the AZGFD department has not performed public outreach to address what they call an emergency life safety imminent concern for public welfare. Additionally, within the 2021 hunting regulations the only public outreach of roles and responsibilities are everything but trail camera life safety. Please see page 14, 51, 80, 81 and 82. Why?

The New 2021 hunting regulations 2021-22-Arizona-Hunting-Regulations_210604.pdf (amazonaws.com) [azgfd-portal-wordpress-pantheon.s3.us-west-2.amazonaws.com] Do not address ethics or the public safety concerns that was brought to the governor's office to open the emergency rule that trail cameras are going to cause harm to the public.

Lastly, as you can see during the video of the commission meeting vote, there were substantive talking points that were prewritten why each commissioner voted to ban trail cameras due to their personal ideas of fair chase. Within the hunting regs page 51, fair chase. Within AZGFD own definition "fair chase is not something that is enforceable by law." It sure appears the AZGFD department and the Commission blatantly and falsely used the Governors Emergency rule to create a new law that may be used to harm the hunting public who may use trail cameras that are part of their public outdoor enjoyment.
Fair chase is the ethical, sportsmanlike and lawful pursuit and taking of free-range wildlife in a manner that does not give a hunter or an angler improper or unfair advantage over such wildlife. Fair chase has been embraced as the proper conduct of a sportsman/ sportswoman in the field and has been taught to new hunters for more than a century. It pays respect to the traditions of hunting and angling by emphasizing the development of an individual's skills rather than reliance on practices or technologies that overwhelm the quarry's ability to elude detection or take. In many situations, fair chase is not something that is enforceable by law. Rather it should be guided by each person's ethical compass, which compels them to do the right thing when no one else is watching. The support of fair chase and respect for the traditions of hunting and angling are every sportsman's responsibility.

I would request you vote NO thus stopping this measure without requiring the AZGFD department to prove they have brought substantial public awareness of use of trail cameras as stated within the October 2020 letter. It would also be prudent to have the Commissioners show the eminent threat to Life Safety by which this emergency rule making session was approved on. Or is this session just fruit from a poisonous tree. There is nothing within their social media, website, or hunting regulations on ethics, roles and responsibilities with use of trail cameras. Why would they not do so if trail cameras were truly an "increasing threat of breach of peace as social media surrounding the use of trail cameras indicate potential for violent confrontation". Maybe all the social media rumors are true, the AZGFD commissioners blatantly falsify information in order to pass a rule banning a practice they consider unethical and for their own personal gain.

October 27, 2020

Charles Podolak
Natural Resource Policy Advisor, Office of the Governor
1700 W. Washington
Phoenix, AZ 85007-2888

Re: Request Exemption from Rulemaking Moratorium to Initiate Rulemaking to Regulate the Use of Trail Cameras for the Take of Wildlife

Dear Mr. Podolak,

The Arizona Game and Fish Department (Department) respectfully submits this letter requesting permission to initiate rulemaking to regulate the use of trail cameras for the purpose of taking, aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife.

Under the guidance of our Assistant Attorneys General the Department requests permission to pursue rulemaking as authorized under Executive Order 2020-02 - 1(b), which allows an agency to promulgate a rule to prevent a significant threat to the public health, peace, and safety.

The use of trail cameras pose an increasing threat of breach of peace as social media surrounding the use of trail cameras indicate potential for violent confrontation between those who support their use and those opposed to such methods. Encounters between these two groups have been more confrontational with those who oppose the use of trail cameras resorting to vandalism, and those who support the use of trail cameras having a sense of entitlement over the areas in which the trail cameras were placed. Violent conflict is likely to occur when those who oppose the use of trail cameras encounter someone while placing a trail camera. A rule under this exemption would prohibit the use of trail cameras for the purpose of taking or aiding in the take of wildlife, and locating wildlife for the purpose of taking or aiding in the take of wildlife.

In an effort to comply with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

If you have any questions, please contact Celeste Cook at (623) 236-7390 or by email at ccook@azgfdgov.

Sincerely,

Ty E. Gray
Director

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Game and Fish Department: Title 12, Chapter 4, Articles 1-3

Howard Frampton <hframpton@gmail.com> Tue, Jul 27, 2021 at 1:16 PM
To: grrc@azdoa.gov

Thank you for the meeting today and the ability to comment and have our voices heard.

The whole process of Request Exemption from Rulemaking Moratorium to Initiate Rulemaking to Regulate the Use of Trail Cameras for the Take of Wildlife that was sent from Director Ty E. Gray of AZGFD on 10.27.2020 only requested that the agency be allowed to propagate a rule to prevent a significant threat to the public health, peace, and safety. There is no mention of Fair Chase in the request for the exemption. The only mention regarding Fair Chase comes in the reply from Mr. Podolak where he inserted the wording regarding Fair Chase. Since the Director did not request this, how does Mr. Podolak have the authority to add this language?

All commissioners in their prewritten public comments at the close of the public meeting in June regarding this issue never mentioned the public safety issue and only the Fair Chase issue. IF they felt that Fair Chase was the driving concern for the Off Cycle rule change, as was restated by Mr. Davis today, why was it not the center and focus of the original request from Director Gray or a bigger questions is way was it not addressed by the commission back in 2018 when they addressed trail cameras before.

I would respectfully request that you not allow this Exemption Request change now and allow AZGFD to complete the necessary studies and impact to the wildlife of AZ as mentioned by Mr. Davis today. They can then present this issue in 2023 when it is the correct time to address these changes.

Thank you,
Howard Frampton

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Arizona Game and Fish Commission Rule Emergency Rule Change

KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov> Thu, Jul 29, 2021 at 1:18 PM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Ron Nixon <bassinix@gmail.com>
Date: Tuesday, July 27, 2021 at 4:20:11 PM UTC-7
Subject: Arizona Game and Fish Commission Rule Emergency Rule Change
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: bowhunter4life@cox.net <bowhunter4life@cox.net>, Josiah Scott <josiahscott5@gmail.com>, Nat Nickele <nat@nickelelaw.com>, Richard Lyons <rlyons@kellylyonslaw.com>

Please see my final edit and submission below:

Madam chair, members of the GRRC council:

First of all, today July 27, 2021 at the GRRC study session, the representative from the attorney general's office stated about the Arizona Game and Fish Commission's rulemaking session incorrectly. This was not a regular rulemaking session. The Arizona Game and Fish Department's 5-year, regular rule making session and review is starting this month actually. This submission to the GRRC was granted via an emergency rulemaking session quoting that trail cameras posed an "Eminent Public safety threat" because of chat sessions on social media pages. This rulemaking was a giant bait and switch. The AZGFD went for EMERGENCY RULEMAKING then provided ZERO proof of the emergency. There is little to no verified and documented proof that a few cameras hanging on a tree or around a waterhole presents any eminent threat to public safety. The only thing the 5 commissioners referred to in their prepared speeches at the June 11th final meeting before their 5-0 vote for this outright ban, was they all addressed how use of cameras was against "Fair Chase." If you look on the Arizona Game and Fish Department website, they specifically state that "FAIR CHASE is not something that is enforceable by law" yet here we are...with 5 commissioners and some "top brass" at the Department trying to regulate something based on Fair Chase. They utilize hunting celebrities like Jim Shockey and Randy Newberg to help promote fair chase, yet neither of those 2 would come forward on the subject of trail cameras because they both use them in their scouting for hunts. The irresponsible use of the emergency rulemaking exception to the Governor Ducey's executive order moratorium on rulemaking is shameful and gross misuse of authority. It's government corruption that should not be tolerated.
Throughout the Arizona Game and Fish Department website you'll also find several times where the department is very proud of how they manage wildlife based on the North American Model of Wildlife Conservation. Within this "Model" are 7 concepts. I won't address them all, but just a few. The first is that "wildlife is held in the public trust"...and the public has weighed in on this with heavy input as to not wanting any further camera use restrictions. In fact, we submitted a petition with over 7400 petitioners (and it was part of the public record at the final meeting on June 11th) who did not want these restrictions. One of the commissioners wanted to excuse that as irrelevant because some of those signers do not have any vested interest because they are out of state or perhaps even international....yet that conflicts with concept 4 that "hunting and angling is an opportunity for all" and also in fact concept #6 as well, which is that "wildlife is an international resource."

Concept 3 of the North American Model of Wildlife Conservation "Hunting and Angling Laws are Created Through a Public Process," which it is very obvious that regardless of public input and the overwhelming lack of support for this rule, the commission and the department moved forward with zero care for that input. Evidence of this is the 5-10 minute or longer speeches that were prepared and read at the June 11th meeting. They had their minds made up and weren't going to let any in-person, public comments sway their opinions.

The final concept of the North American model of wildlife conservation is number 7 "Science is the basis for wildlife policy." The department has yet to provide any scientific proof of the need of this rule change and trail camera ban. You would think the Dept would reach out to their own people....their Wildlife Managers who all have Bachelors of Science degrees in wildlife conservation and management. But after communicating with several of those wildlife managers, none of them were consulted. Not one. The Department even admitted at the public meetings that there are no studies to prove that there is a link between trail cameras and their effect on wildlife. In these conversations with the wildlife managers the overwhelming response has been that banning of trail cameras would actually probably increase human interaction at water sites by placing more people there for serval hours at a time to survey and watch wildlife ahead of their hunts. This would be instead of the way it is now which is where a few people pop in to a site for a few minutes throughout the week. I think humans being set up on every waterhole day and night, 24/7 has a lot more negative impact then a few cameras, THAT WILDLIFE CANNOT DETECT just hanging on a fence post or a tree. Look at this from the standpoint that there is not an animal in the wild that hasn't seen a trail camera. They are used to it.... just like they are used to a gate, or boulder, or an old tire dumped on the ground. Make no mistake, This rule will make things worse for wildlife. So the department ignored five of the seven main concepts of their own Wildlife Management policy.

Finally this is not an enforceable rule. The only way to enforce this if passed, would be if a trail camera was found anywhere in a unit, the game warden would have to set a 24 hour stake out until someone checks it, or the department would have to acquire a search warrant for EVERY Tag holder to check their digital records on laptop computers, desk top computers, cell phones etc. We are talking about hundreds of people being investigated. This is a HUGE burden on the department game wardens, and a colossal waste of their time. This also flies in the face of the Governor's executive order on rulemaking.

Former chairman Kurt Davis also commented at the GRRC study session how one of the well recognized hunting organizations agreed with their decision to ban trail cameras. That is a misrepresentation of the truth and an overreach statement. Boone & Crockett acknowledged that although they didn't think trail camera use should be considered a violation of Fair Chase, they respected the rights of individual states to rule on them as they saw fit. That is a far cry from, "Boone and Crockett agreed with us." And once again, Former Chairman Davis could not speak to any "eminent threat of public safety" regarding trail cameras....only the politics behind fair chase. So much so, that he needed to be shut down for ranting so long.

Madam chair, members of the council, please pay attention to the facts in this rule making. The facts are, the department could not back up...with any proof, their emergency rulemaking request. That alone should get this thrown out. They should not be able to get away with requesting an emergency rulemaking session, not a regular rulemaking session, I reiterate an emergency rule making session, for a reason that they do not back up at all once they complete it. It is government corruption and shameful. There is no scientific basis for this rule change, they are contradicting themselves and how they manage wildlife. They did not give proper weight to the opinions of the public and their stakeholders, only went with their personal feelings on trail cameras and in wanting people to hunt like, "our ancestors used to." This rule is worse for wildlife than allowing trail cameras to be used as they are now for scouting purposes. This is an unenforceable rule that will create a regulatory burden on Department staff and officers wasting the valuable field time of their wildlife managers while actual criminals get away with wildlife poaching and felonies. This entire rule is based on personal vendetta and opinions of a only few people within the Arizona Game and Fish Department. That is not how we regulate in this country.

Thanks,

Ron Nixon
623-826-0624

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Trail cameras rule

KRISHNA JHAVERI <krishna.jhaveri@azdoa.gov> Thu, Jul 29, 2021 at 1:17 PM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: Loren Ennes <lorenennes@gmail.com>
Date: Tuesday, July 27, 2021 at 7:21:30 PM UTC-7
Subject: Trail cameras rule
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear board
I am writing this email in regards to your upcoming ruling pertaining to the trail camera rule change recommended by the Arizona Game and Fish.
As I am sure you are aware rule/ laws recommended by the Arizona game and fish must be based off of sicenitific study not on assumtion or pressure.
No such evidence has been presented too the public that supports a rule such as this.
The public had offered to the Game and Fish board several ideas that would I believe would work for both the commission and the public and not one was considered.
This rule request is to harsh and will take the opportunity from peopel with medical hardships from experience the outdoors and seeing wildlife that they may never have the chance to see.
Another thing that makes me very concerned is how can this rule be enforced ?
How could a wildlife officer make a honest call if a rule has been broken if he seen a camera where a hunter has taken a legal animal.
First he would have to prove the camera is the hunters, them confirm there has been pictures of the animal on the camera.
If he cannot honestly prove a law has been broke and writes a ticket to the hunter he is baseing the ticket on assumption.
I do not see any court in this state finding in the states favor.
Sounds like a waste of time for both the courts and officer.
I ask the board to stop this rule now because no sicenitific facts and the trouble enforcing this rule.

The following materials include: (1) a comment Council staff received on July 26, 2021 from Richard Lyons in opposition to the Department's rulemaking and (2) the Department's July 27, 2021 response to Mr. Lyons's comment and supporting documentation.

KELLY & LYONS

Richard D. Lyons, Esq.
Trial Attorney
rlyons@kellylyonslaw.com
480.867.3414

MEMORANDUM

To: Governor Regulatory Review Council

From: Richard D. Lyons, Esq.

Date: July 26, 2021

Subject: The Unlawful Attempt by Arizona Game & Fish to Ban Trail Cameras

---

I. Introduction.

This law firm represents a group of responsible, law-abiding Arizona sportsmen. They object to the Arizona Game & Fish Department's attempts to restrict hunters from using trail cameras (proposed rule amendments to R12-4-301, R12-4-303) (the "Proposed Rule").

The Proposed Rule is unlawful and will be stricken if, and when, it is challenged in court. The Proposed Rule violates two separate provisions of Governor Ducey's Executive Order 2021-02. The Proposed also violates Arizona Revised Statute § 41-1038.

In addition to being unlawful, the Proposed Rule would have a negative impact on small businesses and harm Governor Ducey politically.

The following memorandum details some of the issues the Governor and the Commission will have to address to should this rule be approved for adoption.

II. Trail Cameras and the Proposed Ban

Trail cameras are video cameras placed in the outdoors. They are not "live action"[1] but instead document days or weeks of footage until the owner physically retrieves the camera. They are used by a variety of individuals, including property owners, photographers, ranchers, and hunters.

[1] Live action cameras were banned by Rule of Arizona Game & Fish in 2018.

The Proposed Rule would prevent hunters from using trail cameras to assist them in locating or taking wildlife. (*See*, R12-4-303, Unlawful Devices, Methods, and Ammunition).

As a practical matter, the Proposed Rule makes little sense. Enforcement will be nearly impossible. Unless somebody puts up a camera literally right in front of a warden, tying a particular camera to a particular individual in the outdoors will be impossible. Proving the intention of the person placing the camera will be impossible. Arizona will be the first state with this limitation on hunters, which will impact hunting tourism. Many people will disobey this rule, so law-abiding hunters like my clients will suffer.

III. The Governor's Executive Orders and Arizona Law Prohibit the Proposed Rule.

The Proposed Rule would not and will not endure a court challenge. In 2020 and again in 2021, Governor Ducey entered separate executive orders. Both orders require that an economic impact analysis be performed before a new rule can be entered. That analysis has not been performed, the public has not had an opportunity to assess the impact on small business, and the Commission does not have the benefit of such analysis. For that reason alone, the Proposed Rule would and will be stricken when challenged in court.

Additionally, the separate executive orders require that any new rule "prevent a significant threat to public health, peace or safety." My clients previously asked for evidence of threat to public health, peace or safety. In return, Arizona Game & Fish offered only a few examples of what the commissioners considered "conflicts" between hunters, and they misled my clients about the particulars of those conflicts.

A.R.S. § 41-1038 reads that '"to protect public health and safety" means the immediate need to address or prevent an outbreak of an infectious disease, a disaster or any other catastrophic event.' Here, the five commissioners imagined that trail cameras will be the source of individual conflict between hunters, and they have used those imaginations as bases for enacting this rule.

The commissioners acted illegally, and the Proposed Rule will be stricken when challenged. The Governor's executive orders have meaning, and if no rule can be enacted unless there is a real and definable threat to the safety of the public at large, the Proposed Rule cannot be enacted.

The Proposed Rule violates A.R.S. § 41-1038 without consideration to any of Governor Ducey's executive orders. That statute requires that if a rule infringes on property rights, it must either be (1) a component of a comprehensive effort to reduce regulatory restraints or burdens, or (2) necessary to implement statutes or required by a final court order or decision. Arizona Game & Fish would prevent rural hunters from using trail

cameras on their own private property. The rule must therefore be part of an effort to reduce regulation (not so) or made necessary by court action (not so).

IV. Under Arizona Law the Council Cannot Approve the Proposed Rule

The motivation of the five commissioners is transparent upon a review of the written material provided to the commission, and by listening to prior public meetings. The commissioners believe personally that trail cameras should be banned pursuant to the "Fair Chase" doctrine. They are free to have those beliefs, as are any people who may have commented on or supported the Proposed Rule.

However, we are a nation and state of laws, and the laws apply to would-be executive rule-makers. Governor Ducey ordered no more rules in 2020 and 2021, unless there is a threat to public health or safety. There is no threat to public health or safety by hunters using trail cameras.

As it is, the five commissioners have declared there is a threat to public safety on false information. Below are the arguments advanced in support of the new rule in the materials provided to the commission. All possible references to threats to public safety, the necessary justification for this new rule, are in red.

> o Commission Policy on Fair Chase includes: "…new or evolving technologies and practices that provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage…" The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.
>
> • The use of trail cameras has become an increasing source of conflict between and amongst hunters, including increased traffic by hunters checking cameras for future hunts, during the hunts of others.
>
> • Frequent visits to set and/or check trail cameras cause disturbance to wildlife, which may be exacerbated during extended dry periods of the year and during drought conditions.
>
> • Livestock operators are concerned that frequent visits to set and/or check trail cameras are negatively affecting livestock operations.

• Invasion of privacy when trail cameras photograph other people in the field without permission.

• The potential monetization of game cameras to include services to place, monitor, check and sell camera images, and if those services increase, the numbers of cameras and their use for take could dramatically increase.

• Trail camera use has also been raised with the State Legislature and legislation has previously been introduced that has so far not advanced because the Commission maintains the authority to examine this issue through rulemaking.

It is obvious that there is no significant threat to public health or safety. The commissioners sense that there will be more visits to the outdoors, so there will be conflict. How convenient. The commissioners are inventing the threat to public safety so they can enact the Proposed Rule, because they think the Proposed Rule makes hunting more fair to wildlife. They cannot do so under Arizona law and Governor Ducey's executive orders.

A.R.S. § 41-1052(D) prohibits you from proceeding. According to the GRRC website, under A.R.S. § 41-1052(D), the Council shall not approve a rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article. ***This was never provided by Arizona Game & Fish.***

2. The economic, small business and consumer impact statement is generally accurate. ***This was never provided by Arizona Game & Fish.***

3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that 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. ***This cannot be accomplished as there is no benefit except to the feelings of the five commissioners. Arizona will be the only state among 50 to prevent hunters from using trail cameras, and the game harvested will not change.***

...

5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority. ***The Proposed Rule violates two executive orders and Arizona statutes.***

...

There is no conflict related to trail cameras. The commissioners just do not like them. They misled the public about the existence of conflict to enact this rule in violation of Governor Ducey's executive orders. Arizona Game & Fish is pursuing a remedy for a problem that does not exist, and this pursuit is going to get Governor Ducey and the Council sued. The Proposed Rule will be stricken, and this will have been a giant waste of time and money.

We ask that you review this memorandum closely, along with the materials provided to you by Arizona Game & Fish. We ask that you listen to the many hunters and other concerned citizens that do not want to be treated differently than any other Arizona citizens.

If you have questions, I would be happy to speak with you.

Very Truly Yours,

/s/ Richard D. Lyons
Richard D. Lyons, Esq.
For the Firm

MEMORANDUM

To: Governor's Regulatory Review Council
From: Jim Odenkirk, General Counsel, Arizona Game and Fish
Date: July 28, 2021
Subject: Response to Richard Lyons' Memorandum

This memorandum responds to the allegations from attorney Richard Lyons that the Governor's rulemaking moratorium and A.R.S. § 41-1038 prohibit the Game and Fish Commission's proposed rule. The Commission's proposed rule on the use of game cameras to take or aid in the taking of wildlife is permitted under A.R.S. § 17-231(A)(3), which authorizes the Commission to adopt rules "prescribing the manner and methods used in taking wildlife." The Commission in 2018 used this rulemaking authority to prohibit the use of live-action cameras as a method used to take wildlife. Since 2018, the number of non-transmitting cameras has proliferated and the problems with game cameras have intensified. The Commission is now proposing to prohibit all game cameras for use in taking wildlife with a delayed effective date to give the public sufficient time to learn of the change.

A. The Commission complied with Executive Order 2021-02.

The Commission requested an exception from the Governor's rulemaking moratorium citing the potential for violent conflict if the Commission did not further restrict the use of game cameras. As with previous requests for an exception, the letter sent to the Governor's office in October 2020 requesting an exception from the moratorium focused only on the specific exception in the moratorium related to public health, peace or safety. The Commission's letter did not detail all the other reasons the Commission was proposing the rule change that were unrelated to the specific moratorium exceptions.

There was nothing deceptive in this approach and the Commission's letter accurately identified as justification for an exception a history of reported conflicts over game cameras and increasing threats on social media. The Governor's office agreed with the Commission and granted an exception. In fact, the Governor's response to the Commission cited the potential for breach of peace, but also recognized fair chase concerns as a reason to proceed with the rule (see attached materials related to the Governor's approval).

The Governor has the sole discretion to determine whether the Commission's request for an exception satisfied any of the enumerated exceptions, and the Governor properly exercised his discretion here. The Governor's decision and the executive order cannot be used as a basis for a legal challenge to the rule.

B. Executive Order 2021-02 does not require an economic impact analysis.

The Governor's Executive Order 2021-02 does not require an agency to complete a separate economic impact analysis prior to submitting a rule. Such a required analysis existed in Executive Order 2020-02, but the most recent executive order continuing the rulemaking moratorium expressly states that it supersedes 2020-02. The current rulemaking moratorium replaced the prior executive order and effectively terminated any requirement that the Commission include an economic impact analysis prior to submitting the proposed rule. The Governor's Office agreed as it did not identify this as a deficiency in the Commission's rule package.

C. A.R.S. § 41-1038 does not apply to the Commission's proposed rule.

Mr. Lyons alleges the Commission's proposed rule violates A.R.S. § 41-1038 because it infringes on private property rights by "preventing rural hunters from using trail cameras on their own private property."

A prohibition on game cameras on private property does not unlawfully impair the use of property or give rise to a claim for infringement. A private property owner has no property right to pursue and take wildlife with the aid of game cameras.

Using private property to pursue and take wildlife is subject to the Commission's authority to regulate the manner and methods used to take wildlife. Not unlike rules prohibiting the use of bait on private property to lure wildlife, a rule regulating the use of game cameras supports wildlife conservation and is consistent with the Commission's public trust responsibility to manage and conserve wildlife for the benefit of all citizens.

The State's sovereign ownership of wildlife establishes a pre-existing limitation on the use of private property, such that a property owner cannot pursue or take wildlife on private property in disregard of regulations to protect wildlife. The proposed rule is consistent with many existing rules that govern what methods can be used to take wildlife. Because the Commission's proposed rule does not infringe on private property, A.R.S. § 41-1038 does not apply to this rule.

In summary, the Commission's proposed rule amending its existing rule prohibiting all game cameras complies with the Governor's rulemaking moratorium executive order and does not

violate A.R.S. § 41-1038. The proposed rule is similar to the existing rule prohibiting the use of live action cameras, and that rule has not been found to be invalid or unlawful.

October 27, 2020

Charles Podolak
Natural Resource Policy Advisor, Office of the Governor
1700 W. Washington
Phoenix, AZ 85007-2888

Re: Request Exemption from Rulemaking Moratorium to Initiate Rulemaking to Regulate the Use of Trail Cameras for the Take of Wildlife

Dear Mr. Podolak,

The Arizona Game and Fish Department (Department) respectfully submits this letter requesting permission to initiate rulemaking to regulate the use of trail cameras for the purpose of taking, aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife.

Under the guidance of our Assistant Attorneys General the Department requests permission to pursue rulemaking as authorized under Executive Order 2020-02 - 1(b), which allows an agency to promulgate a rule to prevent a significant threat to the public health, peace, and safety.

The use of trail cameras pose an increasing threat of breach of peace as social media surrounding the use of trail cameras indicate potential for violent confrontation between those who support their use and those opposed to such methods. Encounters between these two groups have been more confrontational with those who oppose the use of trail cameras resorting to vandalism, and those who support the use of trail cameras having a sense of entitlement over the areas in which the trail cameras were placed. Violent conflict is likely to occur when those who oppose the use of trail cameras encounter someone while placing a trail camera. A rule under this exemption would prohibit the use of trail cameras for the purpose of taking or aiding in the take of wildlife, and locating wildlife for the purpose of taking or aiding in the take of wildlife.

In an effort to comply with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

If you have any questions, please contact Celeste Cook at (623) 236-7390 or by email at ccook@azgfdgov.

Sincerely,

Ty E. Gray
Director

Gmail

Jim Odenkirk <jodenkirk@azgfd.gov>

Fwd: Rulemaking moratorium exemption approval - AZGFD rulemaking for Trail Camera regulation

Ty Gray <tgray@azgfd.gov> Wed, Jul 28, 2021 at 12:29 PM
To: Jim Odenkirk <JOdenkirk@azgfd.gov>

---------- Forwarded message ---------
From: **Chuck Podolak** <cpodolak@az.gov>
Date: Mon, Nov 9, 2020 at 4:46 PM
Subject: Rulemaking moratorium exemption approval - AZGFD rulemaking for Trail Camera regulation
To: Ty Gray <tgray@azgfd.gov>
Cc: Tom Finley <tfinley@azgfd.gov>, Marianne Cox <mcox@azgfd.gov>, Celeste Cook <ccook@azgfd.gov>

Director Gray,

I am sending this message after having reviewed the attached request by the Arizona Game and Fish Department (Department), to initiate rulemaking to regulate the use of trail cameras for the take of wildlife by amending 12 A.A.C. Chapter 4, Article 3.

I understand this request has been submitted to address an increasing threat of breach of peace posed by trail cameras used for the take of wildlife and to better align with fair chase principles. I believe that this request meets the criteria for an exemption to the rulemaking moratorium set forth in Executive Order 2020-02 under criteria (1)(b).

Furthermore, because the proposed rulemaking will add an additional rule, Executive Order 2020-02 requires the submission of three existing rules recommended for elimination. The Department has recommended that R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License be considered for elimination. I appreciate the Department's continued work to streamline the regulatory regime in Arizona, agree with this recommendation, and encourage the Department to undertake the necessary steps to remove these rules.

Based on the authority provided from Gretchen Conger, I am hereby approving the rulemaking exemption so the Department can proceed.

I am available for any questions you may have.

PDF **Trail Camera Regulation Rulemaking Request sign...**

Chuck Podolak
Natural Resources Policy Advisor
Office of Governor Doug Ducey
1700 W Washington St, Suite 800
Phoenix, AZ 85007
O: 602.542.1782
C: 602.769.7566
E: cpodolak@az.gov

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Ty E. Gray | Director

ARIZONA GAME AND FISH DEPARTMENT

OFFICE: 623-236-7100

CELL: 480-721-6759

EMAIL: tgray@azgfd.gov

5000 W. Carefree Highway, Phoenix, AZ 85086

Join our new Conservation Membership program and ensure a wildlife legacy for the future.

June 22, 2021

Charles Podolak, Natural Resource Policy Advisor, Office of the Governor
1700 W. Washington
Phoenix, AZ 85007-2888

Re: Request to File Final Trail Camera Rulemaking with the Governor's Regulatory Review Council

Dear Mr. Podolak,

In compliance with the requirements of Executive Order 2021-02(2), the Arizona Game and Fish Department (Department), on behalf of the Commission, respectfully submits this letter requesting permission to file the final trail camera rulemaking to the Governor's Regulatory Review Council. An exemption from Executive Order 2020-02 was provided in an email dated November 9, 2020, the rulemaking is attached for your consideration.

The Commission is seeking to regulate the use of trail cameras as a result of the following concerns and maintaining balance with other "take" related rules including:

- The Commission's Fair Chase Policy, which requires the Fair Chase Committee include use of new or evolving technologies and practices that provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage…" The following criteria was used to evaluate the use of trail cameras for the purpose of taking wildlife: Does the technology or practice allow a hunter to:
  - Locate or take wildlife without acquiring necessary hunting and angling skills or competency
  - Pursue or take wildlife without being physically present and pursuing wildlife in the field; or
  - Almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.
- The use of trail cameras has become an increasing source of conflict between and amongst hunters, including increased traffic by hunters checking cameras for future hunts and during the hunts of others.
- Frequent visits to set and/or check trail cameras cause disturbance to wildlife, which is exacerbated in an arid state and during extended dry periods of the year and during drought conditions.
- Livestock operators are concerned that frequent visits to set and/or check trail cameras are negatively affecting livestock operations (disturbing livestock, damaging property/equipment, polluting water sources, etc.)
- Invasion of privacy due to trail cameras photographing people in the field without their permission. Concerns voiced by parents over their children being photographed.
- Potential monetization of game cameras to include services to place, monitor, check, and sell camera images. If these services continue to grow, the numbers of cameras on the landscape and their use for take is likely to increase dramatically.

The trail camera issue was raised with the State Legislature and legislation was introduced to regulate the use of trail cameras for take of wildlife. However, the proposed bills had not advanced because of agreement by sponsors that the Commission maintains the authority to examine this issue through rulemaking.

The State's population continues to steadily grow, combined with technological advances designed to make trail cameras more accurate, easier to operate, and less costly, it is reasonable to expect the number of cameras on the landscape to increase. Which, in turn, will increase the frequency and severity of the concerns identified above along with the increases that have and will continue to pressure wildlife from the increasing number of people enjoying outdoor recreational activities.

A proposed rulemaking prohibiting the use of trail cameras for the purpose of taking wildlife was published in the *Arizona Administrative Register* on January 1, 2021. The public comment period ran from January 1 through February 1, 2021. In all, the Department received 2,742 public comments with the majority of them being form letters (254 comments were duplicates from earlier commenters).

In response to comments received during the January/February public comment period, the Commission pursued a separate rulemaking seeking to prohibit a person from placing, maintaining, or using a trail camera including images, video, or location, time or date data from a trail camera, for the purpose of taking or aiding in the take of wildlife within one-fourth mile (440 yards) of a developed water source.

This rulemaking published in the *Arizona Administrative Register* on March 12, 2021. The public comment period ran from March 12 through April 12, 2021. In all, the Department received 1,845 public comments with the majority of them being form letters (160 comments were duplicates from earlier commenters). In addition, one trail camera advocate who opposed the rulemaking submitted 6,172 pages containing the same letter/text, but with a different computer generated name, city, and state (obtained through an online petition platform).

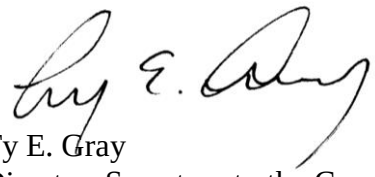
In addition to the above, at the December 2020, January, February, March, April, and May 2021 Commission meetings, under the Call to the Public agenda item, the public could comment on the proposed rule packages and numerous individuals did afford themselves the opportunity to do so. During the formally noticed June 11th Commission meeting, the Commission formally accepted additional oral comments in person, by telephone, and from public stakeholders who wished to comment about the proposed rules virtually from any of the six Game and Fish regional offices.

It is important to note that during the rulemaking process for both rulemakings, to further encourage public participation in the rulemaking process, the Department issued multiple press releases and published information regarding the proposed changes to regulate the use of trail cameras for the take of wildlife. In addition, Commission members appeared in other media, broadcasts, and conservation organization meetings.

The Commission approved the Final Notice of Rulemaking at the meeting held on June 11, 2021.

If you have any questions, please contact Celeste Cook at (623) 236-7390 or by email at ccook@azgfdgov.

Sincerely,



Ty E. Gray
Director, Secretary to the Commission

Gmail **Jim Odenkirk <jodenkirk@azgfd.gov>**

Fwd: Final Rulemaking submittal approval - AZGFD rulemaking for Trail Cameras

Ty Gray <tgray@azgfd.gov> Wed, Jul 28, 2021 at 12:31 PM
To: Jim Odenkirk <JOdenkirk@azgfd.gov>

---------- Forwarded message ---------
From: **Chuck Podolak** <cpodolak@az.gov>
Date: Tue, Jun 22, 2021 at 5:52 PM
Subject: Final Rulemaking submittal approval - AZGFD rulemaking for Trail Cameras
To: Ty Gray <tgray@azgfd.gov>
Cc: Tom Finley <tfinley@azgfd.gov>, Celeste Cook <ccook@azgfd.gov>

Director Gray,

I am sending this message after having reviewed the attached request by the Arizona Department of Game and Fish (Department), to file a final rulemaking in order prohibit the use of trail cameras for the take of wildlife in 12 A.A.C. Chapter 4, and to remove three outdated rules (R12-4-111, R12-4-209, and R12-4-214).

Based on the authority provided from Gretchen Conger, I am hereby approving the filing of final rulemaking so the Department can proceed.

I am available for any questions you may have.

Chuck Podolak
Natural Resources Policy Advisor
Office of Governor Doug Ducey
1700 W Washington St, Suite 800
Phoenix, AZ 85007
O: 602.542.1782
C: 602.769.7566
E: cpodolak@az.gov

--

Ty E. Gray | Director

ARIZONA GAME AND FISH DEPARTMENT

OFFICE: 623-236-7100

CELL: 480-721-6759

EMAIL: tgray@azgfd.gov

5000 W. Carefree Highway, Phoenix, AZ 85086

2 attachments

2 Trail Camera GRRC Submission Request signed copy.pdf
158K

Trail Camera Final Rulemaking.pdf
342K

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-111. Identification Number

A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:

1. Full name,
2. Any additional names the person has lawfully used in the past or is known by,
3. Date of birth, and
4. Mailing address.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 25-320(P), 25-502(K), and 25-518

Historical Note

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-209. Community Fishing License; Exemption

A. A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.

B. The community fishing license is valid for one-year from:

1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or
2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.

C. A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A community fishing license applicant shall provide the following information on the application:

1. The applicant's:
   a. Name;
   b. Date of birth,
   c. Physical description, to include the applicant's eye color, hair color, height, and weight;
   d. Department identification number, when applicable;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
3. Applicant's signature and date.

D. In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:

1. In person shall pay the applicable fee required under R12-4-102.
2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.

E. In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

Historical Note

Adopted effective March 20, 1981 (Supp. 81-2). Former Section R12-4-42 renumbered as Section R12-4-209 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by

final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-214. Apprentice License

A. An apprentice license authorizes the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.

B. An apprentice license is:
1. A complimentary license,
2. Valid for any two consecutive days; and
3. Issued to a person only once per calendar year.

C. The apprentice license is not valid for the take of big game animals.

D. The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.

E. An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:
1. Be a resident of Arizona,
2. Be 18 years of age or older,
3. Possess an appropriate and valid Arizona hunting license, and
4. Provide the apprentice with instruction and supervision on safe and ethical hunting practices.
5. A short-term license does not meet the license requirement of this subsection.

F. A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:
1. The mentor's:
   a. Name;
   b. Arizona hunting license number and effective date of the license; and
2. The applicant's:
   a. Name;
   b. Age;
   c. Date of birth;
   d. Telephone number, when available;
   e. Department identification number, when applicable;
   f. E-mail address, when available;
   g. Physical description, to include the applicant's eye color, hair color, height, and weight;
   f. Mailing address, when applicable;
   g. Physical address; and
   h. Residency status.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-333 and 41-1005

Historical Note

Former Section R12-4-67 renumbered as Section R12-4-214 without change effective August 13, 1981 (Supp. 81-4). Repealed effective December 22, 1989 (Supp. 89-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-301. Definitions

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to apply a drug directly to wildlife by injection, inhalation, ingestion, or any other means.

"Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance, including unmanned aircraft systems also known as drones.

"Artificial flies and lures" means man-made devices intended as visual attractants to catch fish. Artificial flies and lures does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, or chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.
"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.
"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.
"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.
"Device" has the same meaning as provided under A.R.S. § 17-101.
"Dip net" means any net, excluding the handle, that is no greater than three feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the person.
"Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.
"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.
"Foothold trap" means a device designed to capture an animal by the leg or foot.
"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.
"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.
"Land set" means any trap used on land rather than in water.
"Live-action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.
"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.
"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, and loaded with black powder or synthetic black powder and a single projectile.
"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
"Muzzleloading shotgun" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.
"Paste-type bait" means a partially liquefied substance used as a lure for animals.
"Pneumatic weapon" means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.
"Pre-charged pneumatic weapon" means an air gun or pneumatic weapon that is charged from a high compression source such as an air compressor, air tank, or internal or external hand pump.
"Prohibited possessor" has the same meaning as provided under A.R.S. § 13-3101.
"Prohibited weapon" has the same meaning as provided under A.R.S. § 13-3101.
"Rifle" means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.
"Shotgun" means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.
"Sight-exposed bait" means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.
"Simultaneous fishing" means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures per line.
"Single-point barbless hook" means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.
"Sinkbox" means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface

of the water.

"Smart device" means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

"Trap flag" means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

"Water set" means any trap used and anchored in water rather than on land.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. § 17-231(A)(1)

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976, Amended effective June 7, 1976 (Supp. 76-3). Amended effective May 26, 1978 (Supp. 78-3). Editorial correction subsection (D) (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-50 renumbered as Section R12-4-301 without change effective August 13, 1981 (Supp. 81-4). Amended subsection (A) effective May 12, 1982 (Supp. 82-3). Amended effective July 3, 1984 (Supp. 84-4). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Former R12-4-301 renumbered to R12-4-321; new Section made by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-303. Unlawful Devices, Methods, and Ammunition

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
   a. Fully automatic firearms, including firearms capable of selective automatic fire.
   b. Tracer or armor-piercing ammunition designed for military use.
   c. Any smart device as defined under R12-4-301.
   d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
3. A person shall not use or possess any of the following while taking wildlife:
   a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
   b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
   c. Any lure, attractant, or cover scent containing any cervid urine.
   d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
4. A person shall not by any means:
   a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
   b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the take of wildlife.
   c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
   d. Place any substance in a manner intended to attract bears.
   e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
   f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
   g. Take migratory game birds, except Eurasian collared-doves:
      i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
      ii. Using electronically amplified bird calls or baits.
      iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.

iv. Activities described under subsections (A)(4)(g)(i) through (A)(4)(g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
   i. Arrow or bolt,
   ii. Hybrid device, or
   iii. Pneumatic weapon, 35 caliber or larger.

i. Participate in, organize, promote, sponsor, or solicit participation in a contest where a participant uses or intends to use any device or implement to capture or kill predatory animals or fur-bearing animals as defined under A.R.S. § 17-101. For the purposes of this subsection, "contest" means a competition among participants where participants must register or record entry and pay a fee, and prizes or cash are awarded to winning or successful participants.

5. A person shall not use a live-action trail camera, or images from a live-action trail camera, for the purpose of:
   a. Taking or aiding in the take of wildlife, or
   b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
   a. Taking or aiding in the take of wildlife, or
   b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
   c. This subsection does not prohibit the use of mapping systems or programs.
7. A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
   a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or
   b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
8. Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.
9. For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:
   a. Water.
   b. Salt.
   c. Salt-based materials produced and manufactured for the livestock industry.
   d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

B. It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.

C. Wildlife taken in violation of this Section is unlawfully taken.

D. This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-251, 17-305, and 17-309

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective April 29, 1977 (Supp. 77-2). Amended effective September 7, 1978 (Supp. 78-5). Former Section R12-4-52 renumbered as Section R12-4-303 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 28, 1983 (Supp. 83-2). Amended subsections (A) and (C) effective October 31, 1984 (Supp. 84-5). Amended effective June 4, 1987 (Supp. 87-2). Former Section R12-4-303 repealed, new Section R12-4-303 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-303 repealed, new Section R12-4-303 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 2473, effective November 3, 2019 (Supp. 19-3).

TITLE 17. GAME AND FISH
CHAPTER 1. GENERAL PROVISIONS
ART. 1. DEFINITIONS AND AUTHORITY OF THE STATE

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.

2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.

3. "Closed season" means the time during which wildlife may not be lawfully taken.

4. "Commission" means the Arizona game and fish commission.

5. "Department" means the Arizona game and fish department.

6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.

7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.

8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.

9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.

10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.

11. "Guide" means a person who meets any of the following:

(a) Advertises for guiding services.

(b) Holds himself out to the public for hire as a guide.

(c) Is employed by a commercial enterprise as a guide.

(d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.

(e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.

12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.

13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.

14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.

15. "Open season" means the time during which wildlife may be lawfully taken.

16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.

17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:

(a) A member of the armed forces of the United States on active duty and who is stationed in:

(i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.

(ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.

(b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.

(c) A youth who resides with and is under the guardianship of a person who is a resident.

18. "Road" means any maintained right-of-way for public conveyance.

19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.

20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.

21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or

preserving any display specimen.

22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.

23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.

24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.

25. "Youth" means a person who is under eighteen years of age.

26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. "Aquatic wildlife" means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.

2. "Big game" means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.

3. "Fur-bearing animals" means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.

4. "Game fish" means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.

5. "Game mammals" means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.

6. "Migratory game birds" means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.

7. "Nongame animals" means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.

8. "Nongame birds" means all birds except upland game birds and migratory game birds.

9. "Nongame fish" means all the species of fish except game fish.

10. "Predatory animals" means foxes, skunks, coyotes and bobcats.

11. "Raptors" means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.

12. "Small game" means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.

13. "Trout" means all species of the family salmonidae, including grayling.

14. "Upland game birds" means quail, partridge, grouse and pheasants.

TITLE 12, CHAPTER 4, ARIZONA GAME AND FISH COMMISSION RULES
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Bow” means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

“Certificate of insurance” means an official document, issued by the sponsor’s and sponsor’s vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

“Cervid” means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,
Open areas for taking wildlife,
Set bag or possession limits for wildlife,
Set the number of permits available for limited hunts, or
Specify wildlife that may or may not be taken.

“Crossbow” means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Export” means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Handgun” means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

“Import” means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under ~~to~~ R12-4-105.

"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Nonprofit organization” means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Pursue” means to chase, tree, corner or hold wildlife at bay.

“Pursuit-only” means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

“Pursuit-only permit” means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.
"Waterdog" means the larval or metamorphosing stage of a salamander.
"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:
"Antlered" means having an antler fully erupted through the skin and capable of being shed.
"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.
"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
"Buck pronghorn" means a male pronghorn.
"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.
"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.
"Bull elk" means an antlered elk.
"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.
"Ram" means any male bighorn sheep.
"Rooster" means a male pheasant.
"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

TITLE 17. GAME AND FISH
CHAPTER 1. GENERAL PROVISIONS

Art. 1. Definitions and Authority of the State

TITLE 17. GAME AND FISH
CHAPTER 1. GENERAL PROVISIONS
ART. 1. DEFINITIONS AND AUTHORITY OF THE STATE

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

TITLE 17. GAME AND FISH
CHAPTER 2. GAME AND FISH DEPARTMENT AND GAME AND FISH COMMISSION

Art. 3. Powers and Duties

ART. 3. POWERS AND DUTIES

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
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.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.

5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.

6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-251. Possession or use of a firearm silencer or muffler while hunting; definition

A. The commission shall not adopt or enforce any rule that prohibits the lawful possession or use of a firearm silencer or muffler, including for the taking of wildlife or while hunting.

B. This section does not limit the authority of the commission to prescribe the type and caliber of firearm or ammunition that may be used for taking wildlife.

C. For the purposes of this section, "firearm silencer or muffler" means any device that is designed, made or adapted to muffle the report of a firearm.

TITLE 17. GAME AND FISH
CHAPTER 3. TAKING OF WILDLIFE

Article 1. General Regulations

17-301. Times when wildlife may be taken; exceptions; methods of taking

17.301.01. Protection from wildlife
17-302. Taking of bear or mountain lion for protection of property; report
17-305. Possession of other weapons while hunting; violation; classification
17-309. Violations; classification

TITLE 17. GAME AND FISH
CHAPTER 3. TAKING OF WILDLIFE
ARTICLE 1. GENERAL REGULATIONS

17-301. Times when wildlife may be taken; exceptions; methods of taking

A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.

B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.

C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.

D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:

1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.

2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission, including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.

3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.

4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.

5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.

17-302. Taking of bear or mountain lion for protection of property; report

A. Other provisions of this title notwithstanding, a landowner or lessee, who is a livestock operator and who has recently had livestock attacked or killed by bear or mountain lion, may, if he complies with subsection B, lawfully exercise such measures as necessary to prevent further damage from the offending bear or lion, including the taking of such bear or mountain lion in the following manner:

1. All traps shall be inspected within seventy-two hours and nontarget animals released without further injury. The department shall provide technical advice and assistance in the release of nontarget bears and lions. Nontarget animals seriously injured and unable to leave the scene upon release shall be humanely dispatched. Target bears and lions shall be humanely dispatched immediately.

2. Bears and lions may be taken only by means of:

(a) Leg hold traps without teeth and with an open jaw spread not exceeding eight and one-half inches.

(b) Leg snares.

(c) Firearms.

(d) Other legal hunting weapons and devices.

3. All traps and snares shall be identified as to the person or agency setting the trap or snare.

4. A livestock operator taking a lion or bear pursuant to this section shall notify a department office within five days after setting traps or initiating pursuit in any manner. The notification for both bears and lions shall include

information on the number and kind of livestock attacked or killed and the name and address of the livestock operator experiencing depredation. Such information shall not be public information.

5. A livestock operator taking a bear or lion pursuant to this section shall provide reasonable evidence of having livestock recently attacked or killed if a person authorized by the director requests such evidence within forty-eight hours of the department being notified pursuant to paragraph 4. Information shall include location description of sufficient detail to allow the site of depredation and traps set to be located. Such information shall not be public information.

6. Dogs may be used to facilitate the pursuit of depredating bears and lions.

B. A license or tag shall not be required for the taking of a bear or mountain lion under this section, but within ten days after the taking, the livestock operator shall file a written report with the department. The location of the take, identity of the livestock operator filing the report and location and date of livestock depredation are not public information. Such report shall also contain the following information:

1. Name and address of livestock operator experiencing depredation losses.

2. Number, ages and kinds of livestock lost.

3. Numbers and location of bears or lions taken.

4. Sex and estimated age of each bear or lion taken.

5. Location and date of livestock depredation.

C. No portion of an animal taken pursuant to this section shall be retained or sold by any person except as authorized by the commission.

D. No animal trapped or taken alive under this section shall be held in captivity.

E. In addition to other penalties provided by law, persons not in compliance with the provisions of this section may be ordered by the department to remove devices not in compliance with the requirements of this section and to cease and desist current pursuit activities intended to take the depredating bear or lion which the livestock operator has failed to comply with the provisions of this section.

F. A livestock operator entitled to take a bear or lion under the provisions of this section may contract with another person for the taking of the depredating bear or lion. The person under contract shall comply with all of the provisions of this section.

17-303. Taking or driving wildlife from closed areas

It is unlawful for any person, except by commission order, to enter upon a game refuge or other area closed to hunting, trapping or fishing and take, drive or attempt to drive wildlife from such areas.

17-305. Possession of other weapons while hunting; violation; classification

A. The possession of legal weapons, devices, ammunition or magazines, which are not authorized to take wildlife, is not prohibited while hunting if the weapon or device is not used to take wildlife.

B. Taking wildlife by using a weapon, device, ammunition or magazine that is not authorized to take wildlife is a class 1 misdemeanor.

17-309. Violations; classification

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

1. Violate any provision of this title or any rule adopted pursuant to this title.

2. Take, possess, transport, release, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.

3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.

4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.

5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.

6. Take big game, except bear or mountain lion, with the aid of dogs.

7. Make more than one use of a shipping permit or coupon issued by the commission.

8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.

9. Litter hunting and fishing areas while taking wildlife.

10. Take wildlife during the closed season.

11. Take wildlife in an area closed to the taking of that wildlife.

12. Take wildlife with an unlawful device.

13. Take wildlife by an unlawful method.

14. Take wildlife in excess of the bag limit.

15. Possess wildlife in excess of the possession limit.

16. Possess or transport any wildlife or parts of the wildlife that was unlawfully taken.

17. Possess or transport the carcass of big game without a valid tag being attached.

18. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.

19. Possess or transport the carcass or parts of a carcass of any wildlife that cannot be identified as to species and legality.

20. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.

21. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.

B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barters, sells or offers for sale any big game or parts of big game taken unlawfully.

2. Barters, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.

3. Barters, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.

4. Assists another person for monetary gain with the unlawful taking of big game.

5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

fund.

A1.6 Fair Chase

Effective: 01/16/2015
Policy Process Owner: FOD Assistant Director

The Arizona Game and Fish Commission defines Fair Chase as the ethical, sportsmanlike, and lawful pursuit and taking of free ranging Arizona wildlife in a manner that does not give a hunter or angler improper or unfair advantage over such wildlife. The Commission recognizes that public support for the manner in which wildlife is pursued and taken is of critical importance to the survival of hunting and angling. The Commission affirms that hunting and angling are the cornerstones of the North American Model of Wildlife Conservation and are the primary source of funding for conservation efforts in North America. Accordingly, it is the Commission's policy that the pursuit and taking of wildlife be managed to conform to the highest ethical standards of Fair Chase.

The Commission recognizes that new or evolving technologies and practices may provide hunters or anglers with an improper or unfair advantage in the pursuit and taking of wildlife, or may create a public perception of an improper or unfair advantage. Improper advantage includes conditions such as:

1. A technology or practice that allows a hunter or angler to locate or take wildlife without acquiring necessary hunting and angling skills or competency.
2. A technology or practice that allows a hunter or angler to pursue or take wildlife without being physically present and pursuing wildlife in the field.
3. A technology or practice that makes harvesting wildlife almost certain when the technology or practice prevents wildlife from eluding take.

The Commission recognizes that development of new or improved technologies and practices can provide multiple benefits to hunters, anglers, businesses, and the economy. In its effort to preserve hunting and angling as the foundations of the North American Model of Wildlife Conservation, the Commission will give careful consideration to weigh the Fair Chase implications of a new technology or practice with the benefits the technology or practice may provide to improving competency or increasing participation in hunting or angling. These tradeoffs must be carefully weighed in an open public process before determining whether a given technology or practice should be limited or prohibited in the interests of preserving Fair Chase.

By this policy the Commission directs the Department to monitor and evaluate emerging and evolving technologies and practices and make recommendations to the Commission for statute or rule changes to preserve Fair Chase standards for the taking of wildlife in Arizona.

Arizona Core Concepts of the North American Model of Wildlife Conservation

Wildlife is Held in the Public Trust
The public trust doctrine means that wildlife belongs to everyone. Through shared ownership and responsibility, opportunity is provided to all.

Regulated Commerce in Wildlife
Early laws banning commercial hunting and the sale of meat and hides ensure sustainability through regulation of harvest and regulating commerce of wildlife parts.

Hunting and Angling Laws are Created Through Public Process
Hunting seasons, harvest limits and penalties imposed for violations are established through laws and regulations. Everyone has the opportunity to shape the laws and regulations applied in wildlife conservation.

Hunting and Angling Opportunity for All
Opportunity to participate in hunting, angling and wildlife conservation is guaranteed for all in good standing, not by social status or privilege, financial capacity or land ownership. This concept ensures a broad base of financial support and advocacy for research, monitoring, habitat conservation and law enforcement.

Hunters and Anglers Fund Conservation
Hunting and fishing license sales and excise taxes on hunting and fishing equipment pay for management of all wildlife, including wildlife species that are not hunted.

Wildlife is an International Resource
Proper stewardship of wildlife and habitats is both a source of national pride and an opportunity to cooperate with other nations with whom we share natural resources. Cooperative management of migrating waterfowl is one example of successful international collaboration.

Science is the Basis for Wildlife Policy
The limited use of wildlife as a renewable natural resource is based on sound science. We learn as we go, adapting our management strategies based on monitoring to achieve sustainability.

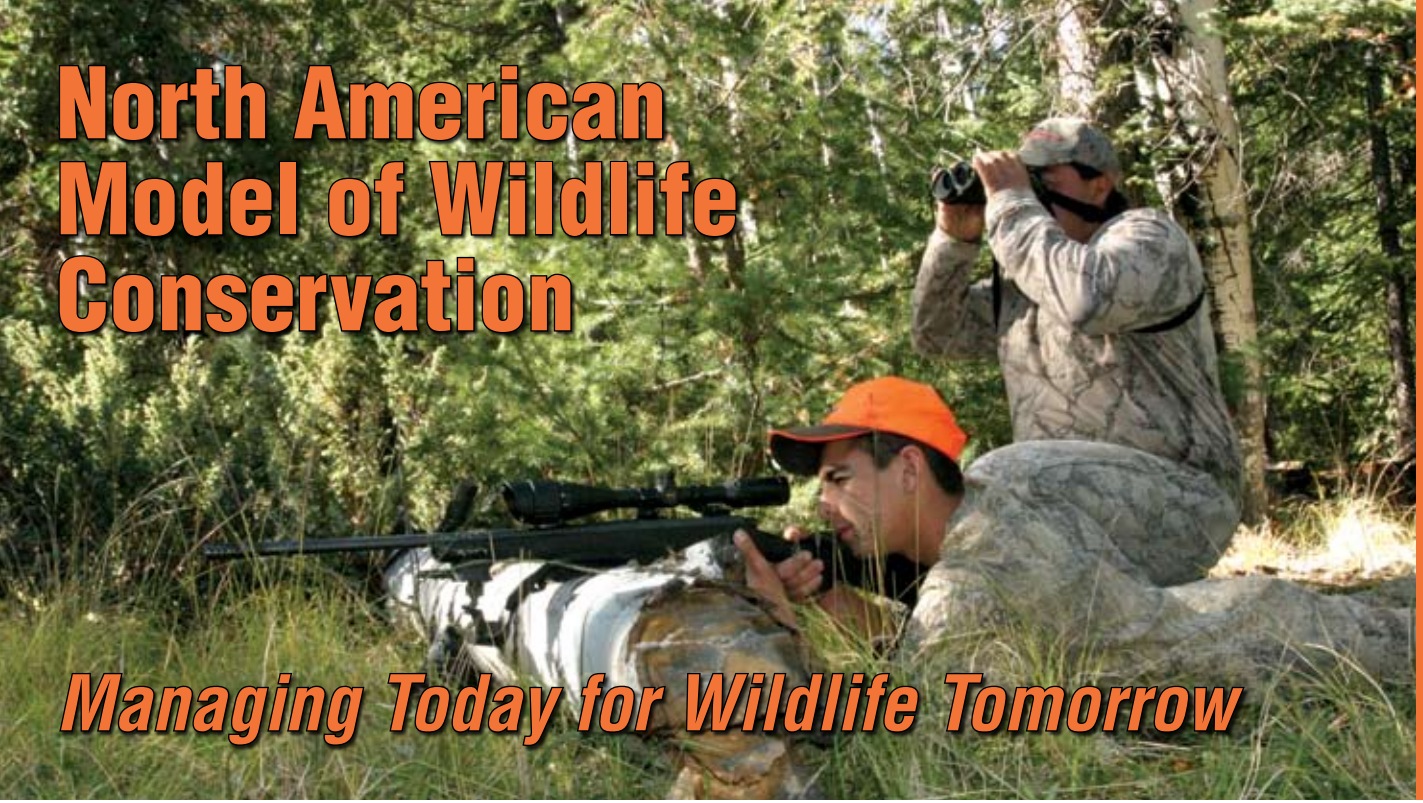
To learn more about hunting or participate in the wildlife conservation movement that has been lead by hunters for more than a century, visit any Arizona Game and Fish Department office or visit www.azgfd.gov/hunting.

Arizona Game and Fish Department

North American Model of Wildlife Conservation

The Untold Story

North American Model of Wildlife Conservation



Managing Today for Wildlife Tomorrow

Arizona Sportsmen's Contributions*

Little to no state general fund monies are used for wildlife conservation in Arizona (general taxpayers usually do not pay for wildlife conservation). The state's sportsmen, however, do contribute:

- Arizona hunters and anglers spend $1.3 billion a year.
- Their spending directly supports 21,000 jobs and generates $124 million in state and local taxes. This especially benefits rural communities.
- Sportsmen support nearly twice as many jobs in Arizona as Raytheon, one of the state's largest employers (21,000 jobs vs. 11,000 jobs).
- Annual spending by Arizona sportsmen is nearly three times more than the combined revenues of The Go Daddy Group, Sprouts Farmers Market and Cold Stone Creamery, which are some of the state's fastest growing companies ($1.3 billion vs. $481 million).
- The economic stimulus of hunting and fishing equates to $3.8 million a day being pumped into the state's economy.

** "Hunting and Fishing: Bright Stars of the American Economy ~ A force as big as all outdoors" (2007). Congressional Sportsmen's Foundation.*

The North American Model of Wildlife Conservation is the world's most successful. No other continent retains as close to a complete compliment of native wildlife species. While other countries struggle to conserve the little they have left, we enjoy great abundance and diversity of native wildlife.

This is due, in large part, to forward-thinking early conservationists who saw the need to preserve wildlife and their habitats. Their efforts were the source of the North American Model of Wildlife Conservation, which strives to sustain wildlife species and habitats through sound science and active management.

Sportsmen's Role in Wildlife Conservation

Hunting and angling are the cornerstones of the North American Model of Wildlife Conservation. These activities continue to be the primary source of funding for conservation efforts in North America. Through a 10 percent to 12 percent excise tax on hunting, angling and shooting sports equipment, hunters and anglers have generated more than $10 billion toward wildlife conservation since 1937.

Though past conservation efforts have focused on hunted species, non-hunted species reap the rewards as well. Protecting wetlands for ducks, forests for deer and grasslands for pronghorn have saved countless non-hunted species from peril.

Regardless of whether one chooses to actively participate in hunting or angling, people interested in wildlife and its future should understand the conservation role sportsmen play.

What if Hunting Ends?

Hunters and anglers actively support wildlife conservation through tangible actions such as buying licenses and paying taxes on hunting and fishing equipment.

Why are hunters and anglers so willing to support conservation through their pocketbooks? Because people place added value on — and are willing to pay for — what they can use.

In some states, the number of hunting and fishing licenses sold has remained stable in recent years. But given the rate of population growth, particularly in Western states, the percentage of people participating in hunting and fishing is actually decreasing.

There is no alternative funding system in place to replace the potential lost funds for conservation. If hunting ends, funding for wildlife conservation is in peril.

"... the nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired in value ..."

—Theodore Roosevelt, 1910

Fair Chase

Hunt Hard, Hunt Fair

Fair Chase is the ethical, sportsmanlike and lawful pursuit and taking of free-range wildlife in a manner that does not give a hunter or an angler improper or unfair advantage over such wildlife.

Fair Chase has been embraced as the proper conduct of a sportsman/sportswoman in the field and has been taught to new hunters for more than a century. It pays respect to the traditions of hunting and angling by emphasizing the development of an individual's skills rather than reliance on practices or technologies that overwhelm the quarry's ability to elude detection or take. In many situations, Fair Chase is not something that is enforceable by law. Rather it should be guided by each person's own ethical compass, which compels them to do the right thing when no one else is watching—even when doing the wrong thing is legal.

"Fundamental to ethical hunting is the idea of fair chase. This concept addresses the balance between the hunter and the hunted. It is a balance that allows hunters to occasionally succeed while animals generally avoid being taken." –From Beyond Fair Chase, by Jim Posewitz p.57

Fair Chase video (https://www.youtube.com/watch?v=363ewNvd_Hg), Jim Shockey

Why Hunt video (https://www.youtube.com/watch?v=LhcabnNjd1I)

Technology and Fair Chase

New technology developments impact almost every aspect of life, and sportsmen may wonder how hunting is affected as new equipment hits the market. Advances in technology are inevitable, and there always will be a better way to craft a bow, firearm or ammunition and a multitude of hunting and angling accessories. However, in terms of Fair Chase, the line is drawn when that advancement becomes unlawful or provides sportsmen with an improper or unfair advantage.

As examples, three recent technological advances have been the smart rifle, drones, and trail cameras. **Hunters in Arizona should be aware that:**

- The **smart rifle** is unlawful for take by nature of its laser-supported sighting system and it's electronically assisted trigger mechanism;
- Unmanned aerial vehicles — **drones** — are aircraft and subject to the same rules as other aircraft, meaning they cannot be used to assist in taking wildlife or locating wildlife during an open season;
- **Live action trail cameras** (send real-time images wirelessly to a remote computer, tablet, phone or other smart device) were recently prohibited by the Commission, through a public process, for use related to hunting.

Why I hunt – food and hunting (https://www.youtube.com/watch?v=sMggfTIvV50), Randy Newberg

Arizona Game and Fish Commission's consideration of Fair Chase issues

The Commission recognizes that development of new or improved technologies and practices can provide benefits to hunters and anglers by improving competency or increasing participation. However, it also believes that the pursuit and taking of wildlife should be managed to conform to the ethical standards of Fair Chase.

The Commission will monitor and give careful consideration to the Fair Chase implications of an emerging or evolving technology or practice. The following criteria will be used to evaluate whether or not a new technology or practice is a Fair Chase issue:

- A technology or practice that allows a hunter or angler to locate or take wildlife without acquiring necessary hunting and angling skills or competency.
- A technology or practice that allows a hunter or angler to pursue or take wildlife without being physically present and pursuing wildlife in the field.
- A technology or practice that makes harvesting wildlife almost certain, and/or the technology or practice prevents wildlife from eluding detection and/or take.

Commission consideration of whether a given technology or practice should be limited or prohibited in the interests of preserving Fair Chase will be carefully weighed in an open public process.

The importance of Fair Chase

Public support of Fair Chase and ethical hunting is critically important to the survival of hunting and angling. These pursuits are the cornerstones of the **North American Model (https://www.azgfd.com/Hunting/NAM/)** of Wildlife Conservation and are the primary source of funding for conservation efforts in North America.

"In any democracy, society decides what is acceptable or unacceptable, and therefore what stays and what goes. Hunting traditions are potentially at risk if the majority of citizens develop a negative perception of hunting, whether this perception is justified or not. Ethics may be a matter of choice, but the actions of individuals can come to represent the entire group and it is important that hunters understand this." – The Boone and Crockett Club on Fair Chase, 2016

The support of Fair Chase and respect for the traditions of hunting and angling are every sportsman's responsibility. So remember, Hunt Hard, Hunt Fair.

Hunter ethics and fair chase website (http://www.huntfairchase.com/)

Hunting's Paparazzi Problem

Numerous trail cameras around a catchment in Arizona. Photograph courtesy of Tom Mackin

Trail cameras over water sources pose a threat to the animals that rely on that water to survive, and the debate over using cameras for hunting heats up, especially in the Southwest.

I'll admit. I love checking my trail camera. It gets my kids excited to go with me on a hike because they can see bears, moose, elk, and other animals just minutes from our house. Yet too much of a good thing can be a bad thing, which is why some states such as Arizona, Utah and Nevada have banned or are considering banning those same cameras.

(https://www.boone-crockett.org/bc-member-spotlight-george-shiras-iii)

This animated night picture was obtained by having the cord so arranged that, when touched, it fired a blank cartridge and immediately afterward the flashlight which photographed the animals as they leaped away in alarm. Photo taken in 1893. From *Hunting Wild Life with Camera and Flashlight* by George Shiras III

Trail cameras have been around as long as the Boone and Crockett Club. In the late 1800s, Boone and Crockett Club member George Shiras (bc-member-spotlight-george-shiras-iii) (yes, the Shiras moose guy) developed a system to take photos of unsuspecting wildlife in the field. His photos were published in 1906 in National Geographic.

Since Shiras' time, trail cameras have become smaller, cheaper, and easier to use. As a result, more people like me can stick one on a tree to see what's lurking on the trail. But there's a big difference between one or two cameras on a game trail and hundreds of cameras in one spot belonging to dozens of hunters, which is exactly what's happening over water sources in southwestern states.

Trail Camera Bans in the Southwest

In states like Arizona, Utah, and Nevada, wildlife is concentrated where they have access to water, be it natural creeks and springs or human constructed tanks and catchment systems. Hunters know this and have placed trail cameras on these water sources. So, what's the big deal?

"It's not one thing," says Kurt Davis, chairman of the Arizona Fish and Game Commission. "It's a combination of things."

The problem is the cumulative effect of all those cameras, which translates into more hunters coming in at all times of day to change batteries, change SD cards—you name it. All that human activity inhibits wildlife's ability to use the water source. It stacks hunters on top of each other when the season opens, leading to more potential conflict. Plus, there is the question of fair chase.

At a June 11 Arizona Game and Fish Commission meeting, Arizona Game and Fish Department officials recommended one of two actions concerning trail camera use. Option one prohibited the use of all trail cameras for hunting. Option two prohibited placement of cameras within a quarter-mile of any water source and would have put seasonal limitations on using cameras for hunting. The commission voted 5-0 for option one: ban the use of any trail camera for the "purpose of taking or aiding in the take of wildlife." The regulation goes into effect in 2022.

In explaining their votes, commissioners cited not just wildlife security issues and concerns, but read quotes from Theodore Roosevelt and invoked the North American Model of Wildlife Conservation. The concept of fair chase was mentioned numerous times.

"We hear of individuals putting out as many as 300 cameras to cover every water source in a hunt unit, or series of hunt units," wrote Turnipseed. "While this may not be much of a problem in areas with abundant water, Nevada has many dry, desert hunt areas with very few water sources in an entire mountain range." Turnipseed also brought up the issue that some hunters will come into water sources to check their cameras while other hunters are actually hunting during a season.

"Years ago, you didn't see them [cameras] everywhere," says Davis. "Now, you do. Part of the issue is our population growth, growing ATV use, which allows people to access these areas by water sources, and cheaper cameras. Since 2010, the number of hunters has increased in Arizona, and the number of applications has increased." The combination of these factors is exacerbated by what Davis calls a generational drought.

Arizona Game and Fish Department employees are hauling tons of water into water catchments for wildlife, says Davis. "And there isn't a water source that isn't easily located on an app," he says. "When it comes to water, these animals don't have second choices. Game cameras are in direct conflict with the tenets of fair chase."

In 2018, the commission voted to ban the use of wireless trail cameras for hunting. In theory, these cameras might help solve the wildlife disturbance concerns. But, Davis explained, Arizona doesn't have the cell coverage needed for these cameras to operate in remote places, which includes most of the state.

To the northeast, the Nevada Board of Wildlife Commissioners cited wildlife security concerns when they voted in 2018 to ban the use of cameras on public land from August 1 to December 31. In addition, the regulation (http://www.ndow.org/uploadedFiles/ndow.org/Content/Our_Agency/News/Articles/R012-16A%20-%20Trail%20Cameras.pdf) prohibits the use of cameras at any time if the camera prevents wildlife from accessing or alters an animal's access to a spring or any other water source.

"Saturating all or most available water sources with trail cameras in a hunt unit not only disrupts the animal's ability to obtain water as camera owners come and go from waters that have as many as 25 or more cameras, but also creates hunter congestion and hunter competition issues," wrote the Nevada Department of Wildlife in a statement.

In a memorandum (http://www.ndow.org/uploadedFiles/ndoworg/Content/Public_Meetings/Com/13-B-Commission-General-Regulation-440-Trail-Cameras.pdf) in support of new trail cam regulations, Chief Game Warden Tyler Turnipseed expressed his concern for the sheer number of cameras and camera owners checking on them. "We hear of individuals putting out as many as 300 cameras to cover every water source in a hunt unit, or series of hunt units," wrote Turnipseed. "While this may not be much of a problem in areas with abundant water, Nevada has many dry, desert hunt areas with very few water sources in an entire mountain range." Turnipseed also brought up the issue that some hunters will come into water sources to check their cameras while other hunters are actually hunting during a season.

This year, Utah came close to banning trail cameras during hunting season. In February, HB295 (https://le.utah.gov/~2021/bills/static/HB0295.html) was introduced by Representative Casey Snider. At the time of introduction, the bill contained language that would have prohibited the use of trail cameras during hunting season. Over the next six weeks, the language of the bill was changed and signed by the Governor in March. Those changes did not ban the use of trail cameras during hunting season. Rather, the new language "authorizes and instructs the Wildlife Board to make rules governing the use of trail cameras." In other words, the use of trail cameras for hunting in Utah is still up for debate.

The Club's Take

As for the Boone and Crockett Club, the Club does have a policy on the use of wireless trail cameras, which states, "The use of any technology that delivers real-time data (including photos) to target or guide a hunter to any species or animal in a manner that elicits an immediate (real-time) response by the hunter is not permitted."

"If a hunter uses real-time data animal location data from collared game animals, drones, or cell phones to kill an animal, those actions violate the basis of fair chase," says Justin Spring, Boone and Crockett Club's director of big game records. "Using collar data or trail cam images for scouting purposes is one thing. Yet knowing the exact location of an animal before you even start hunting is another thing altogether."

As for cameras that require hunters to physically check the photos, there is no across-the-board Club policy. Rather, the Boone and Crockett Club recognizes that states are geographically different, and they will have different regulations. What's good for states in the Southwest affected by prolonged drought will have different regulations than states in the Midwest or Southeast where water sources are more abundant.

At the same time, the Club does support state game agencies in their decisions regarding the use of trail cameras. "The Club commends the Arizona Fish and Game Department and commission for working together for the betterment of wildlife management," says Spring. "We certainly appreciate the concern Arizona managers have for the wildlife resource."

PJ DelHomme is a writer for Crazy Canyon Media in Missoula, Montana. He regularly contributes content to the Boone and Crockett Club as well as national and regional publications.

Tags: In the Field (/tags/field)

Stewardship Links

Big Game Records LIVE! (/big-game-records-live-all-new)

Find an Official Measurer (/official-measurer-locator)

World's Record Gallery (/bc-worlds-record-gallery)

How to Enter a Trophy in B&C (/trophy-entry-requirements)

Score Chart PDFs (/download-bc-score-charts)

Online Scoring Calculator (/online-scoring-calculator)

Poach and Pay (/poach-and-pay)

Minimum Entry Scores (/minimum-entry-scores-north-american-big-game)

Become a B&C Official Measurer (/how-become-bc-official-measurer)

Field Judging Big Game (/tags/field-judging)

Big Game Profiles Documentaries (/big-game-profiles-r)

Category Boundaries (/category-boundaries-big-game-records)

Position Statement on Big Game Records and Hunting (/bc-position-statements-big-game-records-and-hunting)

Hunter and Conservation Ethics (/hunter-and-conservation-ethics)

Fair Chase Statement (/fair-chase-statement)

Records Watch (https://www.boone-crockett.org/records-watch)

Frequently Asked Questions about Records (/records-program-faq)

Join Boone and Crockett Club (/join-boone-and-crockett-club)

Donate to B&C (/contributing-boone-and-crockett-club)

Stone Glacier

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 20, Breast and Cervical Cancer Treatment Program

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: **June 10, 2021**

SUBJECT: **Arizona Health Care Cost Containment (AHCCCS)**
Title 9, Chapter 20, Article 20

This 5YRR from AHCCCS relates to rules in Title 9, Chapter 20, Article 20, regarding the Breast and Cervical Cancer Treatment Program.

In the last 5YRR of these rules AHCCCS indicated it would amend its rules to improve overall clarity, conciseness, and understandability, but did not complete the changes. AHCCCS indicates the changes are still necessary, and is addressing the changes again in this report.

Proposed Action

The Department plans to complete the changes addressed in the report by submitting a rulemaking to the Council by the end of July 2021.

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

Yes, the Department cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has reviewed the rules and provides recommended changes that are anticipated to provide clarity and not a change in practice. They believe the recommendations will not incur any additional costs to the implementing agency or any other agency but represent current practice. They believe the promulgated rules represent the most cost-effective method of fulfilling AHCCCS responsibilities while complying with all applicable state and federal laws and regulations.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Administration believes that the recommended changes are mostly for clarity and conciseness, as well as compliance with changes in federal regulation. They state that the changes impose the lease burden and cost because they either update to reflect current practice, or mirror updated federal and state regulations.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department indicates they did not receive any written criticisms to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R9-22-2002 - General Requirement
R9-22-2003 - Eligibility Criteria
R9-22-2004 - Treatment
R9-22-2005 - Application Process

6. 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.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are effective in achieving their objectives.

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

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal laws; 42 CFR 435 Subpart E.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require the issuance of a general permit.

11. Conclusion

As mentioned above, the Department plans to complete a rulemaking by the end of July 2021, that would address the issues identified in the report. The rulemaking will result in the rules being more clear, concise, understandable, and effective.

Council staff recommends approval of this report.

May 25, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 20, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 22, Article 20 which is due on May 31, 2021.

AHCCCS reviewed the following rules on this date because the Council rescheduled the initial review of an article under A.R.S. 41-1056(H).

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,

Matthew Devlin
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 20, Article 20

May 2021

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2903.01(F)

Specific Statutory Authority: A.R.S. § 36-2901.05

2. **The objective of each rule:**

Rule	Objective
R9-22-2001	The objective of the rule is to provide definitions for terms used within the Breast and Cervical Cancer Treatment Program.
R9-22-2002	This rule provides General Requirements that apply to the Breast and Cervical Cancer Treatment Program.
R9-22-2003	The rule provides criteria that must be met in order to be eligible for the Breast and Cervical Cancer Treatment Program.
R9-22-2004	The rule provides information regarding the scope of coverage for the Breast and Cervical Cancer Treatment Program.
R9-22-2005	The rule provides how a person may apply for the Breast and Cervical Cancer Treatment Program.
R9-22-2006	The rule provides how the administration determines, approves, denies or discontinues eligibility for BCCTP.
R9-22-2007	The rule describes when eligibility for the Breast and Cervical Cancer Treatment Program is effective and when it ends.
R9-22-2008	The rule describes the redetermination of eligibility for the Breast and Cervical Cancer Treatment Program.

3. **Are the rules effective in achieving their objectives?** **Yes _X__** **No __**

4. **Are the rules consistent with other rules and statutes?** **Yes _X__** **No __**

5. **Are the rules enforced as written?** **Yes _X__** **No __**

6. **Are the rules clear, concise, and understandable?** **Yes ___** **No X**

R9-22-2002	Subsection (D) is not necessary because the eligibility of an American Indian woman is addressed under R9-22-2003. A clarifying change should be made to subsection (E) stating that a woman under this program is exempt from copays as described under R9-22-711.
R9-22-2003	Revising the rule to be consistent with ARS §36-2905.01 will ensure alignment with State Law and will remove ambiguity. In addition, updating subsection (A)(3) with a reference to Chapter 28 will provide greater clarity because a person must be ineligible for Title XIX, including ALTCS eligibility, to qualify for the BCCTP. Under subsection (A)(6) a correction is needed to also include a cross-reference to Article 3; under subsection (B)(3) it is not necessary to state that a person is ineligible when the

	person no longer meets the eligibility requirements; under subsection (C), the reference to the Chief Medical Officer should be stricken and replaced with a reference to the Administration since the Administration staff conduct the continuation of eligibility; and finally, subsection (D) should be reworded to clarify the reoccurrence of cancer and eligibility. Section A(6) should be removed since the rule that it references have been repealed.
R9-22-2004	The Administration believes the reference to the Chief Medical Officer in subsections (A)(4), (B)(4) and (C)(4) should be stricken, because the determination of whether a treatment is considered the standard of care may be made by the Administration, not necessarily by the Chief Medical Officer.
R9-22-2005	Reference to R9-22-1406 should be removed because the referenced rule has been repealed.

7. Has the agency received written criticisms of the rules within the last five years? Yes __ No _X_

8. Economic, small business, and consumer impact comparison:

The Administration does not anticipate an economic impact due to this change since the change provides clarity and not a change in practice. The recommendations will not incur any additional costs to the implementing agency or any other agency but represent current practice. The promulgated rule represents the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with all applicable state and federal laws and regulations. The promulgated rule represents the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with all applicable state and federal laws and regulations.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No X

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The changes made in the last 5YRR were not made but are still recommended and therefore incorporated in this report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The recommended changes are mostly for clarity and conciseness, as well as compliance with changes in federal regulation. The changes impost the least burden and cost because they either update to reflect current practice or mirror updated federal and state regulations.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

Chapter 22, Article 20 rules are consistent with statutes and federal regulations 42 CFR 435 Subpart E.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action

Since the rules are not currently aligned with state statute, the change to make these changes to the rule is a priority for AHCCCS and will be submitted to the Governor's office as a rulemaking request by the end of July.

by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1918. Additional Eligibility Criteria for the Basic Coverage Group

An applicant or member shall meet the following eligibility criteria:

1. Disabled. As a condition of eligibility, an applicant or member shall be disabled. Disabled means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E), except employment activity, earnings, and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.
2. Employed. As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant or member's work.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:
   a. Earns at least the minimum wage and works at least 40 hours per month, or
   b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.
2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and
3. Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1920. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1921. Enrollment

The Administration shall enroll members under Article 17 of this Chapter. If a member has not paid a required premium, the Administration shall not grant a guaranteed enrollment period.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1922. Redetermination of Eligibility

A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.

B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

Have expertise in the subject matter of the study,
Evaluate the science and methodology of the study,
Are selected by the editorial staff of the publication, and
Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2002. General Requirements

A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.

B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.

C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.

D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.

E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2003. Eligibility Criteria

A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:
1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
2. Be less than 65 years of age;
3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;
5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and
6. Meet the requirements under R9-22-1417 and R9-22-1418.

B. Ineligible woman. A woman is ineligible under this Article if the woman:
1. Is an inmate of a public institution and federal financial participation (FFP) is not available,
2. Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or
3. No longer meets an eligibility requirement under this Article.

C. Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.

D. Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.

E. Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2004. Treatment

A. Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:
1. Lumpectomy or surgical removal of breast cancer;
2. Chemotherapy;
3. Radiation therapy; and
4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

B. Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:
1. Conization;
2. LEEP;
3. Cryotherapy; and
4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

C. Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:
1. Surgery;
2. Radiation therapy;
3. Chemotherapy; and
4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2005. Application Process

A. Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.

B. Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.

C. Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.

D. Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:
1. Provide medical insurance information, including any changes in medical insurance; and
2. Inform the Administration about a change in address, residence, and alienage status.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2006. Approval, Denial, or Discontinuance of Eligibility

A. Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsec-

tion (B) or (C) within seven days of receiving a complete application.

B. Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:
1. The name of the eligible woman, and
2. The effective date of eligibility.

C. Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:
1. The name of the ineligible woman,
2. The specific reason why the woman is ineligible,
3. The legal citations supporting the reason for the denial,
4. The location where the woman can review the legal citations, and
5. Information regarding the woman's appeal and request for hearing rights.

D. Discontinuance.
1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.
2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:
   a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS,
   b. Receives information confirming the death of the woman,
   c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
   d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.
3. The Notice of Action shall contain the:
   a. Name of the ineligible woman,
   b. Effective date of the discontinuance,
   c. Specific reason why the woman is discontinued,
   d. Legal citations supporting the reason for the discontinuance,
   e. Location where the woman can review the legal citations, and
   f. Information regarding the woman's appeal and request for hearing rights.

E. Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2007. Effective and End Date of Eligibility

A. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.

B. The end date of eligibility:
1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.
2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004 for the pre-cancerous lesion.
3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4). Section amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-2008. Redetermination of Eligibility

A. Redetermination. Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBCCEDP at redetermination.

B. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

R9-22-2101. General Provisions

A. A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.

B. The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F) of this Section, for unrecovered trauma center readiness costs as defined in subsection (F) of this Section. Reimbursement is limited to no more than the amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C) of this Section.

C. The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-22-2103. The Administration may distribute more than 10% of the monies for unrecovered emergency room costs when there are unexpended monies under subsection (B) of this Section.

D. The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F) of this Section. The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed

36-2901.05. Breast and cervical cancer treatment; additional definition of eligibility

A. For the purposes of this article, beginning January 1, 2002, "eligible person" includes a person who meets all of the following requirements:

1. Has been screened for breast and cervical cancer by a provider or entity that is recognized by the well woman healthcheck program administered by the department of health services as part of its program under title XV of the public health service act and that operates consistently with well woman healthcheck program guidelines.

2. Needs treatment for breast or cervical cancer.

3. Has an income level that is at or below two hundred fifty per cent of the federal poverty guidelines.

4. Is under sixty-five years of age.

5. Is not otherwise covered under creditable coverage as defined in section 2701(c) of the public health services act (42 United States Code section 300gg(c)).

B. The administration shall limit the assistance it provides pursuant to this section to medically necessary services provided during the period that the person requires treatment for breast or cervical cancer as determined by the administration.

C. The administration shall use a simplified eligibility form that the applicant may mail to the administration. Once the administration receives a completed application, the administration shall expedite the eligibility determination and enrollment on a prospective basis.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9, Articles 1, 3, 4, 5, 7 & 10, Department of Environmental Quality - Water Pollution Control

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: **Jul 15, 2021**

SUBJECT: **Department of Environmental Quality**
Title 18, Chapter 9, Articles 1, 3, 4, 5, 7, & 10

This Five-Year-Review Report (5YRR) from the Department of Environmental Quality relates to rules in Title 18, Chapter 9, regarding Water Pollution Control. The report covers the following:

Article 1 -	Aquifer Protection Permits - General Provisions
Article 3 -	Aquifer Protection Permits - General Permits
Article 4 -	Nitrogen Management General Permits
Article 5 -	Grazing Best Management Practices
Article 7 -	Use of Recycled Water
Article 10 -	Arizona Pollutant Discharge Elimination System - Disposal, Use, and Transportation of Biosolids

In the last 5YRR of these rules, the Department proposed to amend rules in Articles 1 and 3 by December 2019. DEQ indicates they did not complete the changes, but are currently working on a rulemaking that addresses the issues identified in the report. Additionally, the Department proposed to make changes to rules in Article 7, and completed a rulemaking in November 2017 that addressed the issues identified in the report. DEQ did not propose any changes to rules in Articles 4, 5, and 10.

Proposed Action

The Department indicates that while the rules in Articles 1 and 3, are generally clear, concise, and understandable, the subject matter itself is complicated, and challenging to convey by nature. This leads to a significant array of opinions on the sub-topics. The Department received an exemption from the rule moratorium from the Governor's Office, in early 2021. DEQ is currently engaged in "Phase 1" of a rulemaking that addresses stakeholder, and ADEQ staff-identified issues (identified in the report). As the rulemaking process is currently ongoing, the Department continues to solicit comments, and plans to complete the Notice of Proposed Rulemaking by February 2022. The Department is not proposing any changes to the rules in Articles 5, 7, and 10.

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

   Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

   Stakeholders are identified as: the Department (ADEQ), reclaimed water permittees, and the general public.

   The Department believes that for Articles 1, 3, and 4 that the rules' impact on the state's economy, small business and consumers has not changed since the effective date. Article 1 and 3 deal with aquifer protection permits (APPs) and the Department states that approximately 560 facilities have APPs. Article 4 deals with nitrogen management general permits and since the permits are paperless the Department indicates they do not track the number of these permits. In December 2001, ADEQ promulgated 18 A.A.C 9, Article 10, establishing a biosolids program under the Arizona Pollutant Discharge Elimination System (AZPES) program. At that time, ADEQ anticipated that the rulemaking would not impose more stringent requirements upon regulated entities. In January 2003, ADEQ amended 11 rules in Article 10 to comply with a request for conformity with the Clean Water Act from the EPA. ADEQ anticipated that the rule amendments would minimally impact businesses. ADEQ believes that the Article 10 rules' impact on the state's economy, small business, and consumers has not changed since the 2001 and 2003 rulemakings.

   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 Aquifer

Protection Permits program. 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 rulemaking has been successful in simplifying the permitting process, reducing costs to permittees, and encouraging greater use of reclaimed water, thereby generating resource savings of thousands acre-feet per year of potable water (comprised of groundwater and surface water). There are currently eleven active reclaimed water individual permits and 455 reclaimed water general permits.

Two rules in Article 10 were amended in 2015. In both economic impact statements ADEQ anticipated that any costs related to these changes would be minimal, and this assessment has been observed as accurate.

In 2020, there were 15 companies or cities that apply biosolids, 2 cities that surface dispose of biosolids, 5 facilities that compost biosolids, and 22 facilities in Arizona that generate biosolids for land application.

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.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes that rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates they have received several criticisms of the rules. The Department, as mentioned in the report, is currently on "Phase 1" of a rulemaking to address issues identified by stakeholders and Department staff. As the rulemaking

process is currently ongoing, the Department continues to actively solicit comments to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates that while rules are generally clear, concise, and understandable, the subject matter itself is complicated and challenging to convey by nature.

6. 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.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are consistent in achieving their objectives.

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

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than corresponding federal laws, 40 C.F.R. Part 503.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes, with the exception of two rules, R18-9-1002 and R18-9-1015, the Department indicates the rules were promulgated before July 29, 2010.

11. Conclusion

As mentioned above, and for the reasons mentioned in the report, the Department is currently in "Phase 1" of a rulemaking that addresses stakeholder and staff identified issues regarding rules in Articles 1 & 3. The Department plans to complete a Notice of Proposed Rulemaking by February 2022.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

April 28, 2021

Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five Year Rule Review Reports for A.A.C. Title 18, Chapter 9, Articles 1, 3 & 4; A.A.C. Title 18, Chapter 9, Article 5 and A.A.C. Title 18, Chapter 9, Article 7.

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Reports for Title 18, Chapter 9, Article 1. APP - General Provisions, Article 3. APP - General Permits & Article 4. Nitrogen Management General Permits; Title 18, Chapter 9, Article 5. Grazing Best Management Practices and Title 18, Chapter 9, Article 7. Use of Recycled Water. Please note that Title 18, Chapter 9, Article 6 was repealed on January 1, 2018 at 23 A.A.R. 3091.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Jon Rezabek in the Water Quality Division at 602-771-8219, or rezabek.jon@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera
Director
Arizona Department of Environmental Quality

Enclosure

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

May 26, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 9, Article 10

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 9, Article 10.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact John Hunt in the Water Quality Division at (602) 771-4464 or hunt.john@azdeq.gov if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

Arizona Department of Environmental Quality
Five-Year-Review Report
Title 18. Environmental Quality
Chapter 9. Department of Environmental Quality - Water Pollution Control
Article 1. Aquifer Protection Permits - General Provisions
Article 3. Aquifer Protection Permits - General Permits
Article 4. Nitrogen Management General Permits
April 30, 2021

1. Authorization of the rule by existing statutes

Statutory Authority: A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A)(7), (A)(10), (A)(11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. The objective of each rule:

Rule	Objective
R18-9-101	This rule provides specific explanation for certain terms used in Articles 1, 2, 3 and 4 of this Chapter.
R18-9-102	This rule specifies facility types unto which Articles 1, 2 and 3 do not apply.
R18-9-103	This rule specifies classes or categories of facilities that are exempt from the Aquifer Protection Permit (APP) requirements, in addition to the exemptions listed in A.R.S. § 49-250(B).
R18-9-104	This rule specifies when owners of facilities that had Notice of Disposals (NOD) filed or Groundwater Quality Protection Permits (GWQPP) issued must submit an application for an APP or closure plan.
R18-9-105	This rule establishes a process for facility owners with NODs and GWQPPs to continue operating under a Notice or a Permit until an APP is issued.
R18-9-106	This rule establishes a process by which a person who engages or who intends to engage in an operation or activity that may result in a discharge regulated under Articles 1, 2, and 3 of this Chapter may request a determination of applicability analysis from the Department.
R18-9-107	This rule establishes the ability of the Director to consolidate APP permits if one or the other criterion are met.
R18-9-108	The rule establishes the mandate of public notice given from the Department to a list of entities in Subsection (A)(2).
R18-9-109	This rule establishes provisions regarding the mandate of public participation given by the Department when certain permitting decisions are made. The delineated public participation methods include detailed public comments and hearing procedures.
R18-9-110	This rule establishes a mandate upon the Department to conduct inspections of permitted facilities and establishes authority to enforcement upon a permittee when violation occurs.
R18-9-A301	This rule establishes the requirements for discharging under an APP General Permit for the four different types. It also establishes the requirements for submitting a Notice of Intent to Discharge under a General Permit, authorization review under a Type 3 General Permit and permit review for Type 4 General Permits.
R18-9-A302	This rule establishes what a point of compliance is for the purposes of the APP.

R18-9-A303	This rule establishes requirements for the different APP General Permit types concerning if and if so, how frequently a permittee must renew a Discharge Authorization.
R18-9-A304	This rule establishes the requirements for how an APP General Permit may be transferred.
R18-9-A305	This rule establishes the requirements for how an APP General Permit facility may be expanded.
R18-9-A306	This rule establishes the requirements an APP General Permit facility must meet in order to close the facility.
R18-9-A307	This rule establishes the ability of the Director to revoke permit coverage of an APP General Permit facility and when such an action is allowed.
R18-9-A308	This rule establishes that APP General Permit facilities are subject to enforcement upon violation.
R18-9-A309	This rule establishes the general provisions and requirements applicable to all Type 4, On-Site Wastewater Treatment Facilities.
R18-9-A310	This rule establishes the requirements for a site investigation which must occur in preparation for the application process for an APP General Permit.
R18-9-A311	This rule establishes the requirements for facility selection of a Type 4, on-site wastewater treatment facility (WWTF).
R18-9-A312	This rule establishes the requirements for facility design of a Type 4 on-site WWTF, including specifics on setbacks, soil characterization, soil absorption, etcetera.
R18-9-A313	This rule establishes further requirements for facility installation, operation and maintenance for Type 4, on-site WWTFs.
R18-9-A314	This rule establishes minimum requirements for the installation of a septic tank for a Type 4 on-site WWTF.
R18-9-A315	This rule establishes minimum requirements for the design, manufacturing and installation of an interceptor, which is required for a Type 4 on-site WWTF when the sewage being treated contains nonresidential flow, like food preparation and laundry service.
R18-9-A316	This rule establishes the requirements for the transferor, responsible party, to have an inspection conducted on the Type 4 on-site WWTF being transferred.
R18-9-A317	This rule establishes the ability of the Director to designate a Nitrogen Management Area in order to control groundwater pollution, as well as, the criteria to be used in making a determination and procedure and duties once a determination is made.
R18-9-B301	This rule establishes the scope of the 12 Type 1 General Permits
R18-9-C301	This rule establishes the scope and requirements for a Type 2.01 General Permit in which covers drywells that drain areas where hazardous substances are used, stored, loaded or treated.
R18-9-C302	This rule establishes the scope and requirements for a Type 2.02 General Permit in which covers intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.
R18-9-C303	This rule establishes the scope and requirements for a Type 2.03 General Permit in which covers discharge caused by the performance of tracer studies.
R18-9-C304	This rule establishes the scope and requirements for a Type 2.04 General Permit in which covers drywells that drain an area at a facility for dispensing motor fuels.
R18-9-C305	This rule establishes the scope and requirements for a Type 2.05 General Permit in which covers the management, operation and maintenance of a sewage collection system under the terms of a CMOM Plan (Subsection (D)).
R18-9-C306	This rule establishes the scope and requirements for a Type 2.06 General Permit in which covers fish hatcheries to discharge to a perennial surface water if the Aquifer Water

	Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.
R18-9-D301	This rule establishes the scope and requirements for a Type 3.01 General Permit in which covers lined surface impoundments and a lined secondary containment structures.
R18-9-D302	This rule establishes the scope and requirements for a Type 3.02 General Permit in which covers filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses.
R18-9-D303	This rule establishes the scope and requirements for a Type 3.03 General Permit in which covers facilities discharging water from washing vehicle exteriors and vehicle equipment.
R18-9-D304	This rule establishes the scope and requirements for a Type 3.04 General Permit in which covers allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
R18-9-D305	This rule establishes the scope and requirements for a Type 3.05 General Permit in which covers discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.
R18-9-D306	This rule establishes the scope and requirements for a Type 3.06 General Permit in which covers the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.
R18-9-D307	This rule establishes the scope and requirements for a Type 3.07 General Permit in which covers constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).
R18-9-E301	This rule establishes the scope and requirements for a Type 4.01 General Permit in which allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction.
R18-9-E302	This rule establishes the scope and requirements for a Type 4.02 General Permit in which allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.
R18-9-E303	This rule establishes the scope and requirements for a Type 4.03 General Permit in which allows for the use of a composting toilet with less than 3000 gallons per day design flow.
R18-9-E304	This rule establishes the scope and requirements for a Type 4.04 General Permit in which allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E305	This rule establishes the scope and requirements for a Type 4.05 General Permit in which allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E306	This rule establishes the scope and requirements for a Type 4.06 General Permit in which allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E307	This rule establishes the scope and requirements for a Type 4.07 General Permit in which allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

R18-9-E308	This rule establishes the scope and requirements for a Type 4.08 General Permit in which allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E309	This rule establishes the scope and requirements for a Type 4.09 General Permit in which allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E310	This rule establishes the scope and requirements for a Type 4.10 General Permit in which allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E311	This rule establishes the scope and requirements for a Type 4.11 General Permit in which allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E312	This rule establishes the scope and requirements for a Type 4.12 General Permit in which allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E313	This rule establishes the scope and requirements for a Type 4.13 General Permit in which allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
R18-9-E314	This rule establishes the scope and requirements for a Type 4.14 General Permit in which allows for the use of a sewage vault that receives sewage.
R18-9-E315	This rule establishes the scope and requirements for a Type 4.15 General Permit in which allows for the construction and use of an aerobic system that uses aeration for treatment.
R18-9-E316	This rule establishes the scope and requirements for a Type 4.16 General Permit in which allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.
R18-9-E317	This rule establishes the scope and requirements for a Type 4.17 General Permit in which allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E318	This rule establishes the scope and requirements for a Type 4.18 General Permit in which allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E319	This rule establishes the scope and requirements for a Type 4.19 General Permit in which allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
R18-9-E320	This rule establishes the scope and requirements for a Type 4.20 General Permit in which allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a).
R18-9-E321	This rule establishes the scope and requirements for a Type 4.21 General Permit in which allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site WWTF.
R18-9-E322	This rule establishes the scope and requirements for a Type 4.22 General Permit in which allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site WWTF to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.
R18-9-E323	This rule establishes the scope and requirements for a Type 4.23 General Permit in which allows for the construction and use of an on-site WWTF with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site WWTF on a

	property or on adjacent properties under common ownership with an combined design flow from 3000 to less than 24,000 gallons per day.
Table 1	This table establishes the unit design flows for on-site wastewater treatment plants delineated in Part E of Article 3 using common buildings, their purpose and sizing based on components within the building.
R18-9-401	This rule provides specific explanation for certain terms used in Article 4 of this Chapter.
R18-9-402	This rule establishes that an nitrogen fertilizer may be applied under a Nitrogen Management General Permit (NMGP) without submitting a notice to the Director, if there is compliance with the best management practices listed in Subsections (1) through (5).
R18-9-403	This rule establishes the requirements of a Concentrated Animal Feeding Operation (CAFO) in order to be covered under a NMGP.
R18-9-404	This rule establishes the ability of the Director to revoke coverage under the NMGP, as well as which criteria upon which to make such a determination, notification to the permittee, and a potential individual permit requirement of the permittee.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X_** **No ___**

5. Are the rules enforced as written? **Yes _X_** **No ___**

6. Are the rules clear, concise, and understandable? **Yes _X_** **No __**

While the rules are generally clear, concise and understandable, the subject matter itself is complicated, challenging to convey by nature and lends itself to a significant array of opinions on the sub-topics therein. Through the feedback received (predominantly from members of our delegated authorities; i.e. Arizona's counties), ADEQ is currently engaged in the initial steps of a rulemaking that aims to further clarify these articles (See Question Numbers 7, 10 and 14 below). An exemption to the Rule Moratorium (Executive Order 2021-02) has been granted by the Governor's Office for the scope of this rulemaking.

7. Has the agency received written criticisms of the rules within the last five years? **Yes _X_** **No ___**

If yes, please fill out the table below:

ADEQ is currently engaged in "Phase 1" of a rulemaking to address stakeholder- or ADEQ staff-identified issues with Articles 1 and 3 of Chapter 9. An exemption to the Rule Moratorium (Executive Order 2021-02) has been granted by the Governor's Office for this scope. A Notice of Proposed Rulemaking is scheduled to be submitted in the fall of 2021. As this rulemaking is a current and on-going process, where ADEQ is actively soliciting for comments on the rule, ADEQ has decided to submit a spreadsheet in addressing Question 7. The spreadsheet is being used to record comments and analysis/response for all of the comments being received in anticipation and preparation of the imminent rulemaking. Under A.R.S. § 41-1056(A)(2), an agency is required to include a concise analysis of "[w]ritten criticisms of the rule received during the previous five years, including any written

analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods." Please find Attachment I, placed after the conclusion of Question 14, at the bottom of this Review.

Additionally, criticisms received that fall within the scope of this Five Year Rule Review, but outside of the scope of the "Phase 1" rulemaking, have been listed in the table below.

Rule	Criticism/Response
R18-9-101	Criticism 1: Subsection (48) - Definition of WOTUS should be aligned with new EPA approach.| Response 1: ADEQ appreciates the comment. ADEQ agrees that an update to the WOTUS definition is necessary to align with the update to the Federal definition of WOTUS, which went into effect on 6/22/20. ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 1.
Article 4	Criticism 1: Nitrogen loading calculations need to be revisited. EPA numbers suggest lesser values. Nitrogen calculations are too restrictive, especially for areas where there is not a nitrogen problem. The rule is so vague that the regulatory community does not even know how to apply it. There is little to no guidance on what numbers may be applied. Look at nitrogen loading-calculation approaches such as North Carolina and Virginia. Their approach is to regulate based upon how much nitrogen you may release at a property line. Both of these states have greater concerns due to shellfish and marine life and have worked with EPA. Why is Arizona more restrictive than these coastal states? Why are onsite systems held to more stringent standards than municipal systems. Municipal systems are not held to any that I know of. A municipal system releases exponentially more waste to the environment than you would ever see from an onsite system. Response 1: ADEQ appreciates the comment. Arizona's surface water resources are scarce which puts groundwater protection (in this case, from Nitrogen loading) in the state high in priority. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 4. The Department will also gather further industry knowledge to verify the necessity of this recommendation. Criticism 2: There is no provision for a permit notice of intent. We need a way of tracking who falls under this permit. Facility name, type of CAFO, location. Response 2: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 4. The Department will also gather further industry knowledge to verify the necessity of this recommendation. Criticism 3: It would be nice to have a general summary of what is to be achieved with the rule. Response 3: The Nitrogen Management General Permits (NMGPs) provide permit coverage for facility owners who apply nitrogen fertilizers and Concentrated Animal Feeding Operations (CAFOs) that follow a list of Best Management Practices (BMPs). The NMGPs also require CAFOs to have an impoundment to process waste and

Article 4	stormwater laden with Nitrogen. Generally, the NMGPs aim to achieve groundwater and surface water protection from facilities and producers with high Nitrogen activities. Criticism 4: Lagoon liner language is unclear. Response 4: ADEQ appreciates the comment. Impoundment liner requirements are listed clearly in R18-9-403(B). ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 4. The Department will also gather further industry knowledge to verify the necessity of this recommendation. Criticism 5: The flow rates have not been looked at in maybe decades; need new engineering study and data analysis of flow rates. Response 5: ADEQ appreciates the comment. Flow rates are not a consideration in the Nitrogen Management General Permits (NMGPs). Criticism 6: Mass loading numbers for nitrogen are too restrictive, and become a limiting factor for development. Response 6: ADEQ appreciates the comment. The NMGPs require an impoundment to capture nitrogen-laden waste and stormwater in order to counteract nitrogen loading, groundwater and surface water degradation. ADEQ believes the rule to strike a reasonable balance between water quality protection and economic hardship. With that said, ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 4. The Department will also gather further industry knowledge to verify the necessity of this recommendation. Criticism 7: Ancient rue that's way over due for updating. Response 7: ADEQ appreciates the comment. The NMGPs were updated in 2005 (11 A.A.R 4544). ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 9, Article 4. The Department will also gather further industry knowledge to verify the necessity of this recommendation. Criticism 8: There is no clear ADEQ path on CAFO operations at this time due to WOTUS implications. Groundwater / Aquifer is still impacted by CAFO manure though. Response 8: ADEQ appreciates the comment. The NMGPs are a state-based program that is not directly associated with the Waters of the United States rule from the Clean Water Act. The NMGPs provide groundwater and surface water protection in many ways (See Response 3 above).

8. Economic, small business, and consumer impact comparison:

Article 1. Aquifer Protection Permits - General Provisions

Article 1 was amended in January 2001, and again in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and

consumers has not changed since the effective date. Approximately 560 facilities have individual APPs.

Article 3. Aquifer Protection Permits - General Permits

Article 3 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. Additionally, ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date. Furthermore, the Type 4 APP General Permits, also known as the onsite wastewater program, has proven to be important to the state's economy in how it has allowed for significant real estate expansion in areas that do not have sewer service. ADEQ estimates that the real estate market has benefited by $22 billion in the last 20 years, as a result of the flexibility these rules provide. In addition to ADEQ's county delegates, the Department has received and processed the following number of general permits, since January 1, 2007:

- Type 2: ~571,
- Type 3: ~208,
- Type 4.01 (sewage collection system): 1839, and
- Type 4 (on-site facilities): 462.

Article 4. Nitrogen Management General Permits

Article 4 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the rules' impact on the state's economy, small business and consumers has not changed since the effective date. As the Nitrogen Management General Permits are "paperless" permits, ADEQ does not track the number of these permits.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Rule	Explanation
Articles 1 and 3	2016 Proposed Course of Action: ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5, and continues to evaluate individual rule sections in the context of the entire program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article where changes would significantly improve both environmental protection and customer service. Where specific comments were received they have been documented in the Section-by-Section Analysis. All criticisms and ADEQ responses are detailed in Attachment I.

Articles 1 and 3	Completed: No. Explanation: ADEQ is currently engaged in Phase 1 rulemaking to address stakeholder- or ADEQ staff-identified issues that are causing documented problems such as waste of resources, human capital or potentially causing harm and have readily identifiable appropriate solutions. This means the identified issues are able to be resolved in a way that limits additional burden on customers and does not require significant discussion or analysis. ADEQ intends to file a Notice of Proposed Rulemaking in February of 2022. ADEQ has permission from the Governor's office to engage in informal and formal rulemaking for Phase 1 via an approved exception memo. ADEQ intends to address other stakeholder- or staff-identified issues via a comprehensive technical workgroup and stakeholder involvement process. This process is outlined in the *Onsite Wastewater Treatment Regulatory Program 5-Year Plan (January 2021)* located at https://static.azdeq.gov/wqd/rulemaking/onsite/5yr-plan-owwt.pdf.
Article 4	2016 Proposed Course of Action: No amendments are proposed. Completed: N/A Explanation: N/A

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons 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. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules were amended before July 29, 2010. The Article rules govern the procedures and requirements for ADEQ to issue both individual and general permits as appropriate. The Article 3 rules govern the procedures and requirements for ADEQ to issue general permits. The Article 4 rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

At the time this Rule Review was submitted, ADEQ was actively engaged in a rulemaking on the rules within the scope of this Review. An exemption to the rulemaking moratorium was issued to ADEQ for this rulemaking in early 2021. ADEQ anticipates submission of "Phase 1" of the rulemaking (explained above in the explanation subsection of question number 10) by February of 2022.

Arizona Department of Environmental Quality
Five-Year-Review Report
Title 18. Environmental Quality
Chapter 9 - Department of Environmental Quality - Water Pollution Control
Article 5. Grazing Best Management Practices
April 30, 2021

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 49-203(A)(3)

Specific Statutory Authority: A.R.S. § 49-202.01

2. **The objective of each rule:**

Rule	Objective
R18-9-501	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. **Are the rules effective in achieving their objectives?** **Yes _X_** **No ___**
4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No ___**
5. **Are the rules enforced as written?** **Yes _X_** **No ___**
6. **Are the rules clear, concise, and understandable?** **Yes _X_** **No __**
7. **Has the agency received written criticisms of the rules within the last five years?** **Yes _X_** **No ___**

If yes, please fill out the table below:

Rule	Criticism/Response
R18-9-501	Criticism 1: It is not clear what the Best Management Practices actually are. The fact they are voluntary makes them ineffective at protecting water quality. There is hardly any requirement to be met, at all, in order to be issued a permit. It is unclear what the point of this rule is. If the objective is to protect surface water quality, the potential permittees should be required to take actions that actually protect surface water quality. The rule should be changed as follows: A. A person who engages in livestock grazing and applies ALL of the following MANDATORY 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 AND CEASES ALL GRAZING ACTIVITIES IMMEDIATELY WHEN THOSE ACTIVITIES IMPAIR WATER QUALITY; 2. Installs rangeland INFRASTRUCTURE, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality

R18-9-501	Standards AND IMMEDIATELY REPAIRS THIS INFRASTRUCTURE WHEN DAMAGED TO PREVENT LIVESTOCK FROM STRAYING; 3. ELIMINATES LIVESTOCK GRAZING WHEN NECESSARY TO achieve Surface Water Quality Standards; 4. Implements supplemental feeding, salting, and parasite control measures ONLY WHEN DOING SO WILL NO IMPAIR Surface Water Quality Standards. Response 1: ADEQ appreciates the comment. The Grazing Best Management Practices (BMPs) are mandated to be voluntary by statute (A.R.S. § 49-202.01). The BMPs themselves were developed by a special statutory committee (see repealed A.R.S. § 49-202.01 & .02) and can only be changed by the committee. Since the committee was disbanded by the repeal of its charter statute in 2008, legislation would be required to reassemble the committee and change the BMPs. Criticism 2: The existing rules are so vague as to be almost meaningless. Response 2: ADEQ appreciates the comment. The BMPs were developed by a special statutory committee (see repealed A.R.S. § 49-202.01 & .02) and can not be changed without new legislative authority. Criticism 3: It needs more specific guidance. Are you sure one who installs some fencing qualifies for the permit if the agency should say more is needed or in a different place. Follow up on each of the requirements so one who complies is given assurance the permit will be issued. It should be detailed enough so one can be assured compliance will result in a permit being issued. Response 3: Please See Response 1. Criticism 4: 1. The rule imposes no burden and does not further progress towards the objective. Response 4: Please See Response 1.. Criticism 5: 1. There is no consideration of the burden of wildlife on the rancher and in his trying to follow this rule. Also the public can be a problem with pollution and cutting fences, also off road vehicles are a problem. Hunters often like to put salt next to waters which is usually blamed on the rancher. The Rancher cannot be the only one held accountable on the following of the rule. Response 5: Please See Response 1. Criticism 6: There are a couple of frequently used and scientifically sound livestock management practices that should be included: A. Livestock grazing should be managed to ensure conservative annual forage utilization rates. B. Livestock grazing should be prohibited in riparian areas during the warm growing season. Response 6: Please See Response 1.

R18-9-501	Criticism 6: What is the objective? It seems like it's relatively easy to obtain the grazing permit but then what happens? Does the permittee ever show the permit to some inspector? Is there any fee associated with it? If the rancher doesn't have the grazing permit, is there any penalty? If there's no follow up or testing of the stream for pollution levels, how does ADEQ know if the surface water quality is indeed being protected? In just the San Pedro River valley, where E.coli tests have been conducted on a regular basis, there's definite surface water contamination. So what did this permit do or not do to protect that surface water? Response 6: The objective of the Surface Water Quality General Grazing Permit (SWQGGP) is to establish an automatic, general permit for livestock grazers who follow one or more of the listed BMPs, protecting surface water quality in the process. ADEQ's General Permits are "automatic" once the criteria therein is met. The SWQGGP is voluntary program as opposed to a required program. Furthermore, ADEQ works with many groups across the state to sample surface waters for pollutants on a frequent basis. Criticism 7: The point of the rule is extremely unclear. It seems to just authorize a permit to a person engaged in livestock grazing for doing pretty much nothing to protect water quality. This rule is not in compliance with ARS 41-1056(A) because it: A. does nothing to achieve the stated objective; B. there are no benefits to this rule, and apparently no costs and imposes no burden at all to permittees; The rule, as ineffectual as it is, should notify the public how they may obtain copies of all permits issued and any notices of non-compliance, permit denials, and rescinded permits. Response 7: Please See Response 1. Also, ADEQ believes this rule is in compliance with A.R.S. § 41-1056(A) as the stated objective is to establish voluntary BMPs (see A.R.S. § 49-202.01). Criticism 8: I don't know its history but it seems like the rule could perhaps be retired. Response 8: Please See Response 1. Criticism 9: The rule appears to specifically avoid providing guidance regarding the best management practices for livestock grazing in Arizona. Response 9: Please See Response 1. Criticism 10: This felt like a waste of time because the Rule doesn't seem to do much. However, I hope someone at ADEQ will start to consider actually managing livestock producers so that they stop harming Arizona's ecology. Response 10: Please See Response 1. Criticism 11: We would really like your feedback as to why this is a rule. Ideally, all ranchers use best management practices. Response 11: Please See Response 1.

8. Economic, small business, and consumer impact comparison:

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. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

ADEQ did not proposed any amendments in the previous Five-Year Review Report, submitted to Council on March 31, 2016.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

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. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules was promulgated before July 29, 2010. The rule established a general permit.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

No amendments are proposed.

Arizona Department of Environmental Quality
Five-Year-Review Report
Title 18. Environmental Quality
Chapter 9. Department of Environmental Quality - Water Pollution Control
Article 7. Use of Recycled Water
April 30, 2021

1. Authorization of the rule by existing statutes

Statutory Authority: A.R.S. § 49-203(A)(6).

2. The objective of each rule:

Rule	Objective
R18-9-A701	This rule provides specific explanation for certain terms used in Articles 7.
R18-9-A702	This rule establishes which entities are applicable to the Article.
R18-9-A703	This rule establishes the application requirements for a recycled water individual permit.
R18-9-A704	This rule establishes a Recycled Water General Permit and the criteria that an entity must meet to become automatically covered by the permit.
R18-9-A705	This rule establishes a requirement for a permitee under a Recycled Water General Permit to provide the Department certain information if facts change, as well as requirements to obtain a renewal of a Recycled Water General Permit.
R18-9-A706	This rule establishes the right of the Director to revoke any Recycled Water General Permit and require an individual permit if one of the listed criteria have been met.
R18-9-A707	This rule establishes that the terms and conditions of Type 2, 3 and individual reclaimed water permits issued before 1/1/18 remain in effect according to the language of Article 7 despite the restructuring of the rule that came into effect as of 1/1/18.
R18-9-B701	This rule establishes that 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.
R18-9-B702	This rule establishes the general requirements for becoming and usage of “reclaimed water”, as opposed to “recycled water”.
R18-9-B703	This rule establishes the general provisions for Recycled Water Individual Permits for Reclaimed Water.
R18-9-B704	This rule establishes the requirements for the Type 2 - Recycled Water General Permits for the direct reuse of Class A+ reclaimed water.
R18-9-B705	This rule establishes the requirements for the Type 2 - Recycled Water General Permits for the direct reuse of Class A reclaimed water.
R18-9-B706	This rule establishes the requirements for the Type 2 - Recycled Water General Permits for the direct reuse of Class B+ reclaimed water.
R18-9-B707	This rule establishes the requirements for the Type 2 - Recycled Water General Permits for the direct reuse of Class B reclaimed water.
R18-9-B708	This rule establishes the requirements for the Type 2 - Recycled Water General Permits for the direct reuse of Class C reclaimed water.
R18-9-B709	This rule establishes the requirements for the Type 3 – Recycled Water General Permits for a reclaimed water blending facility.

R18-9-B710	This rule establishes the requirements for the Type 3 – Recycled Water General Permits for a reclaimed water agent.
R18-9-C701	This rule establishes the requirements for the Recycled Water Individual Permits for industrial wastewater that is reused.
R18-9-D701	This rule establishes the requirements for the Type 1 – Recycled Water General Permits for grey water.
R18-9-D701	This rule establishes the requirements for the Type 3 – Recycled Water General Permits for grey water.
R18-9-E701	This rule establishes the requirements for the Recycled Water Individual Permits for an advanced reclaimed water treatment facility.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X_** **No ___**

5. Are the rules enforced as written? **Yes _X_** **No ___**

6. Are the rules clear, concise, and understandable? **Yes _X_** **No __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes _X_** **No ___**

If yes, please fill out the table below:

Rule	Criticism/Response
General	Criticism 1: Could be more generalized, especially for the General Public. Response 1: ADEQ appreciates the comment. ADEQ believes the rule to be functionally terse, while sufficiently detailed, simultaneously. ADEQ believes that if the rule were more generalized, human health and the environment would be less protected. Criticism 2: The difference(s) between industrial and commercial wastewater needs to be defined. Response 2: ADEQ appreciates the comment. "Industrial wastewater" is defined in R18-9-A701(6). ADEQ does not believe it is necessary to define other types of wastewater as they fall into the general category that encompasses wastewaters other than "Industrial Wastewater". Criticism 3: If the product meets current ADEQ drinking water quality standards then there should be no further burden to its use as potable water. Response 3: ADEQ appreciates the comment. ADEQ believes the transformation from recycled water to drinking water via treatment facility warrants a permit. A.A.C. R18-9-E701 delineates the requirements for a "Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility." Criticism 4: Public opinion is important but not science based. Budget funding toward the general acceptance of all sources of water available for drinking. Response 4: ADEQ appreciates the comment. ADEQ's Water Quality Division budgets funding to support its regulatory programs. Drinking water must meet the Primary

	Drinking Water Maximum Contaminant Levels to be considered appropriate for human consumption.
R18-9-D701	Criticism 1: There is a conflict between R18-9-D701 and R18-9-E303 causing confusion as to how grey water is to be handled in homes being designed to use composting toilets and incinerating toilets. Response 1: ADEQ believes the commenter to be addressing the requirement for Type 4 general permits to be designed to include a capacity for the flow of the onsite system, even if greywater is not going to the onsite system (See R18-9-E303(A)(3)(b)). The intent of the rule is to ensure that if there is an issue with the greywater system, the onsite system is large enough to handle the flow. If, for example, ADEQ eliminates the greywater flow from the onsite wastewater treatment system design, then in the future, if there is an issue with the greywater system (plugging, heavy precipitation, or other), then the only other recourse for the disposal of the greywater is the onsite system. However, if the greywater is not included in the design of the onsite system, then the undersized system will not be able to handle the greywater flows during an emergency. Therefore, R18-9-E303(A)(3)(b)'s requirement to "oversize the system" is a necessary one in protecting Arizona's ground water quality. Criticism 2: The Grey Water rules have not been well received. They are not truthful as any alteration of plumbing fixtures or a structure results in a permit being required from the local building official. As part of the flow for a Type 4 APP general permit they need to be disclosed and identified properly on Notice of Transfers. Without the requirement of a permit there is little to no documentation for a new homeowner let alone the 4th or 5th buyer. This Grey Water process is the only process that allows a one-time homeowner to set the course for all other homeowners after them. Typically, permitting decisions are based off of the optimum expectancy of the home not the ideas of a one-time owner. Despite the no-permit approach, the interest in grey water usage is dismally low, largely due to only directing the conversation to the permit-less process and not how to apply the grey water to the site. It was process-centric and missed out on the most important aspect of how a homeowner should use it on their site. To optimize the beneficial use of grey water for the irrigation of plants you need to have a soil application rate, know the amount of water generated and determine the types of plants that can be successful. In cold climates there needs to be a method to turn off the system during dormant months. Instead of permit-less, permits should be processed as a continuation of an onsite system. There should be a separate O & M Manual for grey water so any homeowner could be successful. We can do better than what has already been done. The Grey Water rules should be incorporated into the General Permit Program. DAs are delegated flows from 3,000 gpd to 24,000 gpd. These uses should be permitted at the local level. We can provide local models, information, insight and expertise. No need to send these permits down to ADEQ in Phoenix to review. Response 2: The grey water rules were not well received prior to 2001 Rule Revision when there were requirements to submit specific design plans for ADEQ and provide a treatment. The current grey water rules are in place to make the process easier for homeowners who want to use grey water at their homes, and ADEQ developed the rules with stakeholder input. Many of these rules are based on the results of a grey water study conducted in the Tucson area. The homeowners who use grey water must abide by the 13 best management practices (BMPs) listed in the Rule which were developed to protect public health. The homeowner should be well aware when to turn on and off grey water due to climate conditions. All grey water systems must have an overflow pipe connected to the sewer system or an on-site wastewater disposal system. The on-site treatment system capacity and the requirement for reserved area for disposal shall not be changed due to use of grey water.

	ADEQ does not see any necessity to add grey water rules under the General Permit Program.
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R18-9-D701	apply the grey water to the site. It was process-centric and missed out on the most important aspect of how a homeowner should use it on their site. To optimize the beneficial use of grey water for the irrigation of plants you need to have a soil application rate, know the amount of water generated and determine the types of plants that can be successful. In cold climates there needs to be a method to turn off the system during dormant months. Instead of permit-less, permits should be processed as a continuation of an onsite system. There should be a separate O & M Manual for grey water so any homeowner could be successful. We can do better than what has already been done. The Grey Water rules should be incorporated into the General Permit Program. DAs are delegated flows from 3,000 gpd to 24,000 gpd. These uses should be permitted at the local level. We can provide local models, information, insight and expertise. No need to send these permits down to ADEQ in Phoenix to review. Response 2: The grey water rules were not well received prior to 2001 Rule Revision when there were requirements to submit specific design plans for ADEQ and provide a treatment. The current grey water rules are in place to make the process easier for homeowners who want to use grey water at their homes, and ADEQ developed the rules with stakeholder input. Many of these rules are based on the results of a grey water study conducted in the Tucson area. The homeowners who use grey water must abide by the 13 best management practices (BMPs) listed in the Rule which were developed to protect public health. The homeowner should be well aware when to turn on and off grey water due to climate conditions. All grey water systems must have an overflow pipe connected to the sewer system or an on-site wastewater disposal system. The on-site treatment system capacity and the requirement for reserved area for disposal shall not be changed due to use of grey water. ADEQ does not see any necessity to add grey water rules under the General Permit Program.

*ADEQ's most recent Notice of Final Rulemaking on this Article, published in the Arizona Administrative Register on November 3, 2017, contained a number of comments and responses to the rulemaking at 23 AAR 3103. An excerpt of those comments and responses has been attached to this Five Year Rule Review as "Attachment I" below the conclusion of the Review.

8. Economic, small business, and consumer impact comparison:

Article 7. Use of Recycled Water

Prior to 2001, both sewage treatment plants and end users were required to monitor reclaimed water quality. The 2001 rulemaking (7 A.A.R. 3091) 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 Aquifer Protection Permits program. 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 active reclaimed water individual permits and 455 reclaimed water general permits.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Rule	Explanation
R18-9: former Article 6 and current Article 7	2016 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 [2016], 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. Completed: Yes Explanation: ADEQ completed a rulemaking on November 3, 2017 (23 AAR 3091, at 3094, 3097, and 3108). Article 6 Conveyances were moved for restructuring purposes which allow for regulation of recycled water as a whole for industry nomenclature's sake. The 2017 rulemaking states in part (emphasis added): *"The proposed modifications also transfer all of the provisions from A.A.C. Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances, into Article 7 for regulation as general reclaimed water requirements under Part B of Article 7. The definitions for "open water conveyance" and "pipeline conveyance" are moved into the Article 7 General Provisions definition section, R18-9-A701. The reclaimed water pipeline conveyance and open water conveyance sections, R18-9-602 and R18-9-603, respectively, are moved into the section for general requirements for reclaimed water, R18-9-B702. These provisions are only applicable to reclaimed water conveyance and distribution and so are only regulated under the reclaimed water category under Part B of Article 7. ADEQ added a clause to the open water conveyances in R18-9-B702(K)(3)(c) to allow for a possible variance from the ¼ mile signage interval requirement, as approved by the Department to be reasonably protective of human health."* A workgroup looked further into whether there were any additional needs for conveyances. They made a recommendation, but the reasoning was not explained in the report (see p. 23). That report is located at the following link at the bottom of the page ("Combined Workgroup Final Report"): https://www.azdeq.gov/node/1205. Further rulemakings to Article 7 are not planned at this time.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

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 objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules were amended after July 29, 2010 and meet all of the requirements from A.R.S. § 41-1037. The rules govern the procedures and requirements for ADEQ to issue both individual and general permits as appropriate.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

ADEQ's rules, as they exist now, provide the necessary information for the regulated community. No significant issues with the rules have come to the attention of ADEQ since the 2017 rulemaking. Therefore, there is no proposed course of action at this time.

Attachment I

ADEQ's most recent Notice of Final Rulemaking on this Article, published in the Arizona Administrative Register on November 3, 2017, contained a number of comments and responses to the rulemaking at 23 AAR 3103. "Attachment I" is an excerpt of those comments and responses.

This was done to allow the regulated community time to evaluate the new rule structure any changes needed to their processes before the new rules apply. The new rules are not, however, expected to cause significant changes for small businesses.

(iii) Exempting small businesses from any or all requirements of this rulemaking.

To protect human health and the environment, ADEQ cannot exempt small businesses from requirements of this rulemaking.

d. The probable cost and benefit to private persons and consumers who are directly affected by this rulemaking.

ADEQ does not anticipate any immediate significant economic cost or benefit to private persons or consumers. The modifications in Type 1 gray water use requirements are essentially clarifications and are expected to at most minimally affect residential gray water users. An intangible benefit of these rules may be the ability of the public to support businesses that conserve more water through gray water use or that lead the nation in protecting water resources by producing potable water from reclaimed water.

F. A statement of the probable effect on state revenues.

ADEQ does not expect any significant increase or decrease state revenues as a result of this rule.

G. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ does not know of any less intrusive or less costly alternative methods of expanding gray water use and allowing for treatment of reclaimed water to produce potable water, while still protecting human health and the environment.

H. A description of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ generally does not track in a database certain information on permittees, such as whether a facility is publicly or privately owned. Some of the information came from an informal review of active permits and past billing histories.

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

R18-9-A701(A)(2)(a) –

- left "National" to avoid clarify applicability to both NPDES & AZPDES permits [see Comment and Response 1]

R18-9-B702, Table 1 –

- combined rows for A+ & A and B+ and B because they are the same [see Comment and Response 18];
- added "at valve" to clarify longstanding ADEQ interpretation of hose bibb [see Comment and Response 37]; and
- modified language for to clarify ADEQ's longstanding interpretation for when and where signage is required for restricted access irrigation signage [see Comment and Response 2]

R18-9-B702(K)(3)(c) –

- added clause to the open water conveyances signage provision in R18-9-B702(K)(3)(c) to allow for a possible variance from the ¼ mile signage interval requirement, as approved by the Department to be reasonably protective of human health [see Comment and Response 30]

R18-9-B705(B)(1)(c) & (d) –

- removed "if applicable" from these subsections as the phrase does not add value for clarification purposes [see Comment and Response 10]

R18-9-B710(F) –

- repealed this subsection because it is already covered under subsection (E) and was left in place in error in the proposed rulemaking [see Comment and Response 27]

R18-9-D701(C)(8) & R18-9-D701(C)(8) –

- in both rules, modified the holding tank time provision from mandating a 24 hour time period to mandating that the holding tank time must be "minimized to avoid development of anaerobic conditions and odors", so as to account for varying temperatures and conditions throughout the state and throughout the year [see Comment and Response 44]

R18-9-E701(B) –

- added emphasis that the rule does not exempt any facility from Safe Drinking Water Act requirements applicable under Title 18, Chapter 4 of the Arizona Administrative Code [see Comment and Response 3, and other comments for which the responses refer the reader to Response 3]; and
- changed "treated" to "considered" in order to avoid confusion between the technical term "treated" and the colloquial interpretation of "treated" [change not made in response to a particular comment]

Technical Corrections –

- ADEQ also made technical corrections at the request of Governor's Regulatory Review Council staff.

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

Comment 1: In R18-9-A701(2)(a), "National" should not be struck out and the rule should read as follows: "The use of water subsequent to its discharge under the conditions of a National or an Arizona Pollutant Discharge Elimination System permit." Phoenix's 91st Avenue Wastewater Treatment Plant has a National, rather than an Arizona, Discharge Elimination System permit, due to proximity to tribal lands. (City of Phoenix)

Response 1: ADEQ agrees that this clarification is important considering the different nomenclatures and the fact that reclaimed conveyance rules would apply to both federal and state permits. ADEQ has modified the rule language accordingly.

Comment 2: R18-9-B702, Table 1, Signage and Notification Requirements for Direct Reuse Sites: under Restricted Access Irriga-

tion for Class B+, B, and C reclaimed water, Phoenix requests the clarifying changes below:

1. Ingress points; or 2. On premises ~~or~~ at reasonably spaced intervals not more than 1/4 mile, as applicable to the use; and 3. Notice on golf score cards, if applicable. (City of Phoenix)

Response 2: ADEQ's interpretation is that a clarification is needed to accommodate situations where reclaimed water is distributed within a large area in which access is secured, such as within the fenced area of a sewage treatment facility. This contrasts with the more typical situation where an irrigation ditch conveys reclaimed water to more distant farm fields and access to the ditch is unsecured to vehicular and pedestrian traffic. In this latter situation, to ensure protection of human health, ADEQ believes the existing signage requirements are appropriate. ADEQ has revised this provision to read:

"1. Ingress points; 2. ~~On premises or at~~ At reasonably spaced intervals of not more than 1/4 mile~~, as applicable to the use~~ at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. ~~Notice~~ If applicable, notice on golf score cards~~, if applicable~~"

Comment 3: The definition of "advanced reclaimed water treatment facility" should be amended to state that it treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water Act. It is not appropriate to regulate potable water under the reclaimed water rules. (Maricopa County Water and Waste Management Division [Maricopa County])

Response 3: ADEQ does not intend that the Part E provisions for an Advanced Reclaimed Water Treatment Facility substitute for or contradict any requirements of the Safe Drinking Water Act, as subsection R18-9-E701(B) prescribes. In fact, federal law has not addressed how to safely treat and directly reuse reclaimed water for Safe Drinking Water Act purposes. If an advanced reclaimed water treatment facility is also subject to the SDWA as a potable water system, then this rule provides additional public health protection in the absence of any parallel federal law. Also, this rule applies to more situations than the distribution of drinking water by a potable water system regulated under the SDWA; it applies to any distribution of treated reclaimed water for potable use. To clarify that this rule does not substitute for Safe Drinking Water Act requirements, ADEQ has revised this subsection from the proposed version to read:

"B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be ~~treated as~~ considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this section exempts an applicable facility from Safe Drinking Water Act requirements."

Note that ADEQ also modified "treated as" to "considered" to avoid confusion between the technical and colloquial interpretations of "treated."

Comment 4: Regulating drinking water under the Aquifer Protection rules is inappropriate, since there is no discharge to the groundwater under the proposed rules. (Maricopa County)

Response 4: This rule proposal regulates an Advanced Reclaimed Water Treatment Facility under a Recycled Water Individual Permit, not through the Aquifer Protection Permit program. Recycled water used as a drinking water source would be regulated as if it were a surface water under Title 18, Chapter 4 of the Arizona Administrative Code.

Comment 5: The proposed rules are inconsistent and need to be clear that an advanced reclaimed water treatment facility treats and purifies reclaimed water to be suitable as a source water supply to a drinking water treatment facility which is designed, approved, and regulated under the Safe Drinking Water Act. It is not appropriate to regulate potable water under the reclaimed water rules. Under the Safe Drinking Water Act, this source of water would need to be treated as a surface water supply, with all of the protections for such a supply as detailed under the Safe Drinking Water rules. (Maricopa County)

Response 5: These rules are fully consistent with SDWA requirements. The finished water from an Advanced Reclaimed Water Treatment Facility will be considered a surface water source under the Safe Drinking Water Act. As Response 3 indicates, ADEQ modified R18-9-E701(B) to further clarify that the Part E requirements do not substitute for or override SDWA requirements. ADEQ developed the criteria for permitting an Advanced Reclaimed Water Treatment Facility in Part E to ensure that such facilities appropriately address safety concerns in consideration of the distinctive characteristics of reclaimed water.

If the commenter is concerned that a drinking water distributor not subject to SDWA (that is, the system serves less than 25 people or 15 service connections) might somehow produce water unsuitable for human consumption, ADEQ does not share this concern. The costs of permitting, design, construction, and monitoring necessary to bring a protective advanced reclaimed water treatment facility online are likely prohibitive for most small systems not subject to the SDWA that have so few water users to fund the project. Even so, these rules are specifically designed to ensure that any advanced reclaimed water treatment facility will be permitted to produce drinkable water protective of human health. Therefore, outside of the clarification to subsection R18-9-E701(B), no further change to the rule is necessary.

Comment 6: The use of Class A+ and B+ effluent as appropriate sources for direct potable reuse is inappropriate as long as the standard only has to be met 4 out of 7 days. This opens up the range of source water to potentially untreated wastewater being acceptable. The use of source water should be limited to those facilities which can prove to meet the standard under all circumstances. (Maricopa County)

Response 6: The commenter mentions only part of the standard for the reclaimed water quality classes. As the commenter alludes to, for Class A+ reclaimed water, there must be no fecal coliform organisms in 4 of the last 7 daily samples, and for Class B+ reclaimed water, there must be less than 200 fecal coliform organisms per 100 milliliters (ml) of water in 4 of the last 7 daily samples. However, the commenter fails to mention that the standard also includes single sample maximum limits. Thus, for Class A+ reclaimed water, all samples for fecal coliforms must fall below 23 organisms per 100 ml, and for Class B+ reclaimed water, all samples must fall below 800 organisms per 100 ml. In other words, the quality of the reclaimed water is tightly constrained for all of the reclaimed water classes, and does not open "up the range of source water to potentially untreated wastewater."

Advanced Reclaimed Water Treatment Facilities will treat water to a potable level through multiple barriers of treatment that take

into consideration not only the 4 of 7 day averages but the single sample maximum limits applicable to the reclaimed water classes. The criteria proposed in this rule ensure that the Advanced Reclaimed Water Treatment Facility will produce finished water protective of public health for any of the reclaimed water classes, although only classes A+ and B+ are allowed under this rule. Among these criteria are detailed characterization of the reclaimed water source, pilot treatment system testing tailored to the characteristics of the source water, multiple barriers of treatment for microbial and chemical constituents within the treatment train, determination of appropriate microbial removal targets, process control monitoring to ensure microbial limits are met, and corrective actions for out-of-range monitoring and diversion of any non-compliant water from delivery. No change to the rule is necessary.

Comment 7: It is inappropriate to proceed with direct potable reuse provisions (section E) until after the Phase 2 standards are developed for the advanced wastewater treatment facility. (Maricopa County)

Response 7: ADEQ believes that the interim criteria proposed in Part E of this rule are fully satisfactory for the purpose of permitting an Advanced Reclaimed Water Treatment Facility if a utility submits an application to ADEQ during the period the interim criteria are in effect. An extensive body of technical literature exists on design and operation details pertaining to the interim criteria. Both facility designers and ADEQ permitting specialists would be relying on this literature to ensure that the interim criteria are satisfactorily addressed. No change to the rule is necessary.

Comment 8: There is a concern that this type of facility would be reviewed and approved by someone without an expertise in the review and approval of surface water treatment facilities. (Maricopa County)

Response 8: ADEQ has delegated approval of surface water treatment facilities under SDWA to only one local authority. If ADEQ were to receive an application and issue a permit for an Advanced Reclaimed Water Treatment Facility that produces a finished water that is considered a surface water source, ADEQ would collaborate with the local authority during the entire process to ensure that appropriate technical review is provided all around. No change to the rule is necessary.

Comment 9: The current and proposed reuse rules do not require any signage at parks which are using reclaimed water as a source of spray irrigation water. It is irresponsible not to notify the users of public or private parks that the water used to irrigate with is reclaimed water. These facilities are typically used by children and families. Activities include picnicking and play, and participants should be properly notified as such. (Maricopa County)

Response 9: ADEQ does not allow reuse of Class B+, B, or C reclaimed water for irrigation of parks and schoolyards. However, it does allow irrigation with Class A+ and A reclaimed water. The current rule requires signage for irrigation of schoolyards with Class A+ or A reclaimed water but not for parks. A rule change to require signage for parks is not a consideration in this rule revision, but ADEQ will analyze the current situation with respect to parks and determine whether a rule change is merited in the next installment of rulemaking.

Comment 10: Under R18-9-B705(B)(1)(c) (Recycled Water Permit Term, Information Changes, and Renewal), the rule requires reporting of "the total nitrogen concentration of the reclaimed water applied, if applicable." It is not clear when it would not be applicable to report this. I think that ADEQ should delete the phrase "if applicable" here. Also, it would be clearer if the rule identified that this is the average total nitrogen concentration or geometric mean of the total nitrogen concentration. (Pima County Regional Wastewater Reclamation Department [Pima County])

Response 10: ADEQ has removed "if applicable" in both subsections (c) and (d) as the phrase does not add clarification value to these subsections. The situation will dictate whether the requirement is applicable to the use. Regarding the total nitrogen comment, ADEQ did not consider this change in this rulemaking but will take this comment under advisement for the next rulemaking installment.

Comment 11: Under R18-9-B702(H)(4)(c), within these exceptions there is opportunity to address use of reclaimed water for riparian ecosystem enhancement. I suggest that ADEQ add an additional item under this subsection that says "ii. Silviculture for riparian habitat restoration where the application uses A+ reclaimed water outside of any active stream channel and irrigation is controlled with moisture sensing equipment." (Pima County)

Response 11: ADEQ is aware of interest among stakeholders in recent years to designate riparian restoration or enhancement as an allowed end use for reclaimed water in A.A.C. Title 18, Chapter 11. ADEQ will take this suggestion under advisement for a possible rule change in the next installment of rulemaking.

Comment 12: For R18-9-A705(B) (Recycled Water Permit Term, Information Changes, and Renewal), ADEQ should be notified within 15 days from the date of change of the permittee (end user), as opposed to annually (as stated in the proposed language). If passed as proposed with the annual limit, this would have the potential to result in the loss of critical permit information which could cost the Department time and resources to recover. Fifteen days is consistent with other ADEQ permit transfer notification timeframes. (Global Water Resources Inc. [Global Water])

Response 12: ADEQ does not anticipate significant costs from having only annual notice of the changes prescribed in the rule. Nor is a delay in this information likely result in negative environmental effects. The rule also does not preclude permittees from notifying ADEQ of any changes more frequently than once annually. No change to the rule is necessary.

Comment 13: For R18-9-A705(B)(1) & (2) (Recycled Water Permit Term, Information Changes, and Renewal), ADEQ should define and specify the difference between the Owner and the Permittee, or replace them with "end-user". Section D701(A) includes a definition for "end-user" as being basically the Permittee, which is supported by the Type 2 Notice of Intent (NOI). It makes sense that the person who uses the recycled water is the one who must adhere to the rules, i.e., the responsible use of recycled water for the intended allowable use. (Global Water)

Response 13: ADEQ believes that there is value in obtaining owner information in the case that ownership has changed and it is different from the permittee or provided contact person. Also, ADEQ believes that the rule and the application forms are clear that the permittee means the end user. No change to the rule is necessary.

Comment 14: For R18-9-A705(B)(6) (Recycled Water Permit Term, Information Changes, and Renewal), the expansion of a reuse area and/or the addition of another allowable use within the same property boundary is information that should be presented to the Department for approval prior to implementing. The Department has the faculty to approve whether or not the use of reclaimed water as presented in a Notice of Intent (NOI) meets with the intent of the rule and is considered safe. The allowable uses and use-requirements are not always interpreted correctly by the end-users (permittees or potential permittees), and they should not be given the authority to self-approve these changes to their Department-approved permit. Two examples come to mind: 1) an end-user wants to expand their reuse area to include land which is not contiguous with their previously-approved permit (ADEQ historically has considered non-contiguous reuse areas as needing separate permits); 2) an end-user wants to add dust control as an allowable use under their Class B reclaimed water permit, with the intent to impound the water at the construction site (ADEQ does not allow the impoundment of non-denitrified reclaimed water without lining the impoundment to achieve a certain hydraulic conductivity). If these activities were only required to be reported to ADEQ annually, non-denitrified reclaimed water could potentially be discharged to the aquifer for an entire year, or what should have been two separate reuse permits could erroneously be permitted under only one. (Global Water)

Response 14: The commenter is concerned that for Classes A, B, and C reclaimed water, in which the total nitrogen content is not removed to below the drinking water Maximum Contaminant Level, any delay by a permittee in notifying ADEQ about end use changes until the end of the calendar year could lead to groundwater contamination. ADEQ recognizes this concern, but believes that in practice, this outcome is highly unlikely.

For example, a permittee irrigating acreage with Class A, B, or C reclaimed water is doing so under an existing end use general permit that covers water application rates and water balances designed to minimize the potential for groundwater contamination for the type of vegetation that is irrigated. It is unlikely that a permittee would risk violating the permit terms by willfully over-irrigating additional non-contiguous land, rather than simply following the application rate and water balance measures that continue to be required under the permit.

As for dust control, the general permit for the end user does prescribe that if an impoundment is added, the impoundment must be lined. Again, a permittee would risk violation of permit terms. However, ADEQ believes the in practice, reclaimed water permittees are very cognizant of the special practices obligated by reuse, so such situations would be rare.

Thus, ADEQ believes that it is the best use of resources for itself and the permittee to process these types of changes no more than once annually, given the unlikelihood of adverse environmental impacts. ADEQ appreciates the comment, but believes that a reasonable person would have considerable experience with reusing reclaimed water under the rules as written, and would contact ADEQ to clarify if he or she is unsure. No change to the rule is necessary.

Comment 15: R18-9-A705(B)(7) (Recycled Water Permit Term, Information Changes, and Renewal) does not specify that an increase in non-denitrified recycled water should be subject to the same nitrogen-management method as originally approved. Without a review of the amended nitrogen-management method (such as a water balance model), the Department would not know if an increase of 10 to 20 percent of the Class A, B, or C reclaimed water could have the potential to reach the water table and cause the groundwater to exceed the Aquifer Water Quality Standard for nitrogen. (Global Water)

Response 15: ADEQ believes that the rules as written would still clearly apply to any additional use or expansion in water use. This means that nitrogen management provisions would still apply to any increased usage of recycled water. Therefore, before expanding his or her use of water, a permittee must ensure that impoundments are lined appropriately, and that, using a water balance or other approved method, any expansion of water usage would not reach the water table and affect an aquifer. Please also see Response 14. No change to the rule is necessary.

Comment 16: For R18-9-A705(C) (Recycled Water Permit Term, Information Changes, and Renewal), Consider rewriting the second sentence as follows: A permittee shall update all information as listed in subsection (B) in a Notice of Renewal; changes to the information specified in B6 and B7 shall be subject to approval. (Global Water)

Response 16: For the reasons stated above, ADEQ currently believes this change is not necessary to protect human health or the environment or to improve internal processes.

Comment 17: For R18-9-B702(C) (General Requirements for Reclaimed Water), there are existing APPs which include reclaimed water blending operations, so it would be inconsistent to say that these blending operations could only take place under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility. (Global Water)

Response 17: The clarification of language in this rule does not change any requirements for existing Aquifer Protection Permits.

Comment 18: For R18-9-B702(I) (General Requirements for Reclaimed Water), since the signage requirements are exactly the same for A+ and A, and also for B+ and B, you may want to consider combining A+ and A in the same row, and also B+ and B, in the interest of brevity and saving space. (Global Water)

Response 18: ADEQ agrees that this would make the rule simpler and more understandable and has modified the rule accordingly.

Comment 19: Consider removing R18-9-B704(D) (Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water). It is difficult to justify why an APP impoundment has to be reviewed and monitored, and the same impoundment at a reuse site does not. (This also pertains to R18-9-B706, for Class B+ reclaimed water.) Or consider adding an explanation that the planned disposal of reclaimed water in unlined impoundments is only allowed under an Aquifer Protection Permit. (Global Water)

Response 19: The general permits for Class A+ and Class B+ reclaimed water do not require a liner for impoundments storing reclaimed water under a general permit. Unlike Class A, B, and C reclaimed water, which contains a total nitrogen content in excess of the Aquifer Water Quality Standard limit of 10 mg/l, Class A+ and B+ reclaimed waters have undergone nitrogen removal within the sewage treatment facility to a total nitrogen content of less than 10 mg/l. Thus, seepage of Class A+ and B+ reclaimed water from an unlined impoundment would not cause an Aquifer Water Quality Standard violation for total nitrogen in

the underlying aquifer.

Under APP, subsection R18-9-B204(B)(7) requires that all containment structures within the treatment works of a sewage treatment facility meet a defined and very low seepage rate. For an impoundment, a lining is usually required to meet this seepage rate. However, under R18-9-B204(D), an applicant may request in writing and justify a less stringent alternative, including use of an unlined impoundment, if justified by site-specific conditions.

ADEQ believes that there is insufficient justification for requiring a liner for impoundments containing Class A+ or B+ reclaimed water. No change to the rule is necessary.

Comment 20: Consider rewriting R18-9-D701 (Type 1 Recycled Water General Permit for Gray Water) as follows: The gray water irrigation area is sited outside of a floodway. (ADEQ does not regulate the "system", as in how they capture their gray water; the rules apply to where and how they apply the gray water for irrigation.) This comment applies also to the Type 3 gray water permit under R18-9-D702(C)(9). (Global Water)

Response 20: It is ADEQ's longstanding interpretation is that the "gray water system" means the gray water system's assemblies and the application area combined. No change to the rule is necessary.

Comment 21: For R18-9-E701 (Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility [Individual Permit for ARWTF]) generally and R18-9-E701(C)(6), currently, the "Part E. Purified Water for Potable Use" (PWPU) R18-9-E701 does not address the compliance tracking and reporting of the water quality for the water system owner and their Customers. The rule advises the water from a facility shall be treated as a surface Water facility. However, this does not address how the Primacy Agency, ADEQ, EPA and customers will track the water quality compliance parameters of the system. The ADEQ Oracle Water Quality Tracking Data base used by the APP SMRF has many problems and program limitations. I recommend the Water Quality (WQ) of the facility be tracked in the SDWIS system as a either a New PWS or a New EPDS. Then, the WQ can be tracked with the additional WQ parameters deemed necessary for PWPU to ensure all interested parties including customers have the ability to monitor and track the facility's performance. This will give the public the knowledge they need to track the system's WQ and obtain a comfort level that the PWPU is being treated to whatever the agreed Direct Potable Reuse DW regulatory standards are deemed to be. Also, the distribution system of the PWPU system needs to be addressed, specifically the piping conveyance prior to entering the actual potable water system. (Global Water)

Response 21: This rule is not intended to substitute for SDWA requirements. However, if the advanced reclaimed water treatment facility is also a potable water system, compliance and monitoring will be tracked in the same manner as required under Arizona's rules and procedures implementing the Safe Drinking Water Act.

Comment 22: For R18-9-E701(C)(1)(b) (Individual Permit for ARWTF), in regards to "source water", I assume source water will be defined as Class B+ - Class A+ as documented on page no. 1667 of proposed rulemaking. (Global Water)

Response 22: Yes, the definition of "advanced reclaimed water treatment facility" specifies that the facility only treats and purifies Class A+ or B+ water.

Comment 23: For R18-9-E701(C)(1)(d) (Individual Permit for ARWTF), requesting a list of unregulated microbial and chemical constituents and the corresponding concentrations in the source water to determine the system's effectiveness of treatment seems ambiguous since even the UCMRs for potable drinking water are consistently changing. This may require a clear definition of what the microbial and chemical constituents are or may require classification for WWTPs that are not in an industrial environment and only treat domestic wastewater for example. (Global Water)

Response 23: For the purpose of these interim criteria, the applicant would propose a list of constituents based on their specific circumstances and other factors. This list would be discussed with ADEQ staff during the application review process to finalize a list appropriate to the applicant's source water, proposed treatment train, published guidance and relevant research, and other factors.

Comment 24: For R18-9-E701(C)(2) (Individual Permit for ARWTF), it seems this will be primarily from the pilot System(s) since the PWPU systems are all fairly new, especially the newer technology related to filtration. (Global Water)

Response 24: ADEQ agrees that the results from pilot treatment testing under R18-9-E701(C)(2) will greatly inform design and monitoring elements of the Advanced Reclaimed Water Treatment Facility.

Comment 25: For R18-9-E701(C)(4) (Individual Permit for ARWTF), on page no. 1667 the verbiage advises technology is in the 6 and 10 log range, however for example the current potable 4 Log requirements for drinking water using chlorine disinfection comply with the 334.0 EPA 4 Log requirement. The rule should help define what the minimum acceptable treatment criteria will be for the logarithmic reduction target level, maybe 6 log? (Global Water)

Response 25: The appropriate logarithmic removal target level will vary on a case by case basis depending on the particular reclaimed source water, treatment train of a facility, and any additional potential treatment as part of a drinking water system. Under the rule as written, applicant may propose an appropriate log removal target accordingly. ADEQ does not believe a rule change is necessary at this time.

Comment 26: For R18-9-E701(C)(9) (Individual Permit for ARWTF), you need to determine if new PWPU operator treatment and distribution certifications will be required. (Global Water)

Response 26: An operation plan and training is already required in the rule as proposed. However, ADEQ will consider specific operator certification requirements in future rulemaking installments.

Comment 27: R18-9-B710(F) (Type 3 Recycled Water General Permit for a Reclaimed Water Agent) should be deleted because it is covered under subsection (E) immediately preceding it and under R18-9-A705(B), and the deadlines for the disclosures would conflict. (Zimmerman)

Response 27: ADEQ agrees with this clarifying change and has modified the rule accordingly.

Comment 28: R18-9-A705(C) (Recycled Water Individual Permit Application) should allow for late filing of a notice of renewal provided that nothing has changed that would require a new permit and the permittee has stayed in compliance with the applicable substantive requirements for reuse. 5 years is a long time to remember or calendar the renewal and ADEQ does not provide notice of imminent permit expiration, so it is not difficult to miss the deadline and have to submit a new application and expend ADEQ resources reviewing it when there is no actual need for it. Alternatively, permit terms could be lengthened or made indefinite. Effluent reuse arrangements are typically very long term. There is no reason for only a 5 year term if the permittee has to stay in compliance as substantive rules change over time and annually submit any changes in information. (Zimmerman)

Response 28: It is important for the agency and the customer to periodically update a permit as rules and facilities change over time. ADEQ believes that a five year permit time is a reasonable permit term time period and similar to other environmental permit term time periods (e.g. CWA AZPDES and CAA Title V). The agency makes every effort to notify a permittee of upcoming renewal dates. However, if a renewal date is missed, the agency works with permittees to ensure that a facility may continue their operations until a new permit is issued.

Comment 29: The RID Board concurs that using reclaimed water will offset and conserve potable water for human consumption and domestic purposes. (Roosevelt Irrigation District [RID])

Response 29: ADEQ appreciates the expression of support.

Comment 30: The RID owns and operates pipelines and open water canal conveyances that carry a combination of reclaimed water in conjunction with remediated water and groundwater. The reclaimed water is from the City of Phoenix 23rd Avenue water reclamation facility and the Liberty Water Company water reclamation facility. It is not practical for the RID to place warning signs along the canal ditch at all points of ingress and at 1/4 mile intervals. (RID)

Response 30: ADEQ agrees that it may be reasonable in certain situations to place signs at different intervals than currently required by the rules. As such, ADEQ added a clause to the open water conveyances signage provision in R18-9-B702(K)(3)(c) to allow for a possible variance from the 1/4 mile signage interval requirement, as approved by the Department to be reasonably protective of human health. The subsection is revised as follows:

"(c) 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 <u>or other interval as approved in writing by the Department</u>; and"

Comment 31: The RID supports the amendment to R18-9-704 in order to allow incidental runoff of reclaimed water to the waters of the U.S. under certain conditions. Reclaimed water has been a significant component of the RID water supply used for beneficial purposes, such as irrigation. Allowing incidental runoff of reclaimed water from a site where it is being applied is a sound practice which have been utilized by the agricultural community for decades. The RID does not see any need for the agency to place additional restrictions or permit regulations on the existing uses and practices of the RID or its customers. (RID)

Response 31: This comment appears to refer to changes made in prior rulemakings. No changes are proposed specific to run-off provisions in this rulemaking.

Comment 32: RID believes that the generator of the reclaimed water should remain responsible for the amount of chlorine and E.Coli that can be discharged into the RID conveyance system. Since the RID owns and operates a significant amount of open conveyance systems, water quality is subject to changes from nonpoint sources. The regulations should be clear that the conveyances which receive reclaimed water is not a reclaimed water blending facility. The use of the RID canals for conveyance has been a long term beneficial means of conveyance and should be allowed to continue without further regulation or permitting. The RID should be allowed to continue to use standard agricultural conveyance pipelines to convey their water which contains some amount of reclaimed water. (RID)

Response 32: ADEQ appreciates the comments. ADEQ has made no substantive changes to conveyance requirements. All requirements that applied regarding conveyances before this rulemaking will still apply.

Comment 33: It is unclear why the owner operator of the facility that accepts reclaimed water, and provides additional treatment for a higher-quality direct reuse, such as using the reclaimed water as source water for a potable water treatment plant, should be permitted as anything other than a potable water treatment facility? (RID)

Response: 33: Please see Response 3.This rule does not substitute for SDWA requirements.

Comment 34: The RID supports ADEQ in providing an exception to the prohibition against providing reclaimed water for human consumption by allowing reclaimed water to be treated appropriately for potable use. The RID supports ADEQ leaving the current reclaimed classes and permitting methodology in place. The RID supports ADEQ no longer using the term reclaimed water for water that is delivered to and processed through an advanced water treatment facility. The RID supports ADEQ requiring an advanced water treatment facility to obtain a recycled water individual permit. The RID supports ADEQ expanding and establishing interim permitting criteria. This will enable projects to move forward, which will meet ever increasing water demands. (RID)

Response 34: ADEQ appreciates the commenter's support.

Comment 35: The RID believes that a permit should be ten (10) years rather than five (5) years in length to provide certainty to the facility owners. (RID)

Response 35: ADEQ believes that five years is a reasonable permit term, especially given the current rate of advancement of treatment and monitoring technologies. Please see Response 28 above.

Comment 36: The RID does not believe ADEQ should always require a full pilot plant study for the advanced water treatment facility that will be used to treat reclaimed water for potable use under a recycled water individual permit. (RID)

Response 36: ADEQ believes that protection of public health currently demands a high level of review, including the submission of a pilot study with a permit application for an advanced reclaimed water treatment facility. ADEQ may accept an analogous facility's full pilot study.

Comment 37: I would like to see a definition of hose bibb in the rule. (City of Flagstaff)

Response 37: This comment refers to the provision in R18-9-B702(G) that hose bibbs discharging reclaimed water should be secured to prevent use by the public and Table 1 in R18-9-B702 for signage of hose bibbs. Neither the International Plumbing Code (IPC) nor the Uniform Plumbing Code (UPC) define hose bibb. To clarify ADEQ's longstanding intent that a "hose bibb" is the valve from which water may be discharged, and does not include hose connection points, ADEQ will add the phrase "at valve" under the heading "Hose Bibbs" in Table 1 of R18-9-B702.

Comment 38: I think the permit requirements in R18-9-E701 should be moved to the drinking water rules. (City of Flagstaff)

Response 38: ADEQ disagrees. As addressed in Responses 3 and 5, the permitting requirements for an Advanced Reclaimed Water Treatment Facility neither substitute for nor contradict any requirements of the Safe Drinking Water Act (SDWA). All SDWA approvals and other requirements remain effect. Despite the high level of treatment provided by an Advanced Reclaimed Water Treatment Facility—to a potable standard—this rule considers the finished water produced by the facility a surface water source with respect to the SDWA and therefore subject to all SDWA requirements regarding surface water sources. No change to the rule is necessary.

Comment 39:

…Currently, about 25% of wastewater in Arizona is… [generated by systems producing] less than 24,000 gallons per day…down to a simple home…I reuse my water through the "free" quote-unquote permit offered by the 711 section of the gray water rules…and I also get the pleasure of enforcing on people who use that permit and use it incorrectly…we need to approach gray water and reuse from a total standpoint including all waste waters in Arizona.

The other point I want to make is…I see this as a "top-down" approach…I believe if we're going to have the support of reuse throughout Arizona that we need to have the individual citizens reusing the water they can in their homes and support that through the proper easy to use, functional permit and process…I believe if you look at those permits [authorizing use of less than 24,000 gallons per day]…they are administered on a face to face basis…and that's very different than the environment established in the individual permits section…people like me have a direct contact with the public.

…If you look at what's happened in NSF 350 recently, there are products now…approved on their product listing...show better test results than A+ quality effluent. I'm encouraging the department to actually look at a…series of permits and a program … for under 24,000 gallons for [recycled water]. And delegate that to the counties along with those the black water permits so that they can be administered face to face by a single party.

I think there is also a missing element…a type 3 permit delegated that is essentially a…residential permit for under 3,000 gallons per day…to also include commercial projects. (Garrett)

Individuals do not read the rules before implementing – RULES MUST BE DESIGNED WITH THE UNDERSTANDING OF NORMAL HUMAN ACTIONS

ADEQ should develop a recycled water program for on-site wastewater treatment facilities of less than 24,000 gallons per day that are regulated under Type 3 General Aquifer Protection Permits. ADEQ should develop these as Type 3 recycled water permits with five or seven year renewal periods and delegate them to the counties. Permits should be developed for residential use from 400 to 24,000 gallons per day and for commercial use from 0 to 24,000 gallons per day.

Resolve:

- Current conflict between 711 residential free permit and E303 Compost system requirements for a normal black water disposal system.
- Apply any resolution to all type 4 permits – Provide consistency
- Provide transition from Type 1 1.09 sewage treatment and onsite treatment facilities that are currently using overflow or gray water discharge. (Garrett)

Response 39: In the above comments, it is sometimes not clear that two different regulatory programs are being discussed. One program requires a permit under the Aquifer Protection Permit (APP) program for on-site wastewater treatment facilities, including septic tanks and alternative on-site systems where site conditions prevent installation of a septic tank. Such facilities exist in order to facilitate the disposal of treated black water, which includes wastewater from toilets and kitchen sinks. The other program discussed is the recycled water program (or the reclaimed water program under the 2001 rules), which involves use, reuse, and permitting of reclaimed water and gray water. Specifically at issue here is the Type 1 Recycled [formerly "Reclaimed"] General Permit for gray water, whereby residents may collect and reuse water collected from laundry, bathroom sinks, or showers, for irrigation purposes.

On-site wastewater treatment facilities, which exist in order to facilitate the disposal of black water, are permitted as general permits under APP. ADEQ has generally delegated permitting authority for on-site wastewater treatment facilities to the 15 counties. Specifically, ADEQ has delegated general permit authority under APP for septic tanks and some or all alternative systems of less than 3000 gallons per day of flow (generally residential systems) to all counties. ADEQ has delegated general permit authority under APP for larger on-site wastewater treatment facilities (multi-residential or non-residential), from 3,000 to 24,000 gallons per day of flow, to counties based on their need for these larger facilities and the ability of the delegated agency to review and oversee administration of these more complex systems. ADEQ retains jurisdiction for sewage treatment facilities with a flow of 24,000 gallons per day or more as Individual Aquifer Protection Permits.

Except for complaint response and compliance assistance duties for Type 1 gray water user permits, ADEQ does not delegate any of the recycled water program to local authorities. This includes individual and general permits for reclaimed water, and general permits for gray water. Two types of general permits are specified in rule for gray water. The Type 1 general permit is for private residential gray water use for a flow of less than 400 gallons per day. The Type 3 general permit applies to gray water flows of not

more than 3000 gallons per day which do not fit the conditions of the Type 1 general permit. In addition, under these final rules, a person has the option to apply for an Individual Recycled Water Permit for gray water use for situations that do not fit either the Type 1 or Type 3 general permit conditions.

The Type 1 general permit for private residential gray water does not require a person to submit an application or register for that permit or pay a permit fee. A person is deemed to be in compliance with the permit and may use gray water under the permit if he or she follows the criteria specified in the rule. This Type 1 gray water permit does not conflict with permits issued by delegated agencies for on-site wastewater treatment facilities. There are no significant changes to the Type 1 gray water permit in this rulemaking. As most people using gray water fall under the Type 1 criteria, and therefore do not need to apply for a permit through ADEQ, the agency disagrees with the current process labeled as duplicative for most customers.

The commenter suggests that ADEQ consider expanding the reclaimed water permitting program to on-site wastewater treatment facilities under this rulemaking and also provides comments related to general permits under APP. A major revision of the APP rules for these systems, involving development of significantly more stringent requirements, would be needed to ensure the safety of any wastewater reuse. This is outside the purview of the recycled water program and of this rulemaking, but ADEQ will take these suggestions under advisement for possible future rule changes.

Also, the commenter ties the issuance of the Type 3 gray water permit to a general APP that would be issued for an on-site system. These are separate programs because black water and gray water pose different environmental and health concerns. In ADEQ's experience, most commercial or institutional facilities dispose of black water to a sewer rather than rely on on-site wastewater treatment systems. Therefore, at this time, there is not enough need to consider tying the issuance of a Type 3 gray water permit to that of a general permit under APP for an on-site wastewater treatment system disposing 3000 to 24,000 gallons per day.

As ADEQ implements the recycled water program as governed under this rule change, it will evaluate the potential benefits to Arizona's citizens and whether delegating provisions of these recycled water rules to local authorities is appropriate.

Comment 40: Currently 15 counties in the State of Arizona have some sort of delegation agreement with ADEQ to administer the onsite wastewater program…we have up to 23 different types of permits…about 15 different advanced technologies that produce wastewater quality far superior than you would get with gray water… [Innovation and technological advancements are] also happening in the onsite technology, we have products already on the proprietary product listing of ADEQ that we can bring inside…for irrigation and to flush inside the house. What we don't have is a framework for the on-site people to be able to manage that. But what we do have are building codes that have already adopted NSF 350 that has these great performance standards…

So if we're going to talk about water reuse…we need to bring the onsite people in and listen to them; we've missed this piece in this rule making…One of the recommendations I would have is on your committee group is to get a building official on it…and one the on-site folks…to talk about the specific parts of the gray water and the things we can do to make sure this dialog moves forward…

The [Coconino County] Board of Supervisors…they want us to be able to issue permits from the local level…if you're above 400 gallons of gray water use you come in and get a permit from our a department, but I have to send you to ADEQ to get a permit down in Phoenix…If we can treat full source waste water at a local level, why are we sending the lesser gray water we are not concerned about to ADEQ…it's an unnecessary complication for our citizens and a duplication of processes, one of the things Doug Ducey has told us he wants us to do a better job at. The counties are delegated full strength waste water up to 24,000 gallons per day so certainly we can handle those permits for gray water as well. (Coconino County)

Response 40: Please see Response 39 above regarding the recycled water program, which is the subject of this rulemaking. The APP general permit program for on-site wastewater treatment facilities is outside the scope of this rulemaking.

The last paragraph of this comment implies that there is a duplication of permitting processes between on-site wastewater treatment systems and gray water systems. This is not the case as the gray systems are separate types of facilities from onsite systems and under separate regulatory frameworks.

No change to this rule is necessary.

Comment 41: In some ways when you go with an unpermitted, "happy go free" approach…, you lose the ability to monitor your effectiveness. So we don't know how many we're doing. I'd like us to do rules statewide and not just written for a semi-arid desert down in Tucson…in Flagstaff, I have gray water but I also have a 30 inch frost depth.

We should have some kind of O&M manual…we regulate the house for the life expectancy…and we like to have documents that live with that house… if we had documentation on the gray water system, it would be helpful for the third or fourth homeowner to know where it is… By not having a permit or documentation, these systems are not being identified 100% of the time on the notice of transfers. Which is problematic…You could have a homeowner who doesn't know what they have. (Coconino County)

Response 41: ADEQ believes that permitting residential gray water users by rule is the current best way to protect human health and the environment while also easing overly burdensome regulation. The current rule for permitting private residential use has been an effective regulatory tool since its inception in 2001, and no changes to the permitting process aspects of the rule are necessary. As issues associated with gray water use are largely self-limiting, ADEQ believes it is not within the scope of its mission to regulate property transfers to the extent of required and O&M manual. ADEQ believes no change to the rule is necessary.

Comment 42: In addition to addressing reclaimed water for direct potable reuse, ADEQ needs to develop and recommend comprehensive criteria for advanced onsite system treatment of reclaimed water for direct reuse. Recommend ADEQ adopt NSF 350 that currently is adopted by the 2015 IRC. Technologies are currently on the ADEQ proprietary Product Listing that will allow reuse of the treated onsite wastewater to be reused to flush toilets and irrigation. (Coconino County)

As with the advances that have been made in innovation and utilization of gray water and reuse permits, advances have also been made with treatment technologies in the onsite wastewater program. There are currently technologies listed on the ADEQ Proprietary Product Listing that would allow for wastewater treated onsite to have the effluent reused for toilet flushing inside the home.

The wastewater rules have been hindered from any substantive rule making since 2005. ADEQ incorrectly characterizes the Type 4 Composting Toilet permit. Type 4.03 is for use of a composting toilet. The disposal methods allow for year round use of a residence. Composting toilet is not a standalone permit.

Response 42: Please see Response 39 above. ADEQ is not revising any APP rules as a part of this rulemaking.

Comment 43: Gray water is for the beneficial use of irrigation and not for discharge. The number one reason people seek out a compost-gray water system is because it is often the cheapest easiest path for development, it is not for irrigation purposes. This section should also consider cold climate for those areas where temperatures drop down to prevent any type of irrigation a properly sized soil based system would be needed. (Coconino County)

Response 43: ADEQ believes that the combination of practices described in R18-9-D701(A)(6), (A)(7), and (A)(11) in the Type 1 gray water general permit along with the option under R18-9-E303(F)(2)(b) of requiring the interceptor and disposal trench for kitchen wastewater to also accommodate gray water flows are sufficient to guide a homeowner in proper operation of the gray water system.

Comment 44: ADEQ specifies that gray water storage tank holding time should be 24 hours or less to avoid development of anaerobic conditions and odors. Consideration should be given for buried tanks in areas with cold climate. In Flagstaff the soil temperature does not get high enough year round to sustain bacterial growth. Soil temperatures are available on the web. (Coconino County)

Response 44: Because of the differences in climate throughout the state and throughout the year, ADEQ has modified R18-9-D701(C)(8) rule to say that holding time must be "minimized to avoid the development anaerobic conditions and odors". If odors or anaerobic conditions may develop, a gray water user is expected to ensure that water is kept in holding tanks for a period of time that prevents such conditions or odors to occur. ADEQ also similarly modified the corresponding provision in the Type 3 gray water rule at R18-9-D702(C)(8).

Comment 45: Simply changing the name from Direct Reuse of Reclaimed Water to Use of Recycled Water does not address the problem. Especially when the classifications of water will remain the same. As it pertains to gray water, gray water should not be included as reclaimed-recycled water as it receives no treatment.

The following are two examples of definitions on Reclaimed/Recycled water:

Reclaimed or recycled water (also called wastewater reuse or water reclamation) is the process of converting wastewater into water that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface water and groundwater (i.e., groundwater recharge).

Reclaimed or recycled water (also called wastewater reuse or water reclamation) is the process of converting wastewater into water that can be reused for other purposes. Reuse may include irrigation of gardens and agricultural fields or replenishing surface water and groundwater (i.e., groundwater recharge). Reused water may also be directed toward fulfilling certain needs in residences (e.g. toilet flushing), businesses, and industry, and could even be treated to reach drinking water standards. This last option is called either "direct potable reuse" or "indirect potable" reuse, depending on the approach used. Colloquially, the term "toilet to tap" also refers to potable reuse.

Additionally "Reclaimed" is the more consistent and common term consistent with the technology on a nationwide scale. (Coconino County)

Response 45: Previously, gray water was included in Article 7 with reclaimed water. However, it is really a different type of recycled water. There is widespread acceptance that gray water use is a distinct form of recycling water. No change to rule is necessary.

Comment 46: Currently, gray water permits are underutilized because of impracticable requirements. The use of gray water is underutilized as it is ideally not the most efficient way to reuse water and is not sustainable due to what is in the waste stream. Gray water is not a Reclaimed water, nor is it a Recycled water as it appears the categories for Reclaimed/Recycled water will not be changed. Gray water needs to be regulated by one entity and not the bifurcated process that currently exists. Gray water needs to be taken out of the 711 rules and put into the Title 18 Chapter 9 APP Program. All 15 counties are delegated the Type 4 permits. The source for all gray water for onsite systems would be through these permitted systems. It is more logical for gray water permitting processing for both rural and municipal areas to be overseen by the county partners.

Currently the application process is as follows: There is a duplicative permitting process by requiring those applicants that are installing onsite system with gray water systems obtain a second permit through ADEQ is overly burdensome. Certainly if the Delegated Authorities can oversee the full strength waste and permit these systems the lesser strength gray water need not be further administered and overseen by and entity in Phoenix. As with the intent of this Rule Revision there is the desire to encourage, permit and oversee these reuse permits at the local level?

The Gray Water Reuse Rules allow for a very permissive use of gray water without regulation. All of the existing Type 4 Alternative Treatment Technologies in the APP produce an effluent discharge that has better performance numbers that the unregulated gray water. Perhaps this should be considered for all general permits and instead of discharge treated effluent could be used at shallower depths to allow for broader irrigation applications. (Coconino County)

Response 46: Please see response 39 and 40 above.

Comment 47: Use of gray water for safely watering food plants, R18-9-D701(A)(3). Caution and disagree with this approach. There is insufficient research to allow this and we would need to be very careful as once it is allowed it is becomes very difficult to segregate, for use on vegetables with a skin or rind as opposed to leafy greens.

Allow gray water use for shrubs as well as trees, R18-9-D701(A)(3). This is actually the best use for gray water as the supply is not as reliable over time and shrubs typically are not as needy as other landscape plants. (Coconino County)

Response 47: This provision is very clear that using gray water to water food plants is not allowed except for trees and shrubs

which have an edible portion that does not come into contact with the gray water, which includes the skin or rind of that edible portion. ADEQ does not believe that irrigation of trees and shrubs in this category would be confused with leafy greens. No change to rule is necessary.

Comment 48: Disallow mixing of water used to wash diapers or similarly soiled garments with gray water, R18-9-D701(A)(5), because disinfection is too complicated for most home gray water systems. Agree with this proposal. (Coconino County)

Response 48: Thank you for your comment.

Comment 49: Provide examples for minimizing standing water on the surface, including the now widespread practice of distributing gray water under a mulch cover. Gray water should not be applied through flood irrigation, flooding is not an efficient method in maximizing the use of gray water for irrigation purposes. If the use of gray water is to promote water conservation this is not a correct path. The best method to maximize water usage to plants is through drip irrigation where the water may be applied to the plants in a controlled amount and time. Wide spread application of flood irrigation for gray water could result in breeding areas for mosquitoes. We already have West Nile Virus and Zika. Mandate that if blockage, backup, or overload of the system occurs, distribution of gray water should cease until the deficiency is corrected, R18-9-D701(A)(7). This is a common sense approach and should not have to be written out however, a blockage alone is not the only reason an individual needs to route their gray water back to an onsite system or municipal system. It may include uses inside the home that generate an effluent that would be harmful to plants, for example salt baths or high bleach loads of laundry. Or if there is a contagious disease inside the household or a very sick person taking and using medications, rubs, and ointments that are best suited to not go to the planted areas. Or what about if the homeowner simply has no desire to maintain their planter and wishes to convert the planted area to something else. Or with time the gray water volume inside the home decreases as children or parties leave the household and irrigation areas need to be reconsidered or sometimes abandoned. There needs to be a method to revert the water back to an onsite system or municipal system. (Coconino County)

Response 49: ADEQ believes the conditions prescribed for private residential gray water in this rule satisfactorily address the issues raised by the commenter. The concern about generating harmful effluent is addressed at R18-9-D701. The commenter's concern with respect to a contagious disease or very sick person is addressed in part by R18-9-D701(A)(5), which specifies not washing diapers or similarly soiled or infectious garments, and by R18-9-D701(A)(2), which specifies that human contact with gray water and soil watered by gray water must be avoided. In whatever way a gray water user reasonably ceases distribution of gray water in case of a system blockage, backup, or overload or in the situation that any of the other permit conditions cannot be met, is up to the user. No change to the rule is necessary.

Comment 50: ADEQ is proposing a new reuse/gray water permit for flows from 3000 to 24,000 gpd. The counties are currently delegated these flows for full-strength wastewater. This permit should be folded into the on-site system rules. (Coconino County)

Response 50: Please see comment 39 above.

Comment 51: Under the proposed R18-9-A703 Recycled Water Individual Permit, ADEQ will allow the addition of kitchen sink and dishwater wastewater to a gray water source, as long as the water is treated appropriately for its end use. This is where there is a potential for problems with vectors with the kitchen water going out on top of the ground in flood irrigation or on top of the ground surface. Food wastes attracts insects, rodents and animals. Disagree with this practice and has not be widely accepted nationwide. (Coconino County)

Response 51: Individual permit conditions are tailored to site-specific conditions and are designed to be protective of human health, including treatment, monitoring, reporting, and other requirements appropriate to the use. No change to the rule is necessary.

Comment 52: Regarding the proposed Type 3 Recycled Water General Permit for Gray Water, R18-9-D702, suggest that large commercial systems that are served by municipal wastewater be the only permits that apply for this permit category. Use of the currently the existing 4.23 General Permit [in APP] would allow for reuse up to 24,000 gpd at the local level. (Coconino County)

Response 52: The 4.23 General APP Permit regulates wastewater discharges from larger-sized septic tanks and alternative on-site systems under the Aquifer Protection Permit program. ADEQ does not intend to move the beneficial use of gray water from these recycled water rules into the APP program. Please see Response 39 above.

Comment 53: The continuation of perpetual-life Type 1 permits for gray water, may meet ADEQ rulemaking intentions in the hands of a highly motivated property owner or lessee. However, such success cannot be assured during a property transfer, or in the hands of less motivated persons, such as a new or impaired owner, or a renter, especially without an effective oversight and training programs.

The absence of records pertaining to the presence and management responsibilities for a Type 1 Recycled Water Gray Water system operating under R18-9-D701 could be problematic for property which is going through a transfer of ownership. At that time there will be responsibilities for seller disclosure and buyer due diligence inspection. Without design and operational records, the transfer of ownership transaction could be in jeopardy, or result in other risk to the parties to the transaction, including a Realtor® and Escrow officer.

Retaining the Type 1 permit for properties operating under a pre-existing gray water authorization makes sense, perhaps with a 20-year sunset date. The upgraded program should provide better documentation by utilizing a process resembling that for the proposed Type 2 Recycled Water General Permit, but allowing for a longer term, say until the time of ownership transfer. While that term may seem burdensome, such general permit-type practices are common for automobile registration renewal, credit card agreements, etc. Further the program established in A.A.C. R18-9-A316 establishes an inspection and transfer processes for Type 4 General Permit facilities in Chapter 9, Article 3; and could be adapted for a recycled water permit. This Article 3 program has been operating since mid-2006, applicable to the approximately 550,000 operating On-site Wastewater Treatment Facilities under ADEQ jurisdiction. (Swanson)

Response 53: Please see Response 41.

Comment 54: ADEQ APP rules pertaining to residential sewage, including gray water, would seem to function more efficiently within the same body of regulation and expertise. The placement of residential gray water on the land surface may seem risk free, though the presence of vectors and disease transmission uncertainty has been rapidly evolving. Further professional scrutiny by those with comprehensive communicable disease expertise within the various public health programs in Arizona is recommended for the 13 Practices and several Prohibitions. (Swanson)

Response 54: Please see Responses 47 and 49. ADEQ has consulted with internal and external gray water experts to develop these rules and considers the rules to be protective of human health and the environment.

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 rules require several different types of permits. General permits are used where possible. However, pursuant to A.R.S. 41-1037(A)(3), which allows individual permits if general permits are technically infeasible, individual permits are prescribed for case-by-case situations. For example, individual permit is required for advanced reclaimed water treatment facilities. Such facilities will have varying advanced water treatment techniques and will also require case-by-case facility-specific determinations.

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 applicable to reclaimed water, gray water, or to the direct potable use of treated reclaimed water.

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 has been submitted.

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

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:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

ARTICLE 6. ~~RECLAIMED WATER CONVEYANCES~~ REPEALED

Section

R18-9-601. ~~Definitions~~ Repealed
R18-9-602. ~~Pipeline Conveyances of Reclaimed Water~~ Repealed
R18-9-603 ~~Open Water Conveyances of Reclaimed Water~~ Repealed

ARTICLE 7. ~~DIRECT REUSE OF RECLAIMED~~ USE OF RECYCLED WATER

Section

R18-9-701. ~~Definitions~~ Renumbered
R18-9-702. ~~Applicability and Standards for Reclaimed Water Classes~~ Renumbered
R18-9-703. ~~Transition of Permits~~ Renumbered
R18-9-704. ~~General Requirements~~ Renumbered
R18-9-705. ~~Reclaimed Water Individual Permit Application~~ Renumbered
R18-9-706. ~~Reclaimed Water Individual Permit General Provisions~~ Renumbered
R18-9-707. ~~Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water~~ Renumbered
R18-9-708. ~~Reusing Reclaimed Water Under a General Permit~~ Renumbered
R18-9-709. ~~Reclaimed Water General Permit Renewal and Transfer~~ Renumbered
R18-9-710. ~~Reclaimed Water General Permit Revocation~~ Renumbered
R18-9-711. ~~Type 1 Reclaimed Water General Permit for Gray Water~~ Renumbered
R18-9-712. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water~~ Renumbered
R18-9-713. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water~~ Renumbered
R18-9-714. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water~~ Renumbered
R18-9-715. ~~Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water~~ Renumbered

Arizona Department of Environmental Quality

Five-Year-Review Report

Title 18. Environmental Quality

Chapter 9. Department of Environmental Quality –

Water Pollution Control

Article 10. Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids

May 28, 2021

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 49-203

Specific Statutory Authority: A.R.S. §§ 49-255.01(B) and 49-255.03

2. The objective of each rule:

Rule	Objective
Article 10 - in general	Biosolids are nutrient-rich organic by-products resulting from wastewater treatment that can be beneficially recycled. Only biosolids that meet pathogen reduction methods, vector attraction reduction methods, and pollutant levels as established in rule may be land applied. Biosolids can be added to soil to increase plant production, and they have significantly fewer pathogens than animal manure. The State of Arizona has regulated the land application of biosolids since 1979. The Biosolids/Sewage Sludge Management Program implements Section 405 of the Clean Water Act (33 U.S.C. 1345) and requires that any person applying, generating or transporting biosolids/sewage sludge in Arizona must register that activity. The Arizona Department of Environmental Quality (ADEQ) was delegated the Biosolids/Sewage Sludge Management Program in March 2004 by the U.S. Environmental Protection Agency (EPA). ADEQ's biosolids program is regulated under 18 A.A.C. 9, Article 10 and includes requirements for: ● Treatment, transportation, land application, and management of biosolids; ● Septage pumping services; ● Class I Management Facilities, other major wastewater treatment plants, and treatment works treating domestic sewage; and ● Management practices and application of biosolids to reclamation sites.
R18-9-1001	The definition section defines important terms used in 18 A.A.C., Chapter 9, Article 10, so that the rules are understandable to the general public, such as words with uncommon meanings and technical terms.
R18-9-1002	The rule defines the scope of the biosolids rules, including applicability, exemptions, and prohibitions.
R18-9-1003	The rule establishes general requirements for this program.
R18-9-1004	The rule establishes the applicator registration process for bulk biosolids.
R18-9-1005	The rule establishes the pollutant concentrations for biosolids application.
R18-9-1006	The rule establishes Class A and Class B pathogen reduction requirements for biosolids.

R18-9-1007	The rule establishes management practices and general requirements for application of bulk biosolids that are not exceptional quality biosolids.
R18-9-1008	The rule establishes management practices and requirements for application of bulk biosolids that are not exceptional quality biosolids to reclamation sites.
R18-9-1009	The rule establishes site restrictions that apply to land where biosolids, which do not meet the Class A pathogen reduction requirements, are land-applied.
R18-9-1010	The rule establishes vector attraction reduction procedures for biosolids.
R18-9-1011	The rule establishes requirements for transportation of biosolids.
R18-9-1012	The rule establishes requirements for sampling and analysis (self-monitoring) of biosolids.
R18-9-1013	The rule establishes recordkeeping requirements applicable to persons who prepare or apply biosolids.
R18-9-1014	The rule establishes reporting requirements applicable to persons who prepare, transport, or apply biosolids.
R18-9-1015	The rule allows ADEQ to conduct inspections, including sampling of biosolids quality.
Appendix A.	The appendix establishes a procedure to determine an annual biosolids application rate that ensures that the annual pollutant loading rates are not exceeded.

3. **Are the rules effective in achieving their objectives?** **Yes _X_** **No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No ___**

5. **Are the rules enforced as written?** **Yes _X_** **No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X_** **No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes _X_** **No ___**

If yes, please fill out the table below:

Rule	Criticism/Response
General	Criticism 1: I think the article is clear, concise and understandable for a person with an engineering background but not for the average person. Response 1: ADEQ appreciates the comment. ADEQ follows federal rule requirements which, admittedly, can be technical. We strive to make complex regulations and permits as simple as possible for our customers, but must stay within the confines of federal rule. ADEQ is available to help anyone understand the requirements for biosolid application. Criticism 2: I don't think the specific objectives of Article 10 are identified. A general objective to protect the environment is understood but what specific objectives are intended to be protected? The burden cannot be determined until the objective is understood. Response 2: ADEQ appreciates the comment. Typically, our regulations simply state requirements but do not provide a narrative explanation of the underlying rationale. However, when we first promulgate the regulation we include a purpose statement that

General cont'd	explains the rule. That statement may be found at 2 A.A.R. 1979. https://apps.azsos.gov/public_services/register/1996/20/final.pdf Criticism 3: The local jurisdiction should have a meaningful say in biosolid application in their community and what level of treatment is done prior to application. Response 3: ADEQ appreciates the comment. Local municipalities that generate biosolids may decide application uses and may exceed, but not reduce, the state's requirements for treatment of their generated biosolids. Additionally, federal and state laws require public notice of application of biosolids to be published in the largest newspaper of general circulation, providing the public and local authorities with awareness of biosolid application in their areas. Criticism 4: The use of domestic septage for land application under a registration for application of biosolids is misleading. Domestic septage from a septic tank, for example, and directly land applied does not have the same level of treatment biosolids do to render exceptional, class A and/or class B biosolids. In fact, there is no criteria in the rule that states if domestic septage requires pathogen reduction. If domestic septage that is directly land applied not treated to meet class A/class B biosolids, then it is simply disposal. Please see solid waste rule R18-13-1112 A(8) and R18-13-1112 B. It is unknown what the pollutant concentration, chain of custody, and analytical methods are for domestic septage that is directly land applied without prior treatment to render class A or B biosolids. Response 4: ADEQ appreciates the comment. Arizona laws and regulations follow the requirements of federal law. A.A.C. R18-9-1009(A) and R18-9-1010(C) provide protections for domestic septage application. Domestic septage that is directly land applied is not simply disposal and must be applied appropriately. Further, R18-13-1112(A)(8) requires domestic septage to be "disposed of according to the recommendations of the local county health department." Federal and state laws do not address pollutant concentrations, chain-of-custody procedures, and analytical methods for domestic septage with regard to land application. Criticism 4.1: The applicator registration requirements of biosolids should include a public comment period. A public comment period would allow for input from local stakeholders and/or interested parties regarding the proposed land registration for application of biosolids. Facilities that require a NPDES/AZPDES permit to prepare biosolids should have a public comment period in addition to an annual report. Response 4.1: ADEQ appreciates the comment. There is no federal CWA requirement for public notice and comment periods for biosolid registrations and ADEQ may not be stricter than the federal requirements. *See* A.R.S. § 49-104(16). A facility with an individual AZPDES permit must renew the permit every five years, affording an opportunity for public notice and comment at that time. The public may also comment on the biosolids general permit, which will be renewed in 2021. Additionally, under A.A.C. R18-9-1004(C), applicators of bulk biosolids, except for exceptional biosolids, must public notice proposed application of bulk biosolids for sites that have not

General cont'd	previously received biosolids, or when a site has not been used for land application for at least three consecutive years. Criticism 4.2: Nitrogen loading requirements for wastewater facilities and onsite wastewater systems are stringent when compared to the land application of biosolids/domestic septage. There are no groundwater monitoring requirements for nitrogen loading. Response 4.2: ADEQ appreciates the comment. Limits on rate of application and proximity to surface and groundwater protect waters from nitrogen loading. However, the Clean Water Act does not provide for groundwater monitoring and ADEQ may not be stricter than the federal requirements. *See* A.R.S. § 49-104(16). Criticism 5: I think overall the rules were well written, however they are confusing to farmers that want to use biosolids for the beneficial properties, but believe it is too difficult to manage. Response 5: ADEQ appreciates the comment. Please see Response #1. Criticism 6: Due to the amount of paperwork required to cover all the testing and reporting requirements it would be nice to have the program integrated into the myDEQ program. Thank you for the opportunity to provide input. I appreciate all your outreach and desire to improve the regulatory process. Response 6: ADEQ appreciates the comment. ADEQ intends to integrate all biosolids registration and reporting into myDEQ in the future. Criticism 7: Article 10 conflicts with 40 CFR 503 in many areas. Response 7: ADEQ appreciates the comment. ADEQ was approved to administer the Biosolids/Sewage Sludge Management Program by EPA. As part of this Five-Year Rule Report, ADEQ evaluated its rules and determined that they are consistent with the relevant federal regulations. If there are specific parts of the rule that the commenter feels do not align with 40 CFR 503, ADEQ would appreciate specific citations. Criticism 8: Article 10 is outdated and not in tune to future needs Response 8: ADEQ appreciates the comment. ADEQ follows federal rule but is working within those confines to make registration and reporting simple. ADEQ would be happy to consider any specific concerns. Criticism 9: Does this consider local regulation? While this is regulation for the State, issuing approval and not considering local regulation may send the wrong message to the applicant when further approvals may be required. Response 9: ADEQ appreciates the comment. Applicators are responsible for complying with all federal, state, and local requirements. ADEQ is willing to notify applicants of any specific local regulations if those regulations are provided to the Agency. Criticism 10: Clear - Yes Concise - Yes, but they can use additional illustration Understandable - Not easily understandable; understanding the rules requires the companion EPA's 'Plain English Guide'

General cont'd	Response 10: ADEQ appreciates the comment. As ADEQ follows EPA rules, generators and applicators may utilize EPA guidance. However, it should be noted that several conditions, such as where to public notice, are specific to Arizona. Criticism 11: The sampling and analysis requirements can capitalize on the full scan of pollutants for the first year in an AZPDES permit, followed by reduced sampling burden during the remaining four years in the permit life for the pollutants that did not show up in the first year. Response 11: ADEQ appreciates the comment. ADEQ requires effluent characterization taken at regular intervals throughout the five-year permit term for individual wastewater permittees because pollutants may appear one quarter and be gone the next. Biosolids ultimately are products derived from that same effluent, and for the same reason monitoring throughout the permit term is required so that no unexpected pollutant slips through.
R18-9-1004	Criticism 1: I only answered no, because I have one burden related to a farmer I work with regarding R18-9-1004. The farmer has three sites all registered for land application that at times because of the crop planted he was unable to apply biosolids within a 3 year period, which required re-registering one of the three sites. It was his opinion that this is a burden that makes no sense, because all three site are rotated based on the crop he plants, the plot was not fallowed, it just takes that particular crop planted longer to harvest. Response 1: ADEQ appreciates the comment. The requirement to re-public notice if a site has not received bulk biosolids application within the last three years balances the public's right to know (a fundamental part of the federal CWA) and simplifies regulatory requirements.
R18-9-1009	Criticism 1: Farmers have expressed the rules were written without consulting farmers on the types of crops they plant and their business practices. More farmers would probably use biosolids for their beneficial use, however, even the UofA MAC advised the R18-9-1009 restrictions regarding biosolids that do not meet class A PR requirements are confusing and easily misinterpreted. Response 1: ADEQ appreciates the comment and agrees with the beneficial use of biosolids. ADEQ must comply with federal requirements, including lengthy requirements set forth in the Code of Federal Regulations, which can make simple explanations challenging. ADEQ strives to administer complex environmental requirements while also making implementation of those requirements simple. ADEQ is willing to meet with any potential applicators to help explain the program.
R18-9-1011	Criticism 1: The regulation requires the vehicles that transport the biosolids to meet the same requirements as a refuse hauler or R18-13-310. Wouldn't liquid and semiliquid which include domestic septage be required to adhere to R18-13-11 for collection and transportation of human excreta? Response 1: ADEQ appreciates the comment. Yes, vehicles that transport domestic septage are regulated under A.A.C. R18-13-1103.

8. Economic, small business, and consumer impact comparison:

Article 10 – In General

In December 2001, ADEQ promulgated 18 A.A.C. 9, Article 10, establishing a biosolids program under the Arizona Pollutant Discharge Elimination System (AZPDES) program. This program completed the EPA requirements for state management of the federal National Pollutant Discharge Elimination System (NPDES)

program. At that time, ADEQ anticipated that the rulemaking would not impose more stringent requirements upon regulated entities. In January 2003, ADEQ amended R18-9-1001, R18-9-1002, R18-9-1003, R18-9-1004, R18-9-1005, R18-9-1006, R18-9-1007, R18-9-1008, R18-9-1011, R18-9-1013, and R18-9-1014 to comply with a request for conformity with the Clean Water Act from the EPA. ADEQ anticipated that the rule amendments that prohibit the storage of bulk biosolids within 1000 feet of a dwelling unless the person obtains permission from the dwelling owner or lessee would minimally impact businesses. ADEQ believes that the Article 10 rules' impact on the state's economy, small business, and consumers has not changed since the 2001 and 2003 rulemakings.
In 2020, there were:

- Fifteen companies or cities that land apply biosolids;
- Two cities that surface dispose of biosolids;
- Five facilities that compost biosolids; and
- Twenty-two facilities in Arizona generate biosolids for land application.

R18-9-1002. Applicability and Prohibitions

ADEQ amended this rule in 2015 and repealed the prohibition on incineration of biosolids, thereby allowing incineration as a means of disposal of biosolids. In the 2015 economic impact statement, ADEQ anticipated that any costs related to this rule change would be minimal because repealing the prohibition allowed an additional option of disposal, which did not previously exist. The federal requirements that were incorporated by reference are self-implementing for an entity that seeks to incinerate biosolids. ADEQ has not received any requests to incinerate biosolids.

R18-9-1015. Inspection

ADEQ amended this rule in 2015 as part of repealing the prohibition on incineration of biosolids. ADEQ made conforming changes to ensure that it had sufficient inspection authority to enter the property of a facility that incinerates biosolids. In the 2015 economic impact statement, ADEQ anticipated that any costs related to this rule change would be minimal because repealing the prohibition allowed an additional option of disposal, which did not exist before. The federal requirements that were incorporated by reference are self-implementing for an entity that seeks to incinerate biosolids. ADEQ has not received any requests to incinerate biosolids.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

A course of action was not indicated in the agency's previous five-year-review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

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. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The Article 10 rules are consistent with, and not more stringent than, the federal regulations applicable to biosolids at 40 C.F.R. Part 503, Standards for the Use or Disposal of Sewage Sludge. 40 C.F.R. Part 503 regulates sewage sludge that is applied to land, fired in a sewage sludge incinerator and/or placed on a surface disposal site. It includes pollutant limits, requirements for pathogen and vector attraction reduction, management practices, monitoring, recordkeeping, and reporting among other requirements. 40 C.F.R. Part 503 applies to any person or treatment works that prepares sewage sludge, applies sewage sludge to the land, fires sewage sludge in an incinerator, and the owners and operators of surface disposal sites.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Apart from A.A.C. R18-9-1002 and R18-9-1015, the rules were amended before July 29, 2010. However, the biosolids land application rules are similar to the definition of a general permit; ADEQ acknowledges the registration if the registrant demonstrates the applicable requirements and no public hearing is required.

As for A.A.C. R18-9-1002 and R18-9-1015, lifting the prohibition on incineration of biosolids did not require a permit, and the federal requirements that were incorporated by reference are self-implementing for an entity that seeks to incinerate biosolids. ADEQ's inspection authority is under A.R.S. § 49-203(B)(1).

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Since the rules are effective and any changes would be minor, ADEQ does not intend to complete any rule updates within the next five years.

Attachment I

The following table is an initial comment analysis of both internal and external stakeholder input on Articles 1 and 3. This table is a summary of the written criticisms of the rule received during the previous five years along with a concise analysis.

Item #	Topic	Section(s) Affected	Description of change	Staff Opinion: Recmd. Change? (Y/N/ M/U) (M - Maybe some version of change U- Undecided)	WHY is this staff-recommended, or not? Is this a good idea? Does the proposal fix it? & How could/should it be done better if at all?	What problem is it intended to solve? Briefly describe. (If unknown, insert "UNKNOWN")
ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
1	Aggregate definition	101	Modified to allow 3 in diameter instead of 2.5, and allows other products that "meet durability, cleanliness, and void space requirements of aggregate	N	No reason for change apparent. It appears that the ¾" thru 2 1/2" gravel size is a common gradation so no changes recommended (unless the proponents of the changes provide justification for the change). Aggregate under the pipe is used to reduce clogging of holes. Example: R18-9-E311. E.2.b. It is unknown whether increasing aggregate diameter will increase clogging. EPA from 1980 recommended using aggregate as porous media and recommended the crushed stone or gravel placed around distribution pipes be ¾ to 2 – 1/2in (2-6 cm) to provide liquid storage before infiltrating surrounding soil.	UNKNOWN
2	Cesspool definition	101	Added a definition: "underground pit or man-made collection structure, which may or may not be partially lined, into which sewage is discharged and from which the sewage seeps into the surrounding soil."	Y	Further clarifies what the State considers a cesspool. Cesspools are forbidden by R18-9-A309(A)(4). However, no definition is given as to what a cesspool is. This definition will correct that shortcoming.	Counties have said they're having problems dealing with persons that argue that a cesspool is not a cesspool because there is no AAC definition.

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3	On-site waste water treatment facility definition	101	Modified to say site begins at exterior wall of the structure(s) where wastewater is disposed of, excludes cesspools, defines "site" as a single parcel where the facility is located Also suggests adding "cesspool"	N	This change would conflict with the cumulative flow language in R18-9-A309(A)(10) in defining the word site (site could include multiple parcels). ADEQ does regulate all sewer pipes at the outside edge of the wall and has delegated the authority when up to 3000 gpd From the entrance of the treatment mechanism (e.g. distribution box or septic tank) back to the structure is regulated by a UPC under county ordinances. A the sewer pipe will either be regulated under 1.11 (B301) or 4.01 (E301): 1.11 if a single building drain for less than 3000 gpd. 1.11 is typically delegated to counties so local building codes apply according to B301(K)(6) (typically a uniform plumbing code). 4.01 if 3,000 gpd or more and not from a single building drain gravity sewer line (to which 1.11 applies). The introductions of 1.11 and 4.01 aren't totally clear, but difficult to know how to word them better. Staff *may* try to word this better in Phase 1. Addition of "cesspool" is not needed here. It is already disallowed by A309(A)(4) under the	**Site and parcel:** Some counties have indicated that a site should only be allowed to exist on a single parcel because multiple parcel systems are more complicated to regulate. **Pipe regulation** There have been questions/disagreements as to who regulates the pipe from the home to the onsite system. **Cesspool:** Problem unclear

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					general provisions, along with other general prohibitions and provisions.	
4	Minor numbering reference change	A303(D)	Changes reference to renewal times from B→C	Y	This change would correct a typo in the text.	The meaning is very clear in the text. In A303(B)(1) permits are granted for operational life (Type 1 & Type 4). Permits under (C) (Type 2 & Type 3) need to be renewed and (C)(1) is the only place that renewal periods are mentioned. Therefore, the reference in A303(D) should have been to (C)(1).
5	Enforcement citation	A308	Adds 49-262 (along with 49-261) whereby enforcement actions can be done	M	It's really not necessary to cite the enforcement statutes because they apply regardless of their reference in the rules, but as long as some are cited, they should maybe all be cited, both for nuisance and water-specific enforcement. The particular language here is not recommended, but it could be addressed more broadly.	Some enforcement statutory authority is cited and other authority isn't, which may be creating confusion.

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					Staff may propose some alternate language for this.	
6	"person" Discharge	A309(A)(1)	Change from "No person shall discharge" without an APP → "a person shall not"	N	This fix creates more ambiguity. This would have a negative impact, because the rewording would make it unclear which persons should not discharge without a permit, where now it prohibits all persons to discharge without a permit.	Unknown problem.
7	Nitrogen management Area	A309(A)(5)(a)(i) A317	Removes requirement to connect to sewer if A317(C) (nitrogen management area) final designation requires connection Removes A317 (nitrogen management area designations)	N	Removal of Nitrogen Management Area Designations takes away a tool ADEQ can use to ensure the protection of groundwater. Unclear that any Nitrogen Management Areas to this date have required homeowners to connect to a sanitary sewer. This would allow people to install on-site systems in area that have high concentrations of nitrogen.	It is a problem from the perspective of developers and/or homeowners who want to install on-site systems.

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8	Franchised utility can require sewer connection	A309(A)(5)(a)(ii)	Allows a franchised utility to require connection to sewer (along with county, municipality, sanitary district ordinance)	N	Several questions would have to be answered, i.e. definition of a franchised utility, checks and balances so a franchised utility does not take advantage of residents, interaction with Arizona Corporation Commission. It costs money to hook up to a sewer and some may not want to hook up if their system is working fine now.	Currently, a private utility cannot require lots in their service area to connect to their collection systems, so some people will continue to use an OWWTF when a sewer is nearby.
9	Conditional sewer connection requirement	A309(A)(5)(b)	*Replaces* current language in (b) (requirements that if sewer is available they have to use it) and instead allows municipality and facility to agree for facility to exist	N	The change being proposed would require the OWWTF to connect no matter what the cost. It is unclear how the municipality and the facility will agree for the facility to exist or what say the owner has in the matter.	Unknown.
10	"Nonresidential flow" v. "typical sewage"	A309(A)(7)(c)	*Replaces* "~~nonresidential flow~~" with "<u>not typical sewage</u>" for the pretreatment requirement	N	A309(A)(7)(d) addresses pretreatment of sewage flow that does not meet the definition of typical sewage. Part (c) is expressly for commercial flows. The words being recommended could undermine the installation of interceptors. There are grease, hair, lint and solid interceptors. The definition of typical sewage does not adequately address the things that wastewater can contain such as lint, buttons, coins, etc.	There may be a perceived problem that the language should tie everything to the definition of typical sewage.

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11	Manufacturer design report for pretreatment	A309(A)(7)(d)	*Addition of language* mandating a manufacturer-approved design report specifying aspects of [unstated, but I think the meant to say of the] pretreatment device for specs necessary to produce typical sewage levels	Y	The language being proposed appears to require a design report for the pretreatment equipment. This provides information and data demonstrating the pretreatment device meets standards.	A lack of information on the effectiveness of the pretreatment equipment and whether it will produce wastewater that meets the requirements of "typical sewage".
12	Repair vs. routine work (Term use in title and rule)	A309(A)(9) & (A)(9)(d)	*Changes title* of "~~Repairs~~" to "Routine Work" and *Changes* reference in (d) from "repair work" to "routine work" (regarding the rule that routine work that doesn't need a notice of intent to discharge, except for those listed in this rule [what is NOT routine])	Y	Recommend to change "Repairs" to → "Repairs and routine work" Just having Routine work is incomplete and may cause confusion. Staff recommends both.	Confusion about the terms.
13	Repair work revamp (generally)	A309(A)(9)(b) (generally)	*Replaces existing language with/leaves only the following (later rows go into more detail):* "The following work is not considered routine work and a Notice of Intent to Discharge is required: **i.** Converting a facility from operation only under gravity to one requiring a pump or other powered equipment for treatment	M	The rule needs to be updated in various parts of A309(A). It would likely be better to deal with these modifications at one time, which will probably mean doing it in Phase 2.	The rule is long and confusing, this is the offered solution to simplify it. It appears that counties also disagree with some of the allowances/requirements. Each is listed in more detail in rows below.

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			or disposal; **iii.** Replacing, (modifying) disposal works of a facility. **viii.** Modifying a treatment works or disposal works to accommodate a daily design flow or waste load greater than the daily design flow or waste load applicable to the original facility, or **ix.** Replacing the treatment works."			
14	Routine work revamp (ii)	A309(A)(9)(b)(**ii**)	*Removes from routine work classification:* "~~Modifying or replacing a facility operating under the 1.09 General Permit with a different type of treatment or disposal technology~~"	M	This is one of two parts of the Rule that give guidance on when to move a facility from a 1.09 GP to a permit under the current rule. Would need to update B301 (I) to remove it from here.	The rule is long and confusing, this is the offered solution to simplify it.

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15	Routine work revamp (iii)	A309(A)(9)(b)(**iii**)	*Modifies existing language* to "Replacing, (modifying) disposal works of a facility" (instead of "~~Changing the treatment works or disposal works of a facility authorized under one or more Type 4 General Permits to a technology covered by any other Type 4 General Permit~~")	N	The rule is long and confusing, this is part of the effort to simplify it, but also seems to be an attempt to make it more stringent. "Modifying" disposal works is a pretty broad statement and it's unclear what exactly qualifies as a "modification" and how that differs from how the current rule applies now. Staff agree that replacing/modifying the disposal works should be done through a permit but it's unclear whether this is appropriate approach, and whether this language is the best.	At the present time, no permit is required to replace your disposal field if it fails. A homeowner's disposal field could fail due to leaking toilets or sinks, and the homeowner might focus on replacing the disposal field instead of fixing the leaks. A design review and permit requirement might be able to stop unneeded construction. (Also, as stated, the rule is indeed confusing.)
16	Routine work revamp (iv)	A309(A)(9)(b)(**iv**)	*Removes from routine work classification:* "~~Extending the disposal works more than 10 feet beyond the footprint of the original disposal works;~~"	Y	The rule now has a loophole for expansion of disposal fields. The wording of this rule allows for a person to add 10 feet to a disposal works without getting a permit, which is likely a bandaid on the problem instead of dealing with the failure of the disposal field in a more comprehensive. The person can then come back at a later time and add 10 feet again without the need for a permit. At some point, the system likely longer meets operational or design requirements.	Yes, it would protect the environment by removing the loophole in the rule for expansion of disposal fields.

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17	Routine work revamp (v)	A309(A)(9)(b)(**v**)	*Removes from routine work classification:* "~~Reconstructing any part of the disposal works in soil that is inadequate for the treated wastewater flow or strength~~" and replaces it with language in Item 15	Y	The rule is long and confusing, this is part of the effort to simplify it. It is unclear whether this is an appropriate replacement of language. Currently the rule requires a person to have knowledge that the soil is inadequate to know whether reconstruction is appropriate. The new language would require a permit regardless of that knowledge (which would then trigger a new soil investigation). This is not a simple update or clarification.	Currently, there is a lack of clarity as to when an alteration to a disposal works requires a permit. If a disposal field is failing, it will continue to fail until the root cause is addressed. This can be done through a new permit process.
18	Routine work revamp (vi)	A309(A)(9)(b)(**vi**)	*Removes from routine work classification:* "~~Expanding the footprint of the facility into or within setback buffers established in R18-9-A312(C);~~"	N	This is an attempt to simplify the rule. The rule currently explicitly limits a person from expanding a facility footprint into a setback unless they have a permit. However, if the extension of the footprint of the disposal field requires a permit (as recommended), then the issue of reducing setbacks will also be dealt with during the permit review and the need to explicitly call out the setback issue here disappears (since "expanding the footprint into or within setback buffers" likely means that the disposal field is expanded). However, it is unclear whether this is the most appropriate language replacement or direction at this time.	Currently the rule is long and confusing, which makes it hard to follow. The recommendations simplify the rule, but make it more stringent with uncertain benefit.

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19	Routine work revamp (vii)	A309(A)(9)(b)(**vii**)	*Removes from routine work classification:* "~~Reconstructing the disposal works so that it does not meet the vertical separation requirements specified in R18-9-A312(E);~~"	Y	The rule currently explicitly ensures that anyone modifying a disposal works must have knowledge of the vertical separation distance, therefore creating a reason for oversight. However, if the reconstruction of the disposal field at all requires a permit (as recommended), then the issue of reducing the vertical separation requirements will also be dealt with during the permit review. Then the need for the warning in the original AAC text disappears.	This is an attempt to simplify a complicated rule.
20	Repair vs. routine work	A309(A)(9) & (9)(d)	<SEE Item 12 for A309(A)(9) above>	--	--	--
21	Person v. permittee create nuisance	A309(A)(9)(e)	Changes "~~person~~" to "permittee" (regarding who can't modify facility to make it unsanitary/nuisance/cause WQS exceedance)	N	"Person" is a purposeful term here. It should not just be limited to permittees. The goal is to ensure that no one can modify a facility (whether a contractor or not) so as to create an unsanitary condition. To change to "permittee" would narrow the scope of who could be held liable. If anything, it could be worded to say "No person shall" rather than "A person shall not modify" a facility so as to create an unsanitary condition or nuisance.	There is perceived inconsistency in terminology as "permittee" is used in A309(A)(9)(d). However, that rule is specifically talking about following local ordinances when doing repairs (/routine work). The requirement in this rule is, and

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						is likely intended to be, broader.
22	1.09 Nitrogen loading exclusion clarification	A309(A)(10)	Adds language to cumulative flow provision: On-site wastewater treatment facilities operating under a 1.09 general permit shall be excluded from the nitrogen loading calculated over the property served by the onsite wastewater treatment facilities, including streets, common areas, and other non-contributing areas.	N - leave to 1.09 workgoup	This would make the impact of 1.09 permits at a site disappear and not be calculated in the flows regarding whether an individual permit is required or not. This could negatively impact the environment. Also, this rule section is in regards to total flows, and does not directly address nitrogen loading. This doesn't seem to belong in this section.	It's not clear what problem is intended to be solved except a limited amount of land to accommodate all the nitrogen loading occurring at a site. However, that is not what this rule addresses, so this would confuse two issues into one rule.
22B	NOI: no plumbing fixtures	A309(B)(3)(a)	NOI has to include info including: Design flow, waste strength, # of bedrooms and ~~plumbing fixtures,~~ and corresponding unit flows used to calc design flow. This modification removes "plumbing fixtures" from flow considerations so that only the	M	There is a constant debate as to what measure should be used to estimate an adequate design flow and account for actual or possible use (number of bedrooms or number of fixtures). Currently, a system is sized first by bedroom and then by fixture counts. This table removes the fixture count aspect.	Current criteria for sizing a system is based on # of bedrooms and then by fixture count. For homes with multiple bathrooms or kitchens for guests or other features without adding bedrooms, this

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			number of bedrooms is considered for design flow purposes.		This may be appropriate, but may not be. It's not clear that design flow based only on the number of rooms adequately addresses the sizing of systems. Some believe a bedroom count is better correlated to the number of people living in the home, or to the number that could use the home at once, rather than the number fixtures. However, this change might not adequately account for flow with a home with more water fixtures.	would be a welcome modification because their additions are counting towards their design flow needs.
23	NOI: Business plan for dwelling?	A309(B)(3)(b)	Adds to NOI info required for non-single family dwelling by including a requirement for a "business plan for growth"	N	This doesn't seem to make sense because it still has to be a "dwelling" not just a structure. Dwelling means a place of residence, like a home. A dwelling should not be required to have a business plan, unless the structure also doubles as a legal commercial place of business. The intent appears to create language to add a requirement for commercial structures to provide a business plan to account for growth and allow the reviewing agency to assess future impacts. This would require discussions on language and on what information to require. This also goes towards the typical sewage investigation in the workgroups.	Commercial buildings (or group rental homes) can produce much higher flows that could be unaccounted for in the future and could be impacting the aquifer. For example, a rental home can be used for a wedding celebration and actually have a flow that is much higher than accounted for. Also, it is difficult to permit commercial structures without understanding their current and potential impacts.

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24	NOI: Non-residential area studies	A309(B)(3)"(c)"	Adds NOI information requirements for non-residential wastewater sources, including area studies and published/cited flow rates, including peaking factors	M	Having more information regarding actual flow data could be useful in the design process. However, ADEQ needs more study on how to treat nonresidential sources. It's not clear what information should be required for commercial systems. For example, peaking factor can be the most important for wastewater treatment plants, but how one would apply that to onsite systems is not clear.	Lack of unit flow values for a given facility currently makes it difficult to permit commercial facilities.
25	NOI: Past permit design flow – use changes	A309(B)(3)"(d)"	Adds a requirement (in the NOI information required section) for previously permitted facilities to be re-evaluated for design flow when the use changes	M	This is in the wrong spot if it moved forward. However, it would be helpful to find a way to verify that a previously permitted facility be re-evaluated at some point. It's unclear what a "use change" is. Also, other changes in the rule would be needed to effectuate this change.	One problem is that facilities are expanding use and the design flow is not re-evaluated.
26	NOI: drainage and erosion	A309(B)(5)(a)	Adds a requirement in the NOI information collection section for: drainage pattern and erosion info	Y	This is a good condition and would pick up the Type 4.02 permitted facilities. This is really bringing language already used in A309(B)(6)(a)(v) & (b) applicable now to alternative systems and making it applicable to septic systems. The language of the text is general but a designer should be able to supply this information easily. Where water is flowing across a facility at 2 fps or greater, you will probably start getting erosion. The better approach is to divert the storm water	It is easy to ignore the potential for stormwater flowing across a disposal area or the treatment works to cause erosion. Sloped facilities with severe erosion can expose the facility causing it to be out of compliance.

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					around the facility and avoid the erosion potential. Good engineers should already be doing this, but the addition would make sure all engineers do this.	
27	NOI: O&M manual – 20 yrs – all facilities	A309(B)(5)(b)	Adds a requirement in the NOI information collection section for: a draft O & M manual for the 20 year life for all facilities	Y	This should be a simple requirement. The language might need a little tweaking and specificity. However, it would be very short (maybe a couple of pages) for a definite benefit for the homeowner to know what needs to be done for a system in the long term. Sidenote: This paperwork should likely be required to pass to the next owner to ensure this doesn't get lost.) This should at least have an "and" after the ";" to connect it to the last number in the list for NOI requirements.	Homeowners often don't know how a system should be cared for. This may be a small change in the direction of compliance assistance.
28	NOI: construction quality – all facilities	A309(B)(6)	Adds a requirement in the NOI information collection section for: construction quality drawings not just for 4.03 – 4.23 permits, but also for any facility other than a single family residence (so for septic tanks for dwellings designed for more than single family and	Y	It is helpful for reviewers and records for the homeowner to have construction quality drawings for septic systems as well. This is another example of applying an alternative system requirement to conventional systems.	Some people draw their septic tank information illegibly and the site drawings do not clearly reflect the system components at all.

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			for commercial operations with septic tanks)			
29	O&M receipt and understanding	A309(C)(2)(c)	Adds a requirement for applicants of alternative systems to sign an acknowledgment of receipt and understanding of O&M manual	N	This does not appear to add a lot of value, but adds a paperwork requirement. It's unclear why this is needed and how it truly helps.	According to counties, many of these systems are not being maintained. This is proposed as an effort to combat "ignorance of the law" and make sure that homeowners are educated about what is needed to maintain their systems.
30	2 yr O&M contract	A309(C)(2)(d)	Modifies O&M service contract minimum required time from 1 to 2 years	M	This would just increase the required service contract time period. It's unclear	According to counties, system can start to degrade in a system after 1 year.

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31	RFDA/ECOC addition	A309(C)(2)(f)	Adds DA info required: signed Request for Discharge Authorization required if applicable (not just Cert. of Completion)	N	This is confusing. The language recommended here would not clarify or address the issues regarding who signs what for the Discharge Authorization request. For example, it should not say "engineer's" COC, just COC. Staff potentially to recommend language on this subject.	There is confusion about the form or at least what the requirements are for submitting a DA request.
32	Owner/builder statement	A309(C)(2)(g)	Adds requirement for owner/builder statement as alternative to contractor license info	N	There is an argument that current requirement for a contractor license number and name is confusing because it may not always required, because the owner is the installer/builder for their own property in accordance with ARS 32-1121(A)(5) (exemption from needing contractor's license for doing work on your own home). However, installation of an alternative system is distinguishable from a home build. ADEQ specifically regulates the installment of a wastewater treatment facilities. The language as it exists now ensures an experienced contractor is installing these alternative OWTFs. Most of these systems are installed by a person that has undergone training from a manufacturer. Also, the manufacturer can void the warranty if the system is installed by an untrained person (for many products).	The perception that an owner builder should not have to hire a contractor to install a system as this is burdensome.

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33	Only PPL permitted	A309(E)(1)	Modifies language to establish that only products on the PPL may be used.	N	Currently, ADEQ allows a product to be approved on a project by project basis provided that the applicant can supply the necessary information and assuming it's allowed by the rule. The rule currently allows a homeowner to find a product that has not been approved through a PPL and to use it at their site if the manufacturer elects not to apply for a PPL for their product in the State. This doesn't limit the use of the PPL approved products only, unless otherwise specified in rule (e.g., E316(B)(2) 4.16 permit for nitrate reactive media). PPL is just a convenience to allow a product to be used statewide easier, rather than having to do an in depth case-by-case analysis. ADEQ does not currently intend to change this. Staff to consider whether language could be modified to be more explicit (rather than implicit as it currently is) and clarify that ADEQ may permit non-PPL equipment (as it currently does unless otherwise specified such as in 4.16). However, given that among current designers, this doesn't seem to be a concern at this time, the language may just be left as is. In the future, it may be better to distinguish upfront in the PPL	The current rule is ambiguous as to whether non-PPL approved products may be used for permitted facilities.

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					rule which types systems must be listed or not (possibly with a table).	
34	Septic tank = PPL	A309(E)(2)	Modifies language so that septic tanks would be required to be listed on PPL	N	This should not fall under a PPL as the PPL is more stringent when it comes to demonstrating the performance standards. The septic tank is the most basic type of treatment there is. The rule requires that the septic tank follow certain design guidelines but does not require testing to demonstrate that the septic tank is performing to the stated performance parameters. It is assumed that if the design is followed, the performance parameters are met. Currently septic tanks are not reviewed or approved by the State.	ADEQ has had complaints from counties stating that certain manufacturers are not meeting the Septic Tank rules. There is no oversight as to what is being manufactured and sold and, therefore, impacting treatment.

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					One way to regulate may be through more specific septic tank rules and review, at some point, but not through PPL. ADEQ should perhaps conduct a review of septic tanks to ensure the manufacturers are meeting the rule, but without more data, monitoring, research, and inspection, it's hard to know whether there should be more in the rule.	
35	Flood zone	A310(C)(2)(d)	Modifies surface limiting requirements: 100 year flood zone area can't affect the facility (rather than just the facility is located on property where facility is installed)	Y	If a 100 year flood zone exists within the property where a facility will be located, it may not impact the facility. If the 100-year floodzone is located on a corner of the property and the onsite facility is located on the other corner the facility may not be affected at all.	It is intended to reduce the burden of classifying the 100-year flood zone as a surface limiting condition for the project which may require that an alternative system be placed on the site. An alternative system is an economic burden to the homeowner when it may not be required
36	ASTM mods	A310(D)(1) (a)(ii)	Modifications of applicable ASTM methods for subsurface characterization	Y	The ASTM standard for auger borings is no longer considered a satisfactory standard and should be removed. It is for shallow borings only and does not apply to continuous flight augers. It should be part of a larger discussion on how to determine SAR values, but for now, given that this particular standard should not be used, it is recommended for removal.	This standard is for shallow borings only and does not apply to continuous flight augers.

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
37	Perc test can't stand alone - Perc always augmented with ASTM	A310(D)(1)(b) & (D)(3)(c)	Adds requirement to augment percolation testing with an ASTM method (D5921) for subsurface characterization Disallows the use of percolation testing as the sole method of subsurface characterization (because essentially percolation testing is only allowed to augment ASTM per changes in A310(D)(1)(b))	N	However, site specific SARs are considered better, so for now, percolation testing should be kept. ASTM is not always available at a site. However, percolation testing should be clarified. Also, the way this is drafted is confusing and may not be the appropriate solution to the perceived problem. Staff to *potentially* recommend changes on this subject.	Some believe percolation tests are unreliable (often in the broad ways they can be conducted).
38	Eliminate the seepage pit-specific performance testing methodologies	A310(D)(1)(c) & (D)(3)(a) & (D)(3)(c)(ii) A310(G)	Disallows seepage pit performance testing as a sole site investigation method for subsurface characterization (removes the detailed methodology in (G) for percolation testing specific to seepage pits so that percolation testing is only done pursuant to subsection (F))	N	There are definitely problems with the present seepage pit test procedure but this needs to be part of a larger discussion on how to determine the SAR value. It's not clear that what is proposed is best. Staff to *potentially* recommend changes.	The problem is that the current test is not the best method to determine percolation test.

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
39	Limiting conditions 12 ft to non-hand shovel soil	A310(D)(2) & (D)(2)(d)(i)	Subsurface limiting conditions would be evaluated not just within 12 feet of land surface or to an impervious soil or rock layer, but also 12 feet to a "similar consolidated rock or soil formation that cannot be excavated with a hand shovel". This is expanding the definition of a subsurface limiting condition to include a consolidated soil that you can't excavate with a hand shovel.	N	This standard is too broad. For example, if you have a silty clay loam with a strong structure and it was really dry, you might not be able to excavate it with a hand shovel, yet the AAC gives it an SAR value of 0.40 gpd/sf.	Unknown
40	<see Item 37 discussion for A310(D)(1)(b)>	A310(D)(3)(c)(ii)	See Item 37 (This change would eliminate perc tests as a stand-alone method of determining the SAR for a given soil and location.)	N	See Item 37	See Item 37
41	Two test locations	A310(E)(1)	Provides that two test locations are selected to provide adequate and credible information to ensure proper location selection, design and installation of a properly working OWTF	N	The language used here is the exact language used in A310.E in the summary for the entire section. The language is redundant and does not add any value to the AAC. The added language does not add anything.	Unknown.

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42	<deleted, see discussion of A310(D)(1)(c)>	A310(G)	<deleted, see Item 38 discussion of A310(D)(1)(c)>	--	<deleted, see Item 38 discussion of A310(D)(1)(c)>	--
43	Site investigator continued training requirement	A310((H)	Site investigator "Knowledge and competence in the subject area" is demonstrated through continued training approved by the Department that covers site investigation information	U	One perspective: This should be implemented. Designers should know what they're doing and people should be continually updating their training. One perspective: Training is important for sound design, but this is likely a major change that belongs in Phase 2 and is part of a wider discussion on how training should be conducted in the future and how to keep track of that training and regulate designers.	Inadequate designs.
44	Setback Table (retaining wall structure)	A312(C) Setback 1.	Adds retaining wall as feature requiring setback. Setbacks are from "structures" instead of "buildings," including "retaining walls," but not "appurtenances"	U	Right now retaining walls are not addressed at all, so this is a broadening of setback requirements. This could be beneficial, because a retaining wall is a structure that depends on the integrity of the soil for support. If that soil gets saturated, that structural support could be compromised. However, it's unclear why a 10 foot setback was chosen.	Possible structural failure.

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45	Setback Table (water well feasibility)	A312(C) Setback 2.	Setback may be reduced to 5 feet from property line if *one* condition satisfied (disjunctive, rather than conjunctive, no more "and"); combines current a & b, and adds another possible condition to reduce setback, that if drilling a water well is proved to be not feasible	M	These changes are too complicated and lacking support for this rulemaking. There have not been enough discussions about this and it's unclear how to make a determination. Research and discussion is needed. Also, criteria for determining feasibility of the water well would be needed (which may be through Dept. of Water Resources).	Persons who cannot build a well now may be constrained by a setback to the property line unnecessarily.
46	Setback Table (rainfall event water line)	A312(C) Setback 6.	Setback measured horizontally not just from 10 yr 24 hr rainfall even high water line of lake or reservoir, but also a canal. Also adds that setback can be reduced from 100 ft to 10 ft if canal is lined with impervious material or other separates canal and septic waters	Y & N	At least the addition of "canal" is appropriate since this term was included in the title, but the table did nothing with it. Rule should say "or from the edge of the canal" because measurements from canal waterlines are taken from the edge of the canal. And the change regarding the 10 foot setback should not be included. Depending on soil type, the setback may be a problem. There's no data or explanation for the 10 fold reduction in setback. A lesser setback may be appropriate, since it is a lined canal, but it is unclear whether a 10 or 50 foot setback would be better. Bulletin 12 mentions canal setback, but it was not chosen in rule. Unclear what should be setback.	Currently, setbacks from a canal may be more stringent than necessary.

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47	Setback Table (domestic water line)	A312(C) Setback 10.	Modifies setbacks from domestic water line include holding tanks and irrigation lines	U	More information is needed as to why the proposed language was proposed. The need and impact or intended impact are unclear.	Unknown.
48	Setback Table (seepage pit)	A312(C) Setback 11."d."	Adds seepage pit as a feature that requires a setback, set at 20 ft measured from edge of boring or undisturbed soil to closest point of surface daylighting	M	Some effluent may weep from enclosed embankments, so it's valid to bring in the seepage pit to the table, but more information is needed before making a change. It's unknown what an appropriate setback is, and it's unclear what the underlying assumptions are to the suggested language. E.g., Is the assumption that the closest point to daylighting is also the entire disposal and treatment area of the seepage pit? Seepage pit and other disposal methods differ on how the treated effluent is dispersed. This may add additional setback area that is not required.	Some effluent may weep from enclosed embankments.

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49	Setback Table (sidewalk)	A312(C) Setback 12.	Adds "sidewalks, block fences or uncovered pads" as features requiring setback. Requires Schedule 40 or equivalent to be used for solid pipe being installed under driveways, requires sleeves or other approved protection. Removes phrase "relative to driveway"	U	More information is needed. What is the intent of this change? What would be the impact? Schedule 40 PVC pipe can take quite a bit of stressed. It appears this is an attempt to set a minimum thickness, possibly to prevent load on top of the tank and disposal field.	Unknown.
50	Setback Table (easement)	A312(C) Setback 14.	Adds a special provision for easements that setback may be reduced if there is a written agreement to reduce set back from all utilities that may use the easement.	M	This change doesn't address easements that are not utility easements. Should it include other easements as well, if a change is indeed needed ("from all utilities" → "from the easement holder")? Also, this doesn't appear to be in the right place or it should refer to A312(G), as that rule already exists to allow a reduced setback. This in part would clarify, and in part confuse homeowners/applicants. This would help homeowners understand the process to reduce setbacks from utility easements. However, this could be confusing, as A312(G) is the current rule avenue to obtain setback reductions. Having the specifics in the rule, however, would be convenient to point to.	Sometimes a utility easement setback limitation limits the installation of onsite systems.

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					why is this needed? Why is A312(G) insufficient? Is this in the right place?	
51	Setback Table (between tanks, leach, pits)	A312(C) Setback "16."	Adds an additional setback requirement of 5 ft "between tanks and leach lines, beds or seepage pits" measured from excavation or undisturbed soil to component or discharging portion of system	N (but want more info)	Comma needed before "or" if decided it's needed. Septic tanks are supposed to be watertight, so what is the problem here? Also, why 5 ft?	Unknown. It's unclear why this is recommended or why the 5 ft is recommended. At this time – no.
52	Setback Table (retention basins)	A312(C) Setback "17."	Adds an additional setback requirement of 15 ft from "retention or detention basins, flood irrigation, storm systems" measured from high water line	M	This is a good idea, but more data and literature is needed to ensure the right standards are set. More information is needed.	Potential eutrophication (excessive nutrients causing decreased dissolved oxygen, leading to dangerous algae growth, for example), if it is an issue locally (e.g. possible northern Arizona). Potential fecal coliform pollution, which could be a problem depending on connectivity to surface/surface water. However, more information is needed. It's unclear whether

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						there's a problem here. More data is necessary.
53	A312(D)(2) SAR tables footnotes for site specific SAR required	A312(D)(2)) SAR tables footnotes	Adds footnote for those perc rates or named items in the tables that require a "site specific SAR" -- E302 (septic tank) may not be used as sole method of treatment for locations that require a site-specific SAR value unless approved under A311(C)(1)(a) & (b) (as interpreted from their citation in the edit)	U	[They meant A311(C)(1)(a) & (b) in the proposed rule text] The first table indicates that a site-specific SAR is required if percolation rate is either: • less than 1 min/in (which is likely surfacing) or • greater than 120 minutes per inch (e.g. gravelly course conduit to groundwater). In either case, an applicant will likely need alternative treatment because it would likely qualify as a subsurface limiting condition under A310(C) or (D), therefore requiring an alternative system assuming the condition cannot be overcome under A311(C). This appears to be attempt to draw a bright line to deduce a subsurface limiting condition that cannot be overcome.	The concern may be that a septic tank does not provide a quality of effluent similar to an alternative OWWTF. When the SAR value is high (greater than 1.20 gpd/sf) the potential to contaminate the groundwater is high and additional precautions are needed to protect the groundwater. Another concern may be the lack of a bright line or clarity to make a decision as to what type of treatment and disposal a facility must use.

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					However, the rule doesn't currently draw that bright line. Rather, it requires a site-specific SAR and an evaluation under A311(C) and other references to site limiting conditions. Preliminarily, is unclear what a "site-specific SAR" is other than a percolation test (unless it's a metered volume test). Second, if a site-specific test for Table 2 is a percolation test, then that is a means to show a site specific SAR.
					
					Staff to *potentially* recommend changes in Phase 1 on this subject to clarify how to interpret these tables similarly along these lines (ensure language encompasses all facilities, not just 4.02).
					
					• First Table:
					  ○ "Indicative of subsurface limiting condition and a showing under A311(A) and (C) is required"
					• Second Table:
					  ○ "Possibly indicative of a subsurface limiting condition at the site. Either a percolation test or a showing under A311(A) and (C) is required."	

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54	All general permits have to follow, including 4.02	A312(E)(2) & (E)(2)(a) & (E)(3)(c)(i) & (E)(4)(b)	Changes citation from E303-E322 to E302-E323 Makes these requirements apply to all general permits (except 1.09), rather than just to alternative systems but 4.23	N	Where changed, the respective requirements would apply for all onsite general permits other than 1.09 and 4.23, but not all seem to be appropriately applicable to 4.02 permits (e.g. coliform). The existing rule specifies that if a Type 4.02 permit is used, then you must meet the requirements of A312.E.1. If you can't meet those requirements, then you need to improve your treatment technology and use the tables & guidance in A312.E.2 thru A312.E.4. However, the proposal is now being made to drop the requirement to use better treatment technology & allow a lower quality effluent to be used. This is not acceptable.	Unknown.
55	Vertical separation table footnotes	A312(E)(2)(a) Vertical separation table footnotes	Modifies footnotes as follows: *(for SAR 0.20-0.63) Removes footnote that absorption rate is in gal per sq ft per day and replaces it with "for seepage pits, multiply MVS [minimum vertical separation] by 12" **no change *** no change	N	The proposal here is part of the greater plan to change how seepage pits and septic systems are to be designed and permitted. This belongs in a discussion with one of the TWG in Phase 2. Staff does not believe that this should apply to seepage pits. More information and discussion is needed here.	Unknown

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			"****"(for SAR 0.63+ to 1.20) Adds the footnote that "for seepage pits multiply MVS by 6"			
56	Vertical separation to subsurface limiting condition table	A312(E)(3)(c)(i) Vertical separation to subsurface limiting condition table	Add a footnote to multiply MVS by 12 for seepage pits. Also modifies max allowable total coliform concentration to 3,2,1 for 1.5 ft, 1 ft, and .5 feet vertical separation, respectively	N	Should coliform really be measured in 3, 2, or 1? "Nominally free" means 1 cfu/100 ml, which equals a log of 0. Staff does not understand the addition of log "3," "2," and "1" here without more information. Adding the 3, 2, 1 would allow more coliform in the water than $Log_{10}1=0$. $Log_{10}1000=3$ (1000cfu/100 ml allowed in this case) $Log_{10}100=2$ (100 cfu/100 ml allowed in this case) $Log_{10}10=1$ (10 cfu/100 ml allowed in this case) $Log_{10}1=0$=nominally free (1 cfr/100 ml allowed) Currently applicants have to demonstrate that the system can meet a log = 0 to be nominally free of coliform (i.e., 1 cfu/100 ml) closer to the surface. The intent is to keep it more protective at 1.5, 1, and .5 because of the potential surfacing water tables. This change makes it more likely to have bacteria in water if a water table rises.	It is unclear what the problem is.

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					See also the comments in #54 & #55.	
57	Hydraulic analyses are required for all	A312(E)(3)(c)(ii)	Removes condition to include hydraulic analysis (currently that hydraulic analysis required is SAR of native soil in which disposal works is placed is equal to or less than 0.63 gal per day per sq ft) so that all facilities have to submit one	Y	Remove this specification because regardless of the speed, hydraulic analysis should show the limiting condition won't cause surfacing. The change makes section more consistent with the introductory language in A312(E)(3)(a) (which allows for limiting condition if zone of acceptable native soil is 4 ft thick and sufficiently permeable to prevent surfacing, as documented by a hydraulic analysis). Soil > 0.63 gpd/sf could still be a confirmation of dispersal capability.	Currently, you may have a layer less than 4 ft that doesn't allow sufficient dispersal.
58	Pipe materials	A312(F)(2)(c)	Removes specifics that distributions may be made of clay tile laid with open joints or perforated clay pipe and just states that pipes may be of other pipe material	Y	Currently, pipe material is limited to HDPE, PVC & ABS & Clay. The new language would open usage of other pipe materials. Clean up of rule by eliminating a reference to a piping material that is not used.	Customers are limited in their choices of pipe material. It's unknown what specific problems this has caused.

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59	National Electric Code	E312(F)(3)(e)	Adds requirement that if electric components are used, the components must be approved by a National Electrical Code	M	This seems pretty vague. This is not a real citation. (I mean, I could create a document and say it's a National Electrical Code) What exactly is intended here? (HW) Many construction products are manufactured in accordance with various codes.	There is a risk of electrocution/fire safety to the owner and the operator. This is an attempt to mitigate that risk. Unclear – we need to understand which code is being referenced here, incorporate it by reference as of a specific date, and have it on file pursuant to ARS 41-1028.
60	Setback for 4.23	A312(G)(7)	Clarifies setback reductions for 4.23 permits.	Y	Clarifying how to do a setback adjustment for the Type 4.23 facility makes sense. This rule already applies to facilities permitted under 4.23, but it's simply a clarification. You can do it for alternative systems, and the general provisions in the section apply for setback to 4.02 permits (4.02 is simply the baseline).	Nothing in A312(G)(7) indicates what guides the setback requirements for 4.23 permits (except what is generally there and applies to 4.02 permits).
60B	Removes sig. better performance requirement	A312(G)(7)(a)	Removes requirement that treatment performance be significantly better than 4.02 permit as one way to allow a setback	N	For alternative system setbacks, the applicant should still demonstrate that the treatment performance is significantly better than that provided under E302. This would lessen the standard too much for systems that need more maintenance (alternative systems).	The performance modification could pose a risk to the environment….it's unclear why this change is there.

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61	Composting toilet designer qualifications	E312"(H)"	Adds qualification requirements for designers of E303 composting toilet through 4.22 permits	N	There would be more restrictions put on who designs OWWTF for Type 4.03 thru Type 4.22 permitted facilities. Requiring 10 hours of continuing education every 2 years will be opposed by some people.	Inappropriate designs
62	E302 design and performance requirements restructure	A314 & E302	Repeal and Modify turning these two rules into 4 rules separately addressing the following types/categories of facilities with flows less than 3000 gal/day: ● Septic tank ● Disposal by trench, bed, chamber technology, gravelless trench or seepage pit ● Shallow seepage pit or backhoe pit ● Deep seepage pit	M	This is not a simple change. If this happens in some form, remember the all citations to E302 and A314 would need to be reviewed/modified. Some of the ideas here are good, but implementation will take more thought, discussion, and research. For example, staff need to understand the need for two types of permits. (Good idea examples: The proposal to permit the treatment works and the dispersal works separately is a great idea. The separation of the seepage pits into a shallow seepage pit and a deep seepage pit is also a great idea. Having a permit to cover just a repair to replace a septic tank is a good idea, too.)	The current rules are somewhat confusing. It's unclear what requirements people must follow to get certain types or combinations of permits. Certain common actions require difficult rule analysis which these changes attempt to solve.
63	NOT - "cesspool" added to title	A316	"Cesspool" is added to Notice of Transfer Title (so acknowledges transfer of OWTF & Cesspools)	N	This seems to acknowledge and condone that a transfer of a cesspool is allowed. Cesspools are prohibited under A309(A)(4)	Unclear

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64	Transfer of Ownership	A316	Extensive changes including: The qualifications of the inspector has been increased to "continuing training" and the requirements of the inspection report has been increased and the new property owner has to agree to get repairs made to the OWWTF before a Transfer of Ownership will be made.	M	This is not a simple change. It's unclear whether what is listed here is the best solution to the problem. The desire is to get better inspections of the OWWTF, which is needed, but this will be controversial and needs more discussion with the public and private stakeholders.	When a new home owner buys a home with an OWWTF, they discover problems with the OWWTF and have to pay to get these problems corrected. These problems should have be identified on the inspection report so that they could discuss them with the home seller and arrange to get them resolved.
65	Nitrogen Management Area	A317	Removes Nitrogen Management Area rule	N	This recommendation needs more research before it can be considered. This is currently a tool that ADEQ may use to protect the environment…and current usage needs to be reviewed.	Unclear.
66	1.09 use change	B301	Addition of requirement for 1.09 (or at least additional language added to the rule) indicating how a 1.09 facility is treated if the facility usage changes.	N	What does "usage of facility" mean? Increase of design flow is already addressed in A309(A)(9). This addition seems to conflict with other current requirements, such as when 1.09 must transition to a Type 4 permit, and offers an alternative way to determine design flow, such as from literature, etc., in combination with Table 1, but what would happen if Table 1 and literature conflict? This seems to be attempting to address too many things at once (change in usage of 1.09s and re-interpreting Table 1). This is not a simple change.	Unclear.

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					Expands the problem of moving owners of Type 1.09 permitted facilities to an updated permit. Allows older designed OWWTF to continue operating and produce a poorer quality of effluent in some cases.	
66b	Adding "or" to list	E301	Adds and "or" between (A)(1) and (A)(2)	N	This "or" is not needed. There is already an "or" in the list between (2) & (3) and a semicolon between (1) & (2) (i.e. it's already a list with a conjunction)	Unsure whether the whole list was a disjunctive or partly conjunctive list
67	Max flow of 4.23 → 100k gal/day	E323(A)&(A)(4)&(G)(1)(c) & (H)(3)	Raises maximum flow for 4.23 facilities form 24k gal/day to 100k gal/day **and** Proposes tiered approach for nitrogen loading and various applicable acreage considered for loading rates based on the tier	M	This change will need considerable background effort to decide the tiers and what the requirements should be. Increasing allowable flows without adding the monitoring requirements would increase the potential for harm to the environment. (note: this change would impact individual permit language as well.) This permit was intended to be more of a hands-off permit, but once flows are increased, so does the risk if there is a malfunction or lack of maintenance.	Lack of flexibility for larger systems, including commercial operations or commercial residences. Some larger flow facilities currently require an individual permit because of their size of flow or because of their total nitrogen loading.

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
68	4.23 may include aerobic system or disinfection	E323(A)(1) & (3)	Removes aerobic system or disinfection device so that 4.23 could still cover facility if these existed on the site	Yes & No	Allowing a system with a flow larger than 3000 gpd that a disinfection device could pose a risk to the environment without required monitoring. Disinfection devices, such as those with UV, require a high level of maintenance to be effective. However, it may be protective to allow aerobic systems with subsurface disposal with trench or bed to allow for conversion of 1.09 systems that are failing (but not for aerobic systems with surface disposal or other types of subsurface disposal). Change to "An aerobic systems as described in R18-9-E15, except that this prohibition does not apply to those aerobic systems with disposal by trench or bed." Also, flow is to high to allow new or continued seepage pit disposal – poses a risk to the environment.	Lack of flexibility for 1.09s transitioning to 4.23s (including for those systems that don't pose additional or continued threat to the environment—although some systems would).

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
69	Nitrogen loading tiered approach	E323(A)(4)(a)	Adds tiered approach for nitrogen loading (see #67)..	M	(see #67) 10 mg/liter is based on MCLs, but it's more information and evaluation is needed as to whether current technologies are meeting that given current technologies. (inf tests are FOGS, fats, oils and greases, accounted for, also, is current technology testing of 5-6 months enough information to represent a 2, 10, or 20 year facility? A lower standard is justified for a unmonitored/minimally regulated industry in order to protect the environment.	(see #67) This is definitely a barrier from moving from a 1.09 to a 4.23
69B	Adding "testing" to 4.23 NOI		Adds "testing" to 4.23 NOI performance assurance plan	N	What is contained in the plan is at the discretion of the designer. Testing could qualify under "tasks," but adding testing might make this more confusing because currently there are no testing requirements. It wouldn't be enforceable because of this, but also wouldn't be helpful.	Unknown
70	Unit Design Flows for OWTF (OWTF added)	Table 1.	Adds Onsite wastewater systems to the title of table.	N	Table 1 is not just used for onsite wastewater systems, but also used as a reference for sewage collection systems and individual permitted wastewater treatment plants (e.g., B202(A)(9)(a).	Table 1 may seem out of context and hard to find for someone who only deals in onsite wastewater treatment systems.

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
71	Unit Design Flows for OWTF (criteria)	Table 1.	Provides relatively extensive design flow determination criteria (see the changes for review)	M	First, more discussion would be needed to put additional peaking factors into residential design flows. The definitions of "design capacity" and "design flow" already demonstrate that designs should account for "peaking factors" and if tables are relied upon for sizing, these tables have potentially already included "peaking factors." If this needs review, this needs further conversation and research. Non-residences using septic tanks already incorporate a "peaking factor" in their calculations by a factor of 2.1x according to A314(4)(b).	There is some confusion about which unit values are to be used with OWWTF design and which unit values are to be used with sewer designs. There is also a question of whether or not a peaking factor should be used with the unit values.
72	Unit Design Flows for OWTF (hotel linens)	Table 1.	For hotels/motels, addition of assumption that linens are provided by outside provider (cleaning them not included in design flow)	Y	If a hotel is washing linens, then this is a major impact, and this needs to be accounted for in the flow. But further below in the table, commercial laundry would likely for this if a hotel is doing their own linens. Washing linens is not accounted for in a hotel design flow alone.	Table 1 does not contemplate hotels doing their own linens, but this is not immediately clear on the face. This means that proposed systems may be sized inappropriately (smaller than they should be) if only the row for hotels is relied upon in Table 1 (instead of the hotel AND the commercial laundry row). However, interpreting this part of Table 1 requires too much background knowledge and interpretation at this time.

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ADEQ Discussion Table of OTAG Onsite Issues 4-5-21						
73	Unit Design Flows for OWTF (restaurant waste)	Table 1.	For restaurants, changes term "waste disposal" to "waste disposable"	Y	This is just clarifying the flow difference between this row and the other "kitchen waste" row above. Two different types of facilities are contemplated here, but it's not totally clear from the word "disposal." The word "disposable" would better describe, for example, a Subway kitchen, where they do not have dine-in service, but rather have disposable service (what the food is served in is disposable). Contrast this with a restaurant like Olive Garden, which has more kitchen waste coming from the washing of customer dishes.	The difference between the two types of restaurant kitchen flows is not clear given the current language. It's not clear what "disposal" means (some might construe this as "garbage disposal" flow, which it is not)
74	Fixture Count Table move and broader application	A314(4)(a)(ii)	Moves the fixture count table in A314 to essentially Table 2 at the end of the Article 3 rules, and appears to make it applicable to all onsite systems for how to identify the number of fixture counts	M	It appears this is a continuation of a restructuring change to A314 and E302 and to fixture count modifications to apply for nonresidential buildings. Placing this this table here requires a clarification that it is only to be applied for onsite systems. (See items 62 & 22B) Table 1 references fixture count/unit value for determining the wastewater flows for non-single family developments. However, no table of FU values were given. By removing the FU table from A314 and placing it here, the intent is for designers to use it for determining the non-single family wastewater flows. Staff to discuss whether a specific reference to the fixture unit table in A314 should possibly be	Table 1 references fixture count/unit value for determining the wastewater flows for non-single family developments. However, no table of FU values were given. Unclear, need to ask

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					made in the text clarifying the use of the fixture count table for non-single family dwellings.	

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75	Sewer	Unclear	The whole section needs to be updated.	N	The present rule effort is concentrated on onsite systems. Gravity sewers are addressed under 1.11 if they're not addressed under 4.01 permits (or 1.10 if grandfathered), depends on flow (3000>x and whether single residence or not). ADEQ still regulates design and approval, it's just that 1.11 is in some cases delegated to counties (See R18-B-301(K)(6)). A sewage line from a single dwelling is regulated under a 1.11 General Permit. This type of permit regulates the following types of facilities: • A sewage collection system that services flows of less than 3000 gpd, and • A single gravity sewer line conveying sewage from a single building, regardless of flow (the building type is also unspecified) *See* R18-9-B301(K) and 11 AAR __,4576 (Nov. 14, 2005) Sewage collections systems, by definition, do not serve a single-family dwelling, only multiple dwellings or other types of structures. However, the 1.11 permit	"Gravity sewers are not addressed. Some counties are not delegated collection systems, which requires an additional review and process through ADEQ. Small to large onsite systems often times will have a collection component. Modification of this section is greatly needed."

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					does cover a sewer line for a single-family dwelling. Performance standards under this permit are met using local building and construction codes, relevant design and construction standards specified in E301 and appropriate operation and maintenance. Staff to discuss whether clarifying language could be/should be proposed in Phase 1, in part to clarify who regulates the pipe to the onsite system.	
76	Percolation Testing	Various	ASTM should replace percolation testing	N	Percolation testing is the closest ADEQ currently has to a site-specific test, and can still be very useful. More analysis is needed to support a full change to ASTM only. Also, percolation testing should not be very expensive unless it is for a seepage pit. If changes to this level are made, there needs to be technical reasoning to ensure continued environmental protection.	"Perc test are extremely expensive and not so useful at this point in the decision making process."

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77	Nitrogen Loading	Various	Nitrogen loading shouldn't be applied equally in all areas.	N	What is being requested is a site-specific application of nitrogen loading requirements. This requires more analysis and review. Type 4 permit program is not structured to take site specific conditions into account for nitrogen loading deviation like this, otherwise one is doing a whole aquifer analysis, requiring hydro engineers. This is not likely the intent of the structure of this general permit program. An individual permit is required to deviate.	"Nitrogen loading may be too strictly adhered to in some areas. For locations that have great depth to aquifers or no aquifers there should be consideration of the performance parameters."
78	Subdivision lot testing	AAC R18-5-408(E)(1)	Testing a cross section of lots for subdivision purposes would be better would be better. Reduce the initial testing to a minimum and allow the use of the soil morphology method.	N	This isn't being considered under the current revision. Subdivisions and testing thereof are addressed in Chapter 5. This is only for test lots bigger than an acre. The requirement is one percolation test and boring per acre. AAC R18-5-408(E)(1). What is promised in selling subdivided lots is viability for onsite systems. Testing a cross-section of undetermined size would not protect the public (or the consumer). Each site might be different, which could impact ultimate costs to the property owner post-sale.	"Duplicative processes that are not updated. Testing of all lots is unreasonable, testing a cross section of lots would be better. Most subdivision do not get built out for many years, if ADEQ needs the comprehensive soils testing for approval then why are these records destroyed prior to these projects being completed. Wouldn't this information be necessary for primary and phased construction of sites? Each lot needs to be tested independently for an onsite system. Reduce the initial testing to a minimum and allow the use of the soil morphology method."

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79	Renewal v. operational life	A303	Establish renewal periods for all alternative WW permits and 4.23 General Permits. Suggest a renewal for an advanced treatment system to be every 2-7 years in alignment with a type 2 &3 General Permits.	M	Permits are issued for the operational life of a facility. Too many questions arise from this questions that cannot be decided quickly: Permits are for construction, so what would a renewal look like since there is no monitoring? How should currently permitted facilities be treated? What about already grandfathered facilities? Renewal would also entail a high burden that would need to be thought through and discussed, in part with homeowners.	State and nationwide it has been emphasized that program oversight is necessary, especially with advanced treatment systems. Requiring a renewal program for advanced treatment systems allows on-going oversight, a comprehensive inventory of onsite systems and allows sustainability for a permitting organization.
80	Construction Quality Drawings and other reqmts	A309(B)(6)	4.02 systems should not be exempt from the basic submittal requirements , large sized and commercial flows need to include design elevations, and construction notes as required of other general permits and operation and maintenance manuals. *At a minimum make it a requirement systems sized larger than 1500 gpd or commercial conventional systems	Y	Some of the alternative system requirements should still apply to 4.02 permits, in staff's opinion. See items 26, 27, & 28.	See items 26, 27, & 28.

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			have these submittal requirements.			
81	Inspection Authority	A309	Include a section for inspection. Provide language that allows for legal authority to inspect and enforce onsite WW rules.	N	ADEQ already has this authority in statute. Various authorities in statute may be delegated in a Delegation Agreement. This does not belong in rule. Unclear how this would help with third-party inspections. Is this regarding delegated authorities? See Item 5 above.	Legal authority to inspect and enforce onsite WW rules is the only category that is missing from A309, it would help assist with regulations and greatly assist inspection verifications conducted by third party inspectors.
82	High Strength Waste/Commercial waste	A309	Include a section for commercial – high strength waste. Provide language that allows consideration of a waste strength other than residential.	M	ADEQ agrees that there needs to be analysis to classify other types of waste. This is an item assigned to technical workgroups.	The emphasis of the APP is focused towards residential applications. There currently is very little guidance for commercial facilities.

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83	Table 1 – commercial flows	Table 1	Modify Table 1 to address different types of commercial flows. Applicant should submit comparable facility flows. Account for business growth in Table 1.	M	ADEQ agrees that there needs to be analysis to classify other types of waste. This is an item assigned to technical workgroups.	Table #1 could be expanded with a section outlining some additional methods. Table #1 by itself does not create large flows but could be modified and complimented by an additional section that outlines commercial such as the US EPA text that provides some averaging of unit flows. The table should never be used as a standalone reference. A commercial operation should be submitting flows from a comparable facility and a plan that projects future growth. Most businesses are in business to be successful and grow their base, yet we have no mechanism to account for this and later expanding an onsite system may not be an easy undertaking. This would be very helpful for designers and regulators alike.
84	PPL rescission language	A309(E)	Add language to clarify that ADEQ may rescind a current PPL listing	U	ADEQ maintains the PPL list. The rule does not say that PPLs may only be listed, just that the list shall be maintained. More analysis needed as to whether further language would help clarify. PPL process will be handled more in PPL	Include language to be able to rescind a listing that has misrepresented data and/or performance criteria. Add a section that allows correct by removal from the listing for a product that could be found to be misrepresented. Recently Ohio has rescinded their Presby approval due to additional information. There is discussion that effluent filters may be harmful to septic tank by collecting gases, there needs to be an easy method to correct errors.

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85	Subdivision rules	A309(7)(c)	Add a section for subdivision rules.	N	It's not entirely clear what's being discussed here.	There needs to be an entire section for Subdivision rules, these rules have not been updated and now inconsistencies exist in testing methodology, and review processes. Percolation testing is still required for all lots when the current APP recognizes the ASTM method of soil classification. Percolation testing used exclusively is not supported by rule if limiting site conditions exist.
86	Switch from ASTM to USDA	A310	Switch from ASTM to USDA Soil Classification System for site evaluations.	Y (a version)	USDA could be *added* as a testing methodology, in conjunction with the option to use ASTM. Using either test will yield the same result. ADEQ is not planning a "switch," however.	ADEQ is limiting the methods available for soil classification even though they both yield the same result. ASTM is too limited for some, and USDA is easier to use. The ASTM Specifications are a copy of the USDA Soil Classification method, therefore they will not be readily updated, expanded or modified. Using the USDA we would be using a nationwide approach to soil evaluation allowing many more tools for design such as the Tyler LLR that uses USDA application rates. It also would allow up to date access to the USDA Soil web, giving site evaluators access to current soil mappings and description (would not eliminate the requirement for a site evaluation). The USDA method is also utilized by geotechs that are providing soil information for construction purposes that would recognize one data source to be utilized for the entire parcel development

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87	Seepage pit requirement inequality	A310	Make seepage pits have pretreatment if their use is to be considered	M	A percolation test is the most site-specific. For a seepage pit, you might be able to get a higher SAR than if ASTM is used, but ADEQ doesn't have a justification to switch from the specific site-specific percolation testing method at the site. Whether seepage pits are appropriate forms of disposal is a question for the technical workgroups. The same for the testing procedures in terms of making a major shift.	Nationwide, seepage pits have been a discontinued design choice because of a threat to the environment as they are only "theoretically" capped at the bottom. Seepage pits need to be held to the same testing requirements as all other onsite systems. Consideration should be given to make them provide pretreatment if their use is to be considered.
88	Alternative design features in delegation	A312(G)	Place the provisions that are included in the DAs in the opening section for the 312G provision.	N	It's unclear what exactly is being asked here, but it seems to relate to the delegation agreements and their relationship to those items mentioned in them to A312G.	Unclear. Potentially a lack of clarity as to what the terms in the DAs mean.
89	Setback table item 2, property line setback	A312(C)	Eliminate or modify the 50' setback from property line	U	This is not a simple update or change and would need significant stakeholder engagement. This setback ensures property or water rights, to install a well for example, are preserved and that an onsite facility would not negatively impact a supply unless otherwise agreed	The 50' setback should be revisited as it has become problematic and allowed adjacent developed properties to hold an undeveloped property hostage. There are too many instances where development occurred before 2001 or when the setback from a well was only 50' instead of 100'. We have whole areas that will only use hauled water due to the depth to

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					to. See also 7 AAR 332-323 (Jan. 12, 2011). This should be revisited in Phase 2 for an alternate solution that is more appropriate for more areas.	ground water exceeding 1500'. These homes typically do not want to give waivers to their future neighbors.
90	USDA v. ASTM SAR	A312(D)(2)	SAR tables should be in terms of USDA instead of ASTM	N	The first table is a percolation conversion table. This table would not change given ADEQ's intention to add USDA as an option for soil investigation. The second table could stay the same for both ASTM and USDA. ADEQ intends to add USDA as an option. See item 86.	"Replace both charts for derivation of soil application rates with standardized USDA charts" "Replace both charts used for percolation rates and soil application rates and replace it with the more universal USDA chart that allows more versatile use of wastewater design tools. Product manufacturers nationwide that recognize a soil system base their product's performance upon the nation-wide USDA approach not a derivative of the system. AZ is currently the only state that has used the ASTM method."

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91	Site-specific SAR	A312(D)	Eliminate Site specific SAR	Y	ADEQ will likely clarify the tables by replacing site-specific SAR. See item 53.	No support in rule for the justification of a site-specific SAR, only 5 basic soil application rates exist, unnecessarily complicates site investigation process. There has never been an explanation as to why we need this category scientifically, it is not necessary. See item 53.
92	Hydraulic Analysis	A312(B)(4)(b) & A312(E0(3)(c)(ii)	Only require hydraulic analysis when flows exceed 1500 g pd	N	This change would pose too much risk to the environment. The hydraulic analysis is very important in situations below 1500 gpd, especially those if the area is sloped or if there is a subsurface limiting condition. (E)(3)(c) addresses high water tables and how much coliform can reach the water table or surfaces; a hydraulic analysis is important to make sure coliform is treated before acting conveyance to groundwater or as a surfacing pathogen.	Other states have had the same results where small lots with poor soils would never qualify for an onsite system if a hydraulic analysis is required. Yet we have been installing onsite systems for well over 30 years in these very conditions and they work. I suggest that consideration be given to only require a HA when flows exceed 1500 gpd—this would in most cases eliminate single family residences as the flows are usually not this high. There could be a separate requirement for an HA for an extreme lot such as one that has a slope greater than 12% and very limiting soils conditions. It just simply cannot be done on most small and regularly sized lots. Revisit this concept that cannot be applied to small and regularly sized lots. Correct it for a larger-perhaps commercial flows and those lots that are extremely challenged but not for every lot with a limiting condition.

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93	Coliform standard	A312(E)(1)-(4)	Replace the use of Total Coliforms with more current science.	Y	ADEQ intends to re-evaluate whether to update total coliform standard to fecal coliform. It will take at least two weeks of working on nothing else. Every coliform performance measure in the rules (for each Type 4 permit) would need modification. Vertical separation requirements would need modification, including the A312(E) MVS tables. There is no 1:1 correlative relationship between total and fecal coliform. It is unclear whether the change to fecal coliform would necessitate a more stringent vertical separation set of data points.	BOD and TSS will eventually not be recognized as accurate measurable parameters due to outdated test methods, Science is marching on and a different approach to system classification may need to be considered. At a minimum, E. coli should be considered as it updates out of date science practices and is now recognized by ADEQ Drinking Water program.
94	Minimum vertical separation	A312(E)(1)-(4)	Consolidate and correct MVS charts	N	That is a very broad conclusion that "all" manufacturers require 1-3 feet of usable soil, and ADEQ does not agree. (Norweco, e.g., chlorine disinfection, only recommends 6 inches of soil for disposal). Also, these tables don't govern the amount of soil needed between the surface and the disposal works. Rather, these tables govern the level of coliform allowed depending on the vertical difference between the seasonal	The current minimum vertical separation charts are cumbersome and too difficult to negotiate. The charts imply that with disinfection you can apply wastewater directly to the surface. This is contradictory to all of the disposal product manufactures that emphasize the presence of 1-3 feet of useable soil to be present in order to discharge into the ground. Our MVS and performance criteria method could be simplified by having 4 treatment levels based upon BOD-TSS & Nitrogen. Similar to what Colorado has done. This would simplify the process and Proprietary Listing; it would create a more equal

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					high water table itself and the disposable works. In some areas, the presumption is seasonal water table is at surface, so MVS is also at the surface. In other areas, the seasonal water table is much lower. The MVS is just dependent on where that water table is. It's a water-table based requirement. If the disposable works are zero feet from the water table, the total coliform level must be nominally free (i.e., 1 cfu /100 ml), but that water table may still be 5 feet below the surface. However, effluent going directly to the surface is also not totally disallowed, given there is pretreatment/disinfection, and if the seasonal high water table is at the surface. However, there is a potential issue with regard to maintenance and monitoring.	playing field for all products without such unexplainable gaps such as gravity pad systems getting better performance ratings over pressurized sand beds, peats systems, textile filters, etc. for example. We are not building space shuttles.

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95	O&M	A313	Reorganize O&M, should be those observed on inspection, and those items requiring ongoing maintenance	N	No reorganization necessary without rethinking how the program works. ADEQ disagrees with the statement that items 1-8 are just inspection items.	Items 1-8 in the O & M section have to do with items observed on inspection and not on going O & M. They should be reorganized in a new A309 section for inspection as these items should be considered at the time of inspection. The whole section should be revisited and updated. O & M items are clunky and could be improved upon.
96	Tank dimensions	A314	Needs correcting for tank length	M	Comment not specific enough. Refer to Item # 141	Refer to Item # 141
97	Tank size and design flow	A314(4)	Eliminate fixture count; need to consider "convenient fixtures" such as a half bath that doesn't add bedrooms, just functionality	M	This is part of a broader discussion in phase 2. See Item 22B	This chart was outdated the minute it was paced into print. Technology is improving where modernization of all fixtures takes into consideration water conservation. Fixtures. The fixture count is often the factor that drives a larger system. No means for we toilet types. Consideration should be given for identifying a "convenient fixture- one that is not adding bedrooms but may add functionality to the home; I.E.: a ½ bathroom in a garage or inside the home. The bedroom size of 150 gpd could be reduced to more realistic numbers- maybe after 4 bedrooms the house size is increased by

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						only 75 gpd considering single room occupancy with a caveat that it truly be a residence. Eliminate the fixture count. Colorado used 150 up to 4 bedrooms and then 75 gpd for each additional. See Item 22B
98	Water Tightness	A314	Expand this section to include all wastewater components used in the treatment process	N	The problem is unclear here. It seems they're talking about 4.02. Pipes from the tank to the distribution box to distribution box must be constructed with watertight joints; lay pipes between septic tank and distribution box, distribution lines must have watertight joints….per E302(C)(1)(e)(-(g). Pipes from the distribution box to disposal works are covered, and must be watertight Designs for 4.03-4.23 permits must be watertight (tanks, liners, ports, seals, piping to and within the facility) under all operational conditions (A312(B)(4)(d)). However, all facilities must be inspected for watertightness under all operational conditions. A313(A)(11).	Unclear, but as stated: make sure there is a reference in each General Permit to ensure process components are tested for water tightness

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99	Intercept or sizing and flows	A315(B)(3)	Correct error in interceptor sizing formula	U	Formula isn't necessarily wrong. The rule already says the intent is for grease and garbage, implying that the flows to the interceptor should be separated. ADEQ potential actions: ADEQ could potentially add "applicable" flow from Table 1 (which would be "kitchen"). "F" could be further clarified to say that only kitchen flows are to be collected (and not toilet waste). [Is there a concern that some toilet waste might be sent to the interceptor?] The term "sewage source" could be confusing. The rule could be further clarified by explicitly stating that the interceptor should be placed directly in front of the flow to collect grease and garbage, and should be placed before these flows merge with other restaurant flows.	"The formula for the sizing of a grease interceptor is incorrect, it ("F" waste flow) includes flows from Table #1 which would include human waste that is not intended to be routed through a grease interceptor. Suggest using corrected UPC formula and keeping section c. for alternative methods."

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100	Alternative features delegation	A316	ADEQ should update their website instructing all applicants to submit NOT forms directly to the DA or ADEQ in the absence of a DA, correct their forms to reflect these changes, eliminate the use of the OWN System for those counties that have DAs and forward the fees improperly collected to the DA's, these functions have been delegated	M	Not a rule	Not a rule
101	Toilet section	B301(H)	Development of a new section specific to toilets, and include 1.08 section	M	This is a significant change requiring a lot of analysis and discussion with stakeholders. If reuse moves more in the direction of smaller facilities, things like toilets may need to be more specifically addressed, especially considering dangers of aerosolization of pathogens. However, at this time, the onsite rules are not set up to consider such options. However, what is described here appears to be more of a local plumbing issue.	Consider making a new section specific to toilet usage. Building departments rely on review of full sanitary facilities for a single-family residence (SFR) Separating out incineration toilets, and other toilet types does not consider these uses in SFRs. Toilet usage is changing and will further include water harvesting from shower water to flush toilets. Toilets comprise 40% of household flow, should be accounted for in the design by recognition of the type and intent of the toilet. This section could allow for modern usage such as pee gardens as opposed to just chemical toilets. There is big movement with toilet development in this county. We will

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					ADEQ does not regulate water harvesting. Phase 2.	see the Smart Toilet by next year and need to provide a mechanism to allow for technological advances. 1.08 section needs to be merged in this section. Incinerator, compost and now Reinvented toilets are offering solution utilized in residential setting and may include additional water sources. Building Departments rely on the counties to review for all sanitary facilities inside a residence, having a 1.08 permit not required to obtain a permit does not make much sense
102	1.09 permits	301(I)	Sunset 1.09 general permits in 2021	M	ADEQ will consider this in Phase 2 under the workgroup analysis and research projects. This would significantly burden current 1.09 permit holders. However, this may improve effects on the environment from these facilities. It's unclear how current 1.09 permit holders would pay for such a transition, or if they could all afford it. However, one cannot say it's not totally unexpected given that "operational life" does not mean forever, especially considering all the situations that in the meantime could/could have forced 1.09 permits into a Type 4 permit if not able to operate the facility pursuant to B301(I)	Discharge authorizations were issued for the operational life of the facility in the case of 1.09 permits. Operational life is generally recognized as 20 years. This means many of these facilities are existing past their life, and probably not well for the environment. By 2021 Discharge Authorizations issued under the APPP will be 20 years of age which has been ear marked as the average life expectancy for an onsite wastewater system. These permits should be merged into the Type 4 GP process with the filing of a new Notice of Intent to Discharge. This allows a mechanism to develop an inventory, manage the types of systems and ensure protection of Health and the Environment by system verification and ensuring they are functioning in accordance with the terms of their General Permits.

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					or if a change must be made that does not qualify under A309(A)(9).	
103	Septic Tanks	E302	Move the information from A314 to this area	M	This likely makes sense, but this may also lead to a reorganization and update of the disposal requirements, which will take a lot of discussion.	Many alternative systems incorporate the use of a tank in their treatment process. Having all these rules separate makes it confusing.
104	Gravity disposal	E302	Make a second section under 4.02 that deals just with gravity disposal methods	M	This likely makes sense, but this may also lead to a reorganization and update of the actual requirements, which will take a lot of discussion. Staff likely to recommend some language to clarify how the disposal requirements apply.	The rules are confusing and the gravity disposal requirements don't clearly apply if an E302 permit is not obtained.

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105	Chamber design	E302	The chart for trench design should be expanded to include the criteria for other trench methods such as chambers, SB2, EZ flow, etc. One chart would simplify the section.	U	Only one chart couldn't really be used. The length of the chamber is not limited like it is for a trench. Commenter would like a table, not just a formula? Possibly phase 2? The ask is not totally clear. Given the number and arrangement of the variables (exterior width and vertical height and length of the chamber) a table may not be as reproduceable.	The rule for sizing chambers is not as easy to use as for trenches or beds.
106	Paving	E302	If there is one section in rule for all disposal methods, then it should expand the topic about driving and paving over a system.	U	This would just clarify how the rule is currently administered. This is probably a good change, but the how and reasoning. It's not totally clear what needs to be expanded, however. What additional details are needed?	It sounds like the requirements for paving over a system are not clear.
107	Composting toilets	E302	Make 4.03 the toilet section and have all toilet technologies addressed here. Eliminate the kit compost toilet section from rule, to be consistent these toilets need to be listed.	M	Composting toilets is a complicated technical issue. ADEQ will need more input on technical direction here as there are multiple perspectives to consider. More discussion needed to understand direction in a methodical way. Recommended for Phase 2.	"No specification for the composting toilets exist which is a key component to their performance also time temperature relationships need to be documented to determine suitably size units. I have gone to the home made compost toilet workshop and they are not an application that should be encouraged. Even in Tucson the air temperature is not conducive for regular-year round use and it promotes a hands on process

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						not suitable for the main st - pream homeowner. Very few homeowners would wish to pitch fork their humanure pile in the back yard on a daily basis. They simply are not a viable option per rule. The other toilets are sized based upon time- temperature and amount of waste that can be processed in the units, the home made ones do not meet these criteria and have not been lab tested."
108	Composting toilets and Gray water	R18-9-E303 & 711 (now D701)	Gray water needs to be removed from the Reclaimed Water Section.	N	ADEQ believes it is appropriate to regulate gray water separately as it is a different health and environmental concern than onsite systems. Onsite is designed for disposal, and gray water is designed for beneficial reuse. These uses may pose risks to the public in a different way than onsite facilities. At this time, ADEQ disagrees. The intent for gray water is to recycle used water for beneficial use. Recycled water is not limited to regulation of municipal waste. However, reorganization and better integration is a topic for discussion for the workgroups, other stakeholders, and potentially academic experts.	"Gray water needs to be removed from the Reclaimed Water Section as it is an onsite system and not municipal waste. Municipal Waste is used, treated and resold for use. Graywater is generated onsite and stays onsite in a soil based approach. It is a portion of the flow form onsite systems permitted under the Type 4 General Permit Process. Flows up to 3,000 gpd but not exceeding 24,000 can be permitted by the Delegated Authority. The current consideration is to create a Graywater General Permit from 3,000 gpd up to 24,000 gpd. It is suggested these be a Type 3 permit that would be renewable every 5 years. This is unnecessary as graywater is a portion of the flows covered by a Type 4 General Permit delegated to the counties. Creating a separate permit unnecessarily bifurcates the process by making an applicant obtain permits form two differing regulating parties that are not located together. The 5-year review would be

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						incomplete as the wastewater system originating the flows would be permitted by a different agency. This does nothing but case unnecessary confusion for an applicant. LEED points are still recognized despite the regulating agency. Local county officials are interested in promoting all reuse options including graywater and have local resources to ensure climatic and building code conditions can be met. Counties have all gone to the one stop shop approach and would not be in favor of sending graywater."
109	Gray Water	R18-9-E303 & 711 (now D701)	Amend General Permit process to address and allow expanded graywater use.	N	See Item 108. This is a Phase 2 topic.	See Item 108. This is a Phase 2 topic.
110	Pressurization and electrical code	E304	The language for electronic components in A312F could be relocated into the first portion of 4.04. Add a section for siphon use and one for use of flow equalization. Prescriptive references to electrical code using specific dates should be	N	No for the first comment. These electronic components requirements apply for all alternative systems, not just pressurization. ADEQ does not understand the other two comments.	?

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			changed as most abide by local codes.			
111	Pressurization	E304	Add a section for grinder pumps to the pressurized section	N	Grinder pumps are not appropriate for septic tanks, you create more TSS. For the same reason you shouldn't have a garbage disposal with some systems because it could increase the TSS and prevent or slow settling so that treatment is not as effective. Once you go through septic, you should not need a grinder pump, you should only need a regular pump up to the distribution box, and all pumps require specialized knowledge, especially to maintain adequate pressure and velocity. ADEQ hopes this topic arises again to be able to have a clarifying discussion to make sure it is understanding the issue.	Building Depts., are not equipped to review or inspect these systems, they have requested assistance from environmental quality programs.
112	PPL revamp	E304 – E323	PPL needs to be streamlined, made more efficient, flexible, changed to treatment categories. Performance numbers if altered should be updated in the written rule text.	M	ADEQ appreciates the comment but this is a workgroup topic. ADEQ agrees the PPL program needs updates and clarity. This is phase 2. Performance numbers are generally approved and certified according to submitted test results.	PPL process is confusing and not transparent: "For all PPL products if the listing has additional criteria these could be incorporated into rule in each General Permit section to make the rules more streamlined. Additionally, performance numbers if altered should be updated in the written rule text. We have several GPs that are outdated. The PPL process could be amended to make it more efficient, will be more flexible when we make a departure from outdated

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						science such as Total Coliform Concentrations. By changing to treatment categories we stand a chance in keeping up with technologies instead of new products being reviewed with differing criteria that the others that are listed resulting in unequal playing fields among products."
113	Wisconsin Mound and PPLs	E308	Update the Wisconsin Mound design. Also, a request to re-evaluate previously approved PPLs	M	Much of this comment is a request to re-evaluate previously approved PPLs rather than a rulemaking comment. Adding a new standard in rule would likely require a lot of research, analysis, and negotiation.	"Mound design out of date: The 1990 Mound Design is now over 25 years old, there have been some new design considerations that could be evaluated for consideration, current A & B mound designs make little sense, and should be struck. Who would ever do a Type A mound it just makes no sense. The section on enhanced loading conflicts with the 1990 manual and does not address other sections of rule that would need to be adhered to. The mound system is a nonproprietary system reliant upon the specific site conditions. With 24" of ASTM c-33 Concrete sand for a pressurized mound system their performance rating should be equal or equivalent to the Eljen and Presby system that are both gravity applications. As a non-proprietary product the agency should re-evaluate these products to allow enhanced performance with their designs."

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114	PPL	A309 (re: E310 & E311 & E312)	Product approval adjustment with respect to intermittent sand filter, peat filter and textile filter	N	ADEQ disagrees with this comment. The actual certificate may show better performance than required by the rule. This is not a deficiency in reviewing products; this is simple a product-specific showing as proven by product third-party testing of a specific design configuration. The standards in the rules are just the minimum based on the specific design prescribed in rule. The performance parameters for each design is like comparing apples and oranges. Specific performance parameters are prescribed as a baseline for each specified technology as designed according to the general permit rule (a cookie cutter approval). Some technologies may actually provide better treatment, and this is to be expected.	PPL process is unfair. Intermittent sand filter, peat filter and textile filter should be given the same favorable rating or higher than the pad products if the rating system is now more favorable. These products all treat the effluent through a fixed media bed process prior to applying to soils (excluding bottomless applications) as opposed to a pad system, which is treatment and disposal in one-step.
115	Peat system	E311(D)(3) & (E)(2)	Eliminate section allowing site built peat system	N	It's unclear that a peat system is unworkable. Unclear why this should be limited. There might be issues in aeration, but likely not if requirements are met, which are prescriptive. No data is provided indicating there's an actual problem if an engineer uses actual peat using sphagnum.	Peat is very specific to performance and cannot be field verified to know the correct percentage of sphagnum as well as air dried porosity

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116	Vault and Haul	E314	Amend rule to allow vault if no other option exists. Require that the allowance of a vault system requires a yearly permit that is submitted with associated pumping records.	N	No. This is already a prerequisite. (E314(A)(1)) However, this comment helped to highlight that there should be a clarification likely of an "or" in that rule subsection. There should also maybe be some proof that haul is viable in the area and a back-up plan. Hauling may not be able to be a long-term solution if a there is only one company to service the property. This will need further discussion and research. Further regulation of this is not something that ADEQ intends to do in at least Phase 1. An analysis of whether an onsite is appropriate in some of these cases should perhaps be evaluated. This should possibly be a part of the research project.	"Vault systems are not economically sustainable and should not be considered. Vaults nationwide have been proven to be problematic due to costs forcing owners to violate laws by bootlegging in trenches, running waste to ditches, etc. *as a last result, if they cannot install an onsite system they should have to consider a whole house combustion system [incinerator toilet], expensive but not as costly as regular pumping and deals with all of the waste. In some locations they may eliminate graywater to reduce frequency of incinerating and therefore associated costs."

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117	Aerobic	E315(B)(2)	Clean up inconsistency. Eliminate performance type 2 for the aerobic treatment system.	N	No, this is not recommended. Type 1 standard is for those facilities that do not undergo PPL and its rigorous review, so certain standards apply in the absence of additional review and testing. Type 2 standards are lesser performance standards allowed after a review of third-party testing and sufficient data for PPL approval.	"Categories should be based on performance and science and not economics and simplicity. Other ATUs performance measures are based upon time-temperature and amount of DO in confined space. Why hold all ATUs to a higher category but allow these to be used as equal based upon economics and simplicity. All ATUs have the same basic operating platforms, treat them the same."
118	Constructed wetlands	E318	The constructed wetland should be expanded to consider indoor wetland applications	N	This rule does require setbacks, 10 ft from the building, so this type of facility cannot be placed in a building. Staff does not think this rule should allow constructed wetlands indoors. You would need to have some guard or protection to keep children or others from it and make sure no one comes in contact with the water/wetland.	"The constructed wetland should be expanded to consider indoor wetland applications, these are not handled by building code, require the addition of an onsite system for startup and overflow and are dependent upon the incorporation of an indoor grease interceptor and a composting toilet. They are better dealt with through the onsite process. The wetlands approach is incorporated into indoor planters Existing wetlands are not well suited for SFDs, rules need to reference Tennessee Valley Authority as the base reference along with local pants species that will be needed to achieve performance."

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119	Pressurized sand trench	E319	Pressurized sand lined trench should be given enhanced treatment performance criteria similar to a pad system to keep up with newer PPL criteria	N	If a product produces better quality, then the adjusted SAR can be different from the baseline, which can be beneficial in creating a cheaper or more flexible design for a particular site. It's comparing apples and oranges. Different standards simply apply for different technologies, based on how they were set in the first place, the minimum that must be bet. If someone obtains a PPL, that technology can possibly show better performance, on a case-by-case basis for different products/manufacturers, using proven data.	"A pressurized sand lined trench should be given enhanced treatment performance criteria similar to a pad system to keep up with newer PPL criteria that has been considered on recent product listings. The sand lined trench is a nonproprietary product that could have great potential if considered like similar sand-bed products. They could prove to be cheaper and more effective than both Presby and Eljen as they would eliminate the manufactured product and rely on the sand for performance and treatment. The sand provides the performance in all systems regardless. These could be a very good lower cost system for difficult sites."
120	UV criteria	E320	Provide design criteria for UV and ozone disinfection. Describe what is expected for fail-safe or eliminate the term from rule.	M	Performance measures are given. Need to show it can handle 4x the design flow and nominally free of coliform. More specific criteria may be helpful (wavelength, time, etc.). This will require research and analysis to settle on specific standards that would not apply on a case by case basis.	People are having a difficult time submitting a disinfection device for review or reviewing a disinfection device for whether it should be authorized to operate. While performance criteria is prescribed, no guidance is given as to whether a particular device can meet the prescribed standards.

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121	Drip disposal types	E322	Drip disposal. Eliminate A/B categories for treatment	N	No, the rule currently allows for more options and flexibility depending on which performance standard can be met based on the treatment given. One would only be able to meet category A coliform standards with a disinfection or disinfection device. There is no reason to change the performance standard. For each of the technologies, these are the minimum standards that must be met. If a product is approved through a PPL then a better performance may be demonstrated on a case by case basis.	"A pressurized sand lined trench should be given enhanced treatment performance criteria similar to a pad system to keep up with newer PPL criteria that has been considered on recent product listings. The sand lined trench is a nonproprietary product that could have great potential if considered like similar sand-bed products. They could prove to be cheaper and more effective than both Presby and Eljen as they would eliminate the manufactured product and rely on the sand for performance and treatment. The sand provides the performance in all systems regardless. These could be a very good lower cost system for difficult sites."
122	Drip disposal	E322	Eliminate shaded trench, product manufacturer will not consider this as suitable design.	N	This is for disposal, not treatment. Treatment should have already occurred. The problem raised here is not understood. That is a broad statement that every manufacturer's product would conflict with this rule.	Product manufacturer will not consider their product suitable for sites with less than 12" of useable soil.

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123	4.23 permits and Aerobic treatment	E323	Allow Aerobic Treatment as acceptable use for larger systems. Also, make the 3.23 permit renewable; these permits are larger and have additional considerations	Y & N	See item 68 – ADEQ may allow aerobic systems in Phase 1 for 4.23 permits on a limited basis. See Item 79 - Permits are for construction, so what would a renewal look like since there is no monitoring?	"There is no science behind restricting their [aerobic system] usage, and has created an unfair advantage and higher system cost in a state that has consistently allowed ATU usage on large flows and individual permits. Allow disinfection on these systems. Typically used on Individual permits that are usually larger flows so why not for these systems. Along with a Performance Assurance Plan make the 3.23 a renewable permit; these flows are treated differently as they become larger they should have additional considerations."
124	Table 1	Table 1	The table should be relocated in a commercial design section where it could be better utilized. A commercial application should include some type of business plan	M	ADEQ hopes that the workgroups will guide the best direction on how to update and organize Table 1. Major table 1 modifications are recommended for Phase 1. See item 71	Rules don't adequately account for commercial flows: "The table should be relocated in a commercial design section where it could be better utilized. A commercial application should include some type of business plan that identifies usage, hours of operation, expected or anticipated growth and a menu of items that may affect wastewater flow and strength. EPA has a similarly suggested unit design flows that give some averages. The trend today is go more towards a mass loading than from unit flows, Table 1 allows those without such information to navigate a path. Our rules should include both methods to allow adequate design, we should develop a process for biological and mass loading."

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125	Gray Water	D701 &D702	Move gray water rules into onsite, provide more information as to how to apply gray water, large gray water flows should be delegated to counties, as well.	U	The recycled water rules are not under discussion for the Phase 1 rulemaking. These are helpful starting discussion points, however. See item 108	"The gray water rules have not been well received. They are not truthful as any alteration of plumbing fixtures or a structure results in a permit being required from the local building official. As part of the flow for a Type 4 general permit they need to be disclosed and identified properly on Notice of Transfers. Without the requirement of a permit there is little to no documentation for a new homeowner let alone the 4th or 5th buyer. This 711 process is the only process that allows a one-time homeowner to set the course for all other homeowners after them. Typically permitting decisions are based off of the optimum expectancy of the home not ideas of a one-time owner. Despite the no-permit approach the interest in gray water usage is dismally low, largely due to only directing the conversation to the permit-less process and not how to apply the graywater to the site. It was process centric and missed out on the most important aspect of how a homeowner should use it on their site. To optimize the beneficial use of gray water for the irrigation of plants you need to have a soil application rate, know the amount of water generated and determine the types of pants that can be successful. In cold climates there needs to be a method to turn of the system during dormant months. Instead of permit less, permits should be processed as a continuation

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						of an onsite system. There should be a separate O & M Manual for graywater so any homeowner could be successful. We can do better than what has already been done. The 711 Gray water rules should be incorporated into the General Permit Program. DAs are delegated flows from 3,000 gpd to 24,000 gpd. These uses should be permitted at the local level. We can provide local models, information, insight and expertise. No need to send these permits down to ADEQ in Phoenix to review. Overly burdensome- proposal not considering customer-service-oriented principles and delegated functions and capabilities."
126	Bifurcated system	All	The rules should be restructured so they're not conventional v. alternative	M	ADEQ staff believe this is good input for phase 2. A rule restructure is not currently recommended for Phase 1.	The way the rule is structured is what has resulted in a bifurcated system. The structure of the plan review for a conventional system or alternative is not a good divider. There are many system choices that should be selected based upon site conditions.

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127	Gray water definition	101	Add a gray water definition incorporating the statutory definition in 49-201	Y	ADEQ agrees that the definition should be included. It's unclear how the definition will enhance gray water use, but it will hopefully add clarity.	People are often confused about what gray water is and where it comes from. "We are going to see a tiered approach to gray water in the very near future, from mulch with technological advances in gray water uses and appliances both inside and outside facilities there is a need for a basic performance criterion to assist in recognition of minimum vertical separation and allowable uses; this will enhance the usage of graywater. NSF 350 which is adopted in the 2015 and 2018 International Residential Codes identified graywater as BOD 130-180 mg/l, TSS 80-100 mg/l"
128	Recycled water, reclaimed	B702(H)(3)(a); B702(H)(3)(c); B704(D)	Clarify these rules	U	These rules are not under consideration for Phase 1, or phase 2 for that matter, unless directly related to onsite.	The following are confusion R18-9-B702 H 3a (Prohibitions for use of reclaimed water) Providing or using reclaimed water for any of the following activities : Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; R18-9-B702 H 3c (Prohibitions for use of reclaimed water) Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, R18-9-B704.D

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						Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water D. No lining is required for an impoundment storing Class A+ reclaimed water.
128	Repairs	A309 (including (A)(9)(b)(iv))	Clarify Repairs, especially 10 foot extension	?	ADEQ unclear what this comment means [like-for-like?]	"R18 -9-A309 Repairs needs clarity; (b.iv) doesn't explain that a repair is a like for like as ADEQ has interpreted and causes numerous issues with customers and the 10 foot extension should only be allowed for a like for like replacement line as many home owners get taken advantage of thinking 10 feet will be a fix."
129	50% rock – limiting condition	A310	ADEQ should provide a prescriptive method as to how to deal with 50% rock limiting condition to make it easier for customers such as designers and counties to be consistent and have less frustration. Ex: 50-60% rock then 10-20% more absorption area, 60-70% then 20-30%.	N	The rules are not designed for ADEQ to dictate how to overcome the subsurface limiting condition. This is a demonstration made by the permittee/designer.	Soil with more than 50% rock is a subsurface limiting condition. ADEQ has stated that this does not mean a conventional system cannot be installed, however, some counties use that as a break point and some use a descriptive method depending on how much rock over 50% you have. ADEQ should provide a prescriptive method as to how to deal with this to make it easier for customers such as designers and counties to be consistent and have less frustration. Ex: 50-60% rock then 10-20% more absorption area, 60-70% then 20-30%.

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130	Organization	All	Reorganize and restructure the rules	M	ADEQ will consider how to reorganize the rules once workgroups have contributed more feedback.	The rules do not flow and are not understandable at a level like Bulletin 12 was. With all its flaws, at least it could be read and basically understood with respect how to design as system.
131	Sewer connection	A309(A)(5)(b)	Maximum costs to require connection to sewer should be cumulative	U	When an onsite system must connect to a sewer should probably be reevaluated, especially given the rise in population and construction in rural areas. This recommendation wouldn't necessarily increase burden from a monetary standpoint, but it would change when a person must connect to sewer.	The costs in R18-9-A309A5bi & ii should be cumulative. In some areas, municipalities offer service connection fees of around $1000 (far less than the $6000 limit in (i)) and many people will try to show that connecting to sewer would require more than $3000 (even slightly more, getting quotes to ensure that the quote is over the (ii) limit of $3000) so they will not connect to sewer, even though they will be cheaper to do so than pay for a septic system. Many times this is only done because they do not wish to pay a sewer bill and assume that they have no maintenance costs with a septic.
132	Sewer connection	A309(A)(5)	Section 5.a. This section needs to be modified to allow for an onsite system to be utilized as an option as opposed to being automatically required to connect to sewer.	N	The rule is specific with regards to when a sewer connection is required. At this time, ADEQ does not agree that a sewer connection is not or should not be required in any instance. Unclear there's a need for even further flexibility.	This will allow for partnering between counties, municipalities and ADEQ designate area plans to be better able to address the needs for development. An example would be an area where water reuse by municipal wastewater is not available and an onsite system could be utilized to solve some water conservation issues.

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					This change might unnecessarily increase pollution. Onsite permitting grants permission to pollute under certain conditions. It's not clear allowing more onsite facilities will be beneficial.	
133	Cumulative Flows	A309(A)(10)	Request for an additional general permit to deal with commercial and more complicated facilities	M	This is proposing essentially a different type of permit, a third bucket where more monitoring and maintenance requirements are applied. Not clear the idea is fully fleshed out…Needs more discussion in workgroups. It may add a burden, but also may decrease burden in that it decreases uncertainty and may allow for more and easier economic expansion. This permit type might need coordination with UIC.	"This section is for existing commercial flows. It needs to be expanded to allow the Delegated Authority the abilty to evaluate and determine the permitting requirements of the facilities, and should be rewritten allow the DA to make the determinations on permitting and could include a-c but a statement that would not be limited to these categories. Allowing the DA to evaluate and with the addition of a Type 5 General permit or an expanded General Permit 4.23 these existing businesses would have additional options to help facilitate not only continued use of their operations but potentially expansion. Allows a more realistic use of existing properties as opposed to suddenly having existing facilities having to replace existing systems and bringing all of their facilities up to current rule."

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134	Site Investigations	A310(C)	Modify this section to adopt the USDA Soil Morphology Criteria as opposed to ASTM.	Y	ADEQ intends to ***add*** USDA as a site investigation option. See Item # 86	Modify this section to adopt the USDA Soil Morphology Criteria as opposed to ASTM. This will allow wide spread usage and confirmation to nationwide soils mapping available on the USDA website. The ASTM specification was a draft, re-write of the USDA into and engineering specification but when transposed contained some errors that have not been corrected. The most current up to date source would be the parent document and the USDA site. Adoption of the USDA will benefit site investigations that are contentious or need additional information. Large scale soil mapping is available that will not eliminate the need for site specific investigations but greatly compliment them. It establishes a base line for both regulators and investigators to compare notes in a science-based setting.
135	Setback table	A312	Provide setback into rule for graywater systems: building setback, well setbacks, property lines etc.	N	Gray water has its own rule. It's unclear what this is requesting. What is the setback from? Where is the "edge" of the gray water system? Why is this a problem? Under the gray water rule, may not pond. Perhaps this is a recommendation for the gray water rule (D701) to specify that the	Technological advances under way will allow a greater usage of graywater and graywater products. Providing some setback criteria will help to ensure safe usage and will not affect current usage in place.

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					gray water system should not be used to irrigate the disposal area.	
136	Percolation testing	A310(F)	Update percolation testing	N	What standard is this commenter referring to? ADEQ's understanding is that presoaking is needed if not sandy soils (no clay). If one presoaks and it drains away within an hour then conclusion is one should soak it longer before test. ADEQ does not agree that presoaking is not needed.	"The percolation testing required in current rule does not meet the national or global standard especially for pre-soaking. With AZ being an arid environment whether you have sand or clay you may need a longer pre-soak to see a true representation of this and good evaluators realize this is an issue."
137	Swimming pool setback	A312(C)	Ensure pool decks have a setback.	Y	Staff agrees that there needs to be clarity on this topic, but believes this is already covered in rule. The setback for buildings already included "decks." Therefore, a clarifying clause may be added to clarify that "deck" includes pool decks.	Swimming pool setback should include a 10 foot setback because many designers want to use 5 foot and building departments also but the decks and walls, if they have them should have a 10 foot setback. Many cannot differentiate the 2 so it would be best if these were listed in the swimming pool setback.

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138	Table 1 – restaurant design & veterinarian clinics	Table 1	Table 1 should be updated to better address restaurants and locations with large animals (such as veterinary clinics)	M	ADEQ agrees Table 1 should be updated. ADEQ hopes that the workgroups will assist providing insight on how best to update Table 1.	"I have problems as I am sure you will hear with parts of Table 1 Unit Flows. "My biggest problem is with restaurant design. If you have a new restaurant many times they are guessing and the numbers come out very high. Existing restaurants replacing a system or building a new location using existing water flows most often are much lower than what table 1 comes up with but if you do not have existing numbers or comparable restaurant numbers the designer is at a disadvantage especially if the designer is not an engineer. We at the county are not supposed to design systems only review them. I also have this issue, less often, with veterinarian clinics. Table 1 only lists dog kennels but veterinarian clinics with or without large animals such as livestock should be listed."
139	Sewer connection	A309(A)	Clarify when sites have to connect to sewer	N	Staff does not believe it is unclear when sites have to connect to a sewer. In fact, the rule is specific. There have been some recommendations to modify the rule, however, which ADEQ may consider for Phase 2. These comments should be considered in the workgroups.	Clarification on when on sites have to connect to sewer. Costs of sewer connection, design of sewer connections/permitting of these connections, O&M of these systems

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140	Type 4 OWTF definition	101	Include a definition for Type 4 Onsite Wastewater Treatment Facilities	N	Type 4 relates to a category of permit. However, the preamble should probably contain an explanation of the program and what the onsite program covers and how it does so.	The rules are confusing so one has to have a clear understanding of the rules to understand what a Type 4 OWTF is. R18-9-101. Please consider including a definition for Type 4 On-site Wastewater Treatment Facilities. No – but we should probably have an explanation. We already have a definition for Type 4 relates to category of the permit. It doesn't get it's own love.
141	Tank size	A314(1)(c)iv	R18-9-A314(1)iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than ~~3~~ 4 times the width;	M	ADEQ would need to do more literature review to demonstrate that in every case this would be appropriate. Strength has changed over time as societies change, too (strength is increasing). Right now, if someone wants to submit a permit for this, they could do a PPL (if it sig. improves treatment or overcomes a site limitation) or a A312(G) and meet the requirements therein. This appears to have potential – we would need to review more recent studies with higher strength wastewater and lower water use fixtures. Greater settling time could be a benefit, because of increased settling time of the solids, and possible capture of more solids. But we need more data.	Unnecessary design limitation requirements? As the number of prime building lots has decreased over time, onsite wastewater treatment systems have been constructed under increasingly challenging conditions, including shallower groundwater conditions. This has led to a rise in popularity of low-profile septic tanks designed for a reduced vertical profile. As tank height has decreased, tank length has increased. Having a minimum tank length relative to its width is widely recognized as advantageous for particle settling, so Infiltrator applauds the specification of a minimum length-to-width ratio of 2. However, capping the ratio at 3 unnecessarily limits tank configuration possibilities. Infiltrator proposes raising the allowable ratio limit from 3

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						to 4 times the width.
142	Baffle height	R18-9-A314(1)(i)	Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located between 25 and 50 percent of the liquid depth of the tank, as measured from the top of the liquid level ~~at the midpoint of the liquid level of the baffle~~. If a	M	Might allow solids to pass through, unless one has (and is required to have) a longer tank length, which is not guaranteed. Just one good laundry day could overload a system with this recommendation. Need more information and analysis.	The current rule requires that the baffle penetration be located at the mid-height of the liquid level. While this is a perfectly acceptable specification, it is prescriptive for companies offering tank products in multiple states, where baffle opening height specifications vary from rule to rule. With the goal of transferring liquid from the "clear zone" in the first compartment to second compartment, AZDEQ has the ability to broaden this specification due to the size of the clear zone. We have proposed a position of 25 and 50 percent of the liquid depth of the tank, as measured from the top of the liquid level. This aligns with IAPMO/ANSI Z1000-2019 and proposed rules in North Carolina.

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			horizontal slot is used, the slot shall be no more than 6 inches in height;			
143	Julian date	R18-9-A314(1)(l)	Add language to allow for Julian date labeling	Y	Julian dating is relatively easy to look up. It may not be that intuitive for inspectors, but they would likely get used to it. Has anyone actually rejected a tank because it had Julian dating instead of just "month and year?" Likely will propose "including, at a minimum, the month and year in Gregorian or Julian dating format." (Gregorian is the calendar used by most.)	Historically, concrete precasters have created an imprint of the date of manufacture on the tank to ensure that it would not be installed and loaded with backfill prior to reaching the concrete 28-day compressive strength. Advancements in tank manufacturing have yielded molded thermoplastic tanks, some of which use different dating conventions, including a laser- etched Julian date. Infiltrator proposes expanding the allowable method of date labeling to incorporate state-of-the art methods that employ Julian dating.
144	Septic tank standard	R18-9-A314(2)(d)	Update septic tank standard from IAPMO to ANSI: R18-9-A314(2)d. A septic tank manufactured using fiberglass or ~~polyethylene~~ thermoplastic shall meet the requirements set forth	Y	Yes, but ADEQ will need a copy to review to ensure no other changes are necessary. Need to contact David Lentz for a copy.	Since the last rulemaking, the International Association of Plumbing and Mechanical Officials (IAPMO) septic tank standard has transitioned to an American National Standards Institute (ANSI) standard and been retitled.

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			in "~~Material and Property Standards for~~ Prefabricated Septic Tanks", IAPMO/ANSI Z1000-2019~~ PS 1-2004,"~~ published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from the International Association of Plumbing ~~&~~ and Mechanical Officials, ~~20001 E. Walnut Drive, South Walnut,CA 91789-2825~~4755 E. Philadelphia Street, Ontario, CA 91761.			

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145	Design flow	A314(4)(a)(i) and A314(4)(a)(ii)	Please consider using a standard sizing, most states use 125-150 gallons/bedroom/day, to prevent oversizing of septic tanks.	M	This will be considered for Phase 2. Would reduce the size of septic tank. See Item 22B	These sections detail the septic tank and design flow based on fixture count. Water use per household has decreased significantly in the last 20 years, by 22% per household since 1999 according to a 2016 study by the Water Research Foundation (https://www.ase.org/blog/congress-set-toilet-standards-1992-heres-data-showing-theyre-saving-water-and-energy). Using fixture counts commonly results in requiring a septic tank significantly larger than what is needed, results in long retention times and contributes to odors. Please consider using a standard sizing, most states use 125-150 gallons/bedroom/day, to prevent oversizing of septic tanks.
146	BOD v. CBOD	E313, E315, and E316	Adopt CBOD instead of BOD.	U	BOD= DO based on Carbonaceous (CBOD) and nitrogenous Carbonaceous provides a slightly lower value. The nitrogen concentration would create a case-by-case basis standard, rather than a static one—so it's more a moving target. The BOD standard is simpler. Staff recommends keeping the same standard	Various sections "reference treatment levels consistent with the NSF/ANSI 40 (NSF/ANSI 40-219 Residential Wastewater Treatment Systems, 04/18/2019) and 245 (NSF/ANSI 245-219 Residential Wastewater Treatment Systems, 06/14/2019) standards. All treatment technologies certified under these standards are required to meet the following treatment levels: The 30-day average of CBOD5 concentrations of effluent samples shall not exceed 25 mg/L. The 30-day average of TSS concentrations of effluent samples shall not exceed 30 mg/L.

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					until it is better understood how this would impact other parts of the rule through workgroup review.	The average total nitrogen concentration of all effluent samples shall be less than 50% of the average total nitrogen concentration of all influent samples." Recommendation: Adopt these standards by reference and revise the pertinent sections to reflect these treatment levels.
147		E315(G)	Ensure that treatment units are installed according to specific testing configurations to reduce risk to product de-certification	Y	ADEQ believes this clarification belongs in a more general provision. ADEQ doesn't believe what is really being discussed here is the "reference design," which is a part of the rule rarely used. They mean the "design." ADEQ already ensures that facilities are used according to testing configuration and manufacturer recommendations. This should probably be in general provisions A312(B) – this would be a good place A312(B)(i) - An application shall ensure the proposed design conforms to the tested and certified design. This doesn't create an additional burden, we're already doing this to ensure good design judgment and to ensure there's conformance to approved PPL or stated	"Residential wastewater treatment units certified under the NSF/ANSI 40 and 245 standards are installed and tested in specific configurations. There are tolerances allowed for each component of the system, including, but not limited to, pretreatment, reactor and/or clarifier. Any NSF/ANSI certified onsite wastewater system is subject to audit by NSF International and manufacturers risk losing certification for any technology that does not conform to the configuration as tested. The rules do not currently include language stating these systems must be designed and installed as certified, which has the potential for noncompliance with the certification. One example is the requirement to install a septic tank prior to the system that has a pretreatment tank or chamber incorporated in the treatment train prior to the reactor tank or chamber. This results in a significant increase in the pretreatment component of the system, which

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					manufactuer performance and third party testing.	may cause the system to not function as designed. Please include a subsection under R18-9-E315(G) as follows: An application shall ensure the ~~reference~~ proposed design conforms to the tested and certified design.
148		E313(B)(1), E315(B)(1)(b) and E316(C)(2) E315(B)(2)(b)	Change standard BOD to CBOD, and associated performance measure	M	See Item 146. This is Phase 2. Need more data. Everything in the rule refers to 5 BOD, not CBOD, this would be a very complicated change.	The current rules use BOD5 as an effluent quality standard. The NSF/ANSI 40 certification standard uses CBOD5. To remain consistent with NSF testing protocols, please change these sections to read: CBOD5 of ~~30~~ 25 milligrams per liter, 30-day arithmetic mean CBOD5 of ~~60~~ 50 milligrams per liter, 30-day arithmetic mean
149	Coliform	E313(B)(4) E315(B)(1)((d) E315(B)(2)(d)	Move from total to fecal coliform	Y	Need to determine how to do this, whether this will increase burden, and how to See Item 93	"Total coliform level of 300,000 (Log10 5.5) colony forming units per 100 milliliters, 95th percentile. Fecal coliform is the most common test for onsite wastewater systems and all states with coliform requirements use this data. An average most probable number for fecal coliform

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						bacteria in septic tank effluent is 1 million cells per 100 milliliters (https://www.onsiteinstaller.com/online_exclusives/2017/11/an_installers_guide_to_wastewater_ pathogens). We strongly encourage this section be revised to require fecal coliform rather than total coliform."
150	Septic tank	E302, A314, various	Require a septic tank be placed in front of all treatment systems as they were tested at NSF. Ensure a system diagram be provided for the test configuration a particular product is trying to list to.	U	The current program requires same configuration as the third-party testing done (e.g., NSF) ADEQ won't currently accept only manufacturer testing. ADEQ already requires the same configuration (although quality of effluent in real life often differs from testing). Can't require the tank in front in every case unless NSF does the test with the septic tank in front if the test results are fine without the tank in front. Standard PPL language is to follow the 24 hr detention requirement unless there is a septic tank in front.	"Most NSF products that are tested are tested with a septic tank placed in front of them. This is a septic tank that receives and homogenized waste flow and further reduces it prior to treatment. No solids or toilet paper reaches the test facilities. Most of the technologies that are receiving excellent performance numbers have a septic tank placed in front of them. The push by industry is to reduce the treatment footprint to the smallest size possible. This defies science and physics and has resulted in the homeowner often purchasing the cheapest system but being saddled with a lot more maintenance. The small trash tanks fill up with solids at a rapid pace with full time use resulting in pumping often yearly."

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151	PPL	E309	NSF should be used as a benchmark and not an absolute. NSF is considering the addition of LRTs to their standards, (likely NSF 350)	U	PHASE 2 – Need a better and more transparent process for PPL, including for evaluating the testing process and how to evaluate high strength waste treatment efficiencies. ADEQ will need more input from stakeholders and a literature review, including of how other entities handle evaluating high strength waste treatment efficiencies.	"Waste Strength at NSF test facilities. Waste strength at NSF facilities is not representative of real-world waste strength. A treatment process train as a total entity cannot be validated by only monitoring the influent and effluent. This method of testing does not provide information on how the specific treatment performance varies under different operating conditions. Two points; current testing concentrations may not be representative of real- world applications and in addition as we head to Log Reduction Targets end-point testing is not validation and could potentially overestimate the performance of the system. For instance, if the influent to the treatment process unit contains a low pathogen concentration during the testing period, then end-point testing will not indicate how a treatment process unit will perform under higher pathogen concentrations. The same scenario could be questioned with a higher strength waste being delivered to a product. Therefore, each individual treatment process unit must be validated. Validation requires an understanding of the mechanisms of pathogen reduction, the factors that affect the efficacy of the treatment process unit and therefore the relevant operational monitoring parameters (indicators of treatment efficacy)."

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152	PPL – testing & configuration	E309	1.Require schematics be submitted on PPL's showing the test configuration their performance numbers were based upon. 2.Make them install the systems the same manner they were tested. 3.If a product requests to be listed but does not have verifiable third-party data to the configuration that they were tested they should not be considered, until the correct configuration is tested."	M	PPL process needs transparency and improvement. This is a Phase 2 item. Generally, ADEQ will require a facility to be installed in the configuration they were tested because that is the only proven methodology ADEQ has.	It's not clear that the PPL products must be installed in the way they were tested. "Many of the current PPL products are not installed in the method that they were tested at the testing facility. If the product relied upon test data, they need to be installed in the manner that they were tested. At NSF if you alter the configuration of your product under testing, the test stop and starts all over with additional fees charged."
153	PPL – third party testing	E309	Adopt the use of NSF testing in AZ to promote and allow enforcement of the required O & M as prescribed by NSF.	N	PHASE 2 Tying to a particular 3rd party would be an evaluation made in Phase 2. Right now, ADEQ does not rely only on one 3rd party's testing, and it is unlikely to do so in the future.	NSF is a testing procedure that has married into their process an on-going audit and O & M process. Some of the other ANSI labs are strictly testing facilities and are not coupled with O & M.

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					However, at the rule should include appropriate testing criteria. This will require significant analysis and discussion.	Adherence with NSF allows an agency to receive assistance with compliance concerns with said manufacturers.
154	PPL – third party testing	E309	This product approval needs to be rescinded due to inappropriate 3rd party test information. Do not allow third party test data that was not conducted in a secure facility. Utilize licensed test facilities that follow ANSI test procedures. Adopt a process that requires NSF testing and use this as a benchmark.	N	ADEQ maintains a list for PPL. Maintenance of a list could potentially cover addition and removal from the list. PPL process for adding, removing, and modifying product listings should be improved and made more transparent. Phase 2. What is being requested here is strict adherence to only one type of testing. See item 153.	"A current PPL was allowed to submit and receive approval using "Independent" third party test data. There are several products that have come to ADEQ without adequate third-party testing. The problem with the lack of bona fide test facilities is the QA/QC. The third party testing for the first instance was not in a secure facility calling into question the following: were the samples composite or grab samples, how many sampling sets were collected, did they follow a loading schedule similar to a single family residence (morning, noon night and weekend sampling), was there stress testing, were they allowed to alter and correct the system (at a bona-fide test facility the test is started over with any adjustment) and what is the life expectancy and ongoing O & M to ensure these systems perform as designed. I am not confident that current product reviewers are capable (not sure many individuals

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						would be capable) of analysing all of the equivalent laboratory protocols needed to ensure consistent and equivalent testing was completed for these listings? Once a product gets approved and has other product approvals there are some states that will accept the PPL as equal. Not only have we done a disservice to AZ with this product approval, but we are now affecting other state processes with a PPL that mis-used data to receive an approval."
155	PPL – third party testing	E309	ANSI Test Facilities other than NSF. Thereis a concern with the legitimacy of some ANSI approved labs. ADEQ should call the question to ANSI on the oversight of these testing facilities. Added attention to reviews must be made to determine if equivalency has been met.	N	Phase 2, same as above. See items 153 & 154.	There are currently two ANSI run facilities that come into question and they are as follows: Norweco-ANSI lab- is this truly third party if they actively own the lab and test their own product. It is no surprise that Norweco Singulair Green is the only ATU on the market that was tested at their own facility and found to only need to run 12 hours as opposed to all other ATUs which need 24 hours Golf State- Louisiana- ANSI approved lab that is approving products for NSF 350 that cannot pass at the NSF test sites

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156	PPL – approved performance parameters	E309	Go back to the original APP rules that recognized treatment but had conservation built in to allow true performance. *[not clear what this is referring to]* By what authority is ADEQ allowed to exceed the performances currently written into rule without a rule revision? Currently there is no program in the entire United States that recognizes performance numbers better than BOD/TSS 10::10. Textile filters 10::10 Pad Systems 10::10 Aerobic systems 30::30	N	This is not how ADEQ does this. ADEQ is following the rule to the best of its ability. Minimum performance standards are called out in rule. In the past, PPLs cited just that minimum value. Companies have asked that ADEQ show the actual test results in the PPL. If demonstrated, ADEQ certifies these results for the PPL. See items 114, 119, & 121. For Phase 2 discussion.	The current process for product approvals has been altered to recognize performance numbers that are not achievable in a real- world setting. Due to misuse of data there has become a mad dash to the agency for correction of performance values The onslaught of Performance adjustments has created an unlevel playing field. Products that cannot get these numbers anywhere else in the US are receiving inaccurate product approvals from ADEQ. Due to the change in staff at ADEQ, with this program there have been inconsistencies with reviews that have resulted in product manufacturers to have to pay to re-revise their approvals, agreements by the agency on performance levels has not been adhered to, again costing money to private industry trying to do business in the state. Not only have manufacturers had to re-do approvals several times with additional costs, it makes it extremely difficult for Regulators, Installers and Homeowner's to know which version of an approval is in place.

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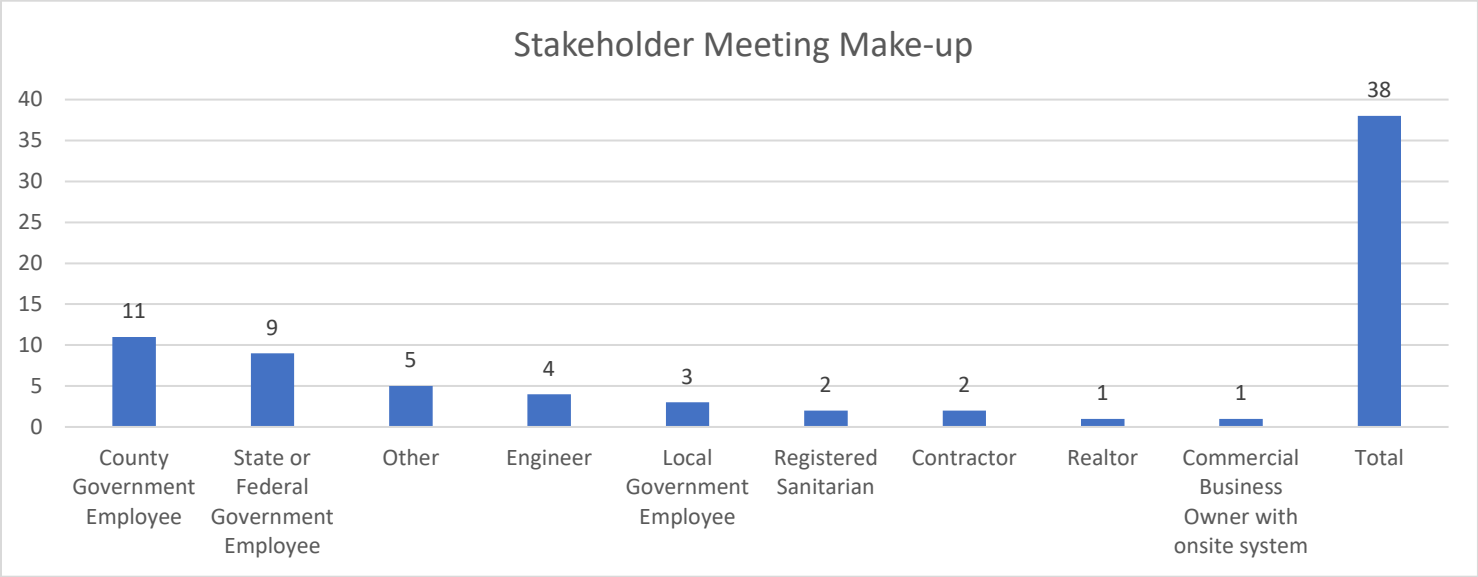
157	Typical sewage	101	The rules once they are opened will need to be corrected to update the science that is being used and adoption of more universally accepted criteria – specifically with regard to typical sewage	N	To evaluate typical sewage in Phase 2. ADEQ has a range of values acceptable for "typical sewage". Other states have a typical sewage definition that it EQUALS a value certain, where ADEQ's is more flexible because it says DOES NOT EXCEED (so a range is acceptable). So a system submitted under ADEQ rules may be able to prove they can handle a higher strength sewage, depending on the third party testing provided. However, ADEQ doesn't have a minimum, so that's interesting. If they provide testing data, so if they test at a lower level, it might show a "better" performance. ADEQ should probably have a tighter range (like have a floor).	"Typical Sewage by ADEQ definition is: "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l. Typical Sewage in AZ has higher parameter numbers than what is expected for a residential onsite wastewater system. EPA and other states are closer to the following parameters: Five-Day Biochemical Oxygen Demand (BOD5) of 300 mg/L; Total Suspended Solids (TSS) of 150 mg/L; Total Kjeldahl Nitrogen (TKN) of 150 mg/L; and Oil and Grease of 25 mg/L. With wastewater strength parameters for typical sewage differing from all others creates a further complication when evaluating and interpreting treatment performance data"

Below are comments from stakeholders during meeting on January 28th. These were analyzed differently and more simply given their abbreviated nature in most cases.



Which section(s) of the rule is not working, confusing or unclear?

Item #	Stakeholder Response	ADEQ Comments
158	A312G	Noted. Phase 2.
159	R18-9-A310.G Testing for seepage pits needs to be updated.	Phase 2 – but staff may propose some language to clarify current process.
160	Collection systems for large system are not to current technologies	Not currently a part of this rulemaking or project plan. Comment unclear.
161	Consider any 5 year pump/inspect program versus the NOT program	Phase 2 - NOT program
162	lack of qualifications for designers and installers is problematic.	Phase 2 - training (maybe in part Phase 1) - see otag table & workplan
163	A statewide system design, soils testing, and installation certification program should be considered	Phase 2 - training (maybe in part Phase 1) - see otag table & workplan
164	Seepage pits typically do not add to the treatment of wastewater and tend to have issues.	Phase 2

Item #	Stakeholder Response	ADEQ Comments
165	Qualifications in all sections with training and certification to support.	Phase 2 - training (maybe in part Phase 1) - see otag table & workplan
166	R18-5-102 A & B have arbitrary and capricious exemptions excluding the need for an operator. Permitees use this an excuse to neglect or poorly maintain their facilities.	This chapter isn't being opened right now. Phase 2 for training or certification updates.
167	PPLs are inconsistent	Phase 2 – perhaps something to provide greater transparency until then
168	ADEQ needs an Onsite Operator Cert program	Phase 2
169	Cumulative flow is unclear and is complicated to use correctly.	Not sure what is being recommended here. Phase 2?
170	Rules do not consider systems that treat and disperse effluent	Not sure what this comment is referring to. Disperse where or how? Drip irrigation?
171	Lack of performance testing for operating systems	Phase 2
172	Sewer connection cost fees should not be independent.	Not sure what is being recommended here.
173	Rules regulate treatment systems based on total coliform level, while nationally, fecal coliform is the parameter that is used	Phase 1/Phase 2 – depending – as previously addressed
174	R18-9-A309 A(9) Repairs	Phase 2
175	ADEQ staff interpretation of rule requirement changes dramatically without notice	Need process – work in progress
176	Seepage pit must be pretreated	This commenter recommends that seepage pit effluent should be more treated than septic tank. Phase 2
177	The rule is fragmented. The General Provisions for on-sites are located in a different part of the APP rule than the specific general permits.	Phase 2. Yeah, the customer is generally completely different, the application of APP is completely different for onsite facilities. It should really be separated out, even if some of the provisions are the same and are repeated.
178	Drainfield choices are limited	Trench, bed, chamber…what is this comment referring to or suggest?
179	A316 does not work as intended	Not sure this is true. Phase 2 intent was for private parties to take the lead on disclosure, not enforcement.[1] Is this not happening? What is the root cause, if not?

[1] "The Department intends that the pre-sale inspection program will rely on the actions of private parties, i.e., it is the buyer and seller rather than governmental entities that will follow the requirements of the program, and will promote inspection, repair, and disclosure about the operational condition of an on-site wastewater treatment facility at the time of

Item #	Stakeholder Response	ADEQ Comments
180	Hole placement in ACC for soil site investigations. It is in ASTM.	Not sure what this comment is referring to.
181	EliminateA309.A.9.b.iv	Phase 2 discussion -refer to OTAG table on this discussion
182	Eliminate chlorine disinfection for shallow discharge systems	Phase 2. Subsurface drip/surface disposal allows chlorine disinfection. Why is this a bad idea?
183	Meeting Total N requirements is very challenging and strange when the cotton farmer next door is drowning his cotton in nitrogen.	Onsite requirements don't currently require the testing or monitoring to have this be an actual issue, they're very cookie cutter in their application, not site-specific.
184	High strength waste treatment must be clarified	Phase 2 - workgroup
185	Repair of leach field pipe is not allowed as a repair but must include an upgrade.	Phase 2
186	For less complicated systems, requiring a PAP AND an O&M Manual is stupid, stupid, stupid. Please combine.	Phase 2 O&M workgroup (performance assurance plan & O&M)
187	R18-9-A314 - Rules on thermoplastic and fiberglass tanks are outdated and no longer relevant	Yes, Phase 1, see addressed issue in table above.
188	R18-9-E315(B) Should BOD5 match NSF/ANSI 40 at 25 mg/l	Phase 2 – need more data
189	Type 4.23 permits don't work because of the total nitrogen requirement.	Phase 2
190	4.23 treatment exemptions must be revisited	The exceptions are what they're likely referring to. Phase 1 for aerobic; phase 2 for disinfection.
191	4.23 systems are regulated in a manner that is based on residential small systems	Phase 2 - should pass along to workgroup
192	'+15% slope set backs	A312 setback table….not sure of the problem here
193	R18-9-a312 3000 to 24,000 GPD needs to allow other technology	Not clear what the comment is here
194	For repairs the 10 foot footprint should be removed	Agree, phase 2 with a routine work and repair revamp
195	Site evaluators should be required to re-certify at some point	Phase 2, likely agree

property transfer. By this approach, the benefits of public health protection, improved water quality and prolonged system life will be achieved at essentially no cost to the public sector." 11 AAR __,4547 (Nov. 14, 2005).

How would you change the current rule? Why?

Item #	Stakeholder Response	ADEQ Comments
196	Required O and M on all alternative system with verified sampling	Phase 2 (what kind of sampling? None of the permits do now….this is a big change).
197	Establish a system life time with renewal to current code. (A system from 1960 is 60 years old and needs to be retired.)	Phase 2 -Need data on systems to better define "operational life" in order to take further action.
198	Require O&M and add 20 year required to the PPL Listing	Phase 2 PPL process re-work
199	Address composting toilet with a clear requirement for the kitchen black water and the gray water.	Statement likely to ensure onsite rules are clear the system must account for both black and gray, as is clear in gray water rules (even though onsite rules refer back to it). Unclear what this comment is suggesting for improvement.
200	Change Effluent Standard BOD to CBOD	Phase 2, discussed previously
201	50' and 20' setback on 15% slope	Unclear.
202	required documented maintenance and testing	Phase 2 -O&M workgroup
203	Provide acceptable methods of justifying Site Specific SAR	As discussed, staff to likely offer some language to clarify these tables in Phase 1.
204	Add qualifications to every section	Phase 2
205	Allow presby systems on greater than 15% slope.	PPL approval comment? Unclear.
206	attention to mass loading not only hydraulic loading	Need more context.
207	Reword site specific SAR to something that most evaluators understand	As discussed, staff to likely offer some language to clarify these tables in Phase 1.
208	Match treatment system wastewater parameter with parameters in NSF International standards (e.g., BOD vs. CBOD)	Phase 2, discussed previously, likely a large lift.
209	Make ACC match ASTM when it comes to hole placement to determine treatment field area.	Need more context. What isn't matching? What isn't working here?
210	Add technology that combines treatment and dispersal in a single footprint	Phase 2 – this looks like a different permit or restructure.
211	PPL must be flexible to allow new technologies to be available on a level playing field	PPL process – Phase 2, but to discuss how to provide transparency until then
212	Provide support on how to come up with a site specific SAR.	As discussed, staff to likely offer some language to clarify these tables in Phase 1.
213	Require seepage pit sizing based on soil lithology, similar to California. This will allow flexibility of testing without relying on a flawed seepage pit performance test.	Phase 2, but helpful for consideration.

Item #	Stakeholder Response	ADEQ Comments
214	One presoak on seepage pit testing	Not sure what this comment means.
215	General Permits that do not reflect a specific technology but address treatment performance	Not sure what this comment means.
216	For treatment systems, remove the requirement for total coliform and replace it with a requirement for fecal coliform	Under consideration, as discussed, Phase 1 or Phase 2.
217	Add Nitrogen to table 1	Phase 2 – Table 1 rework
218	Definition of "aggregate." Bump the max of 2.5" up.	Why?
219	Require UV or ozone disinfection where chlorine was used in shallow discharge.	Why?
220	Update R18-9-A309.A.9 (repairs) to include replacing the disposal works as needing an NOI	Phase 2 – Staff agree that replacing/modifying the disposal works should be done through a permit, but this would be part of the repairs/routine work re-vamp.
221	Sunset cesspools and provide loan grant funding	1.09s they probably mean
222	ROI sent to county with a NOT section added. Add truth for those who cheat.	What is this comment referring to?
223	Decrease the total nitrogen requirement for type 1.09 permitted facilities so that could convert to a type 4.23 permit.	Phase 2 – addressed elsewhere
224	Permit renewal (every 2-3 years?) based on documented O&M by a qualified service provider, tracked on a Department data base.	Phase 2 – renewal addressed elsewhere
225	Make it easier for 1.09 systems such as old schools and parks to convert to 4.23 easier	Phase 2 – addressed elsewhere (except may allow for aerobic system)
226	Better define a variance clause for items that do not fit into the rules.	A312(G) - other than that, unclear what the comment refers to. Some technologies just don't fit because the program would need more oversight to allow for certain technologies to operate on a regular and nonprofessional basis.
227	Update to IAPMO/ANSI Z1000 for the regulation of non-concrete tanks, such as fiberglass and thermoplastic	Phase 1 - agreed
228	Update Table 1	Phase 2 - Agreed

What other issues are you having with the current rule?

Item#	Stakeholder Response	ADEQ Comments
229	Allow ATUs that have been certified under NSF/ANSI 40 and 245 to be installed as tested at the NSF facility. The current rule is unclear on this.	(aerobic) – Addressed elsewhere.
230	PPLs are inconsistent with technologies	PPL process – Phase 2- but perhaps address lack of transparency in meantime
231	Consider switching from ASTM testing method for soils to USDA methods	Discussed elsewhere – Phase 1, intend to add USDA as option
232	The Department needs a better ENFORCEMENT presence.	Phase 2
233	using fixture count has the potential to oversize on onsite wastewater system	Phase 2 – discussed elsewhere
234	Perk testing in AZ rule is not to national or global standards especially with arid soils	Discussed elsewhere – unclear what standards are referred to here.
235	I agree with earlier comment about applicable rules being fragmented. You have to become an expert on ARS in order to stay informed/compliant.	Agreed. Phase 1 is not likely to reorganize the rules.
236	Restaurant/food establishment sizing in Table 1	Phase 2 - Discussed elsewhere – need more data
237	Code should have a descriptive rule to follow when you have greater than 50% rock	Discussed elsewhere – ADEQ disagrees that the rule should be more prescriptive or limiting.
238	In table 1 add description of what is included in each entry	Phase 2 – this would help to clarify what each row is intended to cover/encompass
239	Eliminate pit testing	No. Pit testing is important.
240	Why can't UV disinfection be approved for use?	They can, it's just difficult. There should be more specific UV criteria….Phase 2. Look to reclaimed standards, potentially.
241	Make local enforcement provisions, need quick turnaround on environmental nuisances.	Local authorities have their own authorities with respect to nuisances. Speak with local counsel regarding this issue. (See ARS 49-143 & 49-144) Perhaps this is something that we could help start a conversation around.
242	Eliminate seepage pits	Phase 2 – need thorough evaluation and data.
243	Add an Inspection template to rule.	Phase 2
244	Please provide what topics are assigned to each workgroup.	This will be available when more fully drafted
245	Chambers and gravelless trench (EZFlow) appear to get unreasonable disposal area reductions when compared to trenches. Consider reviewing current research regarding the performance of the product and other disposal technologies.	PPL process – Phase 2, possibly

246	where do sewage lagoons fit?	They're not allowed. They're just not contemplated by the general permit program….It would basically be either a previously permitted 1.09 or an individual permit "impoundment."
247	lots of pit haters : (	Noted.
248	How to address requests to use new or emerging treatment and disposal technologies that aren't part of an existing general permit.	Phase 2
249	Table 1 flows	Noted.
250	Clarify on Table 1 cafeteria does not add to design flow per student for elementary schools	Table 1 – Is this saying Table 1 should say “per student?” This table needs more descriptors – agreed.
251	Need ability to enforce "shalls" in rule	DA comment.
252	1 1/2 presoak on pit testing :)	This comment is unclear.
253	Major issues when it comes to enforcement of nuisances.	Local authorities have their own authorities with respect to nuisances. Speak with local counsel regarding this issue. (See ARS 49-143 & 49-144) Perhaps this is something that we could help start a conversation around.
254	If pits are allowed, we should consider shallower technology such as backhoe pits and drainwalls.	Phase 2, needs more discussion and analysis, but likely agree
255	Table 1 - Restaurant/Cafeteria - Kitchen waste disposal service or kitchen waste "disposable" service	Replace with disposable instead of disposal -- 2 gal/meal (disposable items), need more water to wash actual dishes at a sit down restaurant. E.g., Subway 2 gal/meal v. Olive Garden (6 gal). Change in table – Phase 1. Discussed elsewhere
256	hotel linens questions (refer to OTAG table) -	Hotel rooms have less flow assigned to them than flows assumed for apartments or dwellings, so it seems that laundry is not contemplated. ADEQ should include the linen statement. Phase 1. Discussed elsewhere.

Arizona Administrative CODE

18 A.A.C. 9 Supp. 19-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2019 through September 30, 2019

Title 18

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

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

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about these rules? Contact:

Name: David Dunaway
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-6176
E-mail: dunaway.david@azdeq.gov
Website: http://www.azdeq.gov/draft-and-proposed-rule-water-quality-division

The release of this Chapter in Supp. 19-3 replaces Supp. 17-4, 1-132 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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

Administrative Rules Division
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TITLE 18. ENVIRONMENTAL QUALITY

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

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

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

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

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CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

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

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

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

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

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between 3/4 inch and 2 1/2 inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49203, 49241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49221 and 49223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
   a. A floor space of at least 70 square feet in area, excluding closets;
   b A ceiling height of at least 7 feet;
   c. Electrical service and ventilation;
   d. A closet or an area where a closet could be constructed;
   e. At least one window capable of being opened and used for emergency egress; and
   f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.
10. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.
11. "CCR" means coal combustion residuals which include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.
12. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a municipal solid waste landfill, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of beneficial use of CCR.
13. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.
14. "CCR unit" means any CCR landfill which receives CCR, any CCR surface impoundment designed to hold an accumulation of CCR and liquids, and the unit treats, stores or disposes of CCR. CCR unit includes a lateral expansion of a CCR unit, or a combination of more than one of these units that receives CCR.
15. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.
16. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.
17. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.
18. "Direct reuse site" means an area where reclaimed water is applied or impounded.
19. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.
20. *"Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.* A.R.S. § 49-331(3)
21. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that has been constructed or will be constructed on real property.
22. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.

23. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.
24. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
25. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.
26. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.
27. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.
28. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontiguous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.
29. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
30. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
31. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system installed at a site to treat and dispose of wastewater, predominantly of human origin, generated at that site. An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.
32. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.
33. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § 49-201(26). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.
34. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.
35. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.
36. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.
37. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.
38. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.
39. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in R18-9-701(4), if the gray water is reused according to 18 A.A.C. 9, Article 7.
40. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
41. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.
42. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.
43. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.
44. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.
45. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.
46. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.
47. *"Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).
48. "Waters of the United States" means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate wetlands;
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:
i. That are or could be used by interstate or foreign travelers for recreational or other purposes;
ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
iii. That are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters defined as waters of the United States under this definition;
e. Tributaries of waters identified in subsections (a) through (d);
f. The territorial sea; and
g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

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

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply
Articles 1, 2, and 3 do not apply to:
1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

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

R18-9-103. Class Exemptions
Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:
1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10; and
5. CCR Units that were in existence as of January 1, 2019, and which are governed by 40 C.F.R. Part 257, Subpart D. This exemption for CCR Units shall only extend until such time as both of the following are met, as applicable to a given CCR Unit:
a. Regulations are approved by the U.S. Environmental Protection Agency, in accordance with 42 U.S.C. § 6945(d)(1), for the issuance of permits governing CCR Units, and
b. The Director issues a permit to a given CCR Unit, which incorporates terms at least as protective as 40 C.F.R. Part 257, Subpart D.

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

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

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

R18-9-105. Permit Continuance
A. Continuance.
1. Groundwater Quality Protection Permits.
a. Subject to R18-9-104 and other provisions of this Section, a Groundwater Quality Protection Permit issued before September 27, 1989 is valid according to the terms of the permit until replaced by an Aquifer Protection Permit issued by the Department.
b. A person who owns or operates a facility to which a Groundwater Quality Protection Permit was issued is in compliance with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3, if the facility:

i. Meets the conditions of the Groundwater Quality Protection Permit; and
ii. Is not causing or contributing to the violation of any Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.

2. Notice of Disposal. A person who owns or operates a facility for which a Notice of Disposal was filed before September 27, 1989 complies with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3 if the facility is not causing or contributing to the violation of an Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
3. Aquifer Protection Permit application submittal. A person who did not file a Notice of Disposal and does not possess a Groundwater Quality Protection Permit or an Aquifer Protection Permit for an existing facility, but submitted the information required in applicable rules before December 27, 1989, is in compliance with Articles 1, 2, and 3 of this Chapter only if the person submitted an Aquifer Protection Permit application to the Department before January 1, 2001.

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

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

R18-9-106. Determination of Applicability

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

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

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

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

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

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

R18-9-107. Consolidation of Aquifer Protection Permits

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

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

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

R18-9-108. Public Notice

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

c. A person who requested, in writing, notification of the activities described in subsection (A).

3. The Department may post the information referenced in subsections (A)(1) and (2) on the Department web site: www.azdeq.gov.

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

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

R18-9-109. Public Participation

A. Notice of Preliminary Decision.

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

B. Public hearing.

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

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

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

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

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

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

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

B. Except as provided in R18-9-A308, a person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R18-9-105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

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

R18-9-111. Repealed

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

R18-9-112. Repealed

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

R18-9-113. Repealed

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

R18-9-114. Repealed

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

R18-9-115. Repealed

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

R18-9-116. Repealed

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

R18-9-117. Repealed

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

R18-9-118. Repealed

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

R18-9-119. Repealed

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

tive January 1, 2001 (Supp. 00-4).

R18-9-120. Repealed

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

R18-9-121. Repealed

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

R18-9-122. Repealed

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

R18-9-123. Repealed

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

R18-9-124. Repealed

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

R18-9-125. Repealed

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

R18-9-126. Repealed

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

R18-9-127. Repealed

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

R18-9-128. Repealed

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

R18-9-129. Repealed

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

R18-9-130. Repealed

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

Appendix I. Repealed

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

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

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

B. An applicant for an individual permit shall provide the Department with:
1. The following information on an application form:
   a. The name and mailing address of the applicant;
   b. The name and mailing address of the owner of the facility;
   c. The name and mailing address of the operator of the facility;
   d. The legal description, including latitude and longitude, of the location of the facility;
   e. The expected operational life of the facility; and
   f. The permit number for any other federal or state environmental permit issued to the applicant for that facility or site.
2. A copy of the certificate of disclosure required by A.R.S. § 49-109;
3. Evidence that the facility complies with applicable municipal or county zoning ordinances, codes, and regulations;
4. Two copies of the technical information required in R18-9-A202(A);
5. Cost estimates for facility construction, operation, maintenance, closure, and post-closure as follows.
   a. The applicant shall ensure that the cost estimates are derived by an engineer, controller, or accountant using competitive bids, construction plan take-off's, specifications, operating history for similar facilities, or other appropriate sources, as applicable.
   b. The following cost estimates that are representative of regional fair market costs:
      i. The cost of closure estimate under R18-9-A209(B)(2), consistent with the closure plan or strategy submitted under R18-9-A202(A)(10);
      ii. The estimated cost of post-closure monitoring and maintenance under R18-9-A209(C), consistent with the post-closure plan or strategy submitted under R18-9-A202(A)(10); and
      iii. For a sewage treatment facility or utility subject to Title 40 of the Arizona Revised Statutes, the operation and maintenance costs of those elements of the facility used to make the demonstration under A.R.S. § 49-243(B);
6. For a sewage treatment facility:
   a. Documentation that the sewage treatment facility or expansion conforms with the Certified Areawide Water Quality Management Plan and the Facility Plan, and
   b. The additional information required in R18-9-B202 and R18-9-B203;

7. Certification in writing that the information submitted in the application is true and accurate to the best of the applicant's knowledge; and
8. The applicable fee established in 18 A.A.C. 14.

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

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

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

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

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

Historical Note

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

R18-9-A202. Technical Requirements

A. Except as specified in R18-9-A201(C)(1), an applicant shall, as required under R18-9-A201(B)(4), submit the following technical information as attachments to the individual permit application:
1. A topographic map, or other appropriate map approved by the Department, of the facility location and contiguous land area showing the known use of adjacent properties, all known water well locations found within one-half mile of the facility, and a description of well construction details and well uses, if available;
2. A facility site plan showing all known property lines, structures, water wells, injection wells, drywells and their uses, topography, and the location of points of discharge. The facility site plan shall include all known borings. If the Department determines that borings are numerous, the applicant shall satisfy this requirement with a narrative description of the number and location of the borings;
3. The facility design documents indicating proposed or as-built design details and proposed or as-built configuration of basins, ponds, waste storage areas, drainage diversion features, or other engineered elements of the facility affecting discharge. When formal as-built plan submittals are not available, the applicant shall provide documentation sufficient to allow evaluation of those elements of the facility affecting discharge, following the demonstration requirements of A.R.S. § 49-243(B). An applicant seeking an Aquifer Protection Permit for a sewage treatment facility satisfies the requirements of this subsection by submitting the documents required in R18-9-B202 and R18-9-B203;
4. A summary of the known past facility discharge activities and the proposed facility discharge activities indicating all of the following:
   a. The chemical, biological, and physical characteristics of the discharge;
   b. The rate, volume, and frequency of the discharge for each facility; and
   c. The location of the discharge and a map outlining the pollutant management area described in A.R.S. § 49-244(1);
5. A description of the BADCT employed in the facility, including:
   a. A statement of the technology, processes, operating methods, or other alternatives proposed to meet the requirements of A.R.S. § 49-243(B), (G), or (P), as applicable. The statement shall describe:
      i. The alternative discharge control measures considered,
      ii. The technical and economic advantages and disadvantages of each alternative, and
      iii. The justification for selection or rejection of each alternative;
   b. An evaluation of each alternative discharge control technology relative to the amount of discharge reduction achievable, site-specific hydrologic and geologic characteristics, other environmental impacts, and water conservation or augmentation;
   c. For a new facility, an industry-wide evaluation of the economic impact of implementation of each alternative discharge control technology;
   d. For an existing facility, a statement reflecting the consideration of factors listed in A.R.S. § 49-243(B)(1)(a) through (h);
   e. A sewage treatment facility meeting the BADCT requirements under Article 2, Part B of this Chapter satisfies the requirements under subsections (A)(5)(a) through (d).
6. Proposed points of compliance for the facility based on A.R.S. § 49-244. An applicant shall demonstrate that:
   a. The facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the proposed point of compliance; or
   b. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, no additional degradation of the aquifer rela-

tive to that pollutant and determined at the proposed point of compliance will occur as a result of the discharge from the proposed facility. In this case, the applicant shall submit an Ambient Groundwater Monitoring Report that includes:

i. Data from eight or more rounds of ambient groundwater samples collected to represent groundwater quality at the proposed points of compliance, and

ii. An AQL proposal for each pollutant that exceeds an Aquifer Water Quality Standard;

7. A contingency plan that meets the requirements of R18-9-A204;
8. A hydrogeologic study that defines the discharge impact area for the expected duration of the facility. The Department may allow the applicant to submit an abbreviated hydrogeologic study or, if warranted, no hydrogeologic study, based upon the quantity and characteristics of the pollutants discharged, the methods of disposal, and the site conditions. The applicant may include information from a previous study of the affected area to meet a requirement of the hydrogeologic study, if the previous study accurately represents current hydrogeologic conditions.
   a. The hydrogeologic study shall demonstrate:
      i. That the facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the applicable point of compliance; or
      ii. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, that no additional degradation of the aquifer relative to that pollutant and determined at the applicable point of compliance will occur as a result of the discharge from the proposed facility;
   b. Based on the quantity and characteristics of pollutants discharged, methods of disposal, and site conditions, the Department may require the applicant to provide:
      i. A description of the surface and subsurface geology, including a description of all borings;
      ii. The location of any perennial, intermittent, or ephemeral surface water bodies;
      iii. The characteristics of the aquifer and geologic units with limited permeability, including depth, hydraulic conductivity, and transmissivity;
      iv. The rate, volume, and direction of surface water and groundwater flow, including hydrographs, if available, and equipotential maps;
      v. The precise location or estimate of the location of the 100-year flood plain and an assessment of the 100-year flood surface flow and potential impacts on the facility;
      vi. Documentation of the existing quality of the water in the aquifers underlying the site, including, where available, the method of analysis, quality assurance, and quality control procedures associated with the documentation;
      vii. Documentation of the extent and degree of any known soil contamination at the site;
      viii. An assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials;
      ix. For an underground water storage facility, an assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials or cause the migration of contaminated groundwater;
      x. Any changes in the water quality expected because of the discharge;
      xi. A description of any expected changes in the elevation or flow directions of the groundwater expected to be caused by the facility;
      xii. A map of the facility's discharge impact area; or
      xiii. The criteria and methodologies used to determine the discharge impact area.
9. A detailed proposal indicating the alert levels, discharge limitations, monitoring requirements, compliance schedules, and temporary cessation or plans that the applicant will use to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of this Chapter;
10. Closure and post-closure strategies or plans; and
11. Any other relevant information required by the Department to determine whether to issue a permit.

B. An applicant shall demonstrate the ability to maintain the technical capability necessary to carry out the terms of the individual permit, including a demonstration that a certified operator will operate the facility if a certified operator is required under 18 A.A.C. 5. The applicant shall make the demonstration by submitting the following information for each person principally responsible for designing, constructing, or operating the facility:

1. Pertinent licenses or certifications held by the person;
2. Professional training relevant to the design, construction, or operation of the facility; and
3. Work experience relevant to the design, construction, or operation of the facility.

Historical Note

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

R18-9-A203. Financial Requirements

A. Definitions.

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

B. Financial demonstration. A person applying for an individual permit shall demonstrate financial capability to construct, operate, close, and ensure proper post-closure care of the facility in compliance with A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; and the conditions of the individual permit. The applicant shall:

1. Submit a letter signed by the chief financial officer stating that the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);
2. For a state or federal agency, county, city, town, or other local governmental entity, submit a statement specifying

the details of the financial arrangements used to meet the estimated closure and post-closure costs submitted under R18-9-A201(B)(5), including any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);

3. For other than a state or federal agency, county, city, town, or other local governmental entity, submit the information required for at least one of the financial assurance mechanisms listed in subsection (C) that covers the closure and post-closure costs submitted under R18-9-A201(B)(5), including:
   a. The selected financial mechanism or mechanisms;
   b. The amount covered by each financial mechanism;
   c. The institution or company that is responsible for each financial mechanism used in the demonstration; and
   d. Any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5); and
4. For a facility subject to R18-9-A201(B)(5)(b)(iii) and not owned by a state or federal agency, county, city, town, or other local governmental entity, submit evidence of financial arrangements to cover the operation and maintenance costs described in R18-9-A201(B)(5).

C. Financial assurance mechanisms. The applicant may use any of the following mechanisms to cover the financial assurance obligation under R18-9-A201(B)(5):

1. Financial test for self-assurance. If an applicant uses a financial test for self-assurance, the applicant shall not consolidate the financial statement with a parent or sibling company. The applicant shall make the demonstration in either subsection (C)(1)(a) or (b) and submit the information required in subsection (C)(1)(c):
   a. The applicant may demonstrate:
      i. One of the following:
         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;
         (2) A ratio of total liabilities to net worth less than 2.0 and a ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or
         (3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;
      ii. The net working capital and tangible net worth of the applicant each are at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; or
   b. The applicant may demonstrate:
      i. The applicant's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;
      ii. The tangible net worth of the applicant is at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; and
   c. The applicant shall submit:
      i. A letter signed by the applicant's chief financial officer that identifies the criterion specified in subsection (C)(1)(a) or (b) and used by the applicant to satisfy the financial assurance requirements of this Section, an explanation of how the applicant meets the criterion, and certification of the letter's accuracy, and
      ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (C)(1)(c)(i) is accurate based on a review of the applicant's financial statements for the latest completed fiscal year or more recent financial data and no adjustment to the financial statement is necessary.
2. Performance surety bond. The applicant may use a performance surety bond if the following conditions are met:
   a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;
   b. The bond provides for performance of all the covered items listed in R18-9-A201(B)(5) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the permittee fails to perform the required activities;
   c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-9-A201(B)(5) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;
   d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;
   e. The original surety bond is submitted to the Director;
   f. Under the terms of the bond, the surety is liable on the bond obligation when the permittee fails to perform as guaranteed by the bond; and
   g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.
3. Certificate of deposit. The applicant may use a certificate of deposit if the following conditions are met:
   a. The applicant submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the applicant's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;
   b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;
   c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;
   d. Only the Department has access to the certificate of deposit; and
   e. Interest accrues to the permittee during the period the applicant gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-9-A201(B)(5).
4. Trust fund. The applicant may use a trust fund if the following conditions are met:
   a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and
   b. The trust is initially funded in an amount at least equal to:
      i. The cost estimate of the closure plan or strategy submitted under R18-9-A201(B)(5),

ii. The amount specified in a compliance schedule approved in the permit, or
iii. A pro-rata amount if used with another financial assurance mechanism.

5. Letter of credit. The applicant may use a letter of credit if the following conditions are met:
   a. The financial institution issuing the letter is regulated and examined by a federal or state agency;
   b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of cancellation or expiration. The permittee shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;
   c. The financial institution names the Arizona Department of Environmental Quality as beneficiary for the letter of credit; and
   d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the applicant as the permittee.
6. Insurance policy. The applicant may use an insurance policy if the following conditions are met:
   a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;
   b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;
   c. The permittee submits a copy of the insurance policy to the Department;
   d. The insurance policy guarantees that funds are available to pay costs as submitted under R18-9-A201(B)(5) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   e. The policy guarantees that while closure and post-closure activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed in R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;
   g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;
   h. The policy contains a provision allowing assignment of the policy to a successor permittee. The transfer of the policy is conditional upon consent of the insurer and the Department; and
   i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the permittee fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the permittee shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.
7. Cash deposit. The applicant may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-9-A201(B)(5).
8. Guarantees.
   a. The applicant may use guarantees to cover the financial assurance obligation under R18-9-A201(B)(5) if the following conditions are met:
      i. The applicant submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the applicant is a corporation, the applicant shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the permittee's financial assurance obligation;
      ii. The applicant submits to the Department documentation that explains the substantial business relationship between the guarantor and the permittee;
      iii. The applicant demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (C)(1). For purposes of applying the criteria in subsection (C)(1) to a guarantor, substitute "guarantor" for the term "applicant" as used in subsection (C)(1);
      iv. The guarantee is governed by and complies with state law;
      v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (C);
      vi. The guarantee provides that, if the permittee fails to perform closure or post-closure care of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure or post-closure care, as required by the permit, or establish a fully funded trust fund as specified under subsection (C)(4) in the name of the owner or operator; and
      vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.
   b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:
      i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;
      ii. Receiving an adverse auditor's notice, opinion, or qualification; or

iii. Receiving a Department notification requesting an update of the guarantor's financial condition.

9. An applicant may use a financial assurance mechanism not listed in subsection (C)(1) through (8) if approved by the Director.

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

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

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

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

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

Historical Note

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

R18-9-A204. Contingency Plan

A. An individual permit shall specify a contingency plan that defines the actions to be taken if a discharge results in any of the following:

1. A violation of an Aquifer Water Quality Standard or an AQL,
2. A violation of a discharge limitation,
3. A violation of any other permit condition,
4. An alert level is exceeded, or
5. An imminent and substantial endangerment to the public health or the environment.

B. The contingency plan may include one or more of the following actions if a discharge results in any of the conditions described in subsection (A):

1. Verification sampling;
2. Notification to downstream or downgradient users who may be directly affected by the discharge;
3. Further monitoring that may include increased frequency, additional constituents, or additional monitoring locations;
4. Inspection, testing, operation, or maintenance of discharge control features at the facility;
5. Evaluation of the effectiveness of discharge control technology at the facility that may include technology upgrades;
6. Evaluation of pretreatment for sewage treatment facilities;
7. Preparation of a hydrogeologic study to assess the extent of soil, surface water, or aquifer impact;
8. Corrective action that includes any of the following measures:
   a. Control of the source of an unauthorized discharge,
   b. Soil cleanup,
   c. Cleanup of affected surface waters,
   d. Cleanup of affected parts of the aquifer, or
   e. Mitigation measures to limit the impact of pollutants on existing uses of the aquifer.

C. A permittee shall not take a corrective action proposed under subsection (B)(8) unless the action is approved by the Department.

1. Emergency response provisions and corrective actions specifically identified in the contingency plan submitted with a permit application are subject to approval by the Department during the application review process.
2. The permittee may propose to the Department a corrective action other than those already identified in the contingency plan if a discharge results in any of the conditions identified in subsection (A).
3. The Department shall approve the proposed corrective action if the corrective action provides a plan and expedient time-frame to return the facility to compliance with the facility's permit conditions, A.R.S. Title 49, Chapter 2, and Articles 1 and 2 of this Chapter.
4. The Director may incorporate corrective actions into an Aquifer Protection Permit.

D. A contingency plan shall contain emergency response provisions to address an imminent and substantial endangerment to public health or the environment including:

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

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

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

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

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

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

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

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

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

Historical Note

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

R18-9-A206. Monitoring Requirements

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

B. Recordkeeping.
1. A permittee shall make a monitoring record for each sample taken as required by the individual permit consisting of all of the following:
   a. The date, time, and exact place of a sampling and the name of each individual who performed the sampling;
   b. The procedures used to collect the sample;
   c. The date sample analysis was completed;
   d. The name of each individual or laboratory performing the analysis;
   e. The analytical techniques or methods used to perform the sampling and analysis;
   f. The chain of custody records; and
   g. Any field notes relating to the information described in subsections (B)(1)(a) through (f).
2. A permittee shall make a monitoring record for each measurement made, as required by the individual permit, consisting of all of the following:
   a. The date, time, and exact place of the measurement and the name of each individual who performed the measurement;
   b. The procedures used to make the measurement; and
   c. Any field notes relating to the information described in subsections (B)(2)(a) and (b).
3. A permittee shall maintain monitoring records for at least 10 years after the date of the sample or measurement, unless the Department specifies a shorter time period in the permit.

Historical Note

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

R18-9-A207. Reporting Requirements

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

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

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

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

Historical Note

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

R18-9-A208. Compliance Schedule

A. A permittee shall follow the compliance schedule established in the individual permit.
1. If a compliance schedule provides that an action is required more than one year after the date of permit issu-

ance, the schedule shall establish interim requirements and dates for their achievement.

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

B. The Department shall consider all of the following factors when setting the compliance schedule requirements:

1. The character and impact of the discharge,
2. The nature of construction or activity required by the permit,
3. The number of persons affected or potentially affected by the discharge,
4. The current state of treatment technology, and
5. The age of the facility.

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

Historical Note

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

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

A. Temporary cessation.

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

B. Closure.

1. Before providing notice under subsection (B)(2), a person may request that the Director review a site investigation plan for a facility under subsection (B)(3)(a) or the results of a site investigation at a facility to determine compliance with this subsection and A.R.S. § 49-252.
2. A person shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
3. The person shall submit a closure plan for Director approval within 90 days following the notification of intent to cease operations with the applicable fee established in 18 A.A.C. 14. A complete closure plan shall include:
   a. A site investigation plan that includes a summary of relevant site studies already conducted and a proposed scope of work for any additional site investigation necessary to identify:
      i. The lateral and vertical extent of contamination in soils and groundwater, using applicable standards;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil proposed for removal from the facility;
      iii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil that will remain at the facility; and
      iv. Information regarding site conditions related to pollutant fate and transport that may influence the scope of sampling necessary to characterize the site for closure;
   b. A summary describing the results of a site investigation and any other information used to identify:
      i. The lateral and vertical extent of soil and groundwater contamination, using applicable standards, and the analytical results that support the determination;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each material scheduled for removal;
      iii. The destination of the materials and documentation that the destination is approved to accept the materials;
      iv. The approximate quantity and chemical, biological, and physical characteristics of each material that remains at the facility; and
      v. Any other relevant information the Department determines is necessary;
   c. A closure design that identifies:
      i. The method used, if any, to treat any material remaining at the facility;
      ii. The method used to control the discharge of pollutants from the facility;
      iii. Any limitation on future land or water uses created as a result of the facility's operations or closure activities and a Declaration of Environmental Use Restriction according to A.R.S. § 49-152, if necessary; and
      iv. The methods used to secure the facility;
   d. An estimate of the cost of closure;
   e. A schedule for implementation of the closure plan and submission of a post-closure plan if clean closure is not achieved; and
   f. For an implemented closure plan, a summary report of the results of site investigation performed during closure activities, including confirmation and verification sampling.
4. Within 60 days of receipt of a complete closure plan, the Department shall determine whether the closure plan achieves clean closure.
   a. If the implemented complete closure plan achieves clean closure, the Director shall:
      i. If the facility is not covered by an Aquifer Protection Permit, send the person a letter of approval; or
      ii. If the facility is covered by an Aquifer Protection Permit, send the person a Permit Release Notice issued under subsection (C)(2)(c).
   b. If the implemented complete closure plan did not achieve clean closure, the person shall submit a post-closure plan under subsection (C) and the following documents within 90 days from the date on the Department's notice or as specified under A.R.S. § 49-252(E):
      i. An application for an individual permit, or

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

C. Post-closure. A person shall describe post-closure monitoring and maintenance activities in an application for a permit or an amendment to an individual permit and submit it to the Department for approval.
1. The application shall include:
   a. The duration of post-closure care;
   b. The monitoring procedures proposed by the permittee, including monitoring frequency, type, and location;
   c. A description of the operating and maintenance procedures proposed for maintaining aquifer quality protection devices, such as liners, treatment systems, pump-back systems, surface water and stormwater management systems, and monitoring wells;
   d. A schedule and description of physical inspections proposed at the facility following closure;
   e. An estimate of the cost of post-closure maintenance and monitoring;
   f. A description of limitations on future land or water uses, or both, at the facility site as a result of facility operations; and
   g. The applicable fee established in 18 A.A.C. 14.
2. The Director shall include the post-closure plan submitted under subsection (C)(1) in the individual permit or permit amendment.
   a. The permittee shall provide the Department written notice that a closure plan or a post-closure plan was fully implemented within 30 calendar days of implementation of the plan. The notice shall include a summary report confirming the closure design and describing the results of sampling performed during closure activities and post-closure activities, if any, to demonstrate the level of cleanup achieved.
   b. The Director may, upon receipt of the notice, inspect the facility to ensure that the closure plan has been fully implemented.
   c. The Director shall issue a Permit Release Notice if the permittee satisfies all closure and post-closure requirements.

Historical Note

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

R18-9-A210. Temporary Individual Permit

A. A person may apply for a temporary individual permit for either of the following:
1. A pilot project to develop data for an Aquifer Protection Permit application for the full-scale project, or
2. A facility with a discharge lasting no more than six months.

B. The applicant shall submit a preliminary application containing the information required in R18-9-A201(B)(1).

C. The Department shall, based on the preliminary application and in consultation with the applicant, determine and provide the applicant notice of any additional information in R18-9-A201(B) that is necessary to complete the application.

D. Public participation.
1. If the Director issues a temporary individual permit, the Director shall postpone the public participation requirements under R18-9-109.
2. The Director shall not postpone notification of the opportunity for public participation for more than 30 days from the date on the temporary individual permit.
3. The Director may amend or revoke the temporary individual permit after consideration of public comments.
4. The Director shall not issue a public notice or hold a public hearing if a temporary individual permit is renewed without change.
5. The Director shall follow the public participation requirements under R18-9-109 when making a significant amendment to a temporary individual permit.

E. A temporary individual permit expires after one year unless it is renewed. The Director may renew a temporary individual permit no more than one time.

Historical Note

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

R18-9-A211. Permit Amendments

A. The Director may amend an individual permit based upon a request or upon the Director's initiative.
1. A permittee shall submit a request for permit amendment in writing on a form provided by the Department with the applicable fee established in 18 A.A.C. 14, explaining the facts and reasons justifying the request.
2. The Department shall process amendment requests following the licensing time-frames established under 18 A.A.C. 1, Article 5, Table 10.
3. An amended permit supersedes the previous permit upon the effective date of the amendment.

B. Significant permit amendment. The Director shall make a significant amendment to an individual permit if:
1. Part or all of an existing facility becomes a new facility under A.R.S. § 49-201;
2. A physical change in a permitted facility or a change in its method of operation results in:
   a. An increase of 10 percent or more in the permitted volume of pollutants discharged, except a sewage treatment facility;
   b. An increase in design flow of a sewage treatment facility as follows:

Permitted Design Flow	Increase in Design Flow
500,000 gallons per day or less	10%
Greater than 500,000 gallons per day but less than or equal to five million gallons per day	6%
Greater than five million gallons per day but less than or equal to 50 million gallons per day	4%
Greater than 50 million gallons per day	2%

   c. Discharge of an additional pollutant not allowed by a facility's original individual permit. The Director may consider the addition of a pollutant with a chemical composition substantially similar to a pollutant the permit currently allows by making an "other" amendment to the individual permit as prescribed in subsection (D);

d. For any pollutant not addressed in a facility's individual permit, any increase that brings the level of the pollutant to within 80 percent or more of a numeric Aquifer Water Quality Standard at the point of compliance; or
e. An increase in the concentration in the discharge of a pollutant listed under A.R.S. § 49-243(I);

3. Based upon available information, the facility can no longer demonstrate that its discharge will comply with A.R.S. § 49-243(B)(2) or (3);
4. The permittee requests and the Department agrees to less stringent monitoring that reduces the frequency in monitoring or reporting or reduces the number of pollutants monitored, and the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
5. It is necessary to change the designation of a point of compliance;
6. It is necessary to update BADCT for a facility that was issued an individual permit and was not constructed within five years of permit issuance;
7. The permittee requests and the Department agrees to less stringent discharge limitations when the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
8. It is necessary to make an addition to or a substantial change in closure requirements or to provide for post-closure maintenance and monitoring; or
9. Material and substantial alterations or additions to a permitted facility, including a change in disposal method, justify a change in permit conditions.

C. Minor permit amendment. The Director shall make a minor amendment to an individual permit to:
1. Correct a typographical error;
2. Change nontechnical administrative information, excluding a permit transfer;
3. Correct minor technical errors, such as errors in calculation, locational information, citations of law, and citations of construction specifications;
4. Increase the frequency of monitoring or reporting, or to revise a laboratory method;
5. Make a discharge limitation more stringent;
6. Make a change in a recordkeeping retention requirement; or
7. Insert calculated alert levels, AQLs, or other permit limits into a permit based on monitoring subsequent to permit issuance, if a requirement to establish the levels or limits and the method for calculation of the levels or limits was established in the original permit.

D. "Other" permit amendment.
1. The Director may make an "other" amendment to an individual permit if the amendment is not a significant or minor permit amendment prescribed in this Section, based on an evaluation of the information relevant to the amendment.
2. Examples of an "other" amendment to an individual permit include:
   a. A change in a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of Articles 1 and 2 of this Chapter and provides equal or better performance;
   b. A change in an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;
   c. A change in the permittee's financial assurance mechanism under R18-9-A203(C);
   d. A permit transfer under R18-9-A212;
   e. The replacement of monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness;
   f. Any increase in the volume of pollutants discharged that is less than that described in subsection (B)(2)(a) or (b);
   g. An adjustment of the permit to conform to rule or statutory provisions;
   h. A calculation of an alert level, AQL, or other permit limit based on monitoring subsequent to permit issuance;
   i. An addition of a point of compliance monitor well;
   j. A combination of two or more permits at the same site as specified under R18-9-107;
   k. An adjustment or incorporation of monitoring requirements to ensure Reclaimed Water Quality Standards developed under 18 A.A.C. 11, Article 3 are met; or
   l. A change in a contingency plan resulting in equal or more efficient responsiveness.

E. The public notice and public participation requirements of R18-9-108 and R18-9-109 apply to a significant amendment. The public notice requirements apply to an "other" amendment. A minor amendment does not require a public notice or public participation.

F. The Director shall not amend or reissue a permit to allow use of a discharge control technology that provides a lesser degree of pollutant discharge reduction than the BADCT established in the individual Aquifer Protection Permit previously issued for a facility, unless:
1. The industrial classification of the facility has changed so that a new assessment of BADCT is appropriate,
2. The pollutant load has decreased or the pollutant composition has changed significantly to warrant a new assessment of the BADCT,
3. The Director approves a corrective or contingency action that necessitates a change in the treatment technology, or
4. The approved discharge control technology is not operating properly due to circumstances beyond the control of the owner or operator.

Historical Note

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

R18-9-A212. Permit Transfer

A. The person subject to the continuance requirements under R18-9-105(A)(1), (2), or (3) shall notify the Department by certified mail within 15 days following a change of ownership. The notice shall include:
1. The name of the person transferring the facility;
2. The name of the new owner or operator;
3. The name and location of the facility;
4. The written agreement between the person transferring the facility and the new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;
5. A signed declaration by the new owner or operator that the new owner or operator has reviewed the permit and agrees to the terms of the permit, including fee obligations under A.R.S. § 49-242; and
6. The applicable fee established in 18 A.A.C. 14.

B. A permittee may request that the Department transfer an individual permit to a new owner or operator.
1. The new owner or operator shall:
   a. Notify the Department by certified mail within 15 days after the change of ownership and include a written agreement between the previous and new owner indicating a specific date for transfer of all permit responsibility, coverage, and liability;
   b. Submit the applicable fee established in 18 A.A.C. 14;
   c. Demonstrate the technical and financial capability necessary to fully carry out the terms of the permit according to R18-9-A202 and R18-9-A203;
   d. Submit a signed statement that the new owner or operator has reviewed the permit and agrees to the terms of the permit; and
   e. Provide the Department with a copy of the Certificate of Disclosure if required by A.R.S. § 49-109.
2. If the Director amends the individual permit for the transfer, the new permittee is responsible for all conditions of the permit.

C. A permittee shall comply with all permit conditions until the Director transfers the permit, regardless of whether the permittee has sold or disposed of the facility.

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

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

A. The Director may, after notice and opportunity for hearing, suspend or revoke an individual permit or a continuance under R18-9-105(A)(1), (2), or (3) for any of the following:
1. A permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; or any permit condition;
2. A permittee misrepresented or omitted a fact, information, or data related to an Aquifer Protection Permit application or permit condition;
3. The Director determines that a permitted activity is causing or will cause a violation of an Aquifer Water Quality Standard at a point of compliance;
4. A permitted discharge is causing or will cause imminent and substantial endangerment to public health or the environment;
5. A permittee failed to maintain the financial capability under R18-9-A203(B); or
6. A permittee failed to construct a facility within five years of permit issuance and:
   a. It is necessary to update BADCT for the facility, and
   b. The Department has not issued an amended permit under R18-9-A211(B)(6).

B. The Director may deny an individual permit if the Director determines upon completion of the application process that the applicant has:
1. Failed or refused to correct a deficiency in the permit application;
2. Failed to demonstrate that the facility and the operation will comply with the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter. The Director shall base this determination on:
   a. The information submitted in the Aquifer Protection Permit application,
   b. Any information submitted to the Department following a public hearing, or
   c. Any relevant information that is developed or acquired by the Department; or
3. Provided false or misleading information.

C. The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

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

R18-9-A214. Requested Coverage Under a General Permit

A. If a person who applied for or was issued an individual permit qualifies to operate a facility under a general permit established in Article 3 of this Chapter, the person may request that the individual permit be terminated and replaced by the general permit. The person shall submit the Notice of Intent to Discharge under R18-9-A301(B) with the appropriate fee established in 18 A.A.C. 14.

B. The individual permit is valid and enforceable with respect to a discharge from each facility until the Director determines that the discharge from each facility is covered under a general permit.

C. The owner or operator operating under a general permit shall comply with all applicable general permit requirements in Article 3 of this Chapter.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

A. Applicability. The requirements in this Article apply to all sewage treatment facilities, including expansions of existing sewage treatment facilities, that treat wastewater containing sewage, unless the discharge is authorized by a general permit under Article 3 of this Chapter.

B. The Director may specify alert levels, discharge limitations, design specifications, and operation and maintenance requirements in the permit that are based upon information provided by the applicant and that meet the requirements under A.R.S. § 49-243(B)(1).

C. The permittee shall ensure that a sewage treatment facility is operated by a person certified under 18 A.A.C. 5, Article 1, for the grade of the facility.

D. Operation and maintenance.
1. The owner or operator shall maintain, at the sewage treatment facility, an operation and maintenance manual for the facility and shall update the manual as needed.
2. The owner or operator shall use the operation and maintenance manual to guide facility operations to ensure compliance with the terms of the Aquifer Protection Permit and to prevent any environmental nuisance described under A.R.S. § 49-141(A).
3. The Director may specify adherence to any operation or maintenance requirement as an Aquifer Protection Permit condition to ensure that the terms of the Aquifer Protection Permit are met.

4. The owner or operator shall make the operation and maintenance manual available to the Department upon request.

E. A person shall not create or maintain a connection between any part of a sewage treatment facility and a potable water supply so that sewage or wastewater contaminates a potable or public water supply.

F. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from a sewage treatment facility.

G. Reclaimed water dispensed to a direct reuse site from a sewage treatment facility is regulated under Reclaimed Water Quality Standards in 18 A.A.C. 11, Article 3.

H. The preparation, transport, or land application of any biosolids generated by a sewage treatment facility is regulated under 18 A.A.C. 9, Article 10.

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

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

R18-9-B202. Design Report

A. A person applying for an individual permit shall submit a design report signed, dated, and sealed by an Arizona-registered professional engineer. The design report shall include the following information:
1. Wastewater characterization, including quantity, quality, seasonality, and impact of increased flows as the facility reaches design flow;
2. The proposed method of disposal, including solids management;
3. A description of the treatment unit processes and containment structures, including diagrams and calculations that demonstrate that the design meets BADCT requirements and will achieve treatment levels specified in R18-9-B204 through R18-9-B206, as applicable, for all flow conditions indicated in subsection (A)(9). If soil aquifer treatment or other aspects of site conditions are used to meet BADCT requirements, the applicant shall document performance of the site in the design report or the hydrogeologic report;
4. A description of planned normal operation;
5. A description of key maintenance activities and a description of contingency and emergency operation for the facility;
6. A description of construction management controls;
7. A description of the facility startup plan, including preoperational testing, expected treated wastewater characteristics and monitoring requirements during startup, expected time-frame for meeting performance requirements specified in R18-9-B204, and any other special startup condition that may merit consideration in the individual permit;
8. A site diagram depicting compliance with the setback requirements established in R18-9-B201(I) for the facility at design flow, and for each phase if the applicant proposes expansion of the facility in phases;
9. The following flow information in gallons per day for the proposed sewage treatment facility. If the application proposes expansion of the facility in phases, the following flow information for each phase:
   a. The design flow of the sewage treatment facility. The design flow is the average daily flow over a calendar year calculated as the sum of all influent flows to the facility based on Table 1, Unit Design Flows, unless a different basis for determining influent flows is approved by the Department;
   b. The maximum day. The maximum day is the greatest daily total flow that occurs over a 24-hour period within an annual cycle of flow variations;
   c. The maximum month. The maximum month is the average daily flow of the month with the greatest total flow within the annual cycle of flow variations;
   d. The peak hour. The peak hour is the greatest total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations;
   e. The minimum day. The minimum day is the least daily total flow that occurs over a 24-hour period within the annual cycle of flow variations;
   f. The minimum month. The minimum month is the average daily flow of the month with the least total flow within the annual cycle of flow variations; and

g. The minimum hour. The minimum hour is the least total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations; and

10. Specifications for pipe, standby power source, and water and sewer line separation.

B. The Department may inspect an applicant's facility without notice to ensure that construction conforms to the design report.

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

R18-9-B203. Engineering Plans and Specifications

A. A person applying for an individual permit for a sewage treatment facility with a design flow under one million gallons per day, shall submit engineering plans and specifications to the Department. The Director may waive this requirement if the Director previously approved engineering plans and specifications submitted by the same owner or operator for a sewage treatment facility with a design flow of more than one million gallons per day.

B. A person applying for an individual permit for a sewage treatment facility with a design flow of one million gallons per day or greater shall submit engineering plans and specifications if, upon review of the design report required in R18-9-B202, the Department finds that:

1. The design report fails to provide sufficient detail to determine adequacy of the proposed sewage treatment facility design;
2. The described design is innovative and does not reflect treatment technologies generally accepted within the industry;
3. The Department's calculations of removal efficiencies based on the design report show that the treatment facility cannot achieve treatment performance requirements;
4. The design report does not demonstrate:
   a. Protection from physical damage due to a 100-year flood,
   b. Ability to continuously operate during a 25-year flood, or
   c. Provision for a standby power source;
5. The design report shows inconsistency in sizing or compatibility between two or more unit process components of the sewage treatment facility;
6. The designer of the facility has:
   a. Designed a sewage treatment facility of at least a similar size on less than three previous occasions,
   b. Designed a sewage treatment facility that has been the subject of a Director enforcement action due to the facility design, or
   c. Been found by the Board of Technical Registration to have violated a provision in A.R.S. Title 32, Chapter 1;
7. The permittee seeks to expand its sewage treatment facility and the Department believes that the facility will require upgrades to the design not described and evaluated in the design report to meet the treatment performance requirements; or
8. The construction does not conform to the design report if the sewage treatment facility has already been constructed.

C. The Department shall review engineering plans and specifications upon request by an applicant seeking a permit for a sewage treatment facility, regardless of its flow.

D. The Department may inspect an applicant's facility without notice to ensure that construction generally conforms to engineering plans and specifications, as applicable.

E. Before discharging under a permit, the permittee shall submit an Engineer's Certificate of Completion signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department, that confirms that the facility is constructed according to the Department-approved design report or plans and specifications, as applicable.

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

R18-9-B204. Treatment Performance Requirements for a New Facility

A. Definition. "Week" means a seven-day period starting on Sunday and ending on the following Saturday.

B. An owner or operator of a new sewage treatment facility shall ensure that the facility meets the following performance requirements upon release of the treated wastewater at the outfall:

1. Secondary treatment levels.
   a. Five-day biochemical oxygen demand (BOD_5) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average), or carbonaceous biochemical oxygen demand ($CBOD_5$) less than 25 mg/l (30-day average) or 40 mg/l (seven-day average);
   b. Total suspended solids (TSS) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average);
   c. pH maintained between 6.0 and 9.0 standard units; and
   d. A removal efficiency of 85 percent for BOD_5, $CBOD_5$, and TSS;
2. Secondary treatment by waste stabilization ponds is not considered BADCT unless an applicant demonstrates to the Department that site-specific hydrologic and geologic characteristics and other environmental factors are sufficient to justify secondary treatment by waste stabilization ponds;
3. Total nitrogen in the treated wastewater is less than 10 mg/l (five-month rolling geometric mean). If an applicant demonstrates, using appropriate monitoring that soil aquifer treatment will produce a total nitrogen concentration less than 10 mg/l in wastewater that percolates to groundwater, the Department may approve soil aquifer treatment for removal of total nitrogen as an alternative to meeting the performance requirement of 10 mg/l at the outfall;
4. Pathogen removal.
   a. For a sewage treatment facility with a design flow of less than 250,000 gallons per day at a site where the depth to the seasonally high groundwater table is greater than 20 feet and there is no karstic or fractured bedrock at the surface:
      i. The concentration of fecal coliform organisms in four of the wastewater samples collected during the week is less than 200 cfu/100 ml or the concentration of *E. coli* bacteria in four of the wastewater samples collected during the week is less than 126 cfu/100 ml, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sam-

ple is not greater than 800 cfu/100 ml or the single sample maximum concentration of *E. coli* bacteria in a wastewater sample is not greater than 504 cfu/100 ml; and

iii. An owner or operator of a facility may request a reduction in the monitoring frequency required in subsection (B)(4)(a)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(a)(i) and (ii) at the discharge point;

b. For any other sewage treatment facility:

i. No fecal coliform organisms or no *E. coli* bacteria are detected in four of the wastewater samples collected during the week, based on a sampling frequency of seven daily samples per week;

ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 23 cfu/100 ml or the single sample maximum concentration of *E. coli* is not greater than 15 cfu/100 ml;

iii. An owner or operator may request a reduction in the monitoring frequency required in subsection (B)(4)(b)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(b)(i) or (ii) at the discharge point;

c. An owner or operator may use unit treatment processes, such as chlorination-dechlorination, ultraviolet, and ozone to achieve the pathogen removal performance requirements specified in subsections (B)(4)(a) and (b);

d. The Department may approve soil aquifer treatment for the removal of fecal coliform or *E. coli* bacteria as an alternative to meeting the performance requirement in subsection (B)(4)(a) or (b), if the soil aquifer treatment process will produce a fecal coliform or *E. coli* bacteria concentration less than that required under subsection (B)(4)(a) or (b), in wastewater that percolates to groundwater;

5. Unless governed by A.R.S. § 49-243(I), the performance requirement for each constituent regulated under R18-11-406(B) through (E) is the numeric Aquifer Water Quality Standard;

6. The performance requirement for a constituent regulated under A.R.S. § 49-243(I) is removal to the greatest extent practical regardless of cost.

a. An operator shall minimize trihalomethane compounds generated as disinfection byproducts using chlorination, dechlorination, ultraviolet, or ozone as the disinfection system or using a technology demonstrated to have equivalent or better performance for removing or preventing trihalomethane compounds.

b. For other pollutants regulated by A.R.S. § 49-243(I), an operator shall use one of the following methods to achieve industrial pretreatment:

i. Regulate industrial sources of influent to the sewage treatment facility by setting limits on pollutant concentrations, monitoring for pollutants, and enforcing the limits to reduce, eliminate, or alter the nature of a pollutant before release into a sewage collection system;

ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or

iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and

7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

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

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);
2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and
3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

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

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:

a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or
b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.

2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

1. Type 1 General Permit. A person may discharge under a Type 1 General Permit without submitting a Notice of Intent to Discharge if the discharge is authorized by and meets:
   a. The applicable requirements of Article 3, Part A of this Chapter; and
   b. The specific terms of the Type 1 General Permit established in Article 3, Part B of this Chapter.
2. Type 2 General Permit. A person may discharge under a Type 2 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 2 General Permit established in Article 3, Part C of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B); and
   c. The person submits the applicable fee established in 18 A.A.C. 14.
3. Type 3 General Permit. A person may discharge under a Type 3 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 3 General Permit established in Article 3, Part D of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B);
   c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review and receives a written Discharge Authorization from the Director; and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
4. Type 4 General Permit. A person may discharge under a Type 4 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 4 General Permit established in Article 3, Part E of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B);
   c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review, including any deficiency relating to the construction of the facility;
   d. The person receives a written Discharge Authorization from the Director before the facility discharges; and
   e. The person submits the applicable fee established in 18 A.A.C. 14 or according to A.R.S. §§ 49-107 and 49-112.

B. Notice of Intent to Discharge.

1. A person seeking a Discharge Authorization under a general permit under subsections (A)(2), (3), or (4) shall submit, by certified mail, in person, or by another method approved by the Department, a Notice of Intent to Discharge on a form provided by the Department.
2. The Notice of Intent to Discharge shall include:
   a. The name, address, and telephone number of the applicant;
   b. The name, address, and telephone number of a contact person familiar with the operation of the facility;
   c. The name, position, address, and telephone number of the owner or operator of the facility who has overall responsibility for compliance with the permit;
   d. The legal description of the discharge areas, including the latitude and longitude coordinates;
   e. A narrative description of the facility or project, including expected dates of operation, rate, and volume of discharge;
   f. The additional requirements, if any, specified in the general permit for which the authorization is being sought;
   g. A listing of any other federal or state environmental permits issued for or needed by the facility, including any individual permit, Groundwater Quality Protection Permit, or Notice of Disposal that may have previously authorized the discharge; and
   h. A signature on the Notice of Intent to Discharge certifying that the applicant agrees to comply with all applicable requirements of this Article, including specific terms of the general permit.
3. Receipt of a completed Notice of Intent to Discharge by the Department begins the administrative completeness review for a Type 3 or Type 4 General Permit.

C. Type 3 General Permit authorization review.

1. Inspection. The Department may inspect the facility to determine that the applicable terms of the general permit have been met.
2. Discharge Authorization issuance.
   a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of the general permit and the applicable requirements of this Article, the Director shall issue a Discharge Authorization.
   b. The Discharge Authorization authorizes the person to discharge under terms of the general permit and applicable requirements of this Article.
3. Discharge Authorization denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue the Discharge Authori-

zation and the person shall not discharge under the general permit. The notification shall inform the person of:

a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. Type 4 General Permit review.

1. Pre-construction phase and facility construction. A person shall not begin facility construction until the Director issues a Construction Authorization.
   a. Inspection. The Department may inspect the facility site before construction to determine that the applicable terms of the general permit will be met.
   b. Review. If the Department determines, based on an inspection or its review of design plans, specifications, or other required documents that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Department shall make a written request for additional information to determine whether the facility will meet the requirements of the general permit.
   c. Construction Authorization. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design conforms with the requirements of the general permit and other applicable requirements of this Article, the Director shall issue a Construction Authorization to the person seeking to discharge. A Construction Authorization for an on-site wastewater treatment facility shall contain:
      i. The design flow of the facility,
      ii. The characteristics of the wastewater sources contributing to the facility,
      iii. The general permits that apply, and
      iv. A list of the documents that are the basis for the authorization.
   d. Construction Authorization denial. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue a Construction Authorization. The notification shall include the information listed in subsections (D)(2)(d).
   e. Construction.
      i. A person shall complete construction within two years of receiving a Construction Authorization.
      ii. Construction shall conform with the plans and documents approved by the Department in the Construction Authorization. A change in location, configuration, dimension, depth, material, or installation procedure does not require approval by the Department if the change continues to conform with the specific standard in this Article used as the basis for the original design.
      iii. The person shall record all changes made during construction, including any changes approved under R18-9-A312(G) on the site plan as specified in R18-9-A309(C)(1) or on documents as specified in R18-9-A309(C)(2) or R18-9-E301(E), as applicable.
   f. Completion of construction.
      i. After completing construction of the facility, the person seeking to discharge shall submit any applicable documents specified in R18-9-A309(C) with the Request for Discharge Authorization form for an on-site wastewater treatment facility and the Engineer's Certificate of Completion specified in R18-9-E301(E) for a sewage collection system. Receipt of the documents by the Department initiates the post-construction review phase.
      ii. If the Department does not receive the documentation specified in subsection (D)(1)(f)(i) by the end of the two-year construction period, the Notice of Intent to Discharge expires, and the person shall not continue construction or discharge.
      iii. If the Notice of Intent to Discharge expires, the person shall submit a new Notice of Intent to Discharge under subsection (B) and the applicable fee under subsection (A)(4)(e) to begin or continue construction.
2. Post-construction phase.
   a. Inspection. The Department may inspect the facility before issuing a Discharge Authorization to determine whether:
      i. The construction conforms with the design authorized by the Department under subsection (D)(1)(c) and any changes recorded on the site plan as specified in R18-9-A309(C)(1) or other documents as specified in R18-9-A309(C)(2), or R18-9-E301(E), as applicable; and
      ii. Terms of the general permit and applicable terms of this Article are met.
   b. Deficiencies. If the Department identifies deficiencies based on an inspection of the constructed facility or during the review of documents submitted with the request for the Discharge Authorization, the Director shall provide a written explanation of the deficiencies to the person.
   c. Discharge Authorization issuance.
      i. Upon satisfactory completion of construction and documents required under R18-9-A309(C)(1) R18-9-A309(C)(2), or R18-9-E301(E), as applicable, the Director shall issue a Discharge Authorization.
      ii. The Discharge Authorization allows a person to discharge under terms of the general permit and applicable requirements of this Article and the stated terms of the Construction Authorization.
   d. Discharge Authorization denial. If, after receiving evidence of correction submitted by the person seeking to discharge, the Department determines that the deficiencies are not satisfactorily corrected, the Director shall notify the person seeking to discharge of the Director's decision not to issue the Discharge Authorization and the person shall not discharge

under the general permit. The notification shall inform the person of:

i. The reason for the denial with reference to the statute or rule on which the denial is based;

ii. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and

iii. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

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

R18-9-A302. Point of Compliance

The point of compliance is the point at which compliance with Aquifer Water Quality Standards is determined.

1. Except as provided in this Section or as stated in a specific general permit, the applicable point of compliance at a facility operating under a general permit is a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility.
2. The point of compliance is the limit of the pollutant management area.
   a. The pollutant management area is the horizontal plane of the area on which pollutants are or will be placed.
   b. If a facility operating under a general permit is located within a larger pollutant management area established under an individual permit issued to the same person, the point of compliance is the applicable point of compliance established in the individual permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A303. Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.

1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
   a. 2.01 General Permit, five years;
   b. 2.02 General Permit, seven years;
   c. 2.03 General Permit, two years;
   d. 2.04 General Permit, five years;
   e. 2.05 General Permit, five years;
   f. 2.06 General Permit, five years; and
   g. Type 3 General Permits, five years.
2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection (B)(1), the Discharge Authorization expires.

Historical Note

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

R18-9-A304. Notice of Transfer

A. Transfer of authorization under a Type 1 General Permit.

1. A permittee transferring ownership of a facility covered by a Type 1.01 through 1.08, or 1.10 through 1.12 General Permit is not required to notify the Department of the transfer.
2. A permittee transferring ownership of an on-site wastewater treatment facility operating under a Type 1.09 General Permit shall follow the requirements under R18-9-A316.
3. A permittee transferring ownership of a sewage treatment facility operating under a Type 1.09 General Permit shall submit a Notice of Transfer to the Department by certified mail within 15 days after the date that ownership changes.

B. Transfer of authorization under a Type 2, 3, or 4.01 General Permit.

1. If a change of ownership occurs for a facility covered by a Type 2, 3, or 4.01 General Permit facility, the permittee shall provide a Notice of Transfer to the Department or to the health or environmental agency delegated by the Director to administer Type 4.01 General Permits, by certified mail within 15 days after the date that ownership changes. The Notice of Transfer, on a form approved by the Department, shall include:
   a. Any information that has changed from the original Notice of Intent to Discharge,
   b. Any other transfer requirements specified for the general permit, and
   c. The applicable fee established in 18 A.A.C. 14.
2. The Department may require a permittee covered by a Type 2, 3, or Type 4.01 General Permit to submit a new Notice of Intent to Discharge and to obtain a new authorization under R18-9-A301(A)(2), (3) and (4), as applicable, if the volume or characteristics of the discharge have changed from the original application.

C. Transfer of a Type 4.02 through 4.23 General Permit. A permittee transferring ownership of an on-site wastewater treatment facility operating under one or more Type 4.02 through 4.23 General Permits shall follow the requirements under R18-9-A316.

Historical Note

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

R18-9-A305. Facility Expansion

A. A permittee may expand a facility covered by a Type 2 General Permit if, before the expansion, the permittee provides the Department with the following information by certified mail:

1. An updated Notice of Intent to Discharge,
2. A certification signed by the facility owner stating that the expansion continues to meet all the conditions of the applicable general permit, and
3. The applicable fee established under 18 A.A.C. 14.

B. A permittee may expand a facility covered by a Type 3 or Type 4 General Permit if the permittee submits a new Notice of Intent to Discharge and the Department issues a new Discharge Authorization.
1. The person submitting the Notice of Intent to Discharge for the expansion may reference the previous Notice of Intent to Discharge if the previous information is identical, but shall provide full and detailed information for any changed items.
2. The Notice of Intent to Discharge shall include:
   a. Any applicable fee established under 18 A.A.C. 14, and
   b. A certification signed by the facility owner stating that the expansion continues to meet all of the requirements relating to the applicable general permit.
3. Upon receiving the Notice of Intent to Discharge, the Department shall follow the applicable review and authorization procedures described in R18-9-A301(A)(3) or (4).

Historical Note

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

R18-9-A306. Closure

A. To satisfy the requirements under A.R.S. § 49-252, a permittee shall close a facility authorized to discharge under a general permit as follows:
1. If the discharge is authorized under a Type 1.01 through 1.08, 1.10, 1.11, 2.05, 2.06, or 4.01 General Permit, closure notification is unnecessary and clean closure is met when:
   a. The permittee removes material that may contribute to a continued discharge; and
   b. The permittee eliminates, to the greatest degree practical, any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance;
2. For a discharge authorized under a Type 2.02, 3.02, 3.05 through 3.07, or 4.23 General Permit, the facility meets clean closure requirements if the permittee provides notice and submits sufficient information for the Department to determine that:
   a. Any material that may contribute to a continued discharge is removed;
   b. The permittee has eliminated to the greatest degree practicable any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance; and
   c. Closure requirements, if any, established in the general permit are met;
3. If the discharge is authorized under a Type 1.12, 2.01, 2.03, 2.04, 3.01, 3.03, or 3.04 General Permit, the permittee shall comply with the closure requirements in the general permit;
4. If the discharge is from an on-site wastewater treatment facility authorized under a Type 1.09 or 4.02 through 4.22 General Permit, the permittee shall comply with the closure requirements in R18-9-A309(D); and
5. If the discharge is from a sewage treatment facility authorized under a Type 1.09 General Permit, the permittee shall comply with the closure requirements under subsection (A)(1).

B. For a facility operating under a general permit and located at a site where an individual area-wide permit has been issued, a permittee may defer some or all closure activities required by this subsection if the Director approves the deferral in writing. The permittee shall complete closure activities no later than the date that closure activities identified in the individual area-wide permit are performed.

Historical Note

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

R18-9-A307. Revocation of Coverage Under a General Permit

A. After notice and opportunity for a hearing, the Director may revoke coverage under a general permit and require the permittee to obtain an individual permit for any of the following:
1. The permittee fails to comply with the terms of the general permit as described in this Article, or
2. The discharge activity conducted under the terms of the general permit causes or contributes to the violation of an Aquifer Water Quality Standard at the applicable point of compliance.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative discharge of the facilities has violated or will violate an Aquifer Water Quality Standard established under A.R.S. §§ 49-221 and 49-223. Unless the public health or safety is jeopardized, the Director may allow continuation of a discharge until the Department:
1. Issues a single individual permit,
2. Authorizes a discharge under another general permit, or
3. Consolidates the discharges authorized under the general permits by following R18-9-107.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit allowing the discharge is automatically revoked upon issuance of the individual permit and notification under subsection (E) is not required.

D. If the Director revokes coverage under a general permit, the facility shall not discharge unless allowed under subsection (B) or under an individual permit.

E. If coverage under the general permit is revoked under subsections (A) or (B), the Director shall notify the permittee by certified mail of the decision. The notification shall include:
1. A brief statement of the reason for the decision;
2. The effective revocation date of the general permit coverage;
3. A statement of whether the discharge shall cease or whether the discharge may continue under the terms of revocation in subsection (B);
4. Whether the Director requires a person to obtain an individual permit, and if so:
   a. An individual permit application form, and
   b. Identification of a deadline between 90 and 180 days after receipt of the notification for filing the application;
5. The applicant's right to appeal the revocation, the number of days the applicant has to file an appeal, and the name

and telephone number of the Department contact person who can answer questions regarding the appeals process; and

6. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

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

R18-9-A308. Violations and Enforcement For On-site Wastewater Treatment Facilities

A. A person who owns or operates an on-site wastewater treatment facility contrary to the provisions of a Type 4 General Permit is subject to the enforcement actions under A.R.S. § 49-261;

B. A person who violates this Article or a specific term of a general permit for an on-site wastewater treatment facility is subject to enforcement actions under A.R.S. § 49-261.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A309. General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.

1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.
2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
   b. A sewer service line extension is available at the property boundary and both of the following apply:
      i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
      ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.
6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;
   b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49-921(5) or hazardous substances;
   c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);
   d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;
   e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;
   f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and
   g. Activities at the site do not adversely affect the operation of the facility.
8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:
   a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;
   b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;
   c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:
      i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;
      ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection

(A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or

iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.

9. Repairs.
   a. A Notice of Intent to Discharge is not required for routine work that maintains a facility.
   b. The following work is not considered routine work and a Notice of Intent to Discharge is required:
      i. Converting a facility from operation only under gravity to one requiring a pump or other powered equipment for treatment or disposal;
      ii. Modifying or replacing a facility operating under the 1.09 General Permit with a different type of treatment or disposal technology;
      iii. Changing the treatment works or disposal works of a facility authorized under one or more Type 4 General Permits to a technology covered by any other Type 4 General Permit;
      iv. Extending the disposal works more than 10 feet beyond the footprint of the original disposal works;
      v. Reconstructing any part of the disposal works in soil that is inadequate for the treated wastewater flow or strength;
      vi. Expanding the footprint of the facility into or within setback buffers established in R18-9-A312(C);
      vii. Reconstructing the disposal works so that it does not meet the vertical separation requirements specified in R18-9-A312(E);
      viii. Modifying a treatment works or disposal works to accommodate a daily design flow or waste load greater than the daily design flow or waste load applicable to the original facility; or
      ix. Replacing the treatment works.
   c. Components used in a repair shall meet the design, installation, and operational requirements of this Article.
   d. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair work.
   e. A person shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.
10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.
    a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.
    b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.
    c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:

1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
   a. Results from any soil evaluation, percolation test, or seepage pit performance test;
   b. Any surface limiting condition identified in R18-9-A310(C)(2); and
   c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
   a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
   b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
      i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;
      ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);
      iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;
      iv. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and
      v. Location of any public sewer if 400 feet or less from the property line;
3. The design flow of the on-site wastewater treatment facility expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
   a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding

unit flows used to calculate the design flow of the facility; and

b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;

4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department; and
6. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
   a. Construction quality drawings that show the following:
      i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
      ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
      iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verification of hydraulic and performance characteristics;
      iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit, and a soil elevation evaluation to allow Department verification of installation design and performance; and
      v. Drainage pattern, drainage controls, and erosion protection, as applicable, for the facility; and
   b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Discharge Authorization under a Type 4 General Permit.

1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the person responsible for assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c);
   g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and
   h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).
3. The Director shall specify in the Discharge Authorization:
   a. The permitted design flow of the facility,
   b. The characteristics of the wastewater sources contributing to the facility, and
   c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:

1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.
   a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;
   b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and
   c. Regrade the surface to provide drainage away from the closed area;
4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treatment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and
5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.

1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site

wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.

2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

Historical Note

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

R18-9-A310. Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the Department. The site investigation shall provide sufficient data to:

1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.

1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.

1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard practices, which are incorporated by reference and do not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959:
      i. "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials; and
      ii. "Standard Practice for Soil Investigation and Sampling by Auger Borings, D1452-80 (2000)," published by the American Society for Testing and Materials;
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compliance with water quality standards through proper system location, selection, design, installation, and operation.
2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:

a. The soil absorption rate determined under R18-9-A312(D)(2) is:
   i. More than 1.20 gallons per day per square foot, or
   ii. Less than 0.20 gallons per day per square foot;
b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
   i. An impervious soil or rock layer,
   ii. A zone of saturation that substantially limits downward percolation from the disposal works,
   iii. Soil with more than 50 percent rock fragments;
e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
   i. Fractures or joints in rock that are open, continuous, or interconnected;
   ii. Karst voids or channels; or
   iii. Highly permeable materials such as deposits of cobbles or boulders; or
f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.

3. Applicability of subsurface characterization methods. The investigator shall:
   a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);
   b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using one or more of the ASTM methods specified in subsection (D)(1)(a) if any of the following site conditions exists:
      i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;
      ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;
      iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;
      iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;
      v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or
      vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).
   c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):
      i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or
      ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:
1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;
2. Perform the characterization at each test location at appropriate depths to:
   a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and
   b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and
3. Submit with the site investigation report:
   a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;
   b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
   c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.
1. Planning and preparation. The investigator shall:
   a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;
   b. Perform percolation testing at each location at intervals in the soil profile sufficient to:
      i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and
      ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection, design, installation, or disposal performance of the on-site wastewater treatment facility;
   c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;
   d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;

e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and
f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.

2. Presoaking procedure. The investigator shall:
a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;
b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;
c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.
i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).
ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the percolation test by following subsection (F)(3); and
d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:
a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;
b. Fill the test hole to a depth of six inches above the bottom with clean water;
c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:
i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,
ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and
iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;
d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;
e. Record the percolation rate results in minutes per inch; and
f. Submit the following information with the site investigation report:
i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;
ii. Whether and which test hole was reinforced with a bucket;
iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;
iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:

1. Planning and Preparation. The investigator shall:
a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and
b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.

2. Presoaking procedure. The investigator shall:
a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;
b. Fill the test hole with clean water up to 3 feet below the land surface;
c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;
d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);
e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole exposed to air for at least four more hours if the water drains away in four or more hours; and
f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.

3. Conducting the test. The investigator shall:
a. Fill the test hole with clean water up to 3 feet below land surface;
b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
c. Measure the decline of the water level continually until three consecutive 10-minute measurements

indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;

d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
   i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
   ii. "DS" is the diameter of the seepage pit test hole in inches, and
   iii. "IS" is the seepage pit stabilized infiltration rate (minutes per inch) determined by the procedure specified in R18-9-A310(F)(3)(c);

e. Submit the following information with the site investigation report:
   i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;
   ii. The log of the test hole indicating lithologic characteristics and points of change;
   iii. The location of the test hole on the site investigation map;
   iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.

f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:
1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

Historical Note

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

R18-9-A311. Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.
1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.
1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 only if:
1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9-A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in R18-9-A310(D)(2)(c); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:

1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

Historical Note

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

R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:
1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction Authorization, including plans, specifications, drawings, reports, and calculations; and
2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:
1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
   a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
   b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
   c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
   d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
   e. Provide adequate storage capacity above high operating level to:
      i. Accommodate a 24-hour power or pump outage, and
      ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
   f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
   g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
   h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:
1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)	Special Provisions
1. Building	10	Includes porches, decks, and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.

3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.
6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir.
7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.
11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.

13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.
2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	**SAR, Trench, Chamber, and Pit (gal/day/ft^2)**	**SAR, Bed (gal/day/ft^2)**
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33
20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22
40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

   b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR.

Sequence of Soil Characteristics Questions	**SAR, Trench, Chamber, and Pit gal/day/ft^2**	**SAR, Bed gal/day/ft^2**
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist consistency stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required
E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or silty loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. Is the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13

J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

$$SAR_a = \left[\left(\frac{11.39}{\sqrt[3]{TSS + BOD_5}} - 1.87\right) SAR^{1.13} + 1\right] SAR$$

   a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,
   b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,
   c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and
   d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.

4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:
   a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;
   b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.
5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.

1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60
Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:
   a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding

to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2
1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.
** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).
*** Nominally free of coliform bacteria.

b. Include a hydraulic analysis with the Notice Of Intent To Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.

3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the Subsurface Limiting Condition (feet)	**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

      ii. If the SAR of the native soil into which the disposal works is placed is not more than 0.63 gallons per day per square foot, include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and
      iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.

4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or
   b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.
1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have monitoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;
   b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and
   c. Distribution lines for disposal works are constructed of clay tile laid with open joints, perforated clay pipe, perforated high density polyethylene pipe, perforated ABS pipe, or perforated PVC pipe if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.
3. Electronic components. When electronic components are used, the applicant shall ensure that:
   a. Instructions and a wiring diagram are mounted on the inside of a control panel cover;
   b. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;
   c. The multimode operation switch operates in the automatic position for normal system operation; and
   d. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.
4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article.
1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:
   a. A description of the requested change;
   b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and
   c. Justification for the requested change, including any necessary supporting documentation.
2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.
3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.
4. The Department shall review and may approve the request for change.
5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.
6. The Department shall deny the request for the change if the change:
   a. Fails to achieve equal or better performance compared to the general permit requirement;
   b. Fails to address site or system conditions more satisfactorily than the general permit requirement;
   c. Is insufficiently justified based on the information provided in the submittal;
   d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or
   e. For any other justifiable cause.
7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in R18-9-E303 through R18-9-E322, either separately or in combination with a septic tank system authorized under R18-9-E302, if the applicant demonstrates that:
   a. The treatment performance is significantly better than that provided under R18-9-E302(B),
   b. The wastewater loading rate is reduced, or
   c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (E)(1) (Supp. 01-1). Amended by final rulemaking at 11

A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

A. Facility installation. In addition to installation requirements in the general permit, the applicant shall ensure that the following tasks are performed, as applicable:
1. The facility is installed as described in design documents submitted with the Notice of Intent to Discharge;
2. Components are installed on a firm foundation that supports the components and operating loads;
3. The site is prepared to protect native soil beneath the soil absorption area and in adjacent areas from compaction, prevent smeared absorption surfaces, minimize disturbances from grubbing, and otherwise preclude damage to the disposal area that would impair performance;
4. Components are protected from damage at the construction site and installed in conformance with the manufacturer's instructions if consistent with this Article;
5. Treatment media are placed to achieve uniform density, prevent differential settling, produce a level inlet surface unless otherwise specified by the manufacturer, and avoid introduction of construction contaminants;
6. Backfill is placed to prevent damage to geotextile, liners, tanks, and other components;
7. Soil cover is shaped to shed rainfall away from the backfill areas and prevent ponding of runoff; and
8. Anti-buoyancy measures are implemented during construction if temporary saturated backfill conditions are anticipated during construction.

B. Operation and maintenance. In addition to operation and maintenance requirements in the general permit or specified in the operation and maintenance manual, the permittee shall ensure that the following tasks are performed, as applicable:
1. Pump accumulated residues, inspect and clean wastewater treatment and distribution components, and manage residues to protect human health and the environment;
2. Clean, backwash, or replace effluent filters according to the manufacturer's instructions, and manage residues to protect human health and the environment;
3. Inspect and clean the effluent baffle screen and pump tank, and properly dispose of cleaning residue;
4. Clean the dosing tank effluent screen, pump switches, and floats, and properly dispose of cleaning residue;
5. Flush lateral lines and return flush water to the pretreatment headworks;
6. Inspect, remove and replace, if necessary, and properly dispose of filter media;
7. Rod pressurized wastewater delivery lines and secondary distribution lines (for dosing systems), and return cleaning water to the pretreatment headworks;
8. Inspect and clean pump inlets and controls and return cleaning water to the pretreatment headworks;
9. Implement corrective measures if anomalous ponding, dryness, noise, odor, or differential settling is observed;
10. Inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for:
    a. Influent wastewater quality;
    b. The pressurized dosing system;
    c. The aggregate infiltration bed and mound system;
    d. Wastewater delivery and the engineered pad;
    e. The pressurized delivery system, filter, underdrain, and native soil absorption system;
    f. Saturation condition status in peat and other media; and
    g. Treatment system components;
11. Inspect tanks, liners, ports, seals, piping, and appurtenances for watertightness under all operational conditions;
12. Manage vegetation in areas that contain components subject to physical impairment or damage due to root invasion or animals;
13. Maintain drainage, berms, protective barriers, cover materials, and other features; and
14. Maintain the usefulness of the reserve area to allow for repair or replacement of the on-site wastewater treatment facility.

Historical Note

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

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:
1. The tank is:
    a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;
    b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;
    c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:
        i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,
        ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,
        iii. The liquid depth of the septic tank is at least 42 inches, and
        iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;
    d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:
        i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;
        ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and
        iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;
    e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:
        i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and
        ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;
    f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed

according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;

g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;

h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the septic tank is at least 2 inches above the top of the inlet fitting vent opening;

i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;

j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:

i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and

ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;

k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and

l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.

2. Materials used to construct or manufacture septic tanks.

a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:

i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and

ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.

b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.

c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic Tanks, C1227-03," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.

d. A septic tank manufactured using fiberglass or polyethylene shall meet the "Material and Property Standards for Prefabricated Septic Tanks, IAPMO PS 1-2004," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing & Mechanical Officials, 20001 E. Walnut Drive, South Walnut, CA 91789-2825.

3. Conformance with design, materials, and manufacturing requirements.

a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.

b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.

c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).

d. The septic tank sale documentation includes:

i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and

ii. Instructions for handling and installing the septic tank.

4. The septic tank's daily design flow is determined as follows:

a. For a single family dwelling:

i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow			
Number of Bedrooms	**Fixture Count**	**Minimum Design Liquid Capacity (gallons)**	**Design Flow (gal/day)**
1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600
4	28 or less	1250	600
	More than 28	1500	750
5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

ii. Fixture count is determined as follows:

Residential Fixture Type	Fixture Units	Residential Fixture Type	Fixture Units
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3
Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.

c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.

5. The following requirements regarding new or replacement septic tank installation apply:
   a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;
   b. A septic tank installed under concrete or pavement has the required access openings extended to grade;
   c. A septic tank effluent filter is installed on the septic tank. The filter shall:
      i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
      ii. Be constructed of materials that are resistant to corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and
   d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.
      i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:
         (1) After 24 hours, the tank is refilled to the invert, if necessary;
         (2) The initial water level and time is recorded; and
         (3) After one hour, water level and time is recorded.
      ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

Historical Note

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

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:
1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other wastes. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
   a. "M" is the number of meals per peak hour;

b. "F" is the waste flow rate from Table 1, Unit Design Flows.
c. "T" is the estimated retention time:
i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
ii. Single service kitchen with utensil wash disposal: 1.5 hours;
d. "S" is the estimated storage factor:
i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
iv. Single service kitchen, 1.5;

4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
a. "M" is the number of machines;
b. "C" is the machine cycles per hour (assume 2);
c. "F" is the waste flow rate from Table 1, Unit Design Flows;
d. "T" is the estimated retention time (assume 2); and
e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

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

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

B. Within six months before the date of property transfer, the person who is transferring a property served by an on-site wastewater treatment facility shall retain an inspector to perform a transfer of ownership inspection of the on-site wastewater treatment facility who meets the following qualifications:
1. Possesses working knowledge of the type of facility and the inspection process;
2. Holds a certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section by July 1, 2006; and
3. Holds a license in one of the following categories:
a. An Arizona-registered engineer;
b. An Arizona-registered sanitarian;
c. An owner of a vehicle with a human excreta collection and transport license issued under 18 A.A.C. 13, Article 11 or an employee of the owner of the vehicle;
d. A contractor licensed by the Registrar of Contractors in one of the following categories:
i. Residential license B-4 or C-41;
ii. Commercial license A, A-12, or L-41; or
iii. Dual license KA or K-41;
e. A wastewater treatment plant operator certified under 18 A.A.C 5, Article 1; or
f. A person qualifying under another category designated by the Department.

C. The inspector shall complete a Report of Inspection on a form approved by the Department, sign it, and provide it to the person transferring the property. The Report of Inspection shall:
1. Address the physical and operational condition of the on-site wastewater treatment facility and describe observed deficiencies and repairs completed, if any;
2. Indicate that each septic tank or other wastewater treatment container on the property was pumped or otherwise serviced to remove, to the maximum extent possible, solid, floating, and liquid waste accumulations, or that pumping or servicing was not performed for one of the following reasons:
a. A Discharge Authorization for the on-site wastewater treatment facility was issued and the facility was put into service within 12 months before the transfer of ownership inspection,
b. Pumping or servicing was not necessary at the time of the inspection based on the manufacturer's written operation and maintenance instructions, or
c. No accumulation of floating or settled waste was present in the septic tank or wastewater treatment container; and
3. Indicate the date the inspection was performed.

D. Before the property is transferred, the person transferring the property shall provide to the person to whom the property is transferred:
1. The completed Report of Inspection; and
2. Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment facility.

E. The person to whom the property is transferred shall complete a Notice of Transfer on a form approved by the Department and send the form with the applicable fee specified in 18 A.A.C. 14 within 15 calendar days after the property transfer to:
1. The Department for transfer of a property with an on-site wastewater treatment facility for which construction was completed before January 1, 2001; or
2. The health or environmental agency delegated by the Director to administer the on-site wastewater treatment facility program for transfer of a property with an on-site wastewater treatment facility constructed on or after January 1, 2001.

F. If the Department issued a Discharge Authorization for the on-site wastewater treatment facility but the facility was not put into service before the property transfer, an inspection of the facility is not required and the transferee shall complete the Notice of Transfer form as specified in subsection (E).

G. Effective date.
1. The owner of an on-site wastewater treatment facility operating under a Type 4 General Permit shall comply with this Section by November 12, 2005.
2. The owner of any on-site wastewater treatment facility other than a facility identified in subsection (G)(1) shall comply with this Section by July 1, 2006.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2002 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A317. Nitrogen Management Area

A. The Director may designate a new Nitrogen Management Area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes and not covered under an individual permit, modify the boundaries or requirements of a Nitrogen Management Area, or rescind designation of a Nitrogen Management Area.
1. If existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of the Aquifer Water Quality Standard for nitrate at a point or points of current or reasonably foreseeable use of the aquifer, the Director shall use the following criteria to determine whether to designate the area as a Nitrogen Management Area:
   a. Population of the area;
   b. The degree to which the area is unsewered;
   c. Gross areal nitrogen loading, calculated as the amount of nitrogen discharged into the subsurface by use of on-site wastewater treatment facilities, divided by the land area under consideration for designation as a Nitrogen Management Area;
   d. Population growth rate of area;
   e. Existing contamination of groundwater by nitrogen species;
   f. Existing and potential impact to groundwater by sources of nitrogen other than on-site wastewater treatment facilities;
   g. Characteristics of the vadose zone and aquifer;
   h. Location, number, and areal extent of existing and potential sources of nitrogen;
   i. Location and characteristics of existing and potential drinking water supplies; and
   j. Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.
2. The Director may modify the boundaries or requirements of a Nitrogen Management Area or rescind designation of a Nitrogen Management Area based on:
   a. A material change to one or more criterion specified in subsection (A)(1); or
   b. The adoption by a local agency of a master plan to substantially sewer the area as soon as possible, but with a completion deadline within 10 years, unless a completion deadline of more than 10 years is approved by the Director.

B. Preliminary designation, modification, or rescission.
1. The Director shall provide a report to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the Department's proposed action to designate, modify, or rescind a Nitrogen Management Area as follows:
   a. If the Department proposes to designate a Nitrogen Management Area, the Department shall provide a report discussing each criterion specified in subsection (A)(1).
   b. If the Department proposes to modify the boundaries or requirements of a Nitrogen Management Area or rescind the designation of a Nitrogen Management Area, the Department shall provide a report discussing applicable criteria in subsections (A)(1) and (2).
2. The town, city, county, or sanitary district receiving the Director's report may provide written comments to the Department within 120 days to dispute the factual information presented in the report and supply any information supporting the comments.
3. The Director shall evaluate the comments and supporting information obtained under subsection (B)(2) and either designate, modify, or rescind the Nitrogen Management Area or withdraw the proposal.

C. Final designation.
1. If the Director designates or modifies the Nitrogen Management Area, the Department shall:
   a. Issue or modify the Nitrogen Management Area designation and any special provisions established for the area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes but not covered under an individual permit. The Department shall provide notice to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the determination;
   b. Maintain the designation and a map showing the boundaries of the Nitrogen Management Area at the Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, Arizona 85007 and on the Department's web site at www.azdeq.gov; and
   c. Provide, upon request, a copy of the Nitrogen Management Area designation and a map of the area.
2. If the Director withdraws the preliminary Nitrogen Management Area designation or rescinds the Nitrogen Management Area designation, the Director shall issue a determination stating the decision and post it on the Department's web site at www.azdeq.gov.

D. Nitrogen Management Area requirements. Within a Nitrogen Management Area:
1. The Department shall issue a Construction Authorization, under R18-9-A301(D)(1)(c), for an on-site wastewater treatment facility only if the applicant proposes, in the Notice of Intent to Discharge, to employ one or more of the technologies allowed under R18-9-E302 through R18-9-E322 that achieves a discharge level containing not more than 15 mg/l of total nitrogen.
2. An agricultural operation shall use the best control measure necessary to reduce nitrogen discharge when implementing the best management practices developed under 18 A.A.C. 9, Article 4. The Director may require the owner or operator to reassess the performance of the impoundment liner systems constructed under R18-9-403 before November 12, 2005.
3. A person shall comply with any special provision established for the Nitrogen Management Area, as applicable, for the person's facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

A. A 1.01 General Permit allows any discharge of wash water from a sand and gravel operation, placer mining operation, or other similar activity, including construction, foundation, and underground dewatering, if only physical processes are employed and only hazardous substances at naturally occurring concentrations in the sand, gravel, or other rock material are present in the discharge.

B. A 1.02 General Permit allows any discharge from hydrostatic tests of a drinking water distribution system and pipelines not previously used, if all the following conditions are met:
1. The quality of the water used for the test does not exceed an Aquifer Water Quality Standard or for non-drinking

water pipelines, if reclaimed water is used, the reclaimed water meets Class A+ Reclaimed Water Quality Standards under A.A.C. R18-11-303 or Class B+ Reclaimed Water Quality Standards under A.A.C. R18-11-305;
2. The discharge is not to a water of the United States, unless the discharge is under an AZPDES permit; and
3. The test site is restored to its natural grade.

C. A 1.03 General Permit allows any discharge from hydrostatic tests of a pipeline, tank, or appurtenance previously used for transmission of fluid, other than those previously used for drinking water distribution systems, if all the following conditions are met:
1. All liquid discharge is contained in an impoundment lined with flexible geomembrane. The liquid is evaporated or removed from the impoundment and taken to a treatment works or landfill authorized to accept the material within:
   a. 60 days of the hydrostatic test if the liner is 10 mils, or
   b. 180 days of the hydrostatic test if the liner is 30 mils or greater;
2. The liner is placed over a layer, at least 3 inches thick, of well-sorted sand or finer grained material, or over an underliner that provides protection equal to or better than sand or finer grained material and the calculated seepage is less than 550 gallons per acre per day;
3. The liner is removed and disposed of at an approved landfill unless the liner can be reused at another test location without a reduction in integrity;
4. The test site is restored to its natural grade; and
5. If the test waters are removed using a method not specified in subsection (C)(1), including a discharge under an AZPDES permit, the test waters meet Aquifer Water Quality Standards and the specific method is approved by the Department before the discharge.

D. A 1.04 General Permit allows any discharge from a facility that, for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well if the discharge is to the same aquifer in approximately the same location from which the water supply was originally withdrawn, or the discharge is under an AZPDES permit.

E. A 1.05 General Permit allows a discharge to an injection well, surface impoundment, and leach line only if the discharge is filter backwash from a potable water treatment system, condensate from a refrigeration unit, overflows from an evaporative cooler, heat exchange system return water, or swimming pool filter backwash and the discharge is less than 1000 gallons per day. The 1.05 General Permit allows a discharge of those sources to a navigable water if the discharge is authorized by an AZPDES permit.

F. A 1.06 General Permit allows the burial of mining industry off-road motor vehicle waste tires at the mine site in a manner consistent with the cover requirements in R18-13-1203.

G. A 1.07 General Permit allows the operation of dockside facilities and watercraft if the following conditions are met:
1. Docks that service watercraft equipped with toilets provide sanitary facilities at dockside for the disposal of sewage from watercraft toilets. No wastewater from sinks, showers, laundries, baths, or other plumbing fixtures at a dockside facility is discharged into waters of the state;
2. Docks that service watercraft have conveniently located toilet facilities for men and women;
3. No boat, houseboat, or other type of watercraft is equipped with a marine toilet constructed and operated to discharge sewage directly or indirectly into a water of the state, nor is any container of sewage placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of the state by a person;
4. Watercraft with marine toilets constructed to allow sewage to be discharged directly into waters of the state are locked and sealed to prevent usage. Chemical or other type marine toilets with approved storage containers are permitted if dockside disposal facilities are provided; and
5. No bilge water or wastewater from sinks, showers, laundries, baths, or other plumbing fixtures on houseboats or other watercraft is discharged into waters of the state.

H. A 1.08 General Permit allows for any earth pit privy, fixed or transportable chemical toilet, incinerator toilet or privy, or pail or can-type privy if allowed by a county health or environmental department under A.R.S. Title 36 or a delegation agreement under A.R.S. § 49-107.

I. A 1.09 General Permit allows:
1. The operation of:
   a. A sewage treatment facility with flows less than 20,000 gallons per day and approved by the Department before January 1, 2001, and
   b. An on-site wastewater treatment facility with flows less than 20,000 gallons per day operating before January 1, 2001;
2. The person who owns or operates a facility under subsections (I)(1)(a) or (b) to operate the facility if the following conditions are met:
   a. The discharge from the facility does not cause or contribute to a violation of a water quality standard;
   b. The owner or operator does not expand the facility to accommodate flows above the design flow or 20,000 gallons per day, whichever is less;
   c. The facility only treats typical sewage;
   d. The facility does not treat flows from commercial operations using hazardous substances or creating hazardous wastes, as defined in A.R.S. § 49-921(5);
   e. The discharge from the facility does not create any environmental nuisance condition listed in A.R.S. § 49-141; or
   f. The owner or operator does not alter the treatment or disposal characteristics of the original facility, except as allowed under R18-9-A309(A)(9)(a).

J. A 1.10 General Permit allows the operation of a sewage collection system installed before January 1, 2001 that serves downstream from the point where the daily design flow is 3000 gallons per day or that includes a manhole, force main, or lift station serving more than one dwelling regardless of flow, if:
1. The system complies with the performance standards in R18-9-E301(B),
2. No sewage is released from the sewage collection system to the land surface, and
3. The system is not operating under the 2.05 General Permit.

K. A 1.11 General Permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following are met:
1. The system does not cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4;
2. No sewage is released from the sewage collection system to the land surface;

3. No environmental nuisance condition listed in A.R.S. § 49-141 is created;
4. The system does not include a manhole, force main, or lift station serving more than one dwelling;
5. Applicable local administrative requirements for review and approval of design and construction are followed;
6. The performance standards specified in R18-9-E301(B) are met using:
   a. Local building and construction codes,
   b. Relevant design and construction standards specified in R18-9-E301, and
   c. Appropriate operation and maintenance;
7. The system flows directly into one of the following downstream facilities:
   a. An on-site wastewater treatment facility;
   b. A sewage treatment facility operating under an individual permit; or
   c. A sewage collection system operating under a 1.10, 2.05, or 4.01 General Permit; and
8. The system is not operating under a 2.05 General Permit.

L. A 1.12 General Permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met:
1. The person holds an AZPDES Construction General Permit authorizing the concrete washout activities;
2. The Stormwater Pollution Prevention Plan required by the Construction General Permit issued according to 18 A.A.C. 9, Article 9, Part C, for the construction activity addresses the concrete washout activities;
3. The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;
4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;
5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;
6. The impoundment is designed and operated to maintain adequate freeboard to prevent overflow or discharge of wastewater;
7. The concrete washout wastewater from any wash pad is routed to the impoundment;
8. The impoundment receives only concrete washout wastewater;
9. The annual average daily flow of wastewater to the impoundment is less than 3000 gallons per day; and
10. The following closure requirements are met.
    a. The facility is closed by removing and appropriately disposing of any liquids remaining in the impoundment,
    b. The area is graded to prevent ponding of water, and
    c. Closure activities are completed before filing of the Notice of Termination under the AZPDES Construction General Permit.

Historical Note

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

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. A 2.01 General Permit allows for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation has concluded that:
   a. Analytical results from sampling the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediments that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5-foot increments starting from 5 feet below ground surface and extending to 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of representative soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance;
3. Design information to demonstrate that the requirements in subsection (C) are satisfied; and
4. A copy of the Best Management Practices Plan described in subsection (D)(5).

C. Design requirements. An applicant shall:
1. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
2. Clearly mark the drywell “Stormwater Only” on the surface grate or manhole cover;
3. Locate the bottom of the drywell hole at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to at least 10 feet above the elevation of saturated conditions before constructing the drywell in the borehole;
4. Ensure that the drywell design or drainage area design includes a method to remove, intercept, or collect pollutants that may be present at the operation with the potential to reach the drywell. The applicant may include a flow control or pretreatment device, such as an interceptor, sump, or another device or structure designed to remove, intercept, or collect pollutants. The applicant may use flow control or pretreatment devices listed under R18-9-C304(D)(1) or (2) to satisfy the design requirements of this subsection;
5. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey; and

6. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns, the location of floor drains and French drains plumbed to the drywell, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas.

D. Operational and maintenance requirements.

1. A permittee shall operate the drywell only for the disposal of stormwater. The permittee shall not release industrial process waters or wastes in the drywell or drywell retention basin drainage area.
2. The permittee shall implement a Best Management Practices Plan for operation of the drywell and control of pollutants in the drywell drainage area.
3. The permittee shall keep the Best Management Practices Plan on-site or at the closest practical place of work and provide the plan to the Department upon request.
4. The permittee may substitute any Spill Prevention Containment and Control Plan, facility response plan, or an AZPDES Stormwater Pollution Prevention Plan that meets the requirements of this subsection for a Best Management Practices Plan. If the permittee submits a substitute for the Best Management Practices Plan, the permittee shall identify the conditions within the substitute plan that satisfy the requirements of subsection (D).
5. The Best Management Practices Plan shall include:
   a. A site plan showing surface drainage patterns and the location of floor drains, water supply, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas. The site plan shall show surface grading details designed to prevent drainage and spills of hazardous substances from leaving the drainage area and entering the drywell;
   b. A design plan showing details of drywell design and drainage design, including flow control or pretreatment devices, such as interceptors, sumps, and other devices and structures designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell;
   c. Procedures to prevent and contain spills and minimize discharges to the drywell;
   d. Operational practices that include routine inspection and maintenance of the drywell and associated pretreatment and flow-control devices, periodic inspection of waste storage facilities, and proper handling of hazardous substances to prevent discharges to the drywell. Routine inspection and maintenance shall include:
      i. Replacing the adsorbent material in the skimmers, if installed, when the adsorbent capacity is reached;
      ii. Maintaining valves and associated piping for a drywell injection and treatment system;
      iii. Maintaining magnetic caps and mats, if installed;
      iv. Removing sludge from the oil/water separator, if installed, and replacing the filtration or adsorption material to maintain treatment capacity;
      v. Removing sediment from the catch basin inlet filters and retention basin to maintain required storage capacity; and
   e. Procedures for periodic employee training on practices required by the Best Management Practices Plan specific to the drywell and prevention of unauthorized discharges.
6. The permittee shall implement waste management practices to prohibit and prevent discharges, other than those exempted in A.R.S. § 49-250(B)(23), in the drywell drainage area, including:
   a. Maintaining an up-to-date inventory of generated wastes and waste products;
   b. Disposing or recycling all wastes or solvents through a company licensed to handle the material;
   c. Where possible, collecting and storing waste in waste receptacles located outside the drywell drainage area. If the permittee collects and stores the waste within the drywell drainage area, the permittee shall collect and store the waste in properly designed receptacles; and
   d. Using a licensed waste hauler to transport waste offsite to a permitted waste disposal facility.

E. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and the flow-control and treatment systems, and remove sediment annually or when 25 percent of the effective capacity is filled, whichever comes first, to restore capacity and ensure that the drywell functions properly. The permittee shall characterize the sediments that are removed from the drywell after inspection and dispose of the sediments according to local, state, and federal requirements; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that the treatment system is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

F. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, the location of water supply wells, monitor wells, underground storage tanks, and places where hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including any flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and methods proposed to prevent and contain hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, maintenance, and waste management practices;
5. Drywell sediment waste characteristics and disposal manifest records for sediments removed during routine inspections and maintenance activities; and

6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

G. Spills.
1. In the event of a spill, the permittee shall:
   a. Notify the Department within 24 hours of any spill of hazardous or toxic substance that enters the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of a hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the drywell injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample the soil in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. Based on the results of subsection (G)(1)(d), the Director may require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

H. Closure and decommissioning requirements.
1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

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

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge under R18-9-A301(B), an applicant shall submit the construction and operation specifications used to satisfy the requirements in subsection (C)(1).

C. Design and operational requirements.
1. An applicant shall design, construct, and operate the stockpile so that it does not impound water. An applicant may rely on stormwater run-on controls or facility design features, such as drains, or both.
2. An applicant shall direct storm runoff contacting the stockpile to a mine pit or a facility covered by an individual or general permit.
3. A permittee shall maintain any engineered feature of the facility in good working condition.
4. A permittee shall visually inspect the facility at least quarterly and repair any defect as soon as practical.
5. A permittee shall not add hazardous substances to the stockpiled material.

D. Closure requirements. In addition to the closure requirements in R18-9-A306, the following apply:
1. If an intermediate stockpile covered under a 2.02 General Permit is permanently closed, a permittee shall remove any remaining material, to the greatest extent practical, and regrade the area to prevent impoundment of water.
2. The permittee shall submit a narrative description of closure measures to the Department within 30 days after closure.

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

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

A. A 2.03 General Permit allows for a discharge caused by the performance of tracer studies.
1. The 2.03 General Permit does not authorize the use of any hazardous substance, radioactive material, or any substance identified in A.R.S. § 49-243(I) in a tracer study.
2. A permittee shall complete a single tracer test within two years of the Notice of Intent to Discharge.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A narrative description of the tracer test including the type and amount of tracer used;
2. A Material Safety Data Sheet for the tracer; and
3. Unless the injection or distribution is within the capture zone of an established passive containment system meeting the requirements of A.R.S. § 49-243(G), the following information:
   a. A narrative description of the impacts that may occur if a solution migrates outside the test area, including a list of downgradient users, if any;

b. The anticipated effects and expected concentrations, if possible to calculate; and
c. A description of the monitoring, including types of tests and frequency.

C. Design and operational requirements. A permittee shall:
1. Ensure that injection into a well inside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed the total depth of the influence of the hydrologic sink;
2. Ensure that injection into a well outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed rock fracture pressures during injection of the tracer;
3. Not add a substance to a well that is not compatible with the well's construction;
4. Ensure that a tracer is compatible with the construction materials at the impoundment if a tracer is placed or collected in an existing impoundment;
5. For at least two years, monitor quarterly a well that is hydraulically downgradient of the test site for the tracer if a tracer is used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) and less than 85 percent of the tracer is recovered. The permittee may adjust this period with the consent of the Department if the permittee shows that the hydraulic gradient causes the tracer to reach the monitoring point in a shorter or longer period of time;
6. Ensure that a tracer does not leave the site in concentrations distinguishable from background water quality; and
7. Monitor the amount of tracer used and recovered and submit a report summarizing the test and results to the Department within 30 calendar days of test completion.

D. Recordkeeping. A permittee shall retain the following information at the site where the facility is located for at least three years after test completion and make it available to the Department upon request.
1. Test protocols,
2. Material Safety Data Sheet information,
3. Recovery records, and
4. A copy of the report submitted to the Department under subsection (C)(7).

E. Closure requirements.
1. If a tracer was used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G), a permittee shall account for any tracer not recovered through attenuation, modeling, or monitoring.
2. The permittee shall achieve closure immediately following the test, or if the test area is within a pollutant management area defined in an individual permit, at the conclusion of operations.

Historical Note

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

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under the 2.04 General Permit.
2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under the 2.04 General Permit.
3. Definition. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those used for cleaning windshields, but not degreasers, engine cleaners, or similar products.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. Design requirements.
1. An applicant shall:
   a. Include a flow control or pretreatment device identified in subsections (D)(1) or (2), or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
   b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell;
   c. Follow local codes and regulations to meet retention periods for removing standing water;
   d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank;

e. Locate the bottom of the drywell injection pipe at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to a level at least 10 feet above the elevation at which saturated conditions were encountered in the borehole before constructing the drywell in the borehole;
f. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey and record the location on the site plans;
g. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
h. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains and French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas; and
i. Prepare design plans showing details of drywell design and drainage design, including one or a combination of pre-approved technologies described in subsections (D)(1) and (2) designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell.

2. For an existing drywell, an applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the depth of the drywell borehole and injection pipe, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

D. Flow control and pretreatment. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:

1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
   a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;
   b. Raised drywell inlet. The permittee shall:
      i. Raise the drywell inlet at least six inches above the bottom of the retention basin or other storage structure, or install a six-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
      ii. Ensure that the storage capacity is at least 110 percent of the volume of the design storm event required by the local jurisdiction and the estimated volume of a potential motor fuel spill based on the facility's past incident reports or incident reports for other facilities that are similar in design;
   c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or a storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
   d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.
      i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor, or chamber before allowing stormwater to enter the drywell.
      ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.
      iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;
2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.
   a. Catch basin inlet filter. The permittee shall:
      i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell,
      ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe, and
      iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;
   b. Combined settling chamber and an oil/water separator.
      i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.
      ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cut off flow to the drywell inlet.
   c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:
      i. Allow for adequate collection and treatment capacity for solid and liquid separation; and
      ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the applicant shall design a larger collection system with storage capacity.
   d. Passive skimmer.
      i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.
      ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.

E. Operation and maintenance. A permittee shall:
1. Operate the drywell only for the subsurface disposal of stormwater;
2. Remove or treat any motor fuel or hazardous substance spills;
3. Replace the adsorbent material in skimmers, if installed; when the adsorbent capacity is reached;
4. Maintain valves and associated piping;
5. Maintain magnetic caps and mats, if installed;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

F. Inspection. A permittee shall:
1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and in the flow control and treatment systems to ensure that the drywell is functioning properly; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

G. Recordkeeping. A permittee shall maintain, for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:
1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and specific methods proposed for motor fuel and hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, and maintenance;
5. Drywell sediment waste characterization and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

H. Spills.
1. In the event of a spill, a permittee shall:
   a. Notify the Department within 24 hours of any spill of motor fuel or hazardous or toxic substances that enters into the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel or hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. The Director may, based on the results of subsection (H)(1)(d), require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

I. Closure and decommissioning requirements.
1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4096, effective September 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 4544, effective November

12, 2005 (05-3).

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

A. Definition. For purposes of this Section, "imminent and substantial threat to public health or the environment" means when:
1. The volume of a release is more than 2000 gallons; or
2. The volume of a release is more than 50 gallons but less than 2000 gallons and any one of the following apply:
   a. The release entered onto a recognized public area and members of the public were present during the release or before the release was mitigated;
   b. The release occurred on a public or private street and pedestrians were at risk of being splashed by vehicles during the release or before the release was mitigated;
   c. The release entered a perennial stream, an intermittent stream during a time of flow, a waterbody other than an ephemeral stream, a normally dry detention or sedimentation basin, or a drywell;
   d. The release occurred within an occupied building due to a condition in the permitted sewage collection system; or
   e. The release occurred within 100 feet of a school or a public or private drinking water supply well.

B. A 2.05 General Permit allows a permittee to manage, operate, and maintain a sewage collection system under the terms of a CMOM Plan that complies with subsection (D). The Department considers a sewage collection system operating in compliance with an AZPDES permit that incorporates provisions for capacity, management, operation, and maintenance of the system to comply with the provisions of the 2.05 General Permit regardless of whether a Notice of Intent to Discharge for the system was submitted to the Department.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and ownership of any downstream sewage collection system and sewage treatment facility that receives sewage from the applicant's sewage collection system;
2. A map of the service area for which general permit coverage is sought, showing streets and sewage service boundaries for the sewage collection system;
3. A statement indicating that the CMOM Plan is in effect and the principal officer or ranking elected official of the sewage collection system has approved the plan; and
4. A statement indicating whether a local ordinance requires an on-site wastewater treatment facility to hookup to the sewage collection system.

D. CMOM Plan.
1. A permittee shall continuously implement a CMOM Plan for the sewage collection system under the permittee's ownership, management, or operational control. The CMOM Plan shall include information to comply with subsection (E)(1) and instructions on:
   a. How to properly manage, operate, and maintain all parts of the sewage collection system that are owned or managed by the permittee or under the permittee's operational control, to meet the performance requirements in R18-9-E301(B);
   b. How to maintain sufficient capacity to convey the base flows and peak wet weather flow of a 10-year, 24-hour storm event for all parts of the collection system owned or managed by the permittee or under the permittee's operational control;
   c. All reasonable and prudent steps to minimize infiltration to the sewage collection system;
   d. All reasonable and prudent steps to stop all releases from the collection system owned or managed by the permittee or under the permittee's operational control; and
   e. The procedure for reporting releases described in subsection (F).
2. The permittee shall maintain and update the CMOM Plan for the duration of this general permit and make it available for Department and public review.
3. If the Department requests the CMOM Plan and upon review finds that the CMOM Plan is deficient, the Department shall:
   a. Notify the permittee in writing of the specific deficiency and the reason for the deficiency, and
   b. Establish a deadline of at least 60 days to allow the permittee to correct the deficiency and submit the amended provision to the Department for approval.

E. Sewage release response determination. If the sewage collection system releases sewage, the Director shall consider any of the following factors in determining compliance:
1. Sufficiency of the CMOM Plan.
   a. The level of detail provided by the CMOM Plan is appropriate for the size, complexity, and age of the system;
   b. The level of detail provided by the CMOM Plan is appropriate considering geographic, climatic, and hydrological factors that may influence the sewage collection system;
   c. The CMOM Plan provides schedules for the periodic preventative maintenance of the sewage collection system, including cleaning of all reaches of the sewage collection system below a specified pipe diameter.
      i. The CMOM Plan may allow inspection of sewer lines by Closed Circuit Television (CCTV) and postponement of cleaning to the next scheduled cleaning cycle if the CCTV inspection indicated that cleaning of a reach of the sewer is not needed.
      ii. The CMOM Plan may specify inspection and cleaning schedules that differ according to pipe diameter or other characteristics of the sewer;
   d. The CMOM Plan identifies components of the sewage collection system that have insufficient capacity to convey, when properly maintained, the peak wet weather flow of a 10-year, 24-hour storm event. For those identified components, a capital improvement plan exists for achieving sufficient wet weather flow capacity within ten years of the effective date of permit coverage;
   e. The CMOM Plan includes an overflow emergency response plan appropriate to the size, complexity, and age of the sewage collection system considering geographic, climatic, and hydrological factors that may influence the system;
   f. The CMOM Plan establishes a procedure to investigate and enforce against any commercial or industrial entity whose flows to the sewage collection system have caused or contributed to a release;
   g. The CMOM Plan adequately addresses management of flows from upstream sewage collection systems not under the ownership, management, or operational control of the permittee; or

h. Any other factor necessary to determine if the CMOM Plan is sufficient;

2. Compliance with the CMOM Plan.
   a. The permittee's response to releases as established in the overflow emergency response plan, including whether:
      i. Maintenance staff responds to and arrive at the release within the time period specified in the plan;
      ii. Maintenance staff follow all written procedures to remove the cause of the release;
      iii. Maintenance staff contain, recover, clean up, disinfect, and otherwise mitigate the release of sewage; and
      iv. Required notifications to the Department, public health agencies, drinking water suppliers, and the public are provided;
   b. The permittee's activities and timeliness in:
      i. Implementing specified periodic preventative maintenance measures;
      ii. Implementing the capital improvement plan; and
      iii. Investigating and enforcing against an upstream sewage collection system, not under the ownership and operational control of the permittee, if those systems are impediments to the proper management of flows in the permittee's sewage collection system; or
   c. Any other factor necessary to determine CMOM Plan compliance;
3. Compliance with the reporting requirements in subsection (F) and the public notice requirements in subsection (G); or
4. The release substantially endangers public health or the environment.

F. Reporting requirements.
1. Sewage releases.
   a. A permittee shall report to the Department, by telephone, facsimile, or on the applicable notification form on the Department's Internet web site, any release that is an imminent and substantial threat to public health or the environment as soon as practical, but no later than 24 hours of becoming aware of the release.
   b. A permittee shall submit a report to the Department within five business days after becoming aware of a release that is an imminent and substantial threat to public health or the environment. The report shall include:
      i. The location of the release;
      ii. The sewage collection system component from which the release occurred;
      iii. The date and time the release began, was stopped, and when mitigation efforts were completed;
      iv. The estimated number of persons exposed to the release, the estimated volume of sewage released, the reason the release is considered an imminent and substantial threat to public health or the environment if the volume is 2000 gallons or less, and where the release flowed;
      v. The efforts made by the permittee to stop, contain, and clean up the released material;
      vi. The amount and type of disinfectant applied to mitigate any associated public health or environmental risk; and
      vii. The cause of the release or effort made to determine the cause and any effort made to help prevent a future reoccurrence.
   2. Annual report. The permittee shall:
      a. Submit an annual report to the Department postmarked no later than March 1. The report shall:
         i. Tabulate all releases of more than 50 gallons from the permitted sewage collection system;
         ii. Provide the date of any release that is an imminent and substantial threat to public health or the environment; and
         iii. For other reportable releases under subsection (F)(2)(a)(i), provide the information in subsection (F)(1)(b);
      b. Provide an amended map of the service area boundaries if, during the calendar year, any area was removed from the service area or if any area was added to the service area that the permittee wishes to include under the 2.05 General Permit and associated CMOM Plan.

G. Public notice. The permittee shall:
1. Post a notice, in a format approved by the Department, at any location where there were more than three reportable releases under subsection (F)(2)(a) from the sewage collection system during any 12-month period,
2. Include within the notice a warning that identified the releases or potential releases at the location and potential health hazards from any release,
3. Post the notice at a place where the public is likely to come in contact with the release, and
4. Maintain the postings until no releases from the location are reported for at least 12 months from the last release and the permittee followed all actions specified in the CMOM Plan to prevent releases at that location during the period.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water

A. A 2.06 General Permit allows a fish hatchery to discharge to a perennial surface water if Aquifer Water Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall provide:
1. The applicable AZPDES permit number;
2. A description of the facility; and
3. A laboratory report characterizing the wastewater discharge, including the analytical results for all numeric Aquifer Water Quality Standards under R18-11-406.

C. Design and operational requirements. An applicant shall:
1. Collect a representative sample of the discharge to demonstrate compliance with all numeric Aquifer Water Quality Standards and make the results available to the Department upon request, and
2. Maintain a record of the average and daily flow rates and make it available to the Department upon request.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART D. TYPE 3 GENERAL PERMITS

R18-9-D301. 3.01 General Permit: Lined Impoundments

A. A 3.01 General Permit allows a lined surface impoundment and a lined secondary containment structure. A permittee shall:
1. Ensure that inflow to the lined surface impoundment or lined secondary containment structure does not contain organic pollutants identified in A.R.S. § 49-243(I);
2. Ensure that inflow to the lined surface impoundment or lined secondary containment structure is from one or more of the following sources:
   a. Evaporative cooler overflow, condensate from a refrigeration unit, or swimming pool filter backwash;
   b. Wastewater that does not contain sewage, temporarily stored for short periods of time due to process upsets or rainfall events, provided the wastewater is promptly removed from the facility as required under subsection (D)(5). Facilities that continually contain wastewater as a normal function of facility operations are not covered under this general permit;
   c. Stormwater runoff that is not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act;
   d. Emergency fire event water;
   e. Wastewater from air pollution control devices at asphalt plants if the wastewater is routed through a sedimentation trap or sump and an oil/water separator before discharge;
   f. Non-contact cooling tower blowdown and non-contact cooling water, except discharges from electric generating stations with more than 100 megawatts generating capacity;
   g. Boiler blowdown;
   h. Wastewater derived from a potable water treatment system, including clarification sludge, filtration backwash, lime and lime-softening sludge, ion exchange backwash, and reverse osmosis spent waste;
   i. Wastewater from food washing;
   j. Heat exchanger return water;
   k. Wastewater from industrial laundries;
   l. Hydrostatic test water from a pipeline, tank, or appurtenance previously used for transmission of fluid;
   m. Wastewater treated through an oil/water separator before discharge; and
   n. Cooling water or wastewater from food processing.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A listing and description of all sources of inflow;
2. A representative chemical analysis of each expected source of inflow. If a sample is not available before facility construction, a permittee shall provide the chemical analysis of each inflow to the Department within 60 days of each inflow to the facility;
3. A narrative description of how the conditions of this general permit are satisfied. The narrative shall include a Quality Assurance/Quality Control program for liner installation, impoundment maintenance and repair, and impoundment operational procedures; and
4. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design and installation requirements. An applicant shall:
1. Design and construct surface water controls to:
   a. Ensure that the impoundment or secondary containment structure maintains, using design volume or mechanical systems, normal operating volumes, if any, and any inflow from the 100-year, 24-hour storm event. The facility shall maintain at least 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering the size of the impoundment and meteorologic and other site-specific factors; and
   b. Direct any surface water run-on from the 100-year 24-hour storm event around the facility if not intended for capture by facility;
2. Ensure that the facility design accommodates any significant geologic hazard, addressing static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
3. Ensure that site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound; and
4. Comply with the following impoundment lining requirements:
   a. If a synthetic liner is used, ensure that the liner is at least a 30-mil geomembrane liner or a 60-mil liner if High Density Polyethylene, or an alternative, that the liner's calculated seepage rate is less than 550 gallons per acre per day, and:
      i. Anchor the liner by securing it in an engineered anchor trench;
      ii. Ensure that the liner is ultraviolet resistant if it is regularly exposed to sunlight; and
      iii. Ensure that the liner is constructed of a material that is chemically compatible with the wastewater or impounded solution and is not affected by corrosion or degradation;
   b. If a soil liner is used:
      i. Ensure that it resists swelling, shrinkage, and cracking and that the liner's calculated seepage rate is less than 550 gallons per acre per day;
      ii. Ensure that the soil is at least 1-foot thick and compacted to a uniform density of 95 percent to meet the "Standard Test Method for Laboratory Compaction Characteristics of Soil Using Standard Effect (12,400 ft-lbf/ft^3), D698-00ae1," (2000) published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
      iii. Upon installation, protect the soil liner to prevent desiccation; and
   c. For new facilities, develop and implement a construction Quality Assurance/Quality Control program that addresses site and subgrade preparation,

inspection procedures, field testing, laboratory testing, and final inspection after construction of the liner to ensure functional integrity.

D. Operational requirements. A permittee shall:
1. Maintain sufficient freeboard to manage the 100-year, 24-hour storm event including at least 2 feet of freeboard under normal operating conditions. Management of the 100-year, 24-hour storm event may be through design, pumping, or a combination of both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for damage to the liner and for accumulation of residual material at least monthly. The operator shall conduct an inspection within 72 hours after the facility receives a significant volume of stormwater inflow;
4. Repair damage to the liner by following the Quality Assurance/Quality Control Plan required under subsection (B)(3); and
5. Remove all inflow from the impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.

E. Recordkeeping. A permittee shall maintain at the site, the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The construction Quality Assurance/Quality Control program documentation; and
6. Records of any inflow into the impoundment other than those permitted by this Section.

F. Reporting requirements.
1. If the liner leaks, as evidenced by a drop in water level not attributable to evaporation, or if the berm breaches or an impoundment is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4).

G. Closure requirements. The permittee shall notify the Department of the intent to close the facility permanently. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
1. Remove liquids and any solid residue on the liner and dispose appropriately;
2. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
3. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall define the lateral and vertical extent of contamination and, within 60 days of the exceedance, notify the Department and submit an action plan for achieving clean closure for the Department's approval before implementing the plan;
4. If there is no evidence of holes, tears, or defective seams that could have leaked:
   a. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   b. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
   c. Grade the facility to prevent the impoundment of water; and
5. Notify the Department within 60 days following closure that the action plan was implemented and the closure is complete.

Historical Note

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

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:
1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
   b. The discharge meets one of the following criteria for microbiological contaminants:
      i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of *E. coli* bacteria is not more than 1/100 ml, or
      ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of *E. coli* bacteria is less than 126/100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in A.R.S. § 49-201(19).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A characterization of the discharge, including a representative chemical and biological analysis of expected discharges and all source waters; and
2. The design capacity of any impoundment covered by this general permit.

C. Impoundment design and siting requirements. An applicant shall:
1. Ensure that the depth to the static groundwater table is greater than 20 feet;
2. Not locate the area of discharge immediately above karstic or fractured bedrock, unless the discharge meets the microbial limits specified in subsection (A)(1)(b)(i);
3. Maintain a minimum horizontal setback of 100 feet between the facility and any water supply well;
4. Design and construct an impoundment to maintain, using design volume or mechanical systems, normal operating volumes and any inflow from the 100-year, 24-hour storm event. The applicant shall:

a. Divert any surface water run-on from the 100-year, 24-hour storm event around the facility if not intended for capture by facility design; and
b. Design the facility to maintain 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering meteorological factors, the size of the impoundment, and other site-specific factors; or
c. Discharge to surface water under the conditions of an AZPDES permit; and

5. Manage off-site disposal of sludge according to A.R.S. Title 49, Chapter 4.

D. Operational requirements.

1. Inorganic chemical, organic chemical, and pesticide monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A).
   b. If the concentration of any pollutant exceeds the numeric Aquifer Water Quality Standard, the permittee shall submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency for that pollutant to quarterly.
   c. If, in the quarterly sampling, the condition in subsection (D)(1)(b) continues for two consecutive quarters, the permittee shall submit an application for an individual permit.
2. Microbiological contaminant monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A)(1)(b).
   b. If the concentration of any pollutant exceeds the limits established in subsection (A)(1)(b), the permittee shall submit a report to the Department with a proposal for mitigation and increase monitoring frequency for that pollutant to monthly.
   c. If, in the monthly sampling, the condition in subsection (D)(2)(b) continues for three consecutive months, the permittee shall submit an application for an individual permit.

E. Recordkeeping. A permittee shall maintain at the site, the following information, if applicable for the disposal method, for at least 10 years, and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Water quality data collected under subsection (D);
4. Standard operating procedures; and
5. Records of any discharge other than those identified under subsection (B).

F. Reporting requirements. The permittee shall:

1. Report unauthorized flows into the impoundment to the Department within five days of discovery, and
2. Submit the report required in subsections (D)(1)(b) or (2)(b) within 30 days of receiving the analytical results.

Historical Note

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

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

A. A 3.03 General Permit allows a facility to discharge water from washing vehicle exteriors and vehicle equipment. The 3.03 General Permit does not authorize:

1. Discharge water that typically results from the washing of vehicle engines unless the discharge is to a lined surface impoundment;
2. Direct discharges of sanitary sewage, vehicle lubricating oils, antifreeze, gasoline, paints, varnishes, solvents, pesticides, or fertilizers;
3. Discharges resulting from washing the interior of vessels used to transport fuel products or chemicals, or washing equipment contaminated with fuel products or chemicals; or
4. Discharges resulting from washing the interior of vehicles used to transport mining concentrates that originate from the same mine site, unless the discharge is to a lined surface impoundment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a narrative description of the facility and a design of the disposal system and wash operations.

C. Design, installation, and testing requirements. An applicant shall:

1. Design and construct the wash pad:
   a. To drain and route wash water to a sump or similar sediment-settling structure and an oil/water separator or a comparable pretreatment technology;
   b. Of concrete or material chemically compatible with the wash water and its constituents; and
   c. To support the maximum weight of the vehicle or equipment being washed with an appropriate safety factor;
2. Not use unlined ditches or natural channels to convey wash water;
3. Ensure that a surface impoundment meets the requirements in R18-9-D301(C)(1) through (3). The applicant shall ensure that berms or dikes at the impoundment can withstand wave action erosion and are compacted to a uniform density not less than 95 percent;
4. Ensure that a surface impoundment required for wash water described in subsection (A)(1) meets the design and installation requirements in R18-9-D301(C);
5. If wash water is received by an unlined surface impoundment or engineered subsurface disposal system, the applicant shall:
   a. Ensure that the annual daily average flow is less than 3000 gallons per day;
   b. Maintain a minimum horizontal setback of 100 feet between the impoundment or subsurface disposal system and any water supply well;
   c. Ensure that the bottom of the surface impoundment or subsurface disposal system is at least 50 feet above the static groundwater level and the intervening material does not consist of karstic or fractured bedrock;
   d. Ensure that the wash water receives primary treatment before discharge through, at a minimum, a sump or similar structure for settling sediments or solids and an oil/water separator or a comparable pretreatment technology designed to reduce oil and grease in the wastewater to 15 mg/l or less;
   e. Withdraw the separated oil from the oil/water separator using equipment such as adjustable skimmers, automatic pump-out systems, or level sensing systems to signal manual pump-out; and

f. If a subsurface disposal system is used, design the system to prevent surfacing of the wash water.

D. Operational requirements. The permittee shall:
1. Inspect the oil/water separator before operation to ensure that there are no leaks and that the oil/water separator is in operable condition;
2. Inspect the entire facility at least quarterly. The inspection shall, at a minimum, consist of a visual examination of the wash pad, the sump or similar structure, the oil/water separator, and all surface impoundments;
3. Visually inspect each surface impoundment at least monthly, to ensure the volume of wash water is maintained within the design capacity and freeboard limitation;
4. Repair damage to the integrity of the wash pad or impoundment liner as soon as practical;
5. Maintain the oil/water separator to achieve the operational performance of the separator;
6. Remove accumulated sediments in all surface impoundments to maintain design capacity; and
7. Use best management practices to minimize the introduction of chemicals not typically associated with the wash operations. Only biodegradable surfactant or soaps are allowed. The permittee shall not use products that contain chemicals in concentrations likely to cause a violation of an Aquifer Water Quality Standard at the applicable point of compliance.

E. Monitoring requirements.
1. If wash water is discharged to an unlined surface impoundment or other area for subsurface disposal, the permittee shall monitor the wash water quarterly at the point of discharge for pH and for the presence of C_{10} through C_{32} hydrocarbons using a Department of Health Services certified method.
2. If pH is not between 6.0 and 9.0 or the concentration of C_{10} through C_{32} hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitorings, submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency to monthly.
3. If the condition in subsection (E)(2) persists for three consecutive months, the permittee shall submit, within 90 days, an application for an individual permit.

F. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure; and
3. The Material Safety Data Sheets for the chemicals used in the wash operations and any required monitoring results.

G. Closure requirements. A permittee shall comply with the closure requirements specified in R18-9-D301(G) if a liner has been used. If no liner is used the permittee shall remove and appropriately dispose of any liquids and grade the facility to prevent impoundment of water.

Historical Note

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

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

A. A 3.04 General Permit allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
1. The following discharges are allowed under the 3.04 General Permit:
   a. Seepage from tailing impoundments, unleached rock piles, or process areas;
   b. Process solution temporarily stored for short periods of time due to process upsets or rainfall, provided the solution is promptly removed from the facility as required under subsection (D);
   c. Stormwater runoff not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act; and
   d. Wash water specific to sand and gravel operations not covered by R18-9-B301(A).
2. Facilities that continually contain process solution as a normal function of facility operations are not eligible for coverage under the 3.04 General Permit. If a normal process solution contains a pollutant regulated under A.R.S. § 49-243(I) the 3.04 General Permit does not apply if the pollutant will compromise the integrity of the liner.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A description of the sources of inflow to the facility. An applicant shall include a representative chemical analysis of expected sources of inflow to the facility unless a sample is not available, before facility construction, in which case the applicant shall provide a chemical analysis of solution present in the facility to the Department within 90 days after the solution first enters the facility;
2. Documentation demonstrating that the facility design and operation under subsections (C) and (D) have been reviewed by a mining engineer or an Arizona-registered professional engineer before submission to the Department; and
3. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design, construction, and installation requirements. An applicant shall:
1. Design and construct the impoundment or secondary containment structure as specified under R18-9-D301(C)(1);
2. Ensure that conveyance systems are capable of handling the peak flow from the 100-year storm;
3. Construct the liner as specified in R18-9-D301(C)(4)(a);
4. Develop and implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines. The program shall address site and subgrade preparation, inspection procedures, field testing, laboratory testing, repair of seams during installation, and final inspection of the completed liner for functional integrity;
5. If the facility is located in the 100-year flood plain, design the facility so it is protected from damage or flooding as a result of a 100-year, 24-hour storm event;
6. Design and manage the facility so groundwater does not come into contact with the liner;
7. Ensure that the facility design addresses any significant geologic hazard relating to static and seismic stability.

The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;

8. Ensure that the site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound;
9. Ensure that the liner is anchored by being secured in an engineered anchor trench. If regularly exposed to sunlight, the applicant shall ensure that the liner is ultraviolet resistant; and
10. Use compacted clay subgrade in areas with shallow groundwater conditions.

D. Operational requirements. The permittee shall:

1. Maintain the freeboard required in subsection (C)(1) through design, pumping, or both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for cracks, tears, perforations and residual build-up at least monthly. The operator shall conduct and document an inspection after the facility receives significant volumes of stormwater inflow;
4. Report cracks, tears, and perforations in the liner to the Department, and repair them as soon as practical, but no later than 60 days under normal operating conditions, after discovery of the crack, tear, or perforation;
5. For facilities that temporarily contain a process solution due to process upsets, remove the process solution from the facility as soon as practical, but no later than 60 days after cessation of the upset; and
6. For facilities that temporarily contain a process solution due to rainfall, remove the process solution from the facility as soon as practical.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The Quality Assurance/Quality Control program required under subsection (C)(4); and
6. Records of any unauthorized flows into the impoundment.

F. Reporting requirements.

1. If the liner is breached, as evidenced by a drop in water level not attributable to evaporation, or if the impoundment breaches or is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3).

G. Closure requirements.

1. The permittee shall notify the Department of the intent to close the facility permanently.
2. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
   c. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall, within 60 days notify the Department and submit an action plan for the Department's approval before implementing the plan;
   d. If there is no evidence of holes, tears, or defective seams that could have leaked:
      i. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
      ii. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
      iii. Grade the facility to prevent the impoundment of water; and
3. Notify the Department within 60 days following closure that the action plan has been implemented and the closure is complete.

Historical Note

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

R18-9-D305. 3.05 General Permit: Disposal Wetlands

A. A 3.05 General Permit allows discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the name and individual permit number of the facility providing the reclaimed water.

C. Design requirements. An applicant shall:

1. Ensure that the reclaimed water released into the wetland meets numeric and narrative Aquifer Water Quality Standards for all parameters except for coliform bacteria and is Class A+ reclaimed water. A+ reclaimed water is wastewater that has undergone secondary treatment established under R18-9-B204(B)(1), filtration, and meets a total nitrogen concentration under R18-9-B204(B)(3) and fecal coliform limits under R18-9-B204(B)(4);
2. Maintain a minimum horizontal separation of 100 feet between any water supply well and the maximum wetted area of the wetland;
3. Post signs at points of access and every 250 feet along the perimeter of the wetland stating, "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER. DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol; and
4. Ensure that wetland siting is consistent with local zoning and land use requirements.

D. Operational requirements.

1. A permittee shall manage the wetland to minimize vector problems.

2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. Management of flows into and through the wetland to minimize erosion and damage to vegetation;
   c. Management of visitation and use of the wetlands by the public;
   d. A management plan for vector control;
   e. A plan or criteria for enhancing or supplementing of wetland vegetation; and
   f. Management of shallow groundwater conditions on existing on-site wastewater treatment facilities.
3. The permittee shall perform quarterly inspections to review bank integrity, erosion evidence, the condition of signage and vegetation, and correct any problem noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the wetland, including the volume of inflow to the wetland in the past year.

Historical Note

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

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

A. A 3.06 General Permit allows the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a design, including information on the quality of the influent, the treatment process to be used, the expected quality of the wastewater, and the nutrients and other constituents that will indicate wetland performance.

C. Design, construction, and installation. An applicant shall:
1. Ensure that:
   a. Water released into the treatment wetland is compatible with construction materials and vegetation;
   b. Water released from the treatment wetland:
      i. Meets numeric Aquifer Water Quality Standards,
      ii. Has a pH between 6.0 and 9.0, and
      iii. Has a sulfate concentration less than 1000 mg/l; and
   c. Water released from the treatment wetland complies with and is released under an individual permit and an AZPDES Permit, if required;
2. Construct the treatment wetland with a liner, using a low-hydraulic conductivity synthetic liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that, if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
3. Design the treatment wetland for optimum:
   a. Sizing appropriate for the anticipated treatment,
   b. Cell configuration,
   c. Vegetative species composition, and
   d. Berm configuration;
4. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
5. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table; and
6. If public access to the treatment wetland is anticipated or encouraged, post signs at points of access and every 250 feet along the perimeter of the treatment wetland stating, "CAUTION. THESE WETLANDS CONTAIN MINE DRAINAGE WATER. DO NOT DRINK." The permittee shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol.

D. Operational requirements.
1. The permittee shall monitor the water leaving the treatment wetlands at least quarterly for the standards specified in subsection (C)(1)(b). Monitoring shall include nutrients or other constituents used as indicators of treatment wetland performance.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the treatment wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address problems, including treatment performance, wash-out and vegetation die-off, and a plan to apply for an individual permit if the treatment wetland is unable to achieve the treatment standards in subsection (C)(1)(b) on a continued basis;
   c. Management of flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.
3. The permittee shall perform quarterly inspections to review the bank and liner integrity, erosion evidence, and the condition of signage and vegetation, and correct any problems noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and

2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements.
1. If preliminary laboratory results indicate that the quality of the water leaving the treatment wetlands does not meet the standards specified in subsection (C)(1)(b), the permittee may request that the laboratory re-analyze the sample before reporting the results to the Department. The permittee shall:
   a. Conduct verification sampling within 15 days of receiving final laboratory results,
   b. Conduct verification sampling only for parameters that are present in concentrations greater than the standards specified in subsection (C)(1)(b), and
   c. Notify the Department in writing within five days of receiving final laboratory results.
2. If the final laboratory result confirms that the quality of the water leaving the treatment wetlands does not meet the standards in subsection (C)(1)(b), the permittee shall implement the contingency plan required by subsection (D)(2)(b) and notify the Department that the plan is being implemented.
3. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland, including the volume of inflow to the treatment wetland in the past year.

Historical Note

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

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

A. A 3.07 General Permit allows constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and individual permit number of any facility that provides the reclaimed water to the treatment wetland;
2. The name and individual permit number of any facility that receives water released from the treatment wetland;
3. The design of the treatment wetland construction and management project, including information on the quality of the influent, the treatment process, and the expected quality of the wastewater;
4. A Best Management Practices Plan that includes:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address any problem, including treatment performance, wash-out, and vegetation die-off;
   c. A management plan for flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.

C. Design requirements. An applicant shall:
1. Release water from the treatment wetland under an individual permit and an AZPDES permit, if required. The applicant shall release water from the treatment wetland only to a direct reuse site if the site is permitted to receive reclaimed water of the quality generated under the individual permit specified in subsection (B)(1);
2. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
3. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table;
4. Maintain a minimum horizontal separation of 100 feet between a water supply well and the maximum wetted area of the treatment wetland;
5. Maintain the setbacks specified in R18-9-B201(I) for no noise, odor, or aesthetic controls between the property boundary at the site and the maximum wetted area of the treatment wetland;
6. Fence the treatment wetland area to prevent unauthorized access;
7. Post signs at points of access stating "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER, DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol;
8. Construct the treatment wetland with a liner using low hydraulic conductivity liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
9. Calculate the size and depth of the treatment wetland so that the rate of flow allows adequate treatment detention time. The applicant shall design the treatment wetland with at least two parallel treatment cells to allow for efficient system operation and maintenance;
10. Ensure that the treatment wetland vegetation includes cattails, bulrush, common reed, or other species of plants with high pollutant treatment potential to achieve the intended water quality identified in subsection (B)(3); and
11. Ensure that construction and operation of the treatment wetlands is consistent with local zoning and land use requirements.

D. Operational requirements. The permittee shall:
1. Implement the Best Management Practices Plan approved under subsection (B);
2. Monitor wastewater leaving the treatment wetland to ensure that discharge water quality meets the expected wastewater quality specified in subsection (B)(3). The permittee shall ensure that analyses of wastewater samples are conducted by a laboratory certified by the Department of Health Services, following the Department's Quality Assurance/Quality Control requirements;

3. Follow the prescribed measures as required in the contingency plan under subsection (B)(4)(b) and submit a written report to the Department within five days if verification sampling demonstrates that an alert level or discharge limit is exceeded;
4. Inspect the treatment wetlands at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation, and correct any problem discovered; and
5. Ensure that the treatment wetland is operated by a certified operator under 18 A.A.C. 5, Article 1.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland including the volume of inflow to the treatment wetland in the past year.

Historical Note

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

PART E. TYPE 4 GENERAL PERMITS

R18-9-E301. 4.01 General Permit: Sewage Collection Systems

A. A 4.01 General Permit allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction as follows:
1. A sewage collection system or portion of a sewage collection system that serves downstream from the point where the daily design flow is 3000 gallons per day based on Table 1, Unit Design Flows, except a gravity sewer line conveying sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow;
2. A sewage collection system that includes a manhole; or
3. A sewage collection system that includes a force main or lift station serving more than one dwelling.

B. Performance. An applicant shall design, construct, and operate a sewage collection system so that the sewage collection system:
1. Provides adequate wastewater flow capacity for the planned service area;
2. Minimizes sedimentation, blockage, and erosion through maintenance of proper flow velocities throughout the system;
3. Prevents releases of sewage to the land surface through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system;
4. Protects water quality through minimization of exfiltration losses from the system;
5. Provides for adequate inspection, maintenance, testing, visibility, and accessibility;
6. Maintains system structural integrity; and
7. Minimizes septic conditions in the sewage collection system.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information:
1. A statement on a form approved by the Director, signed by the owner or operator of the sewage treatment facility that treats or processes the sewage from the proposed sewage collection system.
   a. The statement shall affirm that the additional volume of wastewater delivered to the facility by the proposed sewage collection system will not cause any flow or effluent quality limits of the individual permit for the facility to be exceeded.
   b. If the facility is classified as a groundwater protection permit facility under A.R.S. § 49-241.01(C), or if no flow or effluent limits are applicable, the statement shall affirm that the design flow of the facility will not be exceeded;
2. If the proposed sewage collection system delivers wastewater to a downstream sewage collection system under different ownership or control, a statement on a form approved by the Director, signed by the owner or operator of the downstream sewage collection system, affirming that the downstream system can maintain the performance required by subsection (B) when receiving the increased flows;
3. A general site plan showing the boundaries and key aspects of the project;
4. Construction quality drawings that provide overall details of the site and the engineered works comprising the project including:
   a. The plans and profiles for all sewer lines, manholes, force mains, depressed sewers, and lift stations with sufficient detail to allow Department verification of design and performance characteristics;
   b. Relevant cross sections showing construction details and elevations of key components of the sewage collection system to allow Department verification of design and performance characteristics, including the slope of each gravity sewer segment stated as a percentage; and
   c. Drainage features and controls, and erosion protection as applicable, for the components of the project; and
   d. Horizontal and vertical location of utilities within the area affected by the sewer line construction;
5. Documentation of design flows for significant components of the sewage collection system and the basis for calculating the design flows;
6. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department. The applicant may submit the drawings in a Department-approved electronic format; and
7. Design documents, including plans, specifications, drawings, reports, and calculations that are signed, dated, and sealed by an Arizona-registered professional engineer. The designer shall use good engineering judgment by following engineering standards of practice, and rely on appropriate engineering methods, calculations, and guidance.

D. Design requirements.
1. General Provisions. An applicant shall design and construct a new sewage collection system or an expansion of an existing sewage collection system involving new construction, according to the requirements of this general permit. An applicant shall:
   a. Base design flows for components of the system on unit flows specified in Table 1, Unit Design Flows.
   b. Design gravity sewer lines and all other sewage collection system components, including, manholes,

force mains, lift stations, depressed sewers, and appurtenant devices and structures to accommodate maximum sewage flows as follows:

i. Any point in a sewer main when flowing full can accommodate a peak wet weather flow calculated by multiplying the sum of the upstream sources of flow from Table 1, Unit Design Flows by a dry weather peaking factor based on upstream population, as tabulated below, and adding a wet weather infiltration and inflow rate based on either a percentage of peak dry weather flow or a gallons per acre rate of flow;

Upstream Population	Dry Weather Peaking Factor
100	3.62
200	3.14
300	2.90
400	2.74
500	2.64
600	2.56
700	2.50
800	2.46
900	2.42
1000	2.38
1001 to 10,000	$PF = (6.330 \times p^{-0.231}) + 1.094$
10,001 to 100,000	$PF = (6.177 \times p^{-0.233}) + 1.128$
More than 100,000	$PF = (4.500 \times p^{-0.174}) + 0.945$
PF = Dry Weather Peaking Factor p = Upstream Population	

ii. For a lift station serving less than 600 single family dwelling units (d.u.), use either of the following methods to size the pumps for peak dry weather flow in gallons per minute and add an allowance for wet weather flow and infiltration:

(1) Peak dry weather flow = $17 \text{ d.u.}^{0.42}$, or

(2) Peak dry weather flow = $11.2 (\text{population})^{0.42}$

iii. If justified by the applicant, the Department may accept lower unit flow values in the served area due to significant use of low-flow fixtures, hydrographs of actual flows, or other factors;

c. Use the "Uniform Standard Specifications for Public Works Construction" (revisions through 2004) and the "Uniform Standard Details for Public Works Construction" (revisions through 2004) published by the Maricopa Association of Governments, and the "Standard Specifications for Public Improvements," (2003 Edition), and "Standard Details for Public Improvements," (2003 Edition), published jointly by Pima County Wastewater Management and the City of Tucson, as the applicable design and construction criteria, unless the Department approves alternative design standards or specifications. An applicant in a county other than Maricopa and Pima shall use design and construction criteria from either the Maricopa Association of Governments or the Pima County Wastewater Management and the City of Tucson for the facility unless alternative criteria are designated by the Department.

i. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material.

ii. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the Maricopa Association of Governments, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona 85003, or on the web at http://www.mag.maricopa.gov/archive/Newpages/on-line.htm; or from Pima County Wastewater Management, 201 N. Stone Avenue, Tucson, Arizona 85701-1207, or on the web at http://www.pima.gov/wwm/stddet;

d. Ensure that sewage collection system components are separated from drinking water distribution system components as specified in 18 A.A.C. 5, Article 5;

e. Ensure that sewage collection system components are separated from reclaimed water system components as specified in 18 A.A.C. 9, Article 6; and

f. Request review and approval of an alternative to a design feature specified in this Section by following the requirements in R18-9-A312(G).

2. Gravity sewer lines. An applicant shall:

a. Ensure that any sewer line that runs between manholes, if not straight, is of constant horizontal curvature with a radius of curvature not less than 200 feet;

b. Cover each sewer line with at least 3 feet of earth cover meeting the requirements of subsection (D)(2)(h). The applicant shall:

i. Include at least one note specifying this requirement in construction plans;

ii. If site-specific limitations prevent 3 feet of earth cover, provide the maximum cover attainable, construct the sewer line of ductile iron pipe or other design of equivalent or greater tensile and compressive strength, and note the change on the construction plans; and

iii. Ensure that the design of the pipe and joints can withstand crushing or shearing from any expected static and live load to protect the structural integrity of the pipe. Construction plans shall note locations requiring these measures;

c. If sewer lines cross or are constructed in floodways;

i. Place the lines at least 2 feet below the level of the 100-year storm scour depth and calculated 100-year bed degradation and construct the lines using ductile iron pipe or pipe with equivalent tensile strength, compressive strength, shear resistance, and scour protection.

ii. If it is not possible to maintain the 2 feet of clearance specified in subsection (D)(2)(c)(i), using the process described in R18-9-A312(G), provide a design that ensures that the sewer line will withstand any lateral and vertical load for the scour and bed degradation conditions specified in subsection (D)(2)(c)(i);

iii. Ensure that sewer lines constructed in a floodway extend at least 10 feet beyond the boundary of the 100-year storm scouring;

iv. If a sewer line is constructed in a floodway and is longer than the applicable maximum manhole spacing distance in subsection (D)(3)(a), using the process described in R18-9-A312(G), provide a design that ensures the performance standards in subsection (B) are met; and
v. Note locations requiring these measures on the construction plans;

d. Ensure that each sewer line is 8 inches in diameter or larger except the first 400 feet of a dead end sewer line with no potential for extension may be 6 inches in diameter if the design flow criteria specified in subsections (D)(1)(a) and (D)(1)(b) are met and the sewer line is installed with a slope sufficient to achieve a velocity of at least 3 feet per second when flowing full. If the line is extended, the applicant seeking the extension shall replace the entire length with larger pipe to accommodate the new design flow unless the applicant demonstrates with engineering calculations that using the existing 6-inch pipe will accommodate the design flow;

e. Design sewer lines with at least the minimum slope calculated from Manning's Formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second when flowing full.
i. An applicant may request a smaller minimum slope under R18-9-A312(G) if the smaller slope is justified by a quarterly program of inspections, flushings, and cleanings.
ii. If a smaller minimum slope is requested, the applicant shall not specify a slope that is less than 50 percent of that calculated from Manning's formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second.
iii. The ratio of flow depth in the pipe to the diameter of the pipe shall not exceed 0.75 in peak dry weather flow conditions;

f. Design sewer lines to avoid a slope that creates a sewage velocity greater than 10 feet per second. The applicant shall construct any sewer line carrying a flow with a normal velocity of greater than 10 feet per second using ductile iron pipe or pipe with equivalent erosion resistance, and structurally reinforce the receiving manhole or sewer main;

g. Design and install sewer lines, connections, and fittings with materials that meet or exceed manufacturer's specifications consistent with this Chapter to:
i. Limit inflows, infiltration, and exfiltration;
ii. Resist corrosion in the ambient electrochemical environment;
iii. Withstand anticipated static and live loads; and
iv. Provide internal erosion protection;

h. Indicate trenching and bedding details applicable for each pipe material and size in the design plans. Unless the Department approved alternative design standards or specifications under subsection (D)(1)(c), the applicant shall place and bed the sewer lines in trenches following the specifications in "Trench Excavation, Backfilling, and Compaction" (Section 601) revised 2004, published by the Maricopa Association of Governments; and "Rigid Pipe Bedding for Sanitary Sewers" (WWM 104) revised July 2002, and "Flexible Pipe Bedding for Sanitary Sewers" (WWM 105) revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).
i. Perform a deflection test of the total length of all sewer lines made of flexible materials to ensure that the installation meets or exceeds the manufacturer's recommendations and record the results;
j. Test each segment of the sewer line for leakage using the applicable method below and record the results:
i. "Standard Test Method for Installation of Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air, F1417-92(1998)," published by the American Society for Testing and Materials;
ii. "Standard Practice for Testing Concrete Pipe Sewer Lines by Low-Pressure Air Test Method, C924-02 (2002)," published by the American Society for Testing and Materials;
iii. "Standard Test Method for Low-Pressure Air Test of Vitrified Clay Pipe Lines, C828-03 (2003)," published by the American Society for Testing and Materials;
iv. "Standard Test Method for Hydrostatic Infiltration Testing of Vitrified Clay Pipe Lines, C1091-03a (2003)," published by the American Society for Testing Materials;
v. "Standard Practice for Infiltration ion and Exfiltration Acceptance Testing of Installed Precast Concrete Pipe Sewer Lines, C969-02 (2002)," published by the American Society for Testing Material; or
vi. "Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications, D2321-00 (2000)," published by the American Society for Testing Materials; or
vii. The material listed in subsections (D)(2)(j)(i) through (vi) is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
k. Test the total length of the sewer line for uniform slope by lamp lighting, remote camera or similar method approved by the Department, and record the results; and
l. Minimize the planting within the disturbed area of new sewage collection system construction of plant species having roots that are likely to reach and damage the sewer or impair the operation of the sewer or visual and vehicular access to any manhole.

3. Manholes.
a. An applicant shall install manholes at all grade changes, size changes, alignment changes, sewer intersections, and at any location necessary to comply with the following spacing requirements:

Sewer Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
Less than 8	400
8 to less than 18	500

18 to less than 36	600
36 to less than 60	800
60 or greater	1300

b. The Department shall allow greater manhole spacing if the applicant follows the procedure provided in R18-9-A312(G) and provides documentation showing the operator possesses or has available specialized sewer cleaning equipment suitable for the increased spacing.
c. The applicant shall ensure that manhole design is consistent with "Pre-cast Concrete Sewer Manhole" #420-1, revised January 1, 2004 and #420-2, revised January 1, 2001, "Offset Manhole for 8" – 30" Pipe" #421 (1998), and "Sewer Manhole and Cover Frame Adjustment" #422, revised January 1, 2001, published by the Maricopa Association of Governments; and "Manholes and Appurtenant Items" (WWM 201 through WWM 211, except WWM 204, 205, and 206), revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).
d. The applicant shall not locate manholes in areas subject to more than incidental runoff from rain falling in the immediate vicinity unless the manhole cover assembly is designed to restrict or eliminate stormwater inflow.
e. The applicant shall test each manhole using one of the following test protocols:
   i. Watertightness testing by filling the manhole with water. The applicant shall ensure that the drop in water level following presoaking does not exceed 0.0034 of total manhole volume per hour;
   ii. Negative air pressure testing using the "Standard Test Method for Concrete Sewer Manholes by Negative Air Pressure (Vacuum) Test, C1244-02e1 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007, or obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   iii. Holiday testing of a lined manhole constructed with uncoated rebar using the "High-Voltage Electrical Inspection of Pipeline Coatings, RP0274-2004 (2004)," published by the National Association of Corrosion Engineers (NACE International). This material is incorporated by reference as modified below, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or obtained from NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906. The following substitutions apply:
      (1) Where the word "metal" is used in the standard, use the word "surface" instead; and
      (2) Where the words "pipe" or "pipeline" are used, use the word "manhole" instead.
f. The applicant shall perform manhole testing under subsection (D)(3)(e) after installation of the manhole cone or top riser to verify watertightness integrity of the manhole from the top of the cone or riser down.
   i. Upon satisfactory test results, the applicant shall install the manhole ring and any spacers, complete the joints, and seal the manhole to a watertight condition.
   ii. If the applicant can install the manhole cone or top riser, spacers, and ring to final grade without disturbance or adjustment by later construction, the applicant may perform the testing from the top of the manhole ring on down.
g. The applicant shall locate a manhole to provide adequate visibility and vehicular maintenance accessibility following construction.

4. Force mains. An applicant may install a force main if it meets the following design, installation, and testing requirements. The applicant shall:
   a. Design force mains to maintain a minimum flow velocity of 3 feet per second and a maximum flow velocity of 7 feet per second. The applicant may design for sustained periods of flow above 7 feet per second, if the applicant justifies the design using the process specified in R18-9-A312(G);
   b. Ensure that force mains have the appropriate valves and controls required to prevent drainback to the lift station. If drainback is necessary during cold weather to prevent freezing, the control system may allow manual or automatic drainback;
   c. Incorporate air release valves or other appropriate components in force mains at all high points along the line to eliminate air accumulation. If engineering calculations provided by the applicant demonstrate that air will not accumulate in a given high point under typical flow conditions, the Department shall waive the requirement for an air release valve;
   d. Design restrained joints or thrust blocks on force mains to accommodate water hammer, surge control, and to prevent excessive movement of the force main. Submitted construction plans shall show restrained joint or thrust block locations and details;
   e. If a force main is proposed to discharge directly to a sewage treatment facility without entering a flow equalization basin, include in the Notice of Intent to Discharge a statement from the owner or operator of the sewage treatment facility that the design is acceptable;
   f. Design a force main to withstand a pressure of 50 pounds per square inch or more above the design working pressure for two hours and test upon completion to ensure no leakage;
   g. Supply flow to a force main using a lift station that meets the requirements of subsection (D)(5); and
   h. Ensure that force mains are designed to control odor.
5. Lift stations. An applicant shall:
   a. Secure a lift station to prevent tampering and affix on its exterior, or on the nearest vertical object if the lift station is entirely below grade, at least one warning sign that includes the 24-hour emergency phone number of the owner or operator of the collection system;

b. Protect lift stations from physical damage from a 100-year flood event. An applicant shall not construct a lift station in a floodway;
c. Lift station wet well design.
i. Ensure that the minimum wet well volume in gallons is 1/4 of the product of the minimum pump cycle time, in minutes, and the total pump capacity, in gallons per minute;
ii. Protect the wet well against corrosion to provide at least a 20-year operational life;
iii. Ensure that wet well volume does not allow the sewage retention time to exceed 30 minutes unless the sewage is aerated, chemicals are added to prevent or eliminate hydrogen sulfide formation, or adequate ventilation is provided. Notwithstanding these measures, the applicant shall not allow the septic condition of the sewage to adversely affect downstream collection systems or sewage treatment facility performance;
iv. Ensure that excessively high or low levels of sewage in the wet well trigger an audible or visible alarm at the wet well site and at the system control center;
v. Ensure that a wet well designed to accommodate more than 5000 gallons per day has a horizontal cross-sectional area of at least 20 square feet; and
vi. Ensure that lift stations are designed to prevent odor from emanating beyond the lift station site;
d. Equip a lift station wet well with at least two pumps. The applicant shall ensure that:
i. The pumps are capable of passing a 2.5-inch sphere or are grinder pumps;
ii. The lift station is capable of operating at design flow with any one pump out of service; and
iii. Piping, valves, and controls are arranged to allow independent operation of each pump;
e. Not use suction pumps if the sewage lift is more than 15 feet. The applicant shall ensure that other types of pumps are self-priming and that pump water brake horsepower is at least 0.00025 times the product of the required discharge, in gallons per minute, and the required total dynamic head, in feet; and
f. For lift stations receiving an average flow of more than 10,000 gallons per day, include a standby power source and redundant wastewater level controls in the lift station design that will provide immediate service and remain available for 24 hours per day if the main power source or controls fail.

6. Depressed sewers. An applicant shall:
a. Size the depressed sewer to attain a minimum velocity of 3 feet per second through all barrels of the depressed sewer when the flow equals or exceeds the design daily peak dry weather flow,
b. Design the depressed sewer to convey the sewage flow through at least two parallel pipes at least 6 inches in diameter,
c. Include an inlet and outlet structure at each end of the inverted sewer,
d. Design the depressed sewer so that the barrels are brought progressively into service as flow increases to its design value, and
e. Design the depressed sewer to minimize release of odors to the atmosphere.

E. Additional Discharge Authorization requirements. An applicant shall:
1. Supply a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department that provides the following:
a. Confirmation that the project was completed in compliance with the requirements of this Chapter, as described in the plans and specifications corresponding to the Construction Authorization issued by the Director, or with changes that are reflected in as-built plans submitted with the Engineer's Certificate of Completion;
b. As-built plans, if required, that are properly identified and numbered; and
c. Satisfactory field test results from deflection, leakage, and uniform slope testing;
2. Provide any other relevant information required by the Department to determine that the facility conforms to the terms of the 4.01 General Permit; and
3. Provide a signed certification on a form approved by the Department that:
a. Confirms that an operation and maintenance manual exists for the sewage collection system;
b. Confirms that the operation and maintenance manual addresses components of operation and maintenance specified on the certification form;
c. Provides the 24-hour emergency number of the owner or operator of the sewage collection system; and
d. Provides an address where the operation and maintenance manual is maintained and confirms that the manual is available for inspection at that address by the Department on request.

F. Operation and maintenance requirements. The permittee shall:
1. Operate the new sewage collection system or expansion of an existing sewage collection system involving new construction using the operation and maintenance manual certified by the owner or operator in subsection (E)(3), to meet the performance standards specified in subsection (B), unless the permittee is operating the sewage collection system under a CMOM Plan under the general permit established in R18-9-C305;
2. Ensure that the sewage collection system is operated according to the operator certification requirements in 18 A.A.C. 5, Article 1; and
3. For safety during operation and maintenance of lift station and other confined space components of the sewage collection system, follow all applicable state and federal confined space entry requirements.

G. Recordkeeping. A person owning or operating a facility permitted under this Section shall maintain the documents listed in subsection (E) for the life of the facility and make them available to the Department upon request.

H. Repairs.
1. A Notice of Intent to Discharge is not required for sewage collection system repairs. Repairs include work performed in response to deterioration or damage of existing structures, devices, and appurtenances with the intent to maintain or restore the system to its original design flow and operational characteristics. Repairs do not include changes in vertical or horizontal alignment.
2. Components used in the repair shall meet the design, installation, and operational requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

A. A 4.02 General Permit allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.
1. The standard septic tank and disposal works design specified in the 4.02 General Permit serves sites where no site limitations are identified by the site investigation conducted under R18-9-A310.
2. If site conditions allow, this general permit authorizes the discharge of wastewater from a septic tank meeting the requirements of R18-9-A314 to one of the following disposal works:
   a. Trench,
   b. Bed,
   c. Chamber technology, or
   d. Seepage pit.

B. Performance. An applicant shall design a system consisting of a septic tank and one of the disposal works listed in subsection (A)(2) so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Design and installation requirements.
1. General provisions. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Ensure that the septic tank meets the requirements specified in R18-9-A314;
   b. Before placing aggregate or disposal pipe in a prepared excavation, remove all smeared or compacted surfaces from trenches by raking to a depth of 1 inch and removing loose material. The applicant shall:
      i. Place aggregate in the trench to the depth and grade specified in subsection (C)(2);
      ii. Place the drain pipe on aggregate and cover it with aggregate to the minimum depth specified in subsection (C)(2); and
      iii. Cover the aggregate with landscape filter material, geotextile, or similar porous material to prevent filling of voids with earth backfill;
   c. Use a grade board stake placed in the trench to the depth of the aggregate if the disposal pipe is constructed of drain tile or flexible pipe that will not maintain alignment without continuous support;
   d. Disposal pipe. If two or more disposal pipes are installed, install a distribution box approved by the Department of sufficient size to receive all lateral lines and flows at the head of each disposal works and:
      i. Ensure that the inverts of all outlets are level and the invert of the inlet is at least 1 inch above the outlets;
      ii. Design distribution boxes to ensure equal flow and install the boxes on a stable level surface such as a concrete slab or native or compacted soil; and
      iii. Protect concrete distribution boxes from corrosion by coating them with an appropriate bituminous coating, constructing the boxes with concrete that has a 15 to 18 percent fly ash content, or by using other equivalent means;
   e. Construct all lateral pipes running from a distribution box to the disposal works with watertight joints and ensure that multiple disposal laterals, wherever practical, are of uniform length;
   f. Lay pipe connections between the septic tank and a distribution box on natural ground or compact fill and construct the pipe connections with watertight joints;
   g. Construct steps within distribution line trenches or beds, if necessary, to maintain a level disposal pipe on sloping ground. The applicant shall construct the lines between each horizontal section with watertight joints and install them on natural or unfilled ground; and
   h. Ensure that a disposal works consisting of trenches, beds, chamber technology, or seepage pits is not paved over or covered by concrete or any material that can reduce or inhibit possible evaporation of wastewater through the soil to the land surface or oxygen transport to the soil absorption surfaces.
2. Trenches.
   a. The applicant shall calculate the trench absorption area as the total of the trench bottom area and the sum of both trench sidewall areas to a maximum depth of 48 inches below the bottom of the disposal pipe.
   b. The applicant shall ensure that trench bottoms and disposal pipe are level. The applicant shall calculate trench sizing from the soil absorption rate specified under R18-9-A312(D) and the design flow established in R18-9-A312(B).
   c. The following design criteria for trenches apply:

Trenches	**Minimum**	**Maximum**
1. Number of trenches	1 (2 are recommended)	No Maximum
2. Length of trench[1]	----	100 feet
3. Bottom width of trench	12 inches	36 inches
4. Trench absorption area (sq. ft. of absorption area per linear foot of trench)	No Minimum	11 sq. ft.
5. Depth of cover over aggregate surrounding disposal pipe	9 inches	24 inches[2]

6. Thickness of aggregate material over disposal pipe	2 inches	2 inches
7. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
8. Slope of disposal pipe	Level	Level
9. Disposal pipe diameter	3 inches	4 inches
10. Spacing of trenches (measured between nearest sidewalls)	2 times effective depth[3] or five feet, whichever is greater	No Maximum

Notes:
1. If unequal trench lengths are used, proportional distribution of wastewater is required.
2. For more than 24 inches, Standard Dimensional Ratio 35 or equivalent strength pipe is required.
3. The effective depth is the distance between the bottom of the disposal pipe and the bottom of the trench bed.

d. The applicant may substitute clean, durable, crushed, and washed recycled concrete for aggregate if noted in design documents and the trench absorption area calculation excludes the trench bottom.

3. Beds. An applicant shall:
   a. If a bed is installed, use the soil absorption rate specified in R18-9-A312(D) for "SAR, Bed. The applicant may, in computing the bed bottom absorption area, include the bed bottom and the perimeter sidewall area not more than 36 inches below the disposal pipe;
   b. Comply with the following design criteria for beds:

Gravity Beds	**Minimum**	**Maximum**
1. Number of disposal pipes	2	No Maximum
2. Length of bed	No Minimum	100 feet
3. Distance between disposal pipes	4 feet	6 feet
4. Spacing of beds measured between nearest sidewalls	2 times effective depth[1] or 5 feet, whichever is greater	No Maximum
5. Width of bed	10 feet	12 feet
6. Distance from disposal pipe to sidewall	3 feet	3 feet
7. Depth of cover over disposal pipe	9 inches	14 inches
8. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
9. Thickness of aggregate material over disposal pipe	2 inches	2 inches
10. Slope of disposal pipe	Level	Level
11. Disposal pipe diameter	3 inches	4 inches

Note:
1. The effective depth is the distance between the bottom of the disposal pipe and the bottom of the bed.

4. Chamber technology. An applicant shall:
   a. Calculate an effective chamber absorption area to size the disposal works area and determine the number of chambers needed. The effective absorption area of each chamber is calculated as follows:
      $A = (1.8 \times B \times L) + (2 \times V \times L)$
      i. "A" is the effective absorption area of each chamber,
      ii. "B" is the exterior width of the bottom of the chamber,
      iii. "V" is the vertical height of the louvered sidewall of the chamber, and
      iv. "L" is the length of the chamber;
   b. Calculate the disposal works size and number of chambers from the effective absorption area of each chamber and the soil absorption rates specified in R18-9-A312(D);
   c. Ensure that the sidewall of the chamber provides at least 35 percent open area for sidewall credit and that the design and construction minimizes the movement of fines into the chamber area. The applicant shall not use filter fabric or geotextile against the sidewall openings.

5. Seepage pits. If allowed by R18-9-A311(B)(1), the applicant shall:
   a. Design a seepage pit to comply with R18-9-A312(E)(1) for minimum vertical separation distance;
   b. Ensure that multiple seepage pit installations are served through a distribution box approved by the Department or connected in series with a watertight connection laid on undisturbed or compacted soil. The applicant shall ensure that the outlet from the pit has a sanitary tee with the vertical leg extending at least 12 inches below the inlet;
   c. Ensure that each seepage pit is circular and has an excavated diameter of 4 to 6 feet. If multiple seepage pits are installed, ensure that the minimum spacing between seepage pit sidewalls is 12 feet or three times the diameter of the seepage pit, whichever is greater. The applicant may use the alternative design procedure specified in R18-9-A312(G) for a proposed seepage pit more than 6 feet in diameter;
   d. For a gravel filled seepage pit, backfill the entire pit with aggregate. The applicant shall ensure that each pit has a breather conductor pipe that consists of a perforated pipe at least 4 inches in diameter, placed vertically within the backfill of the pit. The pipe shall extend from the bottom of the pit to within 12 inches below ground level;
   e. For a lined, hollow seepage pit, lay a concrete liner or a liner of a different protective material in the pit on a firm foundation and fill excavation voids behind the liner with at least 9 inches of aggregate;
   f. For the cover of a lined seepage pit, use an approved one or two piece reinforced concrete slab with a minimum compressive strength of 2500 pounds per square inch. The applicant shall ensure that the cover:
      i. Is at least 5 inches thick and designed to support an earth load of at least 400 pounds per square foot;
      ii. Has a 12-inch square or diameter minimum access hole with a plug or cap that is coated on the underside with an protective bituminous seal, constructed of concrete with 15 percent to 18 percent fly ash content, or made of other nonpermeable protective material; and
      iii. Has a 4 inch or larger inspection pipe placed vertically not more than 6 inches below ground level;
   g. Ensure that the top of the seepage pit cover is 4 to 18 inches below the surface of the ground;

h. Install a vented inlet fitting in every seepage pit to prevent flows into the seepage pit from damaging the sidewall. An applicant may use a 1/4 bend fitting placed through an opening in the top of the slab cover if a one or two piece concrete slab cover inlet is used;
i. Bore seepage pits five feet deeper than the proposed pit depth to verify underlying soil characteristics and backfill the five feet of overdrill with low permeability drill cuttings or other suitable material;
j. Backfill seepage pits that terminate in gravelly, coarse sand zones five feet above the beginning of the zone with low permeability drill cuttings or other suitable material;
k. Determine the minimum sidewall area for a seepage pit from the design flow and the soil absorption rate derived from the testing procedure described in R18-9-A310(G). The effective absorption surface for a seepage pit is the sidewall area only. The sidewall area is calculated using the following formula:
$A = 3.14 \times D \times H$
i. "A" is the minimum sidewall area in square feet needed for the design flow and soil absorption rate for the installation,
ii. "D" is the diameter of the proposed seepage pit in feet,
iii. "H" is the vertical height in feet in the seepage pit through which wastewater infiltrates native soil. The applicant shall ensure that H is at least 10 feet for any seepage pit.

D. Operation and maintenance. The permittee shall follow the applicable operation and maintenance requirements in R18-9-A313.

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

R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.
1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting chamber where dehydration and biological activity reduce the waste volume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.
2. An applicant may use a composting toilet if:
a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
c. Inadequate space prevents use of other systems,
d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.
1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:
1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:
1. Composting toilet.
a. The name and address of the composting toilet system manufacturer;
b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;
c. The product model number;
d. Composting rate, capacity, and waste accumulation volume calculations;
e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
f. The method of vector control;
g. The planned method and frequency for disposing the composted human excrement residue; and
h. The planned method for disposing of the drainage from the composting unit; and
2. Wastewater.
a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;
b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and
c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:
1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;

3. The capacity of the chamber and rate of composting are calculated based on:
   a. The lowest monthly average chamber temperature; or
   b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55°F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.
1. Interceptor. An applicant shall ensure that the design complies with the following:
   a. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
   b. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
   c. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
   d. Minimum interceptor size is based on design flow.
      i. For a dwelling, the following apply:

No. of Bedrooms	Design Flow (gallons per day)	Minimum Interceptor Size (gallons)	
		Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800
6	420	200	900
7	460	225	1000

      ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.
2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
   a. A trench or bed is used to disperse the wastewater into the subsurface;
   b. Sizing of the trench or bed is based on the design flow of wastewater as determined in subsection (F)(1)(d) and an SAR determined under R18-9-A312(D);
   c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
   d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:
1. Composting toilet.
   a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
   b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
   c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
   d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
   e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;
   f. Ensure that any liquid end product is:
      i. Sprayed back onto the composting waste material;
      ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
      iii. Is drained to the interceptor described in subsection (F);
   g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;
   h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and
   i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;
2. Wastewater Disposal Works.
   a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and
   b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.
1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed

system with the applicant's submittal of the Notice of Intent to Discharge.

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

R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.
2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:
1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:
1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.
1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and
   c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
      i. Quick-disconnects are accessible in the pressure piping, and
      ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.
2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are mounted in an exterior location visible from the dwelling,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:
      i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;
      ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances; and
      iii. Alarms, test features, and controls are on a non-dedicated electrical circuit associated with a frequently used household lighting fixture and separate from the dedicated circuit for the pump;
   e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:
      i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and
      ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.
3. Dosing tanks and wastewater distribution components.
   a. An applicant shall:
      i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
      ii. Design dosing tanks to be easily accessible and have secured covers;

iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;
iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;
v. Ensure that dosing tanks are watertight and anti-buoyant;
vi. Design the wastewater distribution components to withstand system pumping pressures;
vii. Design the wastewater distribution system to allow air to purge from the system;
viii. Design pressure piping to minimize freezing during cold weather;
ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;
x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and
xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.

b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.

4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distribution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:

1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:
   a. Sludge level in the bottom of the treatment and dosing tanks,
   b. Watertightness,
   c. Condition of electrical and mechanical components, and
   d. Piping and other components functioning within design limits;
2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:
   a. Alarms, test features, and controls;
   b. Float switch level settings;
   c. Dose rate, volume, and frequency, if applicable;
   d. Distal pressure or squirt height, if applicable; and
   e. Voltage test on pumps, motors, and controls, as applicable;
3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

Historical Note

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

R18-9-E305. 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.05 General Permit allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "gravelless trench" means a disposal technology characterized by installation of a proprietary pipe and geocomposite or other substitute media into native soil instead of the distribution pipe and aggregate fill used in a trench allowed in R18-9-E302.
2. A permittee may use a gravelless trench if suitable gravel or volcanic rock aggregate is unavailable, excessively expensive, or if adverse site conditions make movement of gravel difficult, damaging, or time consuming.

B. Performance. An applicant shall design a gravelless trench so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit the following:

1. The soil absorption area that would be required if a conventional disposal trench filled with aggregate was used at the site,
2. The configuration and size of the proposed gravelless disposal works, and
3. The manufacturer's installation instructions and warranty of performance for absorbing wastewater into the native soil.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:

1. Ensure that the top of the gravelless disposal pipe or similar disposal mechanism is at least 6 inches below the surface of the native soil and 12 to 36 inches below finished grade if approved fill is placed on top of the installation;
2. Calculate the infiltration surface as follows:
   a. For 8-inch diameter pipe, 2 square feet of absorption area is allowed per linear foot;
   b. For 10-inch diameter pipe, 3 square feet of absorption area is allowed per linear foot;
   c. For bundles of two pipes of the same diameter, the absorption area is calculated as 1.67 times the absorption area of one pipe; and

d. For bundles of three pipes of the same diameter, the absorption area is calculated as 2.00 times the absorption area of one pipe;

3. Use a pressure distribution system meeting the requirements of R18-9-E304 in medium sand, coarse sand, and coarser soils; and
4. Construct the drainfield of material that will not decay, deteriorate, or leach chemicals or byproducts if exposed to sewage or the subsurface soil environment.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Install the gravelless pipe material according to manufacturer's instructions if the instructions are consistent with this Chapter,
2. Ensure that the installed disposal system can withstand the physical disturbance of backfilling and the load of any soil cover above natural grade placed over the installation, and
3. Shape any backfill and soil cover in the area of installation to prevent settlement and ponding of rainfall for the life of the disposal works.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade in the vicinity of the gravelless disposal works for maintenance of proper drainage and protection from damaging loads.

Historical Note

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

R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.06 General Permit allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "natural seal evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system, contained on the bottom and sidewalls by an engineered liner consisting of natural soil and clay materials.
2. An applicant may use a natural seal evapotranspiration bed if site conditions restrict soil infiltration or require reduction of the volume of wastewater discharged to the native soil underlying the natural seal liner.

B. Restrictions. Unless a person provides design documentation to show that a natural seal evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of the average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a natural seal evapotranspiration bed:
1. Minimizes discharge to the native soil through the natural seal liner,
2. Maximizes wastewater disposed to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. An applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and shall calculate the bed design based on the capillary rise of the bed media, following the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2000)," incorporated by reference in R18-9-E307(E), and the anticipated maximum frost depth;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months and the design seepage rate;
4. Ensure that the natural seal liner is a durable, low-hydraulic conductivity liner and is accompanied by the liner performance specification and calculations for bottom and sidewall seepage rate;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches and ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1-1/2 percent organic matter, by dry weight, either natural or added;
   b. If landscaping material other than topsoil is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1"	100
1/2"	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt- and drought-tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to determine the level of the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical

separation from the bottom of the natural seal evapotranspiration bed liner to the seasonal high water table is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The liner covers the bottom and all sidewalls of the bed and is installed on a stable base according to the manufacturer's installation specifications;
2. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
3. The liner is leak tested under the supervision of an Arizona-registered professional engineer to confirm the design leakage rate; and
4. A 2- to 4-inch layer of 1/2- to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall ensure that the filter cloth is placed on top of the gravel or crushed stone to prevent sand from settling into the gravel or crushed stone.

G. Additional Discharge Authorization requirements. An applicant shall submit the satisfactory results of the leakage test required under subsection (F)(3) to the Department before the Department issues the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed, and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

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

R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.07 General Permit allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "lined evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system contained on the bottom and sidewalls by an impervious synthetic liner.
2. An applicant may use a lined evapotranspiration bed if site conditions restrict soil infiltration or require reduction or elimination of the volume of wastewater or nitrogen load discharged to the native soil.
3. Provision of a reserve area is not required for a lined evapotranspiration bed.

B. Restrictions. Unless a person provides design documentation to show that a lined evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a lined evapotranspiration bed:
1. Prevents discharge to the native soil by a synthetic liner,
2. Attains full disposal of wastewater to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter in size) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and calculate the bed design on the basis of the capillary rise of the bed media, according to the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2003)," published by the American Society for Testing and Materials and the anticipated maximum frost depth. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months;
4. Ensure that the evapotranspiration bed liner is a durable, low hydraulic conductivity synthetic liner that has a calculated bottom area and sidewall seepage rate of less than 550 gallons per acre per day;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches. The applicant shall ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1 1/2 percent organic matter, by dry weight, either natural or added;
   b. If another landscaping material is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1"	100
1/2"	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt and drought tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to allow determination of the depth to the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the evapotranspiration bed liner to the surface of the seasonal high water table or impervious layer or formation is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. All liner seams are factory fabricated or field welded according to manufacturer's specifications. The applicant shall ensure that:
2. The liner covers the bottom and all sidewalls of the bed and is cushioned on the top and bottom with layers of sand at least 2 inches thick or other puncture-protective material;
3. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
4. The liner is leak tested under the supervision of an Arizona-registered professional engineer; and
5. A 2- to 4-inch layer of one-half to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall place filter cloth on top of the gravel or crushed stone to prevent sand from settling into the crushed stone or gravel.

G. Additional Discharge Authorization requirements. An applicant shall submit the liner test results sealed by an Arizona-registered professional engineer to the Department for issuance of the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed; and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

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

R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

A. A 4.08 General Permit allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "Wisconsin mound" means a disposal technology characterized by:
   a. An above-grade bed system that blends with the land surface into which is dispensed pressure dosed wastewater from a septic tank or other upstream treatment device,
   b. Dispersal of wastewater under unsaturated flow conditions through the engineered media system contained in the mound, and
   c. Wastewater treated by passage through the mound before percolation into the native soil below the mound.
2. An applicant may use a Wisconsin mound if:
   a. The native soil has excessively high or low permeability,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. A reduction in minimum vertical separation is desired.

B. Performance. An applicant shall design a Wisconsin mound so that treated wastewater released to the native soil meets the following criteria:
1. Performance Category A.
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1000 (Log_{10} 3.0) colony forming units per 100 milliliters, 95th percentile; or
2. Performance Category B.
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the internal wastewater distribution system media proposed for use in the Wisconsin mound;
2. Two scaled or dimensioned cross sections of the mound (one of the shortest basal area footprint dimension and one of the lengthwise dimension); and
3. Design calculations following the "Wisconsin Mound Soil Absorption System: Siting, Design, and Construction Manual," published by the University of Wisconsin – Madison, January 1990 Edition (the Wisconsin Mound Manual). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the University of Wisconsin – Madison, SSWMP, 1525 Observatory Drive, Room 345, Madison, WI 53706.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressure dosed wastewater is delivered into the Wisconsin mound through a pressurized line and secondary distribution lines into an engineered aggregate infiltration bed, or equivalent system, in conformance with R18-9-E304 and the Wisconsin Mound Manual. The applicant shall ensure that the aggregate is washed;
2. Wastewater is applied to the inlet surface of the mound media at not more than 1.0 gallon per day per square foot of mound bed inlet surface if the mound bed media conforms with the "Standard Specification for Concrete Aggregates, C33-03 (2003)," published by the American Society for Testing and Materials and the Wisconsin Mound Manual, except if cinder sand is used that is the

appropriate grade with not more than 5 percent passing a #200 screen. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. The applicant shall:

a. For cinder sand, ensure that the rate is not more than 0.8 gallons per day per square foot of mound bed inlet surface; and
b. Wash the media used for the mound bed;

3. The aggregate infiltration bed and mound bed is capped by coarser textured soil, such as sand, sandy loam, or silt loam. An applicant shall not use silty clay, clay loam, or clays;
4. The cap material is covered by topsoil, following the procedure in the Wisconsin Mound Manual, and the topsoil is capable of supporting vegetation, is not clay, and is graded to drain;
5. The top and bottom surfaces of the aggregate infiltration bed are level and do not exceed 10 feet in width and that:
   a. The minimum depth of the aggregate infiltration bed is 9 inches, or
   b. Synthetic filter fabric permeable to water and air and capable of supporting the cap and topsoil load is placed on the top surface of the aggregate infiltration bed;
6. The minimum depth of mound bed media is:
   a. Performance Category A, 24 inches; or
   b. Performance Category B, 12 inches;
7. The maximum allowable side slope of the mound bed, cap material, and topsoil is not more than one vertical to three horizontal;
8. Ports for inspection and monitoring are provided to verify performance, including verification of unsaturated flow within the aggregate infiltration bed. The applicant shall:
   a. Install a vertical PVC pipe and cap with a minimum diameter of 4 inches as an inspection port at the end of the disposal line, and
   b. Install the pipe with a physical restraint to maintain pipe position;
9. The main pressurized line and secondary distribution lines for the aggregate infiltration bed are equipped at appropriate locations with cleanouts to grade;
10. The following requirements and the setbacks specified in R18-9-A312(C) are observed:
    a. Increase setbacks for the following downslope features at least 30 feet from the toe of the mound system:
       i. Property line,
       ii. Driveway,
       iii. Building,
       iv. Ditch or interceptor drain, or
       v. Any other feature that impedes water movement away from the mound; and
    b. Ensure that no upslope natural feature or improvement channels surface water or groundwater to the mound area;
11. The portion of the basal area of native soil below the mound conforms to the Wisconsin Mound Manual. The applicant shall:
    a. Calculate the absorption of wastewater into the native soil for only the effective basal area;
    b. Apply the soil absorption rate specified in R18-9-A312(D). The applicant may increase allowable loading rate to the mound bed inlet surface up to 1.6 times if the wastewater dispersed to the mound is pretreated to reduce the sum of TSS and BOD_5 to 60 mg/l or less. The applicant may increase the soil absorption rate to not more than 0.20 gallons per day per square foot of basal area if the following slowly permeable soils underlie the mound:
       i. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure; or
       ii. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure;
12. The slope of the native soil at the basal area does not exceed 25 percent, and a slope stability analysis is performed whenever the basal area or site slope within 50 horizontal feet from the mound system footprint exceeds 15 percent.

E. Installation. An applicant shall:

1. Prepare native soil for construction of a Wisconsin mound system. The applicant shall:
   a. Mow vegetation and cut down trees in the vicinity of the basal area site to within 2 inches of the surface;
   b. Leave in place boulders and tree stumps and other herbaceous material that would excessively alter the soil structure if removed after mowing and cutting;
   c. Plow native soil serving as the basal area footprint along the contours to 7- to 8- inch depth;
   d. Not substitute rototilling for plowing; and
   e. Begin mound construction immediately after plowing;
2. Place each layer of the bed system to prevent differential settling and promote uniform density; and
3. Use the Wisconsin Mound Manual to guide any other detail of installation. The applicant may vary installation procedures and criteria depending on mound design but shall use installation procedures and criteria that are at least equivalent to those in the Wisconsin Mound Manual.

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), the permittee shall:

1. If an existing mound system shows evidence of overload or hydraulic failure, conduct the following sequence of evaluations:
   a. Verify the actual loading and performance of the pretreatment system.
   b. Verify the watertightness of the pretreatment and dosing tanks;
   c. Determine the dosing rates and dosing intervals to the aggregate infiltration bed and compare it with the original design to evaluate the presence or absence of saturated conditions in the aggregate infiltration bed;
   d. If the above steps in subsections (F)(1)(a) through (c) do not indicate an anomalous condition, evaluate the site and recalculation of the disposal capability to determine if mound lengthening is feasible;
   e. Determine if site modifications are possible including changing surface drainage patterns at upgrade locations and lowering the groundwater level by installing interceptor drains to reduce native soil saturation at shallow levels; and
   f. Determine if the basal area can be increased, consistent with R18-9-A309(A)(9)(b)(iv);

2. Prepare servicing and waste disposal procedures and task schedules necessary for clearing the main pressurized wastewater line and secondary distribution lines, septic tank effluent filter, pump intake, and controls.

Historical Note

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

R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.09 General Permit allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "engineered pad system" means a treatment and disposal technology characterized by:
   a. The delivery of pretreated wastewater by gravity or pressure distribution to the engineered pad and sand bed assembly, followed by dispersal of the wastewater into the native soil; and
   b. Wastewater movement through the engineered pad and sand bed assembly by gravity under unsaturated flow conditions to provide additional passive biological treatment.
2. The applicant may use an engineered pad system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The available area is limited for installing a disposal works authorized by R18-9-E302.

B. Performance. An applicant shall ensure that:

1. The engineered pad system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 50 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 50 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile; or
2. The engineered pad system is designed to meet any other performance, loading rate, and configuration criteria specified in the reviewed product list maintained by the Department as required under R18-9-A309(E).

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit design materials and construction specifications for the engineered pad system.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Gravity and pressurized wastewater delivery is from a septic tank or intermediate watertight chamber equipped with a pump and controls. The applicant shall ensure that:
   a. Delivered wastewater is distributed onto the top of the engineered pad system and achieves even distribution by good engineering practice, and
   b. The dosing rate for pressurized wastewater delivery is at least four doses per day and no more than 24 doses per day;
2. The sand bed consists of mineral sand washed to conform to the "Standard Specification for Concrete Aggregates, C33-03 (2003)," which is incorporated by reference in R18-9-E308(D)(2), unless the performance testing and design specifications of the engineered pad manufacturer justify a substitute specification. The applicant shall ensure that:
   a. The sand bed design provides for the placement of at least 6 inches of sand bed material below and along the perimeter of each pad, and
   b. The contact surface between the bottom of the sand bed and the native soil is level;
3. The spacing between adjacent two-pad-wide rows is at least two times the distance between the bottom of the distribution pipe and the bottom of the sand bed or 5 feet, whichever is greater;
4. The wastewater distribution system installed on the top of the engineered pad system is covered with a breathable geotextile material and the breathable geotextile material is covered with at least 10 inches of backfill.
   a. The applicant shall ensure that rocks and cobbles are removed from backfill cover and grade the backfill for drainage.
   b. The applicant may place the engineered pad system above grade, partially bury it, or fully bury it depending on site and service circumstances;
5. The engineered pad system is constructed with durable materials and capable of withstanding stress from installation and operational service; and
6. At least two inspection ports are installed in the engineered pad system to confirm unsaturated wastewater treatment conditions at diagnostic locations.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place sand media to obtain a uniform density of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), an applicant shall inspect the backfill cover for physical damage or erosion and promptly repair the cover, if necessary.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (B)(2) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.10 General Permit allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "intermittent sand filter" means a treatment technology characterized by:
   a. The pressurized delivery of pretreated wastewater to an engineered sand bed in a containment vessel equipped with an underdrain system or designed as a bottomless filter;
   b. Delivered wastewater dispersed throughout the sand media by periodic doses from the delivery pump to maintain unsaturated flow conditions in the bed; and
   c. Wastewater that is treated during passage through the media, collected by a bed underdrain chamber, and removed by pump or gravity to the disposal works, or wastewater that percolates downward directly into the native soil as part of a bottomless filter design.

2. An applicant may use an intermittent sand filter if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The applicant desires a reduction in setback distances or minimum vertical separation.

B. Performance. An applicant shall ensure that:
1. An intermittent sand filter with underdrain system is designed so that it produces treated wastewater that meets the following criteria:
   a. TSS of 10 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 10 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 40 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level or 1000 (Log_{10} 3) colony forming units per 100 milliliters, 95th percentile; or
2. An intermittent sand filter with a bottomless filter is designed so that it produces treated wastewater released to the native soil that meets the following criteria:
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
   d. Total coliform level of 100,000 (Log_{10} 5 colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the media proposed for use in the intermittent sand filter.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressurized wastewater delivery is from the septic tank or separate watertight chamber with a pump sized and controlled to deliver the pretreated wastewater to the top of the intermittent sand filter. The applicant shall ensure that the dosing rate is at least 4 doses per day and not more than 24 doses per day;
2. The pressurized wastewater delivery system provides even distribution in the sand filter through good engineering practice. The applicant shall:
   a. Specify all necessary controls, pipes, valves, orifices, filter cover materials, gravel, or other distribution media, and monitoring and servicing components in the design documents; and
   b. Ensure that the cover and topsoil is 6 to 12 inches in depth and graded to drain;
3. The sand filter containment vessel is watertight, structurally sound, durable, and capable of withstanding stress from installation and operational service. The applicant may place the intermittent sand filter above grade, partially buried, or fully buried depending on site and service circumstances;
4. Media used in the intermittent sand filter is mineral sand and that the media is washed and conforms to "Standard Specification for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2);
5. The sand media depth is a minimum of 24 inches with the top and bottom surfaces level and the maximum wastewater loading rate is 1.0 gallons per day per square foot of inlet surface at the rated daily design flow;
6. The underdrain system:
   a. Is within the containment vessel;
   b. Supports the filter media and all overlying loads from the unsupported construction above the top surface of the sand media;
   c. Has sufficient void volume above the normal high level of the intermittent sand filter effluent to prevent saturation of the bottom of the sand media by a 24-hour power outage or pump malfunction; and
   d. Includes necessary monitoring, inspection, and servicing features;
7. Inspection ports are installed in the distribution media and in the underdrain;
8. The bottomless filter is designed similar to the underdrain system, except that the sand media is positioned on top of the native soil absorption surface. The applicant shall ensure that companion modifications are made that eliminate the containment vessel bottom and underdrain and relocate the underdrain inspection port to ensure reliable indication of the presence or absence of water saturation in the sand media;
9. The native soil absorption system is designed to ensure that the linear loading rate does not exceed site disposal capability; and
10. The bottomless sand filter discharge rate per unit area to the native soil does not exceed the adjusted soil absorption rate for the quality of wastewater specified in subsection (B)(2).

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place the containment vessel, underdrain system, filter media, and pressurized wastewater distribution system in an excavation with adequate foundation and each layer installed to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter within the sand media.

F. Operation and maintenance requirements. The applicant shall follow the applicable requirements in R18-9-A313(B).

Historical Note

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

R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.11 General Permit allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "peat filter" means a disposal technology characterized by:
   a. The dosed delivery of treated wastewater to the peat bed, which can be a manufactured module or a disposal bed excavated in native soil and filled with compacted peat;
   b. Wastewater passing through the peat that is further treated by removal of positively charged molecules, filtering, and biological activity before entry into native soil; and
   c. If the peat filter system is constructed as a disposal bed filled with compacted peat, wastewater that is absorbed into native soil at the bottom and sides of the bed.
2. An applicant may configure a modular system if a portion of the wastewater that has passed through the peat filter is recirculated back to the pump chamber.
3. An applicant may use a peat filter system if:
   a. The native soil is excessively permeable,

b. There is little native soil overlying fractured or excessively permeable rock,
c. A reduction in setback distances or minimum vertical separation is desired, or
d. Cold weather inhibits performance of other treatment or disposal technologies.

B. Performance. An applicant shall ensure that a peat filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the peat media proposed for use in the peat filter or provided in the peat module, including:
   a. Porosity;
   b. Degree of humification;
   c. pH;
   d. Particle size distribution;
   e. Moisture content;
   f. A statement of whether the peat is air dried, and whether the peat is from sphagnum moss or bog cotton; and
   g. A description of the degree of decomposition;
2. Specifications for installing the peat media; and
3. If a peat module is used:
   a. The name and address of the manufacturer,
   b. The model number, and
   c. A copy of the manufacturer's warranty.

D. Design requirements.
1. If a pump tank is used to dose the peat module or bed, an applicant shall:
   a. Ensure that the pump tank is sized to contain the dose volume and a reserve volume above the high water alarm that will contain the volume of daily design flow; and
   b. Use a control panel with a programmable timer to dose at the applicable loading rate.
2. Peat module system. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Size the gravel bed supporting the peat filter modules to allow it to act as a disposal works and ensure that the bed is level, long, and narrow, and installed on contour to optimize lateral movement away from the disposal area;
   b. For modules designed to allow wastewater flow through the peat filter and base material into underlying native soil, size the base on which the modules rest to accommodate the soil absorption rate of the native soil;
   c. Place fill over the module so that it conforms to the manufacturer's specification. If the fill is planted, the applicant shall use only grass or shallow rooted plants; and
   d. Ensure that the peat media depth is at least 24 inches, the peat is installed with the top and bottom surfaces level, and the maximum wastewater loading rate is 5.5 gallons per day per square foot of inlet surface at the rated daily design flow, unless the Department approves a different wastewater loading rate under R18-9-A309(E).
3. Peat filter bed system. In addition to the applicable requirements in R18-9-A312, the applicant shall ensure that:
   a. The bed is filled with peat derived from sphagnum moss and compacted according to the installation specification;
   b. The maximum wastewater loading rate is 1 gallon per day per square foot of inlet surface at the rated daily design flow;
   c. At least 24 inches of installed peat underlies the distribution piping and 10 to 14 inches of installed peat overlies the piping;
   d. The cover material over the peat filter bed is slightly mounded to promote runoff of rainfall. The applicant shall not place additional fill over the peat; and
   e. The peat is air dried, with a porosity greater than 90 percent, and a particle size distribution of 92 to 100 percent passing a No. 4 sieve and less than 8 percent passing a No. 30 sieve.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), the applicant shall:
1. Peat module system.
   a. Compact the bottom of all excavations for the filter modules, pump, aerator, and other components to provide adequate foundation, slope the bottom toward the discharge to minimize ponding, and ensure that the bottom is flat, and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
   b. Place the peat filter modules on a level, 6-inch deep gravel bed;
   c. Place backfill around the modules and grade the backfill to divert surface water away from the modules;
   d. Not place objects on or move objects over the system area that might damage the module containers or restrict airflow to the modules;
   e. Cover gaps between modules to prevent damage to the system;
   f. Fit each system with at least one sampling port that allows collection of wastewater at the exit from the final treatment module;
   g. Provide the modules and other components with anti-buoyancy devices to ensure stability in the event of flooding or high water table conditions; and
   h. Provide a mechanism for draining the filter module inlet line; or
2. Peat filter bed system.
   a. Scarify the bottom and sides of the leaching bed excavation to remove any smeared surfaces, and:
      i. Unless directed by an installation specification consistent with this Chapter, place peat media in the excavation in 6-inch lifts; and
      ii. Compact each lift before the next lift is added. The applicant shall take care to avoid compaction of the underlying native soil;
   b. Lay distribution pipe in trenches cut in the compacted peat, and
      i. Ensure that at least 3 inches of aggregate underlie the pipe to reduce clogging of holes or scouring of the peat surrounding the pipe, and
      ii. Place peat on top of and around the sides of the pipes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall

inspect the finished grade over the peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system and perform maintenance as needed.

Historical Note

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

R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.12 General Permit allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "textile filter" means a disposal technology characterized by:
   a. The flow of wastewater into a packed bed filter in a containment structure or structures. The packed bed filter uses a textile filter medium with high porosity and surface area; and
   b. The textile filter medium provides further treatment by removing suspended material from the wastewater by physical straining, and reducing nutrients by microbial action.
2. An applicant may use a textile filter in conjunction with a two-compartment septic tank or a two-tank system if the second compartment or tank is used as a recirculation and blending tank. The applicant shall divert a portion of the wastewater flow from the textile filter back into the second tank for further treatment.
3. An applicant may use a textile filter if:
   a. Nitrogen reduction is desired,
   b. The native soil is excessively permeable,
   c. There is little native soil overlying fractured or excessively permeable rock, or
   d. A reduction in setback distances or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a textile filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean, or 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(4); and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. A copy of the manufacturer's filter warranty;
4. If the system is for nitrogen reduction to 15 milligrams per liter, five-month arithmetic mean, specifications on the nitrogen reduction performance of the filter system and corroborating third-party test data;
5. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life; and
6. If a pump or aerator is required for proper operation, the pump or aerator model number and a copy of the manufacturer's warranty.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The textile medium has a porosity of greater than 80 percent;
2. The wastewater is delivered to the textile filter by gravity flow or a pump;
3. If a pump is used to dose the textile filter, the pump and appurtenances meet following criteria:
   a. The textile media loading rate and wastewater recirculation rate are based on calculations that conform with performance data listed in the reviewed product list maintained by the Department as required under R18-9-A309(E),
   b. The tank and recirculation components are sized to contain the dose volume and a reserve volume above the high water level alarm that will contain the volume of daily design flow, and
   c. A control panel with a programmable timer is used to dose the textile media at the applicable loading rate and wastewater recirculation rate.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Before placing the filter modules, slope the bottom of the excavation for the modules toward the discharge point to minimize ponding;
2. Ensure that the bottom of all excavations for the filter modules, pump, aerator, or other components is level and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
3. Provide the modules and other components with anti-buoyancy devices to ensure they remain in place in the event of high water table conditions; and
4. Provide a mechanism for draining the filter module inlet line.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313, the permittee shall not flush corrosives or other materials known to damage the textile material into any drain that transmits wastewater to the on-site wastewater treatment facility.

Historical Note

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

R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

A. A 4.13 General Permit allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
1. Definition. For purposes of this Section a "denitrifying system using wastewater streams" means a gravity flow treatment and disposal system for a dwelling that requires separate plumbing drains for conducting dishwasher, kitchen sink, and toilet flush water to wastewater treatment tank "A" and all other wastewater to a wastewater treatment tank "B."
   a. Treated wastewater from tanks "A" and "B" is delivered to an engineered composite disposal bed system that includes an upper distribution pipe to deliver treated wastewater from tank "A" to a columnar celled, sand-filled bed.
   b. The wastewater drains downward into a sand bed, then into a pea gravel bed with an internal distribution pipe system that delivers the treated wastewater from tank "B."

c. The entire composite bed is constructed within an excavation about 6 feet deep.
d. The system operates under gravity flow from tanks "A" and "B."
e. An engineered sampling assembly is installed at the midpoint of the disposal line run and at the base of the composite bed during construction to monitor system performance.

2. An applicant may use a separated wastewater streams, denitrifying system where total nitrogen reduction is required under this Article before release to the native soil.

B. Performance. An applicant shall ensure that a separated wastewater streams, denitrifying system is designed so that the treated wastewater released to the native soil meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The applicant shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a separated wastewater streams, denitrifying system achieving the performance requirements specified in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

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

R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.
1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article.
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

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

R18-9-E315. 4.15 General Permit: Aerobic System Less Than 3000 Gallons Per Day Design Flow

A. A 4.15 General Permit allows for the construction and use of an aerobic system that uses aeration for treatment.
1. Definition. For purposes of this Section, an "aerobic system" means a treatment unit consisting of components that:
a. Mechanically introduce oxygen to wastewater,
b. Typically provide clarification of the wastewater after aeration, and
c. Convey the treated wastewater by pressure or gravity distribution to the disposal works.
2. An applicant may use an aerobic system if:
a. Enhanced biological processing is needed to treat wastewater with high organic content,
b. A soil or site condition is not adequate for installation of a standard septic tank and disposal works under R18-9-E302,
c. A highly treated wastewater amenable to disinfection is needed, or
d. Nitrogen removal from the wastewater is needed and removal performance of the system is documented according to subsection (C)(6).

B. Performance.
1. An applicant shall ensure that the aerobic system is designed so that the treated wastewater released to the native soil meets the following criteria:
a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;

c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(6); and
d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

2. An applicant may use an aerobic system that meets the following less stringent performance criteria if the aerobic technology is listed by the Department under R18-9-A309(E) and the Department bases its review and listing on the technology being less costly and simpler to operate when compared to other aerobic technologies:
a. TSS of 60 milligrams per liter, 30-day arithmetic mean;
b. BOD_5 of 60 milligrams per liter, 30-day arithmetic mean;
c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five month arithmetic mean per liter, if documented under subsection (C)(6); and
d. Total coliform level of 1,000,000 (Log_{10} 7) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the aerobic system manufacturer;
2. The model number of the aerobic system;
3. Evidence of performance specified in subsection (B)(1) or (B)(2), as applicable;
4. A list of pretreatment components needed to meet performance requirements;
5. A copy of the manufacturer's warranty and operation and maintenance recommendations to achieve performance over a 20-year operational life; and
6. If the aerobic system will be used for nitrogen removal from the wastewater, either:
a. Evidence of a valid product listing under R18-9-E309(E) indicating nitrogen removal performance, or
b. Specifications and third party test data corroborating nitrogen reduction to the intended level.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The wastewater is delivered to the aerobic treatment unit by gravity flow either directly or by a lift pump;
2. An interceptor or other pretreatment device is incorporated if necessary to meet the performance criteria specified in subsection (B)(1) or (2), or if recommended by the manufacturer for pretreatment if a garbage disposal appliance is used;
3. A clarifier is provided after aeration for any treatment technology that achieves performance that is equal to or better than the performance criteria specified in subsection (B)(1); and
4. Ports for inspection and monitoring are provided to verify performance.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The installation of the aerobic treatment components conforms to manufacturer's specifications that do not conflict with Articles 1 and 3 of this Chapter and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c); and
2. Excavation and foundation work, and backfill placement is performed to prevent differential settling and adverse drainage conditions.

F. Operation and maintenance requirements. The permittee shall:
1. Follow the applicable requirements in R18-9-A313(B), and
2. Ensure that filters are cleaned and replaced as necessary.

G. Reference design.
1. An applicant may use an aerobic system that achieves the applicable performance requirements by following a reference design on file with the Department.
2. An applicant using a reference design shall submit, with the Notice of Intent to Discharge, supplemental information specific to the proposed installation on a form approved by the Department.

Historical Note

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

R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.16 General Permit allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.
1. Definition. "Nitrate-reactive media filter" means a treatment technology characterized by:
a. The application of pretreated, nitrified wastewater to a packed bed filter in a containment structure. A packed bed filter consists of nitrate-reactive media that receives pretreated wastewater under appropriate design and operational conditions, and
b. The ability of the nitrate-reactive filter to further treat the nitrified wastewater by removing total nitrogen by chemical and physical processes.
2. An applicant shall use a nitrate-reactive media filter with a treatment or disposal works to pretreat and dispose of the wastewater.
3. An applicant may use a nitrate-reactive media filter if nitrogen reduction is required under this Article.

B. Restrictions. The applicant shall not use any product to supply pretreated wastewater to the nitrate-reactive media filter unless:
1. The product meets the pretreatment requirements for the filter based on product performance information in the product listing, and
2. The product is listed by the Department as a reviewed product under R18-9-A309(E).

C. Performance. An applicant shall ensure that a nitrate-reactive media filter is designed so that it produces treated wastewater that does not exceed the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 10 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. The manufacturer's requirements for pretreated wastewater supplied to the nitrate-reactive media filter;

4. The manufacturer's specifications for design, installation, and operation for the nitrate-reactive media filter system and appurtenances;
5. The manufacturer's warranty for the nitrate-reactive media filter system and appurtenances;
6. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life for the nitrate-reactive media filter system and appurtenances; and
7. The manufacturer name and model number for all appurtenances that significantly contribute to achieving the performance required in subsection (C).

E. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances conform with manufacturer's specifications,
2. The loading rate of pretreated wastewater to the nitrate-reactive media inlet surface meets the manufacturer's specification and does not exceed 5.00 gallons per day per square foot of media inlet surface area, and
3. The bed packed with nitrate reactive media is at least 24 inches thick.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances are installed according to manufacturer's specifications to achieve proper wastewater treatment, hydraulic performance, and operational life; and
2. Anti-buoyancy devices are installed when high water table or extreme soil saturation conditions are likely during operational life of the facility.

G. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and the manufacturer's specifications for the nitrite-reactive media filter, the permittee shall not dispose of corrosives or other materials that are known to damage the nitrate-reactive media filter system into the on-site wastewater treatment facility.

Historical Note

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

R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.17 General Permit allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "cap system" means a disposal technology characterized by:
   a. A soil cap, consisting of engineered fill placed over a trench that is not as deep as a trench allowed by R18-9-E302; and
   b. A design that compensates for reduced trench depth by maintaining and enhancing the infiltration of wastewater into native soil through the trench sidewalls.
2. An applicant may use a cap system if:
   a. There is little native soil overlying fractured or excessively permeable rock, or
   b. A high water table does not allow the minimum vertical separation to be met by a system authorized by R18-9-E302.

B. Performance. An applicant shall ensure that the design soil absorption rate and vertical separation complies with this Chapter for a trench, based on the following performance, unless additional pretreatment is provided:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed cap fill material.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The soil texture from the natural grade to the depth of the layer or the water table that limits the soil for unsaturated wastewater flow is no finer than silty clay loam;
2. Cap fill material used is free of debris, stones, frozen clods, or ice, and is the same as or one soil group finer than that of the disposal site material, except that the applicant shall not use fill material finer than clay loam as an additive;
3. Trench construction.
   a. The trench bottom is at least 12 inches below the bottom of the disposal pipe and not more than 24 inches below the natural grade, and the trench bottom and disposal pipe are level;
   b. The aggregate cover over the disposal pipe is 2 inches thick and the top of the aggregate cover is level and not more than 9 inches above the natural grade;
   c. The cap fill cover above the top of the aggregate cover is at least 9 inches but not more than 18 inches thick. The applicant shall ensure that:
      i. The cap surface is protected to prevent erosion and sloped to route surface drainage around the ends of the trench; and
      ii. If the top of the aggregate is at or below the original ground surface, the cap surface has side slopes not more than one vertical to three horizontal; or
      iii. If the top of the aggregate is above the original ground surface, the horizontal extent of the finished fill edges is at least 10 feet beyond the nearest trench sidewall or endwall;
   d. The criteria for trench length, bottom width and spacing, and disposal pipe size is the same as that for the trench system prescribed in R18-9-E302;
   e. Permeable geotextile fabric is placed on the aggregate top, trench end, and sidewalls extending above natural grade;
   f. The native soil within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed a 12 percent slope if the top of the aggregate cover extends above the natural grade at any location along the trench length. The applicant shall ensure that the slope within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed 20 percent if the top of the aggregate cover does not extend above the natural grade;
   g. The fill material is compacted to a density of 90 percent of the native soil if the invert elevation of the

disposal pipe is at or above the natural grade at any location along the trench length;

h. At least one observation port is installed to the bottom of each cap fill trench;

i. The effective absorption area for each trench is the sum of the trench bottom area and the sidewall area. The height of the sidewall used for calculating the sidewall area is the vertical distance between the trench bottom and the lowest point of the natural land surface along the trench length; and

j. If the applicant uses correction factors for soil absorption rate under R18-9-A312(D)(3) and minimum vertical separation under R18-9-A312(E), additional wastewater pretreatment is provided.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall prepare the disposal site when high soil moisture is not present and equipment operations do not create platy soil conditions. The applicant shall:

1. Plow or scarify the fill area to disrupt the vegetative mat while avoiding smearing,
2. Construct trenches as specified in subsection (D)(3),
3. Scarify the site and apply part of the cap fill to the fill area and blend the fill with the scarified native soil within the contact layers, and
4. Follow the construction design specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect and repair the cap fill and other surface features as needed to ensure proper disposal function, proper drainage of surface water, and prevention of damaging loads on the cap.

Historical Note

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

R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

A. A 4.18 General Permit allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. "Constructed wetland" means a treatment technology characterized by a lined excavation, filled with a medium for growing plants and planted with marsh vegetation. The treated wastewater flows horizontally through the medium in contact with the aquatic plants.
   a. As the wastewater flows through the wetland system, additional treatment is provided by filtering, settling, volatilization, and evapotranspiration.
   b. The wetland system allows microorganisms to break down organic material and plants to take up nutrients and other pollutants.
   c. The wastewater treated by a wetland system is discharged to a subsurface soil disposal system.
2. An applicant may use a constructed wetland if further wastewater treatment is needed before disposal.

B. Performance. An applicant shall ensure that a constructed wetland is designed so that it produces treated wastewater that meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The permittee shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.

1. An applicant may use a constructed wetland that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed constructed wetland with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

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

R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.19 General Permit allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "sand-lined trench" means a disposal technology characterized by:
   a. Engineered placement of sand or equivalently graded glass in trenches excavated in native soil,
   b. Wastewater dispersed throughout the media by pressure distribution technology as specified in R18-9-E304 using a timer-controlled pump in periodic uniform doses that maintain unsaturated flow conditions, and
   c. Wastewater treated during travel through the media and absorbed into the native soil at the bottom of the trench.
2. An applicant may use a sand-lined trench if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. Reduction in setback distances, or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a sand-lined trench is designed so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed media in the trench.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. The media used in the trench is mineral sand, crushed glass, or cinder sand and that:
   a. The media conforms to "Standard Specifications for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2), "Standard

Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C117-04 (2004)," published by the American Society for Testing and Materials, or an equivalent method approved by the Department. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and

b. Sieve analysis complies with the "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C11704," which is incorporated by reference in subsection (D)(1)(a), or an equivalent method approved by the Department;

2. Trenches.
   a. Distribution pipes are capped on the end;
   b. The spacing between trenches is at least two times the distance between the bottom of the distribution pipe and the bottom of the trench or 5 feet, whichever is greater;
   c. The inlet filter media surface, wastewater distribution pipe, and bottom of the trench are level and the maximum effluent loading rate is not more than 1.0 gallon per day per square foot of sand media inlet surface;
   d. The depth of sand below the gravel layer containing the distribution system is at least 24 inches;
   e. The gravel layer containing the distribution system is 5 to 12 inches thick, at least 36 inches wide, and level;
   f. Permeable geotextile fabric is placed at the base of and along the sides of the gravel layer, as necessary. The applicant shall ensure that:
      i. Geotextile fabric is placed on top of the gravel layer, and
      ii. Any cover soil placed on top of the geotextile fabric is capable of maintaining vegetative growth while allowing passage of air;
   g. At least one observation port is installed to the bottom of each sand lined trench;
   h. If the trench is installed in excessively permeable soil or rock, at least 1 foot of loamy sand is placed in the trench below the filter media. The minimum vertical separation distance is measured from the bottom of the loamy sand; and
   i. The trench design is based on the design flow, native soil absorption area at the trench bottom, minimum vertical separation below the trench bottom, design effluent infiltration rate at the top of the sand fill, and the adjusted soil absorption rate for the final effluent quality; and

3. The dosing system consists of a timer-controlled pump, electrical components, and distribution network and that:
   a. Orifice spacing on the distribution piping does not exceed 4 square feet of media infiltrative surface area per orifice, and
   b. The dosing rate is at least four doses per day and not more than 24 doses per day.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that the filter media is placed in the trench to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall ensure that:
1. The septic tank filter and pump tank are inspected and cleaned;
2. The dosing tank pump screen, pump switches, and floats are cleaned yearly and any residue is disposed of lawfully; and
3. Lateral lines are flushed and the liquid waste discharged into the treatment system headworks.

Historical Note

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

R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.
3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.
1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:
1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
   a. Is nominally free of coliform bacteria;
   b. Is clear and odorless, and
   c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:
1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	Required Concentration of Available Chlorine in Wastewater (mg/L)	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD_5 of 30 mg/L	Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD_5 of 20 mg/L
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;

2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and
3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:
1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and
2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

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

R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.21 General Permit allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site wastewater treatment facility.

B. Performance. An applicant shall ensure that the treated wastewater distributed for surface application meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean;
4. Is nominally free of total coliform bacteria as indicated by a total coliform level of Log_{10} 0 colony forming units per 100 milliliters, 95th percentile.

C. Restrictions. The applicant shall not install the disposal works if weather records indicate that:
1. Average minimum temperature in any month is 20°F or less, or
2. Over 1/3 of the average annual precipitation falls in a 30-day period.

D. Design requirements. An applicant shall ensure that:
1. The land surface application rate does not exceed the lowest application rate as determined under R18-9-A312(D) minus no greater than 50 percent of the evapotranspiration that may occur during the month with the least evapotranspiration in any soil zone within the top 5 feet of soil;
2. The design incorporates sprinklers, bubbler heads, or other dispersal components that optimize wastewater loading rates and prevent ponding on the land surface;
3. The design specifies containment berms:
   a. Compacted to a minimum of 95 percent Proctor;
   b. Designed to contain the runoff of the 10-year, 24-hour storm event in addition to the daily design flow; and
   c. Designed to remain intact in the event of a more severe rainfall event; and
4. The design incorporates placement of signage on hose bibs, human ingress points to the surface disposal area, and at intervals around the perimeter of the surface disposal area to provide notification of use of treated wastewater and a warning against ingestion.

E. Installation requirements. An applicant shall ensure that installation of the wastewater dispersal components conforms to manufacturer's specifications that do not conflict with this Article and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance. In addition to the requirements specified in R18-9-A313(B), the permittee shall operate and maintain the surface disposal works to:
1. Prevent treated wastewater from coming into contact with drinking fountains, water coolers, or eating areas;
2. Contain all treated wastewater within the bermed area; and
3. Ensure that hose bibs discharging treated wastewater are secured to prevent use by the public.

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

R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.22 General Permit allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site wastewater treatment facility to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.
1. The subsurface drip irrigation disposal works is designed to disperse the treated wastewater into the soil under unsaturated conditions by pressure distribution and timed dosing. The applicant shall ensure that the pressure distribution system meets the requirements specified in R18-9-E304, and the Department shall consider whether the requirements of R18-9-E304 are met when processing the application under R18-9-A301(B).
2. A subsurface drip irrigation disposal works reduces the downward percolation of wastewater by enhancing evapotranspiration to the atmosphere.
3. An applicant may use a subsurface drip irrigation disposal works to overcome site constraints, such as high groundwater, shallow soils, slowly permeable soils, or highly permeable soils, or if water conservation is needed.
4. The subsurface drip irrigation disposal works includes pipe, pressurization and dosing components, controls,

and appurtenances to reliably deliver treated wastewater to driplines using supply and return manifold lines.

B. Performance. An applicant shall ensure that:
1. Treated wastewater that meets the following criteria is delivered to a subsurface drip irrigation disposal works:
   a. Performance Category A.
      i. TSS of 20 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of one colony forming unit per 100 milliliters, 95th percentile; or
   b. Performance Category B.
      i. TSS of 30 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile; and
2. The subsurface drip irrigation works is designed to meet the following performance criteria:
   a. Prevention of ponding on the land surface, and
   b. Incorporation of a fail-safe wastewater control or operational process to prevent inadequately treated wastewater from being discharged.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B), R18-9-A309(B), and R18-9-E304, the applicant shall submit:
1. Documentation of the pretreatment method proposed to achieve the wastewater criteria specified in subsection (B)(1), such as the type of pretreatment system and the manufacturer's warranty;
2. Initial filter and drip irrigation flushing settings;
3. Site evapotranspiration calculations if used to reduce the size of the disposal works; and
4. If supplemental irrigation water is introduced to the subsurface drip irrigation disposal works, an identification of the cross-connection controls, backflow controls, and supplemental water sources.

D. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The design requirements of R18-9-E304 are followed, except that:
   a. The requirement for quick disconnects in R18-9-E304(D)(1)(c) is not applicable, and
   b. The applicant may provide the reserve volume specified in R18-9-E304(D)(3)(a)(iv) in an oversized treatment tank or a supplemental storage tank;
2. Drip irrigation components and appurtenances are properly placed.
   a. Performance category A subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed to prevent ponding on the land surface, and
      ii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; or
   b. Performance category B subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed at least 6 inches below the surface of the native soil;
      ii. A cover of soil or engineered fill is placed on the surface of the native soil to achieve a total emitter burial depth of at least 12 inches;
      iii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; and
      iv. The drip irrigation disposal works is not used for irrigating food crops;
3. Wastewater is filtered upstream of the dripline emitters to remove particles 100 microns in size and larger;
4. A pressure regulator is provided to limit the pressure of wastewater in the drip irrigation disposal works;
5. Wastewater pipe meets the approved pressure rating in "Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120, D1785-04a (2004)," or "Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80, F441/F441M-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
6. The system design flushes the subsurface drip irrigation disposal works components with wastewater at a minimum velocity of 2 feet per second, unless the manufacturer's manual and warranty specify another flushing practice. The applicant shall ensure that piping and appurtenances allow the wastewater to be pumped in a line flushing mode of operation with discharge returned to the treatment system headworks;
7. Air vacuum release valves are installed to prevent water and soil drawback into the emitters;
8. Driplines.
   a. Driplines are placed from 12 to 24 inches apart unless other configurations are allowed by the manufacturer's specifications;
   b. Dripline installation and design requirements, including the allowable deflection, follow manufacturer's requirements;
   c. The maximum length of a single dripline follows manufacturer's specifications to provide even distribution;
   d. The dripline incorporates a herbicide to prevent root intrusion for at least 10 years;
   e. The dripline incorporates a bactericide to reduce bacterial slime buildup;
   f. Disinfection does not reduce the life of the bactericide or herbicide in the dripline;
   g. Any return flow from a drip irrigation disposal works to the treatment works does not impair the treatment performance; and
   h. When dripline installation is under subsection (E)(1)(b) or (c), backfill consists of the excavated soil or similar soil obtained from the site that is screened for removal of debris and rock larger than 1/2-inch;
9. Emitters.
   a. Emitters are spaced no more than 2 feet apart, and

b. Emitters are designed to discharge from 0.5 to 1.5 gallons per hour;

10. A suitable backflow prevention system is installed if supplemental water for irrigation is introduced to the pumping system. The applicant shall not introduce supplemental water to the treatment works;
11. The drip irrigation disposal works is installed in soils classified as:
    a. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure or in soil with a percolation rate from 45 to 120 minutes per inch;
    b. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure or in soil with a percolation rate from 31 to 120 minutes per inch; and
    c. Other soils if an appropriate site-specific SAR is determined;
12. The minimum vertical separation distances are 1/2 of those specified in R18-9-A312(E)(2) if the design evapotranspiration rate during the wettest 30-day period of the year is 50 percent or more of design flow, except that the applicant shall not use a minimum vertical separation distance less than 1 foot;
13. In areas where freezing occurs, the irrigation system is protected as recommended by the manufacturer;
14. If drip irrigation components are used for a disposal works using a shaded trench constructed in native soil, the following requirements are met:
    a. The trench is between 12 and 24 inches wide;
    b. The trench bottom is between 12 and 30 inches below the original grade of native soil and level to within 2 inches per 100 feet of length;
    c. Two driplines are positioned in the bottom of the trench, not more than 4 inches from each sidewall;
    d. The trench with the positioned driplines is filled to a depth of 6 to 10 inches with decomposed granite or C-33 sand or a mixture of both, with mixture composition, if applicable, and placement specified on the construction drawing;
    e. A minimum of 8 inches of backfill is placed over the decomposed granite or C-33 sand fill to an elevation of 1 to 3 inches above the native soil finished grade;
    f. Observation ports are placed at both ends of each shaded trench to confirm the saturated wastewater level during operation; and
    g. A separation distance of 24 inches or more is maintained between the nearest sidewall of an adjacent trench; and
15. The soil absorption area used for design of a drip irrigation works is calculated using:
    a. For a design that uses the shaded trench method described in subsection (D)(14), the bottom and sidewall area of the shaded trench not more than 4 square feet per linear foot of trench; or
    b. For all other designs, the number of emitters times an area for each emitter where the emitter area is a square centered on each emitter with the side dimension equal to the emitter separation distance selected by the designer in accordance with R18-9-E322(D)(9)(a), excluding all areas of overlap of adjacent squares.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A) and R18-9-E304, the applicant shall ensure that:

1. The dripline is installed by:
    a. A plow mechanism that cuts a furrow, dispenses pipe, and covers the dripline in one operation;
    b. A trencher that digs a trench 4 inches wide or less;
    c. Digging the trench with hand tools to minimize trench width and disruption to the native soil; or
    d. Without trenching, removing surface vegetation, scarifying the soil parallel with the contours of the land surface, placing the pipe grid, and covering with fill material, unless prohibited in subsection (D)(2)(b)(ii);
2. Drip irrigation pipe is stored to preserve the herbicidal and bactericidal characteristics of the pipe;
3. Pipe deflection conforms to the manufacturer's requirements and installation is completed without kinking to prevent flow restriction;
4. A shaded trench drip irrigation disposal works is installed as specified in the design documents used for the Construction Authorization; and
5. The pressure piping and electrical equipment are installed according to the Construction Authorization in R18-9-A301(D)(1)(c) and any local building codes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and R18-9-E304, the permittee shall:

1. Test any fail-safe wastewater control or operational process quarterly to ensure proper operation to prevent discharge of inadequately treated wastewater, and
2. Maintain the herbicidal and bacteriological capability of the drip irrigation disposal works.

Historical Note

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

R18-9-E323. 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with an combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:

1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that are covered under other general permits, but are sized larger to accommodate increased flows;
2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;
3. The facility is not a system or a technology covered by one of the following general permits available for a design flow of less than 3000 gallons per day:
    a. An aerobic system with subsurface or surface disposal described in R18-9-E315;
    b. A disinfection device described in R18-9-E320; or
    c. A seepage pit or pits described in R18-9-E302; and
4. The discharge of total nitrogen to groundwater is controlled.
    a. An applicant shall:
        i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath

the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or

ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.

b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;
3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.

1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:

1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,
   b. Certifies compliance with the requirements of the performance assurance plan, and
   c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and
2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility.

1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Historical Note

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

Table 1. Unit Design Flows

Wastewater Source	**Applicable Unit**	**Sewage Design Flow per Applicable Unit, Gallons Per Day**
Airport	Passenger (average daily number) Employee	4 15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75
Camp Day camp, no cooking facilities Campground, overnight, flush toilets Campground, overnight, flush toilets and shower Campground, luxury Camp, youth, summer, or seasonal	 Camping unit Camping unit Camping unit Person Person	 30 75 150 100-150 50
Church Without kitchen With kitchen	 Person (maximum attendance) Person (maximum attendance)	 5 7
Country Club	Resident Member Nonresident Member	100 10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building 1 bedroom 2 bedroom 3 bedroom 4 bedroom Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction) Single Family Dwellings Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Apartment Apartment Apartment Apartment Resident see R18-9-A314(D)(1) Bedroom Bedroom Fixture unit	 200 300 400 500 100 see R18-9-A314(D)(1) 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40
Hotel/motel Without kitchen With kitchen	 Bed (2 person) Bed (2 person)	 50 60

Industrial facility		
Without showers	Employee	25
With showers	Employee	35
Cafeteria, add	Employee	5
Institutions		
Resident	Person	75
Nursing home	Person	125
Rest home	Person	125
Laundry		
Self service	Wash cycle	50
Commercial	Washing machine	Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use)		
Picnic, with showers, flush toilets	Parking space	40
Picnic, with flush toilets only	Parking space	20
Recreational vehicle, no water or sewer connections	Vehicle space	75
Recreational vehicle, with water and sewer connections	Vehicle space	100
Mobile home/Trailer	Space	250
Restaurant/Cafeteria	Employee	20
With toilet, add	Customer	7
Kitchen waste, add	Meal	6
Garbage disposal, add	Meal	1
Cocktail lounge, add	Customer	2
Kitchen waste disposal service, add	Meal	2
Restroom, public	Toilet	200
School		
Staff and office	Person	20
Elementary, add	Student	15
Middle and High, add	Student	20
with gym & showers, add	Student	5
with cafeteria, add	Student	3
Boarding, total flow	Person	100
Service Station with toilets	First bay	1000
	Each additional bay	500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store	Employee	20
Public restroom, add	Square foot of retail space	0.1
Swimming Pool, Public	Person	10
Theater		
Indoor	Seat	5
Drive-in	Car space	10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

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

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a crop or plant includes commercial sod farms and nurseries.
2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.
4. "Crop or plant uptake" means the amount of water and nitrogen that can be physiologically absorbed by the roots and vegetative parts of a crop or plant following the application of water.
5. "Impoundment" means any structure, other than a tank or a sump, designed and maintained to contain liquids. A structure that stores or impounds only non-contact stormwater is not an impoundment under this Article.
6. "Liner" or "lining system" means any natural, amendment, or synthetic material used to reduce seepage of impounded liquids into a vadose zone or aquifer.

7. "NRCS guidelines" means the United States Department of Agriculture, Natural Resources Conservation Service, National Engineering Handbook, Part 651 Agricultural Waste Management Field Handbook, Chapter 10, 651.1080, Appendix 10D – Geotechnical, Design, and Construction Guideline (November 1997). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the United States Department of Agriculture, Natural Resources Conservation Service at ftp://ftp.wcc.nrcs.usda.gov/downloads/wastemgmt/AWMFH/awmfh-chap10-app10d.pdf.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-401 renumbered from R18-9-201 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers

An owner or operator may apply a nitrogen fertilizer under this general permit without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Limit application of the fertilizer so that it meets projected crop or plant needs;
2. Time application of the fertilizer to coincide to maximum crop or plant uptake;
3. Apply the fertilizer by a method designed to deliver nitrogen to the area of maximum crop or plant uptake;
4. Manage and time application of irrigation water to minimize nitrogen loss by leaching and runoff; and
5. Use tillage practices that maximize water and nitrogen uptake by a crop or plant.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-402 renumbered from R18-9-202 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).

R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations

A. An owner or operator may discharge from a concentrated animal feeding operation without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Harvest, stockpile, and dispose of animal manure from a concentrated animal feeding operation to minimize discharge of any nitrogen pollutant by leaching and runoff;
2. Control and dispose of nitrogen-contaminated water resulting from an activity associated with a concentrated animal feeding operation, up to a 25-year, 24-hour storm event equivalent, to minimize the discharge of any nitrogen pollutant;
3. Following the requirements in subsection (B), construct and maintain a lining for an impoundment, used to contain process wastewater or contact stormwater from a concentrated animal feeding operation to minimize the discharge of any nitrogen pollutant; and
4. Close a facility in a manner that will minimize the discharge of any nitrogen pollutant. If a liner was used in an impoundment:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect any synthetic liner for evidence of holes, tears, or defective seams that could have leaked. If evidence of leakage is discovered:
      i. Remove the liner in the area of suspected leakage,
      ii. Sample potentially impacted soil, and
      iii. Properly dispose of impacted soil or restore to background nitrogen levels;
   c. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   d. Remove and dispose of the liner elsewhere if the impoundment is bermed;
   e. Grade the facility to prevent the impoundment of water; and
   f. Notify the Department within 60 days following closure.

B. Lining requirements for concentrated animal feeding operation impoundments.

1. New impoundments. The owner or operator shall:
   a. Follow the NRCS guidelines for any newly constructed impoundment or an impoundment first used after November 12, 2005, and
   b. Use a coefficient of permeability of 1×10^{-7} centimeters per second or less as acceptable liner performance. The owner or operator may include up to 1 order of magnitude reduction in permeability from manure sealing in impoundments that hold wastes having manure as a significant component.
2. Impoundments already in use.
   a. The owner or operator shall maintain the existing seal for any impoundment first used before November 12, 2005.
   b. If any of the following conditions exist at a concentrated animal feeding operation, the Director shall send a notice requiring the owner or operator to reassess the performance of the lining system:
      i. The concentrated animal feeding operation is located within a Nitrogen Management Area designated under R18-9-A317; or
      ii. Existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of an Aquifer Water Quality Standard for a nitrogen pollutant at the point of compliance determined under A.R.S. § 49-244, based on the following information:
         (1) Existing contamination of groundwater by nitrogen species;
         (2) Existing and potential impact to groundwater by sources of nitrogen other than the concentrated animal feeding operation;
         (3) Characteristics of the soil surface, vadose zone, and aquifer;
         (4) Depth to groundwater;
         (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 deter-

mining 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. REPEALED

R18-9-601. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-602. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-603. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

ARTICLE 7. USE OF RECYCLED WATER

R18-9-701. Renumbered

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). Section R18-9-701 renumbered to R18-9-A701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-702. Renumbered

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). Section R18-9-702 renumbered to R18-9-A702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-703. Renumbered

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). Section R18-9-703 renumbered to R18-9-B701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-704. Renumbered

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). Section R18-9-704 amended by final rulemaking at 22 A.A.R. 1696, effective August 12, 2016 (Supp. 16-2). Section R18-9-704 and Table 1 renumbered to R18-9-B702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-705. Renumbered

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). Section R18-9-705 renumbered to R18-9-A703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-706. Renumbered

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). Section R18-9-706 renumbered to R18-9-B703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-707. Renumbered

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). Section R18-9-707 renumbered to R18-9-C701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-708. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-708 renumbered to R18-9-A704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-709. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-709 renumbered to R18-9-A705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp.

17-4).

R18-9-710. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-710 renumbered to R18-9-A706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-711. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-711 renumbered to R18-9-D701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-712. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-712 renumbered to R18-9-B704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-713. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-713 renumbered to R18-9-B705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-714. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-714 renumbered to R18-9-B706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-715. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-715 renumbered to R18-9-B707 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-716. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-716 renumbered to R18-9-B708 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-717. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-717 renumbered to R18-9-B709 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-718. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-718 renumbered to R18-9-B710 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-719. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-719 renumbered to R18-9-D702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-720. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS

R18-9-A701. 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. "Advanced reclaimed water treatment facility" means a facility that treats and purifies Class A+ or Class B+ reclaimed water to produce potable water suitable for distribution for human consumption. R18-9-B702(B) does not apply to an advanced reclaimed water treatment facility. Potable water produced by an advanced reclaimed water treatment facility is not reclaimed water.
2. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:
   a. The use of water subsequent to its discharge under the conditions of a National or Arizona Pollutant Discharge Elimination System permit;
   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3;
   c. The use of industrial wastewater, reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures; or
   d. The use of potable water produced by an advanced reclaimed water treatment facility.
3. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
4. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
5. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(18).
6. "Industrial wastewater" means wastewater generated from an industrial process.

7. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.
8. "Open access" means access to reclaimed water by the general public is uncontrolled.
9. "Open water conveyance" means any constructed open waterway, including canals and laterals, that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
10. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.
11. *"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.* A.R.S. § 49-201(32).
12. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.
13. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Table A.
14. "Recycled water" means a processed water that originated as a waste or discarded water, including reclaimed water and gray water, for which the Department has designated water quality specifications to allow the water to be used as a supply.
15. "Restricted access" means that access to reclaimed water by the general public is controlled.
16. "Sewage Treatment Facility" means a sewage treatment facility as defined in 18 A.A.C. 9, Article 1.

Historical Note
New Section R18-9-A701 renumbered from R18-9-701 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A702. Applicability and Standards for Recycled Water

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 of reclaimed water,
5. A person who uses recycled water regulated under this Article,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with 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
New Section R18-9-A702 renumbered from R18-9-702 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A703. Recycled Water Individual Permit Application

A. To apply for a Recycled Water Individual Permit, a person shall provide the Department with:
1. The applicable permit fee specified under 18 A.A.C. 14; and
2. The following information on a form provided by the Department:
   a. The name, e-mail address, telephone number, and mailing address of the owner or operator of the facility or, if applicable, the reclaimed water agent;
   b. The latitude and longitude coordinates; township range, and section; site address, if applicable; and a map showing the facility or site location;
   c. Any other federal or state environmental permits issued to the applicant;
   d. Source of recycled water to be used;
   e. The applicant may propose for approval, and the Department may issue, a single permit that includes more than one type of recycled water allowed by this article, including for multiple classes of reclaimed water, if the applicant demonstrates the waters will be treated appropriately for the end use;
   f. The applicant may propose, and the Department may permit, the inclusion of kitchen sink and dishwasher wastewater with gray water under a Recycled Water Individual Permit, if the applicant demonstrates such waters will be treated appropriately for the end use;
   g. Estimated volume of recycled water to be used on an annual basis;
   h. Class of reclaimed water to be directly reused, if applicable;
   i. Description of the use activity;
   j. Any treatment measures utilized to meet or maintain reclaimed water quality standards or otherwise ensure the quality of the recycled water is fit for the intended use; and
   k. The applicant's certification that the information submitted in the application is true and accurate to the best of the applicant's knowledge.

B. Public participation.
1. Notice of Preliminary Decision.
   a. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination on the Department's website.
   b. The Department shall accept written comments from the public before a Recycled Water Individual Permit is issued or denied.
   c. 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 (B)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Significant public interest in a public hearing exists, or

b. Significant 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 a public hearing is necessary and a public hearing has not already been noticed under subsection (B)(1)(a), the Department shall schedule a public hearing and republish the Notice of Preliminary Decision and notice of the public hearing on the Department's website.
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.

C. Final permit issuance or denial.

1. The Department may deny a Recycled Water Individual Permit if the Department determines upon completion of the application process the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate 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 developed or acquired by the Department, or
   c. Provided false or misleading information.
2. If the Department denies a Recycled Water Individual Permit the Department shall provide the applicant with written notification explaining 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

New Section R18-9-A703 renumbered from R18-9-705 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A704. Recycled Water General Permit

A. Type 1 Recycled Water General Permit for Gray Water. A person may use recycled water without notice to the Department if the use:

1. Is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Recycled Water General Permit under this Article.

B. Type 2 Recycled Water General Permit for Reclaimed Water.

1. A person may use recycled water under a Type 2 Recycled Water General Permit if:
   a. The use is authorized by and meets the requirements of this Article;
   b. The use meets all the conditions of the applicable Type 2 Recycled Water General Permit under this Article;
   c. The person files a Notice of Intent to Use Recycled Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent to Use Recycled Water.
   a. A person shall submit, by mail, in person, or by another method approved by the Department, the Notice of Intent to Use Recycled Water on a form provided by the Department.
   b. The Notice of Intent to Use Recycled Water shall include;
      i. The name, address, e-mail address, and telephone number of the applicant;
      ii. The name, address, and telephone number of the contact person;
      iii. The source, estimated volume, and, if applicable, class of recycled water to be used;
      iv. The latitude and longitude coordinates of the approximate center point of the use site;
      v. The description of the use activity; and
      vi. The applicant's certification that the applicant agrees to comply with all requirements of this Article, including specific terms of the applicable Recycled Water General Permit.
   c. For a Type 2 Recycled Water General Permit for Direct Reuse of Reclaimed Water, the Notice of Intent to Use Recycled Water must include 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.
3. The Department shall notify the applicant that the Department received the Notice of Intent to Use Recycled Water and that the applicant is authorized to use the recycled water according to Type 2 permit conditions.

C. Type 3 Recycled Water General Permit for Reclaimed Water and Type 3 Recycled Water General Permit for Gray Water. A person shall not operate under a Type 3 Recycled Water General Permit until the Department issues a written Recycled Water Authorization.

1. Application submittal. The applicant shall submit, either by mail, in person at the Department, or by another method approved by the Department:
   a. The Notice of Intent to Use Recycled Water on a form provided by the Department containing the information specified in the applicable Type 3 Recycled Water General Permit under this Article, and
   b. The applicable fee established in 18 A.A.C. 14.
2. Issuance of Recycled Water Authorization. If, after reviewing the Notice of Intent to Use Recycled Water, the Department determines the direct reuse conforms with the conditions of a Type 3 Recycled Water General Permit and all other applicable requirements of this Article, the Department shall issue the Recycled Water Authorization.
3. Denial of Recycled Water Authorization.
   a. If the Department determines on the basis of its review or an inspection the use does not conform to the conditions of the applicable Type 3 Recycled Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Recycled Water Authorization.
   b. The applicant may appeal the decision not to issue a Recycled Water Authorization under A.R.S. §§ 41-1092 through 41-1092.12.

Historical Note
New Section R18-9-A704 renumbered from R18-9-708 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A705. Recycled Water Permit Term, Information Changes, and Renewal

A. A recycled water general permit is valid as follows:
1. A Type 1 Recycled 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 Recycled Water General Permit is valid for five years from the date the Department receives the Notice of Intent to Use Recycled Water;
3. A Type 3 Recycled Water General Permit is valid for five years from the date the Recycled Water Authorization is issued.

B. If any change in the following information occurs, a permittee operating under any individual, or Type 2 or Type 3 recycled water general permit shall update the Department with such changes at least once annually by January 31:
1. Permittee,
2. Ownership,
3. Contact person,
4. Phone number, address, email address, or telephone number, or any combination of any of the above, for permittee or contact person,
5. Name of the use site,
6. For a Type 2 Recycled Water General Permit for Direct Reuse of Class A + or B + Reclaimed Water remaining under the same ownership:
   a. Expansion of the reuse area,
   b. Addition of another allowable use if it is located within the same property boundary as the boundary identified in the Notice of Intent to Use Recycled Water submitted to the Department.
7. An increase in Class A, B, or C reclaimed water use of more than ten percent but less than twenty percent above the volume of reclaimed water currently permitted for use at the reuse site, if applicable.

C. To renew any Type 2 or Type 3 Recycled Water General Permit, a permittee must submit a Notice of Renewal at least 30 days before the permit expires and include the applicable fee established in 18 A.A.C. 14. A permittee may update or change any information as described in subsection (B) in a Notice of Renewal.

D. For changes not described in subsections (B) or (C), the permittee must submit a new Notice of Intent to Use Recycled Water or a Recycled Water Individual Permit application, as applicable.

Historical Note
New Section R18-9-A705 renumbered from R18-9-709 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A706. Recycled Water Permit Revocation

A. After notice and opportunity for a hearing, the Director may revoke coverage under a Recycled Water General Permit and require the permittee to obtain an individual permit in order to operate for any of the following:
1. The permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2; Article 7 of this Chapter; or any permit condition;
2. The permittee misrepresented or omitted a fact, information, or data related to an application or permit condition;
3. The Director determines a permitted activity is causing or will cause a violation of a water quality standard established under A.R.S. § 49-221;
4. A permitted activity is causing or will cause imminent and substantial endangerment to public health or the environment.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative effect of the facilities subject to the Recycled Water General Permit has violated or will violate a water quality standard established under A.R.S. § 49-221.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit is automatically revoked upon issuance of the individual permit.

D. The Director may, after notice and opportunity for hearing, suspend or revoke a Recycled Water Individual Permit for any of the reasons listed in subsections (A)(1) through (A)(4) of this section.

Historical Note
New Section R18-9-A706 renumbered from R18-9-710 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A707. Recycled Water Permit Transition

The terms and conditions of Type 2, Type 3, and individual reclaimed water permits issued before January 1, 2018, including permits issued for gray water, shall remain in effect according to the language of this Article effective as of the date the permit was issued.

Historical Note
New Section R18-9-A707 made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART B. RECLAIMED WATER

R18-9-B701. Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater

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 Recycled Water Individual Permit application, required under R18-9-A703(A), or a Notice of Intent to Use Recycled Water, required under R18-9-A704(B)(2) or R18-9-A704(B)(3), 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 holding an individual Aquifer Protection Permit, the Department shall amend an individual Aquifer Protection Permit 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, any applicable supporting documentation, 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 issue an amended individual Aquifer Protection Permit under procedures specified under 18 A.A.C. 9, Article 2 containing:
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 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
New Section R18-9-B701 renumbered from R18-9-703 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B702. General Requirements for Reclaimed Water

A. Sewage treatment facility. A sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

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 provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall conduct blending operations only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility.

D. Reclaimed water agent. A person shall operate as a reclaimed water agent only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Agent.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee applying reclaimed water for an irrigation use allowed in 18 A.A.C. 11, Article 3, Table A 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; and
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas.

G. Hose bibbs. A permittee directly reusing reclaimed water shall secure hose bibbs discharging reclaimed water to prevent use by the public.

H. Prohibited activities.
1. Irrigating with untreated sewage;
2. Providing water for human consumption from a reclaimed water source except as allowed in Part E of this Article.
3. Providing or using reclaimed water for any of the following activities:
a. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
b. Direct reuse for evaporative cooling or misting.
4. Misapplying reclaimed water for any of the following reasons:
a. Application of a stated class of reclaimed water of lesser quality than allowed by this Article for the type of direct reuse application;
b. Application of reclaimed water to any area other than a direct reuse site; or
c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:
i. agricultural return flow directed onto an adjacent field or returned to an open water conveyance; or
ii. a discharge authorized by an individual or general NPDES or AZPDES permit.

I. Signage and Notification. A permittee shall place and maintain signage at locations and provide applicable notification as specified in Table 1 so the public is informed reclaimed water is in use and no one should drink from the system.

J. Pipeline Conveyances of Reclaimed Water.
1. Applicability. Any person constructing a pipeline conveyance, whether new or a replacement of an existing pipeline, shall meet the requirements of this subsection.
2. A person shall design and construct a pipeline conveyance system using good engineering judgment following standards of practice.
3. A person shall construct a pipeline conveyance so that:
a. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;
b. System structural integrity is maintained; and
c. The capability for inspection, maintenance, and testing is maintained.
4. 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 R18-9-E301(D)(2)(j).
5. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.
6. The following requirements for minimum separation distance apply. A person shall:
a. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (J)(6)(c);
b. 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 (J)(6)(c);
c. Construct a pipeline conveyance that does not meet the minimum separation distances specified in sub-

sections (J)(6)(a) and (J)(6)(b) 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

d. 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.

7. A person shall:
   a. 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.
   b. For a mechanical appurtenance to a pipeline conveyance, ensure 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.

K. Open Water Conveyances of Reclaimed Water.

1. This subsection applies to an open water conveyance, regardless of the date of construction.
2. 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.
3. Signage for Class B+, B, and C Reclaimed Water. A person shall:
   a. Ensure signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
   b. 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 or other interval as approved in writing by the Department; and
   c. Ensure signs are visible and legible from both sides of the open water conveyance.

Historical Note

New Section R18-9-B702 renumbered from R18-9-704 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018; clerical error to subsections corrected at (J)(6)(a), (b), and (c) as published at 23 A.A.R. 3091 (Supp. 17-4).

Table 1. Signage and Notification 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+, A	Each bibb at valve	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	On dispersal equipment and visible to the public
B+, B	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public
C	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public

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

New Section R18-9-B702, Table 1 renumbered from R18-9-704, Table 1 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B703. General Provisions for Recycled Water Individual Permit for Reclaimed Water

A. A Recycled Water Individual Permit for Reclaimed Water is obtained under R18-9-A703. A Recycled Water Individual Permit for Reclaimed Water:
1. Is valid for five years;
2. Must be updated as prescribed by R18-9-A705; 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 60 days before the expiration of the existing permit; and
   b. The permitted activity is of a continuing nature.

B. A Recycled Water Individual Permit for Reclaimed Water shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse or the alternative water quality criteria appropriate for a direct reuse type not listed in 18 A.A.C. 11, Article 3, Table A that ADEQ may allow under R18-11-309;
2. Specific types of direct reuse and any 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 the reclaimed water meets the applicable standards for the class of water or the alternative water quality criteria 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 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 data 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.
8. Signage or other notification requirements appropriate to the use; and
9. Closure requirements, if applicable.

Historical Note
New Section R18-9-B703 renumbered from R18-9-706 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B704. Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Recycled 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, Table A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years describing 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 or provide notification or both as specified in R18-9-B702(I).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

Historical Note
New Section R18-9-B704 renumbered from R18-9-712 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B705. Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Recycled 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, Table 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, Table 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 to Use Recycled Water:
   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:
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. If assigned, the water allotment specified 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 to Use Recycled Water specified in R18-9-A704(B)(2), the applicant shall provide a list of impoundments, water depth, freeboard, and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs or provide notification, or both, as specified in R18-9-B702(I).

Historical Note
New Section R18-9-B705 renumbered from R18-9-713 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B706. Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Recycled 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, Table 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-B704 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 R18-9-B706 renumbered from R18-9-714 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B707. Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Recycled 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, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B707 renumbered from R18-9-715 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B708. Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Recycled 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, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B708 renumbered from R18-9-716 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B709. Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Recycled 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 on a form provided by the Department. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The source and volume of reclaimed water to be blended;
4. The class of reclaimed water to be blended;
5. The source, volume, and quality of other water to be blended;
6. The latitude and longitude coordinates of the blending facility;
7. A description of the reclaimed water blending facility, including a demonstration 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;
8. The applicant's certification that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this recycled water general permit; and
9. 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 Recycled Water Authorization under R18-9-A704(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 in the blended water of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the applicable reclaimed water class established in 18 A.A.C. 11, Article 3, within 30 days of the exceedance, the permittee shall submit a plan to the Department to change the blending process or to otherwise correct the deficiency. The permittee shall also double the monitoring frequency for the next four months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Recycled Water Individual Permit for Reclaimed Water.
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 by January 31, for the immediately preceding calendar year, and shall make this information available to the end users.

Historical Note

New Section R18-9-B709 renumbered from R18-9-717 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B710. Type 3 Recycled Water General Permit for a Reclaimed Water Agent

A. A Type 3 Recycled Water General Permit for a Reclaimed Water Agent allows a person to operate as a Reclaimed Water Agent if 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 and notification requirements specified under R18-9-B702(I), as applicable;
2. Impoundment liner requirements specified under R18-9-B704(D), R18-9-B705(C), R18-9-B706(C), R18-9-B707(B) or R18-9-B708(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-B705(C), R18-9-B707(B), and R18-9-B708(B), as applicable.

B. A person holding a Type 3 Recycled 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 Recycled 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. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address, e-mail address, and telephone number of the end user;
   b. A system map showing the locations of the direct reuse sites and the latitude and longitude coordinates of each site; 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.
4. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
5. 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
6. 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 Recycled Water Authorization under R18-9-A704(C).

E. A reclaimed water agent shall record and annually report the following information to the Department by January 31, for the immediately preceding year:
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).

Historical Note

New Section R18-9-B710 renumbered from R18-9-718 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART C. RECYCLED INDUSTRIAL WASTEWATER

R18-9-C701. Recycled Water Individual Permit for Industrial Wastewater That Is Reused

A. The following activities are prohibited unless a Recycled Water Individual Permit is obtained under R18-9-A703:
1. Use of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or water from an industrial wastewater treatment facility.
2. Use 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-A703(A), an application for a Recycled Water Individual Permit shall include:
1. Each source of the industrial wastewater with Standard Industrial Code or North American Industry Classification System 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

New Section R18-9-C701 renumbered from R18-9-707 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART D. GRAY WATER

R18-9-D701. Type 1 Recycled Water General Permit for Gray Water

A. A Type 1 Recycled Water General Permit for Gray Water allows private residential use of gray water for a flow of less than 400 gallons per day if all the following conditions are met:
1. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, or landscape watering;
2. Human contact with gray water and soil watered by gray water is avoided;
3. Surface application of gray water is not used for watering of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
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 hobbyist or home occupational activities;
5. The gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
6. The application of gray water is managed to minimize standing water on the surface by using measures such as avoiding overwatering, distributing the gray water beneath a mulch or other cover, and using best practices to improve soil condition and increase filtration;
7. If blockage, backup, or overload of the system occurs, gray water distribution shall cease until the deficiency is corrected. The gray water system may include components to reduce blockage and backup and be operated using best practices to extend system lifetime;

8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. 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;
11. For a residence 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 the facility can handle the combined black water and gray water flow;
12. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water; and
13. Surface application of gray water is only by flood or drip distribution methods. Flood distribution methods may include containment by horticultural mulch basins and swales.

B. Prohibitions. The following are prohibited:
1. Gray water use for purposes other than watering and composting, and
2. Application of gray water by a spray method.

Historical Note
New Section R18-9-D701 renumbered from R18-9-711 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-D702. Type 3 Recycled Water General Permit for Gray Water

A. A Type 3 Recycled Water General Permit for Gray Water allows for the use of gray water for landscape irrigation and composting if:
1. The general permit described in R18-9-D701 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 subsections (B) and (C).

B. A person shall file a Notice of Intent to Operate a Gray Water System with the Department on a form provided by the Department. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
2. The latitude and longitude coordinates;
3. A description of the sources of gray water and calculations demonstrating the flow is not more than 3000 gallons per day;
4. Design plans for the gray water system;
5. The applicant's certification that the applicant agrees to comply with the requirements of this Article and the terms of this Recycled Water General Permit for Gray Water; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following requirements apply to the design, installation, and operation of a gray water system allowed under this Recycled Water General Permit for Gray Water:
1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water is not applied to an exposed surface but into a bed or trench of permeable material, through piping installed below the soil surface, or by similar means. Spray irrigation of gray water is not allowed. The application of gray water shall not result in standing water on the surface.
3. The design shall ensure gray water is used and contained within the property boundary for landscape irrigation or composting;
4. Gray water is not used for irrigation of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
5. The gray water may contain water from drinking fountains but does not contain hazardous chemicals derived from industrial, hobbyist, or similar activities at the site;
6. Gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
7. The gray water system is constructed so 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;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. 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;
11. If an on-site wastewater treatment facility is used 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 so the facility may handle the combined black water and gray water flow; and
12. Any piping used in a gray water system susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water.

D. The applicant shall not operate the gray water system until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. The Department may issue a Recycled Water Authorization that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

F. In the Recycled Water Authorization, the Department may require a permittee to report data or information for any of the conditions in this section if the Department deems the reporting necessary to protect human health or water quality or both.

Historical Note
New Section R18-9-D702 renumbered from R18-9-719 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART E. PURIFIED WATER FOR POTABLE USE

R18-9-E701. Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

A. An application for a Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility must be submitted to the Department according to the requirements in R18-9-A703, as applicable.

B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this section exempts an

applicable facility from Safe Drinking Water Act requirements.

C. Design Report. In addition to the information required by subsection (A), the applicant shall submit a design report for the Advanced Reclaimed Water Treatment Facility according to a form prescribed by the Department and certified by an Arizona-registered professional engineer. The design report must include the following information:

1. Characterization of source water quantity and quality, including:
   a. Average and anticipated minimum and maximum source water flows to the facility;
   b. Concentrations of the source water's physical, microbiological, and chemical constituents regulated for drinking water Maximum Contaminant Levels under the Safe Drinking Water Act and which the Department determines are appropriate for the particular facility and source water;
   c. Description and concentrations of constituents in the source water used for unit treatment process monitoring and assessment of unit treatment process efficacy, and
   d. A list of unregulated microbial and chemical constituents and corresponding concentrations in the source water a facility proposes to monitor in order to assess the treatment effectiveness of the overall treatment train. The particular constituents will depend on consideration of factors, such as:
      i. Occurrence of the constituent in source and local waters,
      ii. Availability of standardized laboratory methods for quantification of the constituent,
      iii. Usefulness as representatives of or surrogates for larger classes of constituents, and
      iv. Availability of toxicity data for the constituent.
2. Description of, and results from, the pilot water treatment system for the facility or of analogous systems where comparable treatment components are demonstrated as appropriate for treating the particular characteristics of the applicant's proposed source water;
3. Identification and description of the technologies, processes, methodologies, and process control monitoring to be employed for microbial control;
4. Logarithmic reduction targets for microbial control, to ensure the product water is free of pathogens and suitable for potable use;
5. Identification and description of technologies, processes, methodologies and process control monitoring for chemical control;
6. Plan for monitoring the product water for public health protection;
7. Commissioning and startup plan, including preoperational and startup testing and monitoring, expected timeframe for meeting full operational performance, and any other special startup condition meriting consideration in the individual permit;
8. Operation and maintenance plan including corrective actions for out-of-range monitoring results and contingencies for non-compliant water;
9. Operator training plan; and
10. Documentation of technical, financial, and management capability.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

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, effective December 8, 2000 (Supp. 00-4).

R18-9-804. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsections (I) and (J) effective June 8, 1981 (Supp. 81-3). Amended subsections (A), (F) and (H) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-314 renumbered without change as Section R18-9-804 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-805. Repealed

Historical Note

Adopted effective April 18, 1979 (Supp. 79-2). Amended effective October 2, 1986 (Supp. 86-5). Former Section R9-8-315 renumbered without change as Section R18-9-805 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-806. Repealed

Historical Note

Adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-317 renumbered without change as Section R18-9-806 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-807. Repealed

Historical Note

Former Section R9-8-321 renumbered without change as Section R18-9-807 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-808. Repealed

Historical Note

Former Section R9-8-323 renumbered without change as

Section R18-9-808 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-809. Repealed

Historical Note
Former Section R9-8-324 renumbered without change as Section R18-9-809 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-810. Repealed

Historical Note
Former Section R9-8-325 renumbered without change as Section R18-9-810 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-811. Repealed

Historical Note
Former Section R9-8-326 repealed, new Section R9-8-326 adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-326 renumbered without change as Section R18-9-811 (Supp. 87-3). First entry in Historical Note corrected to reflect Section numbers at time of rule repeal and adoption by changing R18-9-326 to R9-8-326 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-812. Repealed

Historical Note
Former Section R9-8-327 renumbered without change as Section R18-9-812 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-813. Repealed

Historical Note
Amended effective April 18, 1979 (Supp. 79-2). Former Section R9-8-329 renumbered without change as Section R18-9-813 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-814. Repealed

Historical Note
Former Section R9-8-331 renumbered without change as Section R18-9-814 (Supp. 87-3). Amended effective October 19, 1989 (Supp. 89-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-815. Repealed

Historical Note
Former Section R9-8-332 renumbered without change as Section R18-9-815 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-816. Repealed

Historical Note
Former Section R9-8-351 renumbered without change as Section R18-9-816 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-817. Repealed

Historical Note
Former Section R9-8-352 renumbered without change as Section R18-9-817 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-818. Repealed

Historical Note
Former Section R9-8-353 renumbered without change as Section R18-9-818 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-819. Repealed

Historical Note
Former Section R9-8-361 renumbered without change as Section R18-9-819 (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).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

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

PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions
In addition to the definitions in A.R.S. § 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
2. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
   a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
   b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy

increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
   a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
      i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
      ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
   b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuride, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
      i. A closed pond that discharges only during periods of excess runoff; or
      ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
   a. The term includes the addition of any pollutant into a navigable water from:
      i. A treatment works treating domestic sewage;
      ii. Surface runoff that is collected or channeled by man;
      iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
      iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
   b. The term does not include an addition of a pollutant by any industrial user as defined in A.R.S. § 49-255(4).
10. "Draft permit" means a document indicating the Director's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.
    a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
    b. A notice of intent to deny a permit is a type of draft permit.
    c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. "EPA" means the U.S. Environmental Protection Agency.
12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. "Individual permit" means an AZPDES permit for a single point source, a single facility, or a municipal separate storm sewer system.
14. "Land application area," for purposes of Article 9, Part D, means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.
15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
    a. 700 mature dairy cows, whether milked or dry;
    b. 1,000 veal calves;
    c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
    d. 2,500 swine each weighing 55 pounds or more;
    e. 10,000 swine each weighing less than 55 pounds;
    f. 500 horses;
    g. 10,000 sheep or lambs;
    h. 55,000 turkeys;
    i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
    j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
    k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
    l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
    m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:
    a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
    b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
    c. Owned or operated by a municipality other than those described in subsections (16)(a) and (16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.

17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, run-off ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles.
19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
    a. The type and number of animals that it stables or confines falls within any of the following ranges:
        i. 200 to 699 mature dairy cows, whether milked or dry;
        ii. 300 to 999 veal calves;
        iii. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
        iv. 750 to 2,499 swine each weighing 55 pounds or more;
        v. 3,000 to 9,999 swine each weighing less than 55 pounds;
        vi. 150 to 499 horses;
        vii. 3,000 to 9,999 sheep or lambs;
        viii. 16,500 to 54,999 turkeys;
        ix. 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
        x. 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
        xi. 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
        xii. 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
        xiii. 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; and
    b. Either one of the following conditions are met:
        i. Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or
        ii. Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.
20. "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
    a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
    b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
    c. Owned or operated by a municipality other than those described in subsections (20)(a) and (20)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
21. "MS4" means municipal separate storm sewer system.
22. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
    a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
    b. Designed or used for collecting or conveying stormwater;
    c. That is not a combined sewer; and
    d. That is not part of a POTW.
23. "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through (iv).
24. "New discharger" includes an industrial user and means any building, structure, facility, or installation:
    a. From which there is or may be a discharge of pollutants;
    b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
    c. That is not a new source; and
    d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
25. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
    b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
26. "NPDES" means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.
27. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
    a. Sewage from vessels; or
    b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is

approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)

28. "POTW" means a publicly owned treatment works.
29. "Process wastewater," for purposes of Article 9, Part D, means any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs, or bedding and water directly or indirectly used in the operation of an animal feeding operation for any or all of the following:
    a. Spillage or overflow from animal or poultry watering systems;
    b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities;
    c. Direct contact swimming, washing, or spray cooling of animals; or
    d. Dust control.
30. "Proposed permit" means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
31. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
32. "Production area," for purposes of Article 9, Part D, means the animal confinement area, manure storage area, raw materials storage area, and waste containment areas. Production area includes any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.
33. "Raw materials storage area" means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.
34. "Silviculture point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
    a. "Log sorting and log storage facilities" means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
    b. "Rock crushing and gravel washing facilities" mean facilities that process crushed and broken stone, gravel, and riprap.
35. "Small municipal separate storm sewer system" means a separate storm sewer that is:
    a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
    b. Not defined as a "large" or "medium" municipal separate storm sewer system or designated under R18-9-A902(D)(2).
    c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
36. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
37. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.
38. "Waste containment area" means any part of an animal feeding operation where waste is stored or contained including settling basins and areas within berms and diversions that separate uncontaminated stormwater.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
    a. The effective date of EPA approval of the AZPDES program;
    b. The name and address of the Department;
    c. The name of each individual permitted facility and its permit number;
    d. The title of each general permit administered by the Department;
    e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
    f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and

g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.

2. The Department shall provide the following entities with a copy of the notice:
   a. Each county department of health, environmental services, or comparable department;
   b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
   c. Any person who requested, in writing, notification of the activity;
   d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
   e. The United States Section of the International Boundary and Water Commission.
3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. Article 9 of this Chapter applies to any "discharge of a pollutant." Examples of categories that result in a "discharge of a pollutant" and may require an AZPDES permit include:
1. CAFOs;
2. Concentrated aquatic animal production facilities;
3. Case-by-case designation of concentrated aquatic animal production facilities;
   a. The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:
      i. The location and quality of the receiving waters of the United States;
      ii. The holding, feeding, and production capacities of the facility;
      iii. The quantity and nature of the pollutants reaching navigable waters; and
      iv. Any other relevant factor;
   b. A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;
4. Aquaculture projects;
5. Manufacturing, commercial, mining, and silviculture point sources;
6. POTWs;
7. New sources and new dischargers;
8. Stormwater discharges:
   a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), incorporated by reference in R18-9-A905(A)(1)(d). The Department shall not consider a discharge to be a discharge associated with industrial activity if the discharge is composed entirely of stormwater and meets the conditions of no exposure as defined under 40 CFR 122.26(g), incorporated by reference in R18-9-A905(A)(1)(d);
   b. From a large, medium, or small MS4;
   c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of:
      i. Equal to or greater than one acre or;
      ii. Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; but
      iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
   d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.

C. Articles 9 and 10 of this Chapter apply to the following biosolids categories and may require an AZPDES permit:
1. Treatment works treating domestic sewage that would not otherwise require an AZPDES permit; and
2. Using, applying, generating, marketing, transporting, and disposing of biosolids.

D. Director designation of MS4s.
1. The Director may designate and require any small MS4 located outside of an urbanized area to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact, including a habitat or biological impact.
   a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
      i. Discharges to sensitive waters,
      ii. Areas with high growth or growth potential,
      iii. Areas with a high population density,
      iv. Areas that are contiguous to an urbanized area,
      v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
      vi. Small MS4s that do not have effective programs to protect water quality, and
      vii. Any other relevant criteria.
   b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).
2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(16)(a) and (b), or R18-9-A901(20)(a) or (b), as applicable. In making this determination, the Director shall consider the following factors:
   a. Physical interconnections between the municipal separate storm sewers;
   b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(16)(a) and R18-9-A901(20)(a);
   c. The quantity and nature of pollutants discharged to a navigable water;

d. The nature of the receiving waters; and
e. Any other relevant factor.

3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.

E. Petitions. The Director may, upon a petition, designate as a large, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(16), R18-9-A901(20) or R18-9-A901(35), as applicable.

F. Phase-ins.

1. The Director may phase-in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.
   a. If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.
   b. All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.
2. The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.

G. Exclusions. The following discharges do not require an AZPDES permit:

1. Discharge of dredged or fill material into a navigable water that is regulated under section 404 of the Clean Water Act (33 U.S.C. 1344);
2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;
3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
5. Return flows from irrigated agriculture;
6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations.

H. Conditional no exposure exclusion.

1. Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).
2. For purposes of this subsection:
   a. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
   b. "Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
   c. "Material-handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A903. Prohibitions

The Director shall not issue a permit:

1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:

a. There are sufficient remaining wasteload allocations to allow for the discharge, and
b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2).

R18-9-A904. Effect of a Permit

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(11), the following 40 CFR sections and appendices, July 1, 2003 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:

1. General program requirements.
   a. 40 CFR 122.7;
   b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
   c. 40 CFR 122.22;
   d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
   e. 40 CFR 122.29;
   f. 40 CFR 122.32;
   g. 40 CFR 122.33;
   h. 40 CFR 122.34;
   i. 40 CFR 122.35;
   j. 40 CFR 122.62(a) and (b).
2. Procedures for Decision making.
   a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
   b. 40 CFR 124.56.
3. Permit requirements and conditions.
   a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
   b. 40 CFR 122.42;
   c. 40 CFR 122.43;
   d. 40 CFR 122.44;
   e. 40 CFR 122.45;
   f. 40 CFR 122.47;
   g. 40 CFR 122.48; and
   h. 40 CFR 122.50.
4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, H, and I.
5. Toxic pollutant effluent standards. 40 CFR 129.
6. Secondary treatment regulation. 40 CFR 133.
7. Guidelines for establishing test procedures for the analysis of pollutants, 40 CFR 136.
8. Effluent guidelines and standards.
   a. General provisions, 40 CFR 401; and
   b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.
9. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
10. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
11. The following substitutions apply to the material in subsections (A)(1) through (A)(10):
    a. Substitute the term AZPDES for any reference to NPDES;
    b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
    c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
    d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;
    e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
    f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
    g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
    h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
    i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

B. A person shall analyze a pollutant using a test procedure for the pollutant specified by the Director in an AZPDES permit. If the Director does not specify a test procedure for a pollutant in an AZPDES permit, a person shall analyze the pollutant using:

1. A test procedure listed in 40 CFR 136, which is incorporated by reference in subsection (A)(7);
2. An alternate test procedure approved by the EPA as provided in 40 CFR 136;
3. A test procedure listed in 40 CFR 136, with modifications allowed by the EPA and approved as a method alteration by the Arizona Department of Health Services under A.A.C. R9-14-610(B); or
4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

A. The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-

A905(A)(8)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(8)(b).

B. Pretreatment applies to:
1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.

C. National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.

D. For purposes of this Section the terms "National Pretreatment Standard" and "Pretreatment Standard" mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A907. Public Notice

A. Individual permits.
1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
   a. The name and address of the Department;
   b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
   c. A brief description of the business conducted at the facility or activity described in the permit application;
   d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
   e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
   f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
   g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
   h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
   i. Any additional information considered necessary to the permit decision.
2. The Department shall provide the applicant with a copy of the draft individual permit.
3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
   a. The applicant or permittee;
   b. Any user identified in the permit application of a privately owned treatment works;
   c. Any affected federal, state, tribal, or local agency, or council of government;
   d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona Historic Preservation Office, and the U.S. Army Corps of Engineers;
   e. Each applicable county department of health, environmental services, or comparable department;
   f. Any person who requested, in writing, notification of the activity; and
   g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the *Arizona Administrative Register*. The notice shall contain:
1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A908. Public Participation, EPA Review, EPA Hearing

A. Public comment period.
1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
   a. Corps of Engineers.

i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.
iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.

b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.

B. Public hearing.
1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Director during the comment period that was not considered previously in the permitting process.
2. If, after publication of the notice under R18-9-A907, the Director determines that a public hearing is necessary, the Director shall schedule a public hearing and publish notice of the public hearing at least once, in one or more newspapers of general circulation where the facility is located. The notice for public hearing shall contain:
   a. The date, time, and place of the hearing;
   b. Reference to the date of a previous public notice relating to the proposed decision, if any; and
   c. A brief description of the nature and purpose of the hearing, including reference to the applicable laws and rules.
3. The Department shall accept written public comment until the close of the hearing or until a later date specified by the person presiding at the public hearing.

C. EPA review of draft and proposed permits.
1. Individual permits.
   a. The Department shall send a copy of the draft permit to EPA.
   b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.
   c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.
   d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:
   a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved;
   b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved;
   c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

D. EPA hearing. Within 90 days of receipt by the Director of a specific objection by EPA, the Director or any interested person may request that EPA hold a public hearing on the objection.
1. If following the public hearing EPA withdraws the objection, the Director shall issue the permit.
2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
4. If EPA issues the permit instead of the Director, the Department shall close the application file.

E. Final permit determination.
1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:
   a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and
   b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.
2. General permits. The Director shall publish a general notice of the final permit determination in the *Arizona Administrative Register*. The notice shall:
   a. Specify the provisions, if any, of the draft general permit that have been changed in the final general

permit determination, and the reasons for the change;
b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and
c. Specify where a copy of the final general permit may be obtained.
3. The Department shall make the response to comments available to the public.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A909. Petitions
A. Any person may submit a petition to the Director requesting:
1. The issuance of a general permit;
2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
3. An individual permit under R18-9-C902(B)(1).
B. The petition shall contain:
1. The name, address, and telephone number of the petitioner;
2. The location of the facility;
3. The exact nature of the petition, and
4. Evidence of the validity of the petition.
C. The Department shall provide the permittee with a copy of the petition.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application
A. Time to apply.
1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
a. Is exempt under R18-9-A902(G);
b. Is covered by a general permit under Article 9, Part C of this Chapter; or
c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
3. Waivers.
a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.
B. Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
1. Discharges, other than stormwater.
a. The information required under 40 CFR 122.21(f) through (l);
b. The signature of the certifying official required under 40 CFR 122.22;
c. The name and telephone number of the operator, if the operator is not the applicant; and
d. Whether the facility is located in the border area, and, if so:
i. A description of the area into which the effluent discharges from the facility may flow, and
ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.
2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
c. For small MS4s:
i. A stormwater management program under 40 CFR 122.34, and
ii. The application requirements under 40 CFR 122.33.
C. Consolidation of permit applications.
1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B902. Requested Coverage Under a General Permit
An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.
1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B903. Individual Permit Issuance or Denial
A. Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
B. Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
C. Permit denial.
1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice

of intent to deny the permit application. The written notification shall include:

a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.
3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

A. Permit duration.

1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).
3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).

B. Permit reissuance.

1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.
2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:
   a. The name, address, and telephone number of the MS4;
   b. The name, address, and telephone number of the contact person;
   c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;
   d. The results of any information collected and analyzed, including monitoring data, if any;
   e. A summary of the stormwater activities planned for the next reporting cycle;
   f. A change in any identified best management practices or measurable goals for any minimum measure; and
   g. Notice of relying on another governmental entity to satisfy some of the permit obligations.

C. Continuation. A NPDES or AZPDES individual permit may continue beyond its expiration date if:

1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and
2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B905. Individual Permit Transfer

A. A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.

B. Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:

1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
   a. The Director receives a written request from an interested person;
   b. The Director receives information, such as when inspecting a facility;
   c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or
   d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
      i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.
      ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).
2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.

a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
b. Revoked and reissued individual permit.
i. The permittee shall submit a new application.
ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.

3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

B. Minor modifications.

1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
a. Correct typographical errors;
b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
c. Require more frequent monitoring or reporting by the permittee;
d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
g Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(7)(b) as enforceable conditions of the permit, and
i. Annex an area by a municipality.

2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.

C. Permit termination.

1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
a. The permittee's failure to comply with any condition of the permit;
b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.

2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.
a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B907. Individual Permit Variances

A. The Director may grant or deny a request for any of the following variances:
1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
4. A variance under R18-11-122 for a water quality standard.

B. The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:
1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.

C. The Director may deny or forward to EPA with a written concurrence a completed request for:
1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).

D. If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

A. The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
   a. Involve the same or substantially similar types of operations;
   b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
   c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
   d. Require the same or similar monitoring; and
   e. Are more appropriately controlled under a general permit than under an individual permit.

B. Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.

C. Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
   a. A discharge from a POTW;
   b. A combined sewer overflow;
   c. A MS4;
   d. A primary industrial facility;
   e. A stormwater discharge associated with industrial activity;
   f. A CAFO;
   g. A treatment works treating domestic sewage; and
   h. A stormwater discharge associated with construction activity.
2. For dischargers not listed in subsection (C)(1), the Director may consider a Notice of Intent inappropriate for the discharge and authorize the discharge under a general permit without a Notice of Intent. In making this finding, the Director shall consider:
   a. The type of discharge,
   b. The expected nature of the discharge,
   c. The potential for toxic and conventional pollutants in the discharge,
   d. The expected volume of the discharge,
   e. Other means of identifying the discharges covered by the permit, and
   f. The estimated number of discharges covered by the permit.
3. The Director shall provide reasons for not requiring a Notice of Intent for a general permit in the public notice.

D. Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:
1. The name, position, address, and telephone number of the owner of the facility;
2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
3. The name and address of the facility;
4. The type and location of the discharge;
5. The receiving streams;
6. The latitude and longitude of the facility;
7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
8. The signature of the certifying official required under 40 CFR 122.22; and
9. Any other information necessary to determine eligibility for the AZPDES general permit.

E. The general permit shall contain:
1. The expiration date; and
2. The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), R18-9-A905(A)(2), and R18-9-A905(A)(3) and determined by the Director as necessary and appropriate for the protection of navigable waters.

F. The Department shall inform a permittee if EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-C902. Required and Requested Coverage Under an Individual Permit

A. Individual permit requirements.
1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
   a. A discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit;
   b. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
   c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
   d. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
   e. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
   f. Standards for sewage sludge use or disposal are promulgated for the sludge use and disposal practices covered by the general permit; or
   g. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
      i. The location of the discharge with respect to navigable waters,
      ii. The size of the discharge,
      iii. The quantity and nature of the pollutants discharged to navigable waters, and

iv. Any other relevant factor.

2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
   a. A brief statement of the reasons for the decision,
   b. An application form,
   c. A statement setting a deadline to file the application,
   d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
   e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).

B. Individual permit request.

1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
   a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than 90 days after publication of the general permit.
   b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C903. General Permit Duration, Reissuance, and Continuation

A. General permit duration.

1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.

B. Continued coverage. Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:

1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
2. The date the permittee has submitted a Notice of Termination; or
3. The date the Director has issued an individual permit for the discharge; or
4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C904. Change of Ownership or Operator Under a General Permit

If a change of ownership or operator occurs for a facility operating under a general permit:

1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
   a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
   b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
2. New owner or operator.
   a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
   b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
   c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:
      i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities,
      ii. The construction is complete and final site stabilization is achieved, or
      iii. The operator's status changes.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C905. General Permit Modification and Revocation and Reissuance

A. The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.

B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

R18-9-D901. CAFO Designations

A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
2. The location of the animal feeding operation relative to a navigable water;
3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
5. Any other relevant factor.

C. The Director shall conduct an onsite inspection of the animal feeding operation before the making a designation under subsection (B).

D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless a pollutant is discharged:
1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or
2. Directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.

E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D902. AZPDES Permit Coverage Requirements

A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).

B. If a person who owns or operates a large CAFO receives a no potential to discharge determination under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.

C. The discharge of manure, litter, or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter, or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site-specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi) through (ix).

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D903. No Potential To Discharge Determinations for Large CAFOs

A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.

B. Any person who owns or operates a large CAFO and has not had a discharge within the previous five years may request a no potential to discharge determination by submitting to the Department:
1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
2. Any additional information requested by the Director to supplement the request or requested through an onsite inspection of the CAFO.

C. Process for making a no potential to discharge determination.
1. Upon receiving a request under subsection (B), the Director shall consider:
   a. The potential for discharges from both the production area and any land application area, and
   b. Any record of prior discharges by the CAFO.
2. The Director shall issue a public notice that includes:
   a. A statement that a no potential to discharge request has been received;
   b. A fact sheet, when applicable;
   c. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
   d. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and
   e. A description of the procedures for reaching a final decision on the no potential to discharge determination.
3. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
4. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.

D. If the Director determines that the operation has the potential to discharge, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the determination of potential to discharge.

E. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issues a no potential to discharge determination for the facility. If the Director issues a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change

in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.

F. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
1. Circumstances at the facility change;
2. New information becomes available; or
3. The Director determines, through other means, that the CAFO has a potential to discharge.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D904. AZPDES Permit Coverage Deadlines

A. Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. Permit coverage deadline for an animal feeding operation operating before April 14, 2003.
   a. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was defined as a CAFO before February 2, 2004 shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
   b. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was not defined as a CAFO until February 2, 2004 shall apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;
   c. An owner or operator of an animal feeding operation that operated before April 14, 2003 who changes the operation on or after February 2, 2004, resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before February 2, 2004, the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage;
   d. An owner or operator of an animal feeding operation that operated before April 14, 2003 who constructs additional facilities on or after February 2, 2004, resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.
2. Permit coverage deadline for an animal feeding operation operating on or after April 14, 2003. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.
3. Permit coverage deadline for a designated CAFO. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.

B. Unless specified under R18-9-D903(E) and (F), the Director shall not require permit coverage for a CAFO that the Director determines under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.

C. Duty to maintain permit coverage.
1. The permittee shall:
   a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
   b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
2. Continued permit coverage or reapplication for a permit is not required if:
   a. The facility ceases operation or is no longer a CAFO; and
   b. The permittee demonstrates to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D905. Closure Requirements

A. Closure.
1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
   a. For operations that met the "no potential to discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit;
   b. The approximate quantity of manure, process wastewater, and other materials and contaminants to be removed from the facility;
   c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
   d. The method to treat any material remaining at the facility;
   e. The method to control the discharge of pollutants from the facility;
   f. Any limitations on future land or water use created as a result of the facility's operations or closure activities;
   g. A schedule for implementing the closure plan; and
   h. Any other relevant information the Department determines necessary.

B. The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and before redevelopment.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

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

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
   a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
   b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
   a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
   b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
   c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
   d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
   e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
   f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
   g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. *"Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376).* A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
16. "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.
17. "Exceptional quality biosolids" means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
18. "Feed crops" means crops produced for animal consumption.
19. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
20. "Food crops" means crops produced for human consumption.
21. "Gravel" means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
22. "Industrial wastewater" means wastewater that is generated in a commercial or industrial process.
23. "Land application," "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.

24. "Monthly average" means the arithmetic mean of all measurements taken during a calendar month.
25. "Municipality" means a city, town, county, district, association, or other public body, including an intergovernmental agency of two or more of the foregoing entities created by or under state law. The term includes special districts such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
26. *"Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).* A.R.S. § 49-201(21).
27. "Other container" means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
28. "Pathogen" means a disease-causing organism.
29. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity.* A.R.S. § 49-201(26).
30. "Person who prepares biosolids" means a person who generates biosolids during the treatment of domestic sewage in a treatment works, packages biosolids, or derives a new product from biosolids either through processing or by combining it with another material, including blending several biosolids together.
31. "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.
32. "Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
33. "Pollutant limit" means:
    a. A numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
    b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
    c. The volume of biosolids that can be applied to a unit area of land such as gallons per acre.
34. "Privately owned treatment works" means a device or system owned by a non-governmental entity used to treat, recycle, or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste that is generated off-site.
35. "Public contact site" means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to biosolids.
36. "Reclamation" means the use of biosolids to restore or repair construction sites, active or closed mining sites, landfill caps, or other drastically disturbed land.
37. "Responsible official" means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official or any duly authorized agent.
38. "Runoff" means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
39. "Sand" means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.
40. *"Sewage sludge":*
    (a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
    (b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
    (c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works. A.R.S. § 49-255(6)
41. "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.
42. "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in biosolids.
43. "Store biosolids" or "storage of biosolids" means the temporary holding or placement of biosolids on land before land application.
44. "Surface disposal site" means an area of land that contains one or more active sewage sludge units.
45. "Ton" means a net weight of 2000 pounds and is known as a short ton.
46. "Total solids" means the biosolids material that remains when sewage sludge is dried at 103° C to 105° C.
47. "Treatment of biosolids" means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.
48. "Unstabilized solids" means the organic matter in biosolids that has not been treated or reduced through an aerobic or anaerobic process.
49. "Vectors" means rodents, flies, mosquitoes, or other organisms capable of transporting pathogens.
50. "Volatile solids" means the amount of total solids lost when biosolids are combusted at 550° C in the presence of excess air.
51. "Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

Historical Note

New Section recodified from R18-13-1502 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1002. Applicability and Prohibitions

A. This Article applies to:
1. Any person who:

a. Prepares biosolids for land application or disposal in a sewage sludge unit or in an incinerator,
b. Transports biosolids for land application or incineration, or disposal in a sewage sludge unit,
c. Applies biosolids to the land,
d. Owns or operates a sewage sludge unit,
e. Owns or leases land to which biosolids are applied, or
f. Owns or operates an incinerator that fires sewage sludge,

2. Biosolids applied to the land or placed on a surface disposal site,
3. Land where biosolids are applied, and
4. A surface disposal site.

B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program established under A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, Articles 1, 2, and 3.

C. Except as provided in subsection (D), the land application of biosolids in a manner that is not consistent with Articles 9 and 10 of this Chapter is prohibited.

D. The Department may permit the land application of biosolids in a manner that differs from the requirements in R18-9-1007 and R18-9-1008 if the land application is permitted under the aquifer protection permit program established under A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1, 2, and 3.

E. Surface disposal site.

1. Any person who prepares biosolids that are placed in a sewage sludge unit, or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and
   a. The pathogen reduction requirements in R18-9-1006, and
   b. The vector attraction reduction requirements in R18-9-1010.
2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.

F. A person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site or fire sewage sludge in a sewage sludge incinerator if the biosolids are likely to adversely affect a threatened or endangered species as listed under section 4 of the Endangered Species Act (16 U.S.C. 1533), or its designated critical habitat as defined in 16 U.S.C. 1532.

G. A person incinerating biosolids shall comply with the requirements set out in 40 CFR Part 503, Subpart E, July 1, 2013 edition, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

Historical Note

New Section recodified from R18-13-1501 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

R18-9-1003. General Requirements

A. A person shall not use or transport biosolids, apply biosolids to land, or place biosolids on a surface disposal site in Arizona, except as established in this Article.

B. The management practices in R18-9-1007 and R18-9-1008 do not apply if biosolids are exceptional quality biosolids.

C. The applicator shall obtain, submit to the Department, and maintain the information required to comply with the requirements of this Article.

D. The applicator shall not receive bulk biosolids without prior written confirmation of the filing of a "Request for Registration" under R18-9-1004.

E. The land owner or lessee of land on which bulk biosolids, that are not exceptional quality biosolids, have been applied shall notify any subsequent land owner and lessee of all previous land applications of biosolids and shall disclose any site restrictions listed in R18-9-1009 that are in effect at the time the property is transferred.

F. A person who prepares biosolids shall ensure that the applicable requirements in this Article are met when the biosolids are applied to the land or placed on a surface disposal site.

G. If necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids, the Department may impose, on a case-by-case basis, requirements for the use or disposal of biosolids, including exceptional quality biosolids, in addition to, or more stringent than, the requirements in this Article. The Department shall notify the preparer, applier, or land owner of these requirements by letter and include the justification for the requirements and the length of time or applicability for the requirements.

Historical Note

New Section recodified from R18-13-1503 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1004. Applicator Registration, Bulk Biosolids

A. Any person intending to land-apply bulk biosolids in Arizona shall submit, on a form provided by the Department, a completed "Request for Registration."

B. An applicator shall not engage in land application of bulk biosolids, unless the applicator has obtained a prior written acknowledgment of the Request for Registration or a supplemental request from the Department.

C. The Request for Registration for all biosolids, except exceptional quality biosolids, shall include:

1. The name, address, and telephone number of the applicator and any agent of the applicator;
2. The name and telephone number of a primary contact person who has specific knowledge of the land application activities of the applicator;
3. Whether the applicator holds a NPDES or AZPDES permit, and, if so, the permit number;
4. The identity of the person, if different from the applicator, including the NPDES or AZPDES permit number, who will prepare the biosolids for land application; and
5. The following information, unless the information is already on file at the Department as part of an approved land application plan, for each site on which application is anticipated to take place:
   a. The name, mailing address, and telephone number of the land owner and lessee, if any;
   b. The physical location of the site by county;

c. The legal description of the site, including township, range, and section, or latitude and longitude at the center of each site;
d. The number of acres or hectares at each site to be used;
e. Except for sites described in R18-9-1005(D)(2)(c), background concentrations of the pollutants listed in Table 4 of R18-9-1005 from representative soil samples;
f. The location of any portion of the site having a slope greater than 6%; and
g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously received biosolids, or when a site has not been used for land application for at least three consecutive years.
i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.
ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotice the site following the process described in subsection (C)(5)(g)(i) before its reuse.

D. The Request for Registration for exceptional quality biosolids shall include the information in subsections (C)(1) through (C)(4).
E. A responsible official of the applicator shall sign the Request for Registration.
F. The Department shall mail a written acknowledgment of a Request for Registration or supplemental request, within 15 business days of receipt of the request.
G. An applicator wishing to use a site that has not been identified in a Request for Registration shall file a supplemental request with the Department before using the new site. Public notice requirements under R18-9-1004(C)(5)(g) apply.

Historical Note
New Section recodified from R18-13-1504 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1005. Pollutant Concentrations
A. A person shall not apply biosolids with pollutant concentrations that exceed any of the ceiling concentrations established in Table 1.
B. A person shall not apply biosolids sold or given away in a bag or other container that are not exceptional quality biosolids to a site if any annual pollutant loading rate in Table 3 will be exceeded. A person shall determine annual application rates using the methodology established in Appendix A.
C. A person shall not apply bulk biosolids to a lawn or garden unless the biosolids are exceptional quality biosolids.
D. Unless using exceptional quality biosolids, a person shall not apply bulk biosolids to a site when:
1. The pollutant concentrations exceed the levels in Table 2, or
2. Any cumulative pollutant loading rate in Table 4 will be exceeded. A person shall determine compliance with the site cumulative pollutant loading rates using the following:
a. By identifying all known biosolids application events and information relevant to a site since September 13, 1979.
b. By calculating the existing cumulative level of the pollutants established in Table 4 using actual analytical data from the application events or if actual analytical data from application events before April 1996 are not available, background concentrations determined by taking representative soil samples of the site, if it is known that the site received biosolids before April 1996.
c. Background soil tests are not required for those sites that have not received biosolids before April 23, 1996.

Table 1. Ceiling Concentrations

Pollutant	Ceiling concentrations (milligrams per kilogram) (1)
Arsenic	75.0
Cadmium	85.0
Chromium	3000.0
Copper	4300.0
Lead	840.0
Mercury	57.0
Molybdenum	75.0
Nickel	420.0
Selenium	100.0
Zinc	7500.0

(1) Dry-weight basis.

Table 2. Monthly Average Pollutant Concentrations

Pollutant	Concentration limits (milligrams per kilogram) (1)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

(1) Dry-weight basis.

Table 3. Annual Pollutant Loading Rates

Pollutant	Annual pollutant loading rates (in kilograms per hectare)
Arsenic	2.0
Cadmium	1.9
Copper	75.0
Lead	15.0
Mercury	0.85
Nickel	21.0
Selenium	5.0
Zinc	140.0

Table 4. Cumulative Pollutant Loading Rates

Pollutant	Cumulative pollutant loading rates (in kilograms per hectare)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

Historical Note
New Section recodified from R18-13-1505 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1006. Class A and Class B Pathogen Reduction Requirements

A. An applicator shall ensure that all biosolids applied to land meet Class A or Class B pathogen reduction requirements at the time the biosolids are:
1. Placed on an active sewage sludge unit unless the biosolids are covered with soil or other material at the end of each operating day, or
2. Land applied.

B. Biosolids that are sold or given away in a bag or other container for land application, or that are applied on a lawn or home garden, shall meet the Class A pathogen reduction requirements established in subsection (D).

C. Land on which biosolids with Class B pathogen reduction requirements are applied is subject to the use restrictions established in R18-9-1009.

D. Biosolids satisfy the Class A pathogen reduction requirements when the density of fecal coliform is less than 1000 Most Probable Number per gram of total solids (dry-weight basis), or the density of *Salmonella sp.* bacteria is less than three Most Probable Number per four grams of total solids (dry-weight basis), and any one of the following alternative pathogen treatment options is used:
1. Alternative 1. The pathogen treatment process meets one of the following time and temperature requirements:
   a. When the percent solids of the biosolids are seven percent or greater, the temperature of the biosolids shall be held at 50° C or higher for at least 20 minutes. The temperature and time period is determined using the equation in subsection (D)(1)(b), except when small particles of the biosolids are heated by either warmed gases or an immiscible liquid;
   b. When the percent solids of the biosolids are seven percent or greater, and small particles of the biosolids are heated by either warmed gases or an immiscible liquid, a temperature of 50° C or higher shall be held for 15 seconds or longer. The temperature and time period is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius;

   c. When the percent solids of the biosolids are less than seven percent, the temperature of the biosolids is 50° C or higher and the time period is 30 minutes or longer. The temperature and time period shall be determined using the following equation:

$$D = \frac{50,070,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius; or

   d. When the percent solids of the biosolids are less than seven percent, and the time of heating is at least 15 seconds, but less than 30 minutes, the time and temperature is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius.

2. Alternative 2. The pathogen treatment process meets all the following parameters:
   a. The pH of the quantity of biosolids treated is raised to 12 or higher and held at least 72 hours;
   b. During the period that the pH is above 12, the temperature of the biosolids is held above 52° C for at least 12 hours; and
   c. At the end of the 72-hour period during which the pH is above 12, the biosolids are air dried to achieve a percent solids in the biosolids greater than 50%.
3. Alternative 3. The following conditions are met:
   a. The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis);
   b. The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density less than one for four grams of total solids (dry-weight basis); and
   c. Once the density requirements in subsections (D)(3)(a) and (D)(3)(b) are consistently met after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.
4. Alternative 4. The following requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:
   a. The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and
   b. The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).
5. Alternative 5. Composting.

a. Use either the within-vessel or the static-aerated-pile composting method, maintaining the temperature of the biosolids at 55° C or higher for three days; or
b. Use the windrow composting method, maintaining the temperature of the biosolids at 55° C or higher for at least 15 days. The windrow shall be turned at least five times when the compost is maintained at 55° C or higher.

6. Alternative 6. Heat drying. The biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content to 10% or lower by weight. During the process:
a. The temperature of the sewage sludge particles shall exceed 80° C, or
b. The wet bulb temperature of the gas as the biosolids leave the dryer shall exceed 80° C.
7. Alternative 7. Heat treatment. The quantity of liquid biosolids treated are heated to a temperature of 180° C or higher for at least 30 minutes.
8. Alternative 8. Thermophilic aerobic digestion. Liquid biosolids are agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids is 10 days at 55 ° to 60° C.
9. Alternative 9. Beta ray irradiation. Biosolids are irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
10. Alternative 10. Gamma ray irradiation. Biosolids are irradiated with gamma rays from certain isotopes, such as ^{60}Cobalt and ^{137}Cesium at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
11. Alternative 11. Pasteurization. The temperature of the biosolids is maintained at 70° C or higher for at least 30 minutes.
12. Alternative 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.

E. Biosolids satisfy the Class B pathogen reduction requirements when the biosolids meet any one of the following options:
1. Alternative 1. The geometric mean of the density of fecal coliform in seven representative samples is less than either 2,000,000 Most Probable Number per gram of total solids (dry-weight basis), or 2,000,000 colony forming units per gram of total solids (dry-weight basis);
2. Alternative 2. Air drying. The biosolids are dried on sand beds or paved or unpaved basins for at least three months. During at least two of the three months, the ambient average daily temperature is above 0° C;
3. Alternative 3. Lime stabilization. Sufficient lime is added to the biosolids to raise the pH of the biosolids to 12 after at least two hours of contact;
4. Alternative 4. Aerobic digestion. The biosolids are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature between 40 days at 20° C and 60 days at 15° C;
5. Alternative 5. Anaerobic digestion. The biosolids are treated in the absence of air for a specific mean cell residence time at a specific temperature between 15 days at 35° C to 55° C and 60 days at 20° C;
6. Alternative 6. Composting. Using the within-vessel, static-aerated-pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher for five consecutive days. For at least four hours during the five days, the temperature in the compost pile exceeds 55° C; or
7. Alternative 7. The Director shall approve another process if it is equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

Historical Note

New Section recodified from R18-13-1506 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1007. Management Practices and General Requirements

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site, except a site where bulk biosolids are applied for reclamation. The applicator shall not:
1. Apply bulk biosolids to soil with a pH less than 6.5 at the time of the application, unless the biosolids are treated under one of the procedures in subsections R18-9-1006(D)(2), R18-9-1006(E)(3), or R18-9-1010(A)(6), or the soil and biosolids mixture has a pH of 6.5 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6%, unless the site is operating under an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
3. Apply bulk biosolids to land under the following conditions:
a. Bulk biosolids with Class A pathogen reduction. If the depth to groundwater is five feet (1.52 meters) or less;
b. Bulk biosolids with Class B pathogen reduction.
i. If the depth to groundwater is 10 feet (3.04 meters) or less; or
ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments, if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well or no closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 25 feet (7.62 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Apply bulk biosolids at an application rate greater than the agronomic rate of the vegetation or crop grown on the site;
8. Apply domestic septage or any other bulk biosolids with less than 10% solids at a rate that exceeds the annual application rate, calculated in gallons per acre for a 365-day period by dividing the amount of nitrogen needed by the crop or vegetation grown on the land, in pounds per acre per 365-day period, by 0.0026;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered, so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);

10. Apply any additional bulk biosolids before a crop is grown on the site if the site has received biosolids containing nitrogen at the equivalent of the agronomic rate appropriate for that crop;
11. Exceed the irrigation needs of the crop of an application site;
12. To minimize odors, apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied; or
13. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. If biosolids are placed in a bag or other container, the person who prepares the biosolids shall distribute a label or information sheet to the person receiving the material. This label or information sheet shall, at a minimum, contain the following information:
1. The identity and address of the person who prepared the biosolids;
2. Instructions on the proper use of the material, including agronomic rates and an annual application rate that ensures that the annual pollutant rates established in R18-9-1005 are not exceeded; and
3. A statement that application of biosolids to the land shall not exceed application rates described in the instructions on the label or information sheet.

Historical Note

New Section recodified from R18-13-1507 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site where the bulk biosolids are applied for reclamation. The applicator shall not:
1. Apply bulk biosolids unless the soil and biosolids mixture has a pH of 5.0 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6% unless:
   a. The site is operating under an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
   b. The site is reclaimed as specified under A.R.S. Title 27, Chapter 5, and controls are in place to prevent runoff from leaving the application area; or
   c. Runoff from the site does not reach navigable waters;
3. Apply bulk biosolids to land under the following conditions:
   a. Bulk biosolids with Class A pathogen reduction. To land if the depth to groundwater is 5 feet (1.52 meters) or less;
   b. Bulk biosolids with Class B pathogen reduction.
      i. To land if the depth to groundwater is 10 feet (3.04 meters) or less; and
      ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well, unless the applicator justifies and the Department approves a shorter distance, or apply bulk biosolids closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 1000 feet (305 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Exceed a total of 150 dry tons per acre to any portion of a reclamation site if bulk biosolids are applied;
8. Apply bulk biosolids with less than 10% solids;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
10. Apply more water than necessary to control dust and establish vegetation; and
11. Apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied.
12. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. The requirements of R18-9-1007(B) apply if biosolids placed in a bag or other container are used to reclaim a site.

Historical Note

New Section recodified from R18-13-1508 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1008 renumbered to R18-9-1009; new Section R18-9-1008 made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1009. Site Restrictions

A. The following site restrictions apply to land where biosolids, which do not meet the Class A pathogen reduction requirements established in R18-9-1006, are land-applied.
1. A person shall not:
   a. Harvest food crop parts that touch the biosolids, or biosolids and soil mixture, but otherwise grow above the land's surface for 14 months following application;
   b. Harvest food crop parts growing in or below the land's surface for 20 months following application if the biosolids remain unincorporated on the land's surface for four months or more;

c. Harvest food crop parts growing in or below the land's surface for 38 months following application if the biosolids remain on the land's surface for less than four months before incorporation;
d. Harvest food, feed, and fiber crops for 30 days after application;
e. Graze animals on the land for 30 days after application; or
f. Harvest turf to be used at a public contact site or private residence for one year after application.

2. A person shall restrict public access to:
a. Public contact sites for one year after application, and
b. Land with a low potential for public exposure for 30 days after application.

B. If the vector attraction reduction requirement is met using the method:
1. In R18-9-1010(C)(1) or R18-9-1010(C)(2), the requirements of subsection (A) apply to domestic septage applied to agricultural land, forests, or reclamation sites; or
2. In R18-9-1010(C)(3), the requirements of subsection (A)(1)(a) through (A)(1)(d) apply to domestic septage applied to agricultural land, forests, or reclamation sites.

C. Once application is completed at a site, the applicator shall, in writing, provide the land owner and lessee with the following information:
1. The cumulative pollutant loading at the site if it is greater than or equal to 90% of the available site capacity established in Table 4 of R18-9-1005;
2. Any restriction established in this Section that applies to the property and the nature of the restriction; and
3. The signature of a responsible official of the applicator on this document that includes the following statement:
"I certify under penalty of law, that the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for false representations, including fines and imprisonment."

D. The land owner or lessee shall provide each applicator with a signature indicating receipt of the site restriction statement.

Historical Note
New Section recodified from R18-13-1509 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1009 renumbered to R18-9-1010; new Section R18-9-1009 renumbered from R18-9-1008 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1010. Vector Attraction Reduction

A. Except as provided in subsection (B), an applicator or person who prepares biosolids shall use one of the following vector attraction reduction procedures if biosolids are land-applied:
1. Reducing the mass of volatile solids by a minimum of 38% using the calculation procedures established in "Environmental Regulations and Technology -- Control of Pathogens and Vector Attraction in Sewage Sludge," EPA/625/R-92-013, published by the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, 1999 edition. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State;
2. If the 38% volatile solids reduction cannot be met for anaerobically digested biosolids the reduction can be met by digesting a portion of the previously digested material anaerobically in a laboratory in a bench-scale unit for 40 additional days at a temperature between 30° C and 37° C. Vector attraction reduction is achieved if, at the end of the 40 days, the volatile solids in the material at the beginning of the period are reduced by less than 17%;
3. If the 38% volatile solids reduction cannot be met for aerobically digested biosolids, the reduction can be met by digesting a portion of the previously digested material, which has a percent solids of 2% or less, aerobically in a laboratory in a bench-scale unit for 30 additional days at 20° C. Vector attraction reduction is achieved if, at the end of the 30 days, the volatile solids in the material at the beginning of the period are reduced by less than 15%;
4. Treat the biosolids in an aerobic process during which the specific oxygen uptake rate (SOUR) is equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry-weight basis) at 20° C;
5. Treat the biosolids in an aerobic process for 14 days or longer, during which the temperature of the biosolids is higher than 40° C and the average temperature of the biosolids is higher than 45° C;
6. Raising the pH of the biosolids to 12 or higher by alkali addition and, without the addition of more alkali, remain at 12 or higher for two hours and at 11.5 or higher for an additional 22 hours;
7. The percent solids of the biosolids that do not contain unstabilized solids generated in a primary wastewater treatment process is equal to or greater than 75% based on the moisture content and total solids before mixing with other materials;
8. The percent solids of the biosolids containing unstabilized solids generated in a primary wastewater treatment process are equal to or greater than 90% based on the moisture content and total solids before mixing with other materials;
9. Injecting the biosolids below the surface of the land so that no significant amount of biosolids is present on the land surface one hour after injection. If the biosolids meet Class A pathogen reduction, injection shall occur within eight hours after being discharged from a Class A pathogen treatment process; or
10. Incorporating the biosolids into the soil within six hours after application. If the biosolids meet Class A pathogen reduction, application shall occur within eight hours after being discharged from a Class A pathogen treatment process.

B. Biosolids that are sold or given away in a bag or other container, or are applied to a lawn or home garden, shall meet one of the vector attraction reduction alternatives established in subsections (A)(1) through (A)(8).

C. For domestic septage, vector attraction reduction is met by one of the following methods:
1. By injecting as specified in subsection (A)(9);
2. By incorporating as specified in subsection (A)(10); or
3. By raising the pH of the domestic septage to 12 or higher through the addition of alkali and, without the addition of more alkali, holding the pH at 12 or higher for at least 30 minutes.

Historical Note
New Section recodified from R18-13-1510 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1010 renumbered to R18-9-1011; new Section R18-9-1010 renumbered from R18-9-1009 and amended by final rulemaking at 7 A.A.R. 5879, effective

December 7, 2001 (Supp. 01-4).

R18-9-1011. Transportation

A. A transporter of bulk biosolids into and within Arizona shall use covered trucks, trailers, rail-cars, or other vehicles that are leakproof.

B. A transporter of bulk biosolids in liquid or semisolid form, including domestic septage, into and within Arizona shall comply with the requirements in A.A.C. R18-13-310. A transporter of bulk biosolids in solid form into and within Arizona shall comply with the requirements in A.A.C. R18-13-310.

C. A transporter of biosolids shall clean any truck, trailer, rail-car, or other vehicle used to transport biosolids to prevent odors or insect breeding. A transporter shall clean any tank vessel used to transport commercial or industrial septage or restaurant grease-trap wastes, that is also used to haul domestic septage, before loading the domestic septage to ensure that mixing of wastes does not occur.

D. If bulk biosolids are spilled while being transported, the transporter shall:

1. Immediately pick up any spillage, including any visibly discolored soil, unless otherwise determined by the Department on a case-by-case basis;
2. Within 24 hours after the spill, notify the Department of the spill and submit written notification of the spill within seven days. The written notification shall include the location of the spill, the reason it occurred, the amount of biosolids spilled, and the steps taken to clean up the spill.

Historical Note

New Section recodified from R18-13-1511 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1011 renumbered to R18-9-1012; new Section R18-9-1011 renumbered from R18-9-1010 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4). A.C.C. citation corrected in subsection (B) at the request of the Department; Office file number M16-185 (Supp. 16-3).

R18-9-1012. Self-monitoring

A. Except as provided in subsection (B) the person who prepares the biosolids shall conduct self-monitoring events at the frequency listed in Table 5 for the pollutants listed in R18-9-1005, the pathogen reduction in R18-9-1006 and the vector attraction reduction requirements in R18-9-1010.

Table 5. Frequency of Self-monitoring

Amount of biosolids prepared (tons/metric tons per 365-day period[(1)])	**Frequency**
Greater than zero but less than 319.6/290	Once per year
Equal to or greater than 319.6/290 but less than 1,653/1,500	Once per quarter (Four times per year)
Equal to or greater than 1,653/1,500 but less than 16,530/15,000	Once per 60 days (Six times per year)
Equal to or greater than 16,530/15,000	Once per month (12 times per year)

(1) The amount of biosolids prepared in a calendar year (dry-weight basis).

B. If biosolids are stockpiled or lagooned, the person shall sample the biosolids for pathogen and vector attraction reduction before land application. A person shall sample in a manner that is representative of the entire stockpile or lagoon.

C. A person who prepares biosolids shall submit additional or more frequent biosolids samples, collected and analyzed during the reporting period, to the Department with the regularly-scheduled data required in subsection (A).

D. The Department may order the person who prepares biosolids or the applicator to collect and analyze additional samples to measure pollutants of concern other than those established in Table 1 of R18-9-1005.

E. The applicator, person who prepares biosolids, or a person collecting samples for the applicator or preparer for analysis shall obtain the samples in a manner that does not compromise the integrity of the sample, sample method, or sampling instrument and shall be representative of the quality of the biosolids being applied during the reporting period.

F. A person responsible for sampling the biosolids shall track biosolids samples using a chain-of-custody procedure that documents each person in control of the sample from the time it was collected through the time of analysis.

G. The person who prepares biosolids or the applicator shall ensure that the biosolids samples are analyzed as specified by the analytical methods established in 40 CFR 503.8, July 1, 2001 edition, or by the wastewater sample methods and solid, liquid, and hazardous waste sample methods established in A.A.C. R9-14-612 and R9-14-613. The person who prepares the biosolids or the applicator shall ensure that the biosolids analyses are performed at a laboratory operating in compliance with A.R.S. § 36-495 et seq. The information in 40 CFR 503.8 is incorporated by reference, does not include any later amendments or editions of the incorporated matter and is on file with the Department and the Office of the Secretary of State.

H. The person who prepares the biosolids or the applicator shall monitor pathogen and vector attraction reduction treatment operating parameters, such as time and temperature, shall be monitored on a continual basis.

I. An applicator shall conduct and record monitoring of each site for the management practices established in R18-9-1007 and R18-9-1008.

J. A person shall maintain, as specified in R18-9-1013, and report to the Department as specified in R18-9-1014, all compliance measurements, including the analysis of pollutant concentrations.

Historical Note

New Section recodified from R18-13-1512 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1012 renumbered to R18-9-1013; new Section R18-9-1012 renumbered from R18-9-1011 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1013. Recordkeeping

A. A person who prepares biosolids shall collect and retain the following information for at least five years:

1. The date, time, and method used for each sampling activity and the identity of the person collecting the sample;
2. The date, time, and method used for each sample analysis and the identity of the person conducting the analysis;
3. The results of all analyses of pollutants regulated under R18-9-1005 and organic and ammonium nitrogen to comply with R18-9-1007(A)(7);
4. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
5. A description of the methods used, if any, and the operating values and ranges observed in any pre-land application, vector attraction reduction activities required in R18-9-1010(A); and

6. For the records described in subsections (A)(1) through (A)(5), the following certification statement signed by a responsible official of the person who prepares the biosolids:

"I certify, under penalty of law, that the pollutant analyses and the description of pathogen treatment and vector attraction reduction activities have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

B. An applicator of bulk biosolids, except exceptional quality biosolids, shall collect the following information for each land application site, and, except as indicated in subsection (B)(6), shall retain this information for at least five years:

1. The location of each site, by either street address or latitude and longitude;
2. The number of acres or hectares;
3. The date and time the biosolids were applied;
4. The amount of biosolids (in dry metric tons);
5. The biosolids loading rates for domestic septage and other biosolids with less than 10 percent solids in tons or kilograms of biosolids per acre or hectare and in gallons per acre and the biosolids loading rates for other biosolids in tons or kilograms of biosolids per acre or hectare;
6. The cumulative pollutant levels of each regulated pollutant (in tons or kilograms per acre or hectare). The applicator shall retain these records permanently;
7. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
8. A description of the activities and measures used to ensure compliance with the management practices in R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;
9. If vector attraction reduction was not met by the person who prepares the biosolids, a description of the vector attraction reduction activities used by the applicator to ensure compliance with the requirements in R18-9-1010;
10. A description of any applicable site restriction imposed by in R18-9-1009 if biosolids with Class B pathogen reduction have been applied and documentation that the applicator has notified the land owner and lessee of these restrictions;
11. For the records described in subsections (B)(1) through (B)(8), the following certification statement signed by a responsible official of the applicator of the biosolids:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

12. The information in subsections (A)(1) through (A)(6) if the person who prepares the biosolids is not located in this state.

C. All records required for retention under this Section are subject to periodic inspection and copying by the Department.

D. If there is unresolved litigation, including enforcement, concerning the activities documented by the records required in this Section, the period of record retention shall be extended pending final resolution of the litigation.

Historical Note

New Section recodified from R18-13-1513 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1013 renumbered to R18-9-1014; new Section R18-9-1013 renumbered from R18-9-1012 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1014. Reporting

A. A person who prepares biosolids for application shall provide the applicator with the necessary information to comply with this Article including the concentration of pollutants listed in R18-9-1005 and the concentration of nitrogen in the biosolids.

B. A transporter shall report spills to the Department under R18-9-1011(D).

C. A bulk applicator of biosolids other than exceptional quality biosolids shall provide the land owner and lessee of land application sites with information on the concentrations of the pollutants listed in R18-9-1005 and loading rates of biosolids applied to that site, and any applicable site restrictions under R18-9-1009.

D. A bulk applicator of biosolids other than exceptional quality biosolids shall report to the Department if 90% or more of any cumulative pollutant loading rate has been used at a site.

E. On or before February 19 of each year, any person land-applying bulk biosolids that are not exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department the following applicable information for the previous calendar year:

1. The actual sites used; and
2. For each site used, the following information:
   a. The amount of biosolids applied (in tons or kilograms per acre or hectare);
   b. The application loading rates (in tons or kilograms per acre or hectare, and gallons per acre for domestic septage);
   c. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
   d. The pathogen treatment methodologies used during the year and the results; and
   e. The vector attraction reduction methodologies used during the year and the results.

F. On or before February 19 of each year, a person preparing biosolids in a Class I Sludge Management Facility, POTW with a design flow rate equal to or greater than one million gallons per day, or POTW that serves 10,000 people or more, that are applied to land, shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:

1. The amount of biosolids received if the preparer purchased or received the biosolids from another preparer or source;
2. The amount of biosolids produced (tons or kilograms);
3. The amount of biosolids distributed;
4. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);

5. The pathogen treatment methodologies used during the year, including the results; and
6. The vector attraction reduction methodologies used during the year, including the results.

G. All annual self-monitoring reports shall contain the following certification statement signed by a responsible official:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Historical Note

New Section recodified from R18-13-1514 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1014 renumbered to R18-9-1015; new Section R18-9-1014 renumbered from R18-9-1013 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1015. Inspection

A person subject to this Article shall allow, during reasonable times, a representative of the Department to enter property subject to this Article, to:

1. Inspect all biosolids pathogen and vector treatment facilities, transportation vehicles, incinerators that fire sewage sludge, and land application sites to determine compliance with this Article;
2. Inspect and copy records prepared in accordance with this Article; and
3. Sample biosolids quality.

Historical Note

Renumbered from R18-9-1014 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

Appendix A. Procedures to Determine Annual Biosolids Application Rates

The following procedure determines the annual biosolids application rate (ABAR) that ensures that the annual pollutant loading rates in Table 3 of R18-9-1005 are not exceeded.

1. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the ABAR is shown in the following equation.

   APLR = C x ABAR x 0.001

   APLR = Annual pollutant loading rate in kilograms of biosolids, per hectare, per 365-day period;
   C = Pollutant concentration in milligrams, per kilogram of total solids (dry-weight basis);
   ABAR = Annual biosolids application rate in metric tons, per hectare, per 365-day period (dry-weight basis); and
   0.001 = A conversion factor.
   metric ton = 1.102 short tons
   hectare = 2.471 acres
2. The ABAR is calculated using the following procedure:
   a. Analyze a biosolids sample to determine a concentration for each of the pollutants listed in Table 3 of R18-9-1005; and
   b. Using each of the pollutant concentrations from subsection (2)(a) and the APLRs from Table 3 of R18-9-1005, calculate a separate ABAR for each pollutant using the following equation:

$$ABAR = \frac{APLR}{C \times 0.001}$$

   c. The ABAR for biosolids is the lowest value calculated in under subsection (2)(b) for any pollutant.

Historical Note

New Appendix recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.

2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.

3. Injection wells.

4. Land treatment facilities.

5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.

6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

9. Sewage treatment facilities, including on-site wastewater treatment facilities.

10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 14, 2021

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards

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Summary:

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to all rules in Title 18, Chapter 11, Article 3 regarding Reclaimed Water Quality Standards.

In the previous 5YRR for these rules, approved by the Council in June 2016, the Department indicated it would begin rulemaking for reclaimed water rules, including the pipeline and water conveyances, permitting requirements, and uses and standards. However, the rulemaking workgroup looked into whether additional rulemaking would be needed for the reclaimed water quality rules and recommended that the five reclaimed water classes are satisfactory to ensure the safe use of reclaimed water for the existing uses. As such, no rulemakings related to Article 3 were completed, though rulemakings on the other reclaimed water articles were completed on November 3, 2017.

Proposed Action

In the current report, the Department indicates that the rules in Article 3 provide the necessary information for the regulated community and no significant issues with the reclaimed

water rules have come to the Department's attention since the 2017 rulemaking. Therefore, the Department proposes no changes to the rules.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

A 2001 Department rulemaking implemented rules for reclaimed water permits, and regulated the reuse of reclaimed water based on the class and end use of reclaimed water. The Department prepared an EIS in 2001 and believes that the assessment of the economic impact remains accurate. The Department believes that Article 3 rules' impact on the state's economy, small business and consumers has not changed since the rulemaking in 2001. The stakeholders include: the Department, entities that apply for or have reclaimed water permits, and the general public.

In 2021, the Department identified 11 currently issued reclaimed water individual permits and 550 reclaimed water general permits.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, which are necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. The Department outlines twelve (12) written criticisms it received over the last five year which are summarized in Section 7 of the report. The Department also provides copies of its responses to those written criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Department indicates that the rules are clear, concise and understandable.

6. 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.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Department indicates that the rules are effective in achieving their regulatory objectives.

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

Yes. The Department indicates that the rules are currently enforced as written.

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

Not applicable. The Department indicates that there is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates that the rules were not adopted after July 29, 2010 and also do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR relates to all rules in Title 18, Chapter 11, Article 3 regarding Reclaimed Water Quality Standards. The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. The Department does not propose to take any action with regards to these rules.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

May 21, 2021

Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Rule Review Report for A.A.C. Title 18, Chapter 11, Article 3.

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for A.A.C. Title 18, Chapter 11, Article 3. Reclaimed Water Quality Standards. Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact the following ADEQ employee if you have any questions:

Jon Rezabek
Water Quality Division
602-771-8219
rezabek.jon@azdeq.gov

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

Arizona Department of Environmental Quality
Five-Year Review Report
Title 18. Environmental Quality
Chapter 11. Department of Environmental Quality - Water Quality Standards
Article 3. Reclaimed Water Quality Standards
May 31, 2021

1. **Authorization of the rule by existing statutes**

Statutory Authority: A.R.S. §§ 49-203(A)(1), 49-221(E).

2. **The objective of each rule:**

Rule	Objective
R18-11-301	This rule provides specific explanation for certain terms used in Article 3.
R18-11-302	This rule specifies the applicability of this article, specifically upon direct reuse or reclaimed water with a few exceptions.
R18-11-303	This rule defines the treatment, filtration, removal, disinfection and additives necessary to meet the Class A+ reclaimed water standard. It also lists requirements for maintenance and delivery of this class of water.
R18-11-304	This rule defines the treatment, filtration, removal, disinfection and additives necessary to meet the Class A reclaimed water standard. It also lists requirements for maintenance and delivery of this class of water.
R18-11-305	This rule defines the treatment, filtration, removal and disinfection necessary to meet the Class B+ reclaimed water standard. It also lists requirements for maintenance and delivery of this class of water.
R18-11-306	This rule defines the treatment and disinfection necessary to meet the Class B reclaimed water standard. It also lists requirements for maintenance and delivery of this class of water.
R18-11-307	This rule defines the treatment necessary to meet the Class C reclaimed water standard. It also lists requirements for maintenance and delivery of this class of water.
R18-11-308	This rule defines industry-specific reclaimed water quality requirements.
R18-11-309	This rule defines reclaimed water quality standards for an unlisted type of direct reuse.
Table A.	This rule establishes the minimum reclaimed water quality requirements for different listed types of direct reuse.

3. **Are the rules effective in achieving their objectives?** **Yes _X_** **No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No ___**

5. **Are the rules enforced as written?** **Yes _X_** **No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X_ No __**

7. **Has the agency received written criticisms of the rules within the last five years? Y _X_ N__**

If yes, please fill out the table below

Rule	Criticism/Response
Article 3	Criticism 1: If the only difference between class A and A+ water is how it is used *after* the treatment process, then class A+ water should have a stricter standard somehow. For example, making the 24 hour / 2NTU average a 24 hour / 1 NTU average. Or loosen the standards by some small increment on Class A water to differentiate the two classes. Maybe make the 24 hour / 2 NTU average a 48 hour / 2NTU average for Class A, or move the TKN number from 10 to 15. Just something small enough to differentiate the two. Response 1: ADEQ appreciates the comment. Class A and Class A+ are both allowed for the same types of direct reuse listed in Table A of R18-11-309. In order to meet the Class A+ criteria, a reclaimed water must meet 10 mg/L for the 5-sample geometric mean concentration of total nitrogen. The nitrogen requirement differentiates the Class A+ from the Class A reclaimed water and may result in reclaim water storage facilities being required to have liners in order to prevent nitrogen loading in the vadose zone. Criticism 2: As much is yet to be determined, it is hard to understand what the impacts will be to specific waters, users, and dischargers. The general concept seems solid. Of concern is the comment from staff in response to the question about economic impact that ADEQ has the least stringent approach of the states in the Southwest. Utah's approach may be too much but being least stringent is probably too little. Response 2: ADEQ appreciates the comment and strives to create and maintain programs that are appropriately protective of Human Health and the Environment. Criticism 3: If a Type 3 Reclaim Water Agent is given to an individual, what happens to the permit when the individual leaves employment with the agency they got the permit for? At present the agent walks away with a valid permit and not only leaves their past agency without permit coverage, but as the permit reads, the individual can sell the reclaim water and receive from those sales independent of their past agency. The rule should be rewritten so that this permit is issued to an agency and can be transferred between individuals as they leave employment with said agency. I know of four occurrences where this has happened and the town/city had to pay for a new 5-year permit with time still left on the other. Response 3: ADEQ appreciates the comment. A.A.C. R18-9-B710. Type 3 Recycled Water Permit for a Reclaimed Water Agent -- allows a "person" to operate as a Reclaimed Water Agent if the conditions of the Article are met. "Person" is defined in A.A.C. R18-9-101(33), *"'Person' means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility,*

Article 3	*interstate body or other entity. A.R.S. § 49-201(26). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association."* The applicant may determine who to designate as the responsible party for the permit or the permittee. Permits are issued to the permittee, which in some cases, can be an individual person. It is up to the applicant to determine who they designate as the permittee, applicant, contact person, etc. An individual is typically listed as a contact on the permit as opposed to the permittee. Furthermore, in light of this comment, ADEQ has reviewed all Type 3 Recycled Water Permits and the listed Reclaimed Water Agent. Not one was found to be an individual. Criticism 4: Where fecal coliform organisms are referred to throughout the existing rule (Title 18, Chapter 11, Article 3), perhaps a reference should be made to E. coli since this is what is placed in the Aquifer Protection Permits for facilities producing reclaimed water. Response 4: ADEQ appreciates the comment. ADEQ is currently evaluating expanding the treatment requirements in the reclaimed water permits to include E. coli. ADEQ will first address the issue in the upcoming Aquifer Water Quality Standards rulemaking. Criticism 5: The program should include routine inspection of the systems; specifically, Operation and Maintenance inspections. Response 5: ADEQ appreciates the comment. Monitoring standards for reclaimed water quality are captured in the Aquifer Protection Permit that governs the wastewater treatment plant (WWTP) or the origin of the reclaimed water. WWTPs are inspected on a regular basis. The inspections include review of the operations and maintenance records. Reclaimed Water permits cover the application of reclaimed water by end users. In addition to WWTP inspections, ADEQ inspects reclaim application sites, which includes a specific review of operation and maintenance. Criticism 6: At some point, we will need to come up with standards that will allow for indirect and direct potable reuse. Hopefully, those standards are created soon. Response 6: ADEQ appreciates the comment. Development of standards for indirect and direct potable reuse have been considered as an addition to the Reclaimed Water Rules. However, the current rules allow for indirect and direct potable reuse on a case-by-case basis (See R18-9-E701). While ADEQ does agree that the development and implementation of standards should be pursued, the program allows for potable reuse as is. ADEQ will consider this development in the future as it is not critical to program functionality. Criticism 7: Need to expand uses of reclaimed water, especially Class A+. Response 7: ADEQ appreciates the comment. ADEQ is open to expanding uses for reclaimed water when the science dictates that it is safe to do so. If there are specific recommendation, ADEQ welcomes this, with supporting data. Expanding the uses of reclaimed water have been considered as an addition for the Reclaim Water

Article 3	Rules. If there is a proposal to expand rules to include new uses for reclaimed water the public will have the opportunity to provide comment and feedback. Criticism 8: Concerning the permitted use of reclaimed water for toilet and urinal flushing (Class A Reclaimed Water), it appears that the focus of ADEQ's standards are only on safeguarding public health and safety and not product performance. Plumbing Manufacturers International (PMI) developed parameters in 2018 to ensure that plumbing products, such as toilets and urinals, perform in accordance with the manufacturer's warranty, as we are aware of several instances where parameters that only focus on safeguarding public and health result in products not performing properly which leads to consumer dissatisfaction. Please see "Recommended Parameters for Indoor Use of Recycled Water" at the following website: https://www.safeplumbing.org/communications/reports-resources Response 8: ADEQ appreciates the comment. ADEQ's mission is to Protect Human Health and the Environment. The authority of ADEQ is governed by Statute and Rule. That authority does not extend to the performance of plumbing products. While reclaimed water must meet standards developed by ADEQ to ensure the protection of human health and the environment, ADEQ's role is not to dictate standards related to the performance of the plumbing products. If the commenter wishes to achieve standards aimed at plumbing product performance and maintenance, ADEQ recommends a discussion with the provider of the reclaimed water and an agreement to treat the water to standards that are above and beyond the human health and environmentally based standards listed in this rule. Criticism 9: Does ADEQ allow "full human body contact" with snow produced from reclaimed wastewater? Response 9: ADEQ appreciates the comment. ADEQ has no rules prohibiting or mentioning "full human body contact" in relation to snow produced from reclaimed water. However, A.A.C. R18-11 Table A does require that the minimum class of reclaimed water for snowmaking direct reuse be Class A or above (A.A.C. R18-11-303 & 304). Criticism 10: Does minimal human exposure to treated class A and A+ reclaimed water and snow pose any risk whatsoever to the health, safety, and general welfare of the people? Response 10: ADEQ appreciates the comment. ADEQ, through scientific and public processes has determined that the benefits of reclaimed water outweigh the potential risks. All water reuse carries some inherent risk, as does interacting with any other source of water, such as a lake or river. ADEQ regulates the use of reclaimed water by assuring that the wastewater treatment plant producing the reclaimed water meets the Aquifer Water Quality Standards (AWQSs) (See Arizona Administrative Code {A.A.C.} R18-11-406). The AWQSs include inorganic compounds, organic compounds, and microbiological contaminants. They also include minimum treatment requirements for reclaimed water that address contaminants like fecal coliform and turbidity prior to use. A.A.C. R18-11-303 and 304 explain the treatment, filtration and disinfection necessary to meet Class A+ and Class A reclaimed water

Article 3	quality standards. On February 16, 2001 a supplementary rulemaking document called a Notice of Final Rulemaking (NFRM), was published in the Arizona Administrative Register (A.A.R.) that has a scope that includes the Reclaimed Water Quality Standards, A.A.C. R18-11, Article 3. The citation for this A.A.R. publication is 7 AAR 870 and can be found here, https://apps.azsos.gov/public_services/register/2001/7/final.pdf, beginning on page 870. Of particular relevance to your question is this quote from page 881, *"A water reclamation plant that consistently meets the minimum treatment requirements, fecal coliform, and turbidity criteria for Class A+ and Class A reclaimed water should reliably produce essentially pathogen-free reclaimed water that may be reused safely for all of the reuse applications listed in Appendix A of the rules."* "Appendix A of the rules" refers to A.A.C. R18-11, Article 3, Table A, which requires the minimum class of reclaimed water for snowmaking direct reuse be Class A or above (A.A.C. R18-11-303 & 304). Criticism 11: Is class A and A+ reclaimed water safe for human and animal ingestion? Please include scientific data. Response 11: ADEQ appreciates the comment. All water reuse carries some inherent risk, as does interacting with any other source of water, such as a lake or river. ADEQ, through scientific and public processes has determined that the benefits of using reclaimed water, as specified in rule, outweigh the potential risks, including those where ingestion is a possibility. In the most recent Notice of Final Rulemaking (NFRM) (2001) on this article, at 7 AAR 870, 896, the following is stated, *"[t]here is general agreement by public health experts that advanced wastewater treatment which includes coagulation, filtration and disinfection can produce an essentially pathogen-free effluent that will protect public health when it is reused."* Scientific analysis relied upon for establishing the standards can be found in the NFRM mentioned above, starting at 7 AAR 870: • "[t]he purposes of reclaimed water quality standards" on page 879 • "[w]hat microbiological quality standards does ADEQ propose for reclaimed water?" on page 881 • [a]re the proposed microbiological criteria overly conservative?" on page 896. (See https://apps.azsos.gov/public_services/register/2001/7/final.pdf, beginning on page 870). It should also be noted that Class A and A+ reclaimed water is prohibited for potable use under A.A.C. R18-9-B702(H)(2), which lists the following as prohibited,

	"[p]roviding water for human consumption from a reclaimed water source except as allowed in Part E of this Article." The Part E exception refers to A.A.C. R18-9, Article 7, Part E – Purified Water for Potable Use. These rules outline technologies such as ultra-filtration, reverse osmosis, advanced oxidation, and/or granular activated carbon. See https://apps.azsos.gov/public_services/register/2017/44/contents.pdf at page 3095.
Article 3	Criticism 12: Is class A and A+ reclaimed snow safe for handling by potentially exposed populations? Response 12: ADEQ appreciates the comment. Snowmaking has been determined to be an appropriate use for Class A and A+ reclaimed water. Please review the responses above. In particular, the potable water prohibition for Class A and A+ reclaimed water under A.A.C. R18-9-B702(H)(2) and the NFRM language mentioned in Responses 1 and 3 above. See 7 AAR 870: https://apps.azsos.gov/public_services/register/2001/7/final.pdf Of particular relevance to your question is this quote from page 881, *"A water reclamation plant that consistently meets the minimum treatment requirements, fecal coliform, and turbidity criteria for Class A+ and Class A reclaimed water should reliably produce essentially pathogen-free reclaimed water that may be reused safely for all of the reuse applications listed in Appendix A of the rules."*

8. Economic, small business, and consumer impact comparison:

ADEQ prepared an economic, small business, and consumer impact statement when it promulgated these rules in January 2001 and described the probable economic impacts in qualitative terms. ADEQ believes that the qualitative assessments of the economic impacts of the rules remain accurate. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the January 22, 2001 effective date. Since reclaimed water quality standards rules are implemented through other programs, the best indicator on economic impact would be the number of reclaimed water permits, which allow the direct reuse of reclaimed water based on the class and end use of reclaimed water. The 2001 economic impact statement for Notice of Final Rulemaking on 18 A.A.C. 9, Articles 6 and 7 (7 A.A.R. 758, February 9, 2001) described that in 2000, ADEQ had 139 active reclaimed water reuse permits. In 2021, there are currently eleven issued reclaimed water individual permits and 550 reclaimed water general permits. The general permits broken down by class of reclaimed water are as follows:

- Class A+: 468

- Class A: 8
- Class B+: 41
- Class B: 23
- Class C: 10

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Rule	Explanation
Article 3	2016 Proposed Course of Action: These rules remain effective in providing a comprehensive approach to regulating the reuse of reclaimed water in Arizona, including permitting requirements, allowable end uses, and technical standards for conveyances of reclaimed water, while still ensuring the safe use of reclaimed water. However, ADEQ recognizes there may be opportunities to further improve the 2001 rules in recognition of over 10 years of experience implementing the program and subsequent advances in the science and technology of reclaimed water reuse. ADEQ received an exemption from the rulemaking moratorium from the Governor's office to begin rulemaking for reclaimed water rules, including the pipeline and water conveyances, permitting requirements, and uses and standards. ADEQ has filed two Notice of Docket Openings (22 A.A.R. 16, January 1, 2016). ADEQ is scheduling stakeholder meetings around the state to gather input on needed changes. With input from stakeholders, ADEQ will develop proposed rule changes. ADEQ anticipates submitting a rulemaking package to Council by June 2017. Completed: Yes. Explanation: At the time of the 2017 rulemaking a workgroup looked into whether additional rulemaking would be needed for the reclaimed water quality rules, including A.A.C. R18-11 Article 3. Their recommendation (See p. 21) stated, "[i]t is the work group's recommendation that the five reclaimed water classes are satisfactory to ensure the safe use of reclaimed water for the existing uses" (See: Combined Workgroup Final Report -- https://static.azdeq.gov/wqd/combined_workgroup_final_report.pdf.) Further rulemakings to Article 3 are not planned at this time. ADEQ did complete the rulemaking on the other reclaimed water articles on November 3, 2017 (23 AAR 3091, at 3094, 3097, and 3108). Article 6 Conveyances was moved for restructuring purposes which allows for regulation of recycled water as a whole for industry nomenclature's sake. The 2017 rulemaking states in part (emphasis added): *"The proposed modifications also transfer all of the provisions from A.A.C. Title 18, Chapter 9, Article 6, Reclaimed Water Conveyances, into Article 7 for regulation as general reclaimed water requirements under Part B of Article 7. The definitions for "open water conveyance" and "pipeline conveyance" are moved into the Article 7 General Provisions definition section, R18-9-A701. The reclaimed water pipeline conveyance and open water conveyance sections, R18-*

	9-602 and R18-9-603, respectively, are moved into the section for general requirements for reclaimed water, R18-9-B702. These provisions are only applicable to reclaimed water conveyance and distribution and so are only regulated under the reclaimed water category under Part B of Article 7. ADEQ added a clause to the open water conveyances in R18-9-B702(K)(3)(c) to allow for a possible variance from the ¼ mile signage interval requirement, as approved by the Department to be reasonably protective of human health."

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

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. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

As listed in item #8, the rules were amended before July 29, 2010. The rules in Article 3 do not require issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

ADEQ's rules, as they exist now, provide the necessary information for the regulated community. No significant issues with the reclaimed water rules have come to the attention of ADEQ since the 2017 rulemaking. Therefore, there is no proposed course of action at this time.

without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1).

R18-11-214. Repealed

Historical Note
Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

Appendix A. Repealed

Historical Note
Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

Appendix B. Repealed

Historical Note
Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp.85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions
The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in R18-9-701(1).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means nepholometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in A.R.S. § 49-201(24).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in A.R.S. § 49-201(31).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Historical Note
Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-302. Applicability
This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

Historical Note
Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-303. Class A+ Reclaimed Water

A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no

detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.

D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

Historical Note
Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-304. Class A Reclaimed Water

A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) before discharge to a reclaimed water distribution system.

D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

Historical Note
Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-305. Class B+ Reclaimed Water

A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.

B. An owner of a facility shall ensure that:

1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-306. Class B Reclaimed Water

A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.

B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:

1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.

C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-307. Class C Reclaimed Water

A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.

B. The owner of a facility shall ensure that:
1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.

C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-308. Industrial Reuse

A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
1. Direct reuse of industrial wastewater containing sewage.
2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.

B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.

B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.

C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
1. The risk to public health;
2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
4. The level of treatment necessary to prevent nuisance conditions;
5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct

reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions
In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-402. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

R18-11-403. Analytical Methods
Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-607(B).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-404. Laboratories
A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-405. Narrative Aquifer Water Quality Standards

A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.

C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005

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, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 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. 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. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

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 reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1 or 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into navigable waters for purposes of implementing the permit program established by 33 United States Code section 1344.

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 other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-221. Water quality standards in general

A. The director shall adopt, by rule, water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider, but not be limited to, the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

DEPARTMENT OF LIQUOR LICENSES AND CONTROL
Title 19, Chapter 1, Articles 1-7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021, May 4, 2021, and August 3, 2021

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

FROM: Council Staff

DATE: **March 8, 2021, updated July 16, 2021**

SUBJECT: **DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F21-0408)**
Title 19, Chapter 1, Articles 1-7, Department of Liquor Licenses and Control

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Note: This 5YRR was previously considered at the April 6, 2021 Council Meeting and again at the May 4, 2021 Council Meeting. A representative of the Department of Public Safety (DPS) advised the Council that DPS temporarily assumed control and responsibility of the Department of Liquor Licenses and Control (Department), and that DPS staff would need additional time to review the Department's rules. At the May 4, 2021 Council Meeting, the Council voted to table consideration of this 5YRR to the July 27, 2021 Study Session and August 3, 2021 Council Meeting.

On July 12, 2021, DPS submitted a "Rules Action Plan" that outlined its ongoing efforts to review the Department's 5YRR. The Rules Action plan identifies items that will be addressed through expedited rulemaking, items that will be addressed through regular rulemaking, and items where no action is required. In addition, DPS submitted a draft of a Notice of Proposed Expedited Rulemaking and a draft of a letter to the Governor's office requesting an exception to the rulemaking moratorium. These materials are included herein for the Council's review.

Summary:

This Five Year Review Report (5YRR) from the Department of Liquor Licenses and Control (Department) relates to rules in Title 19, Chapter 1, Articles 1-7, regarding the Department of Liquor Licenses and Control. The rules address the following:

- Article 1: General Provisions;
- Article 2: Licensing;
- Article 3: Licensee Responsibilities;
- Article 4: Required Notices to Department;
- Article 5: Required Records and Reports;
- Article 6: Violations; Hearing; Discipline; and
- Article 7: State Liquor Board.

As the Department indicates, "[t]he mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently."

In the previous 5YRR for these rules, which the Council approved in June 2016, the Department stated it would seek an exception to the rulemaking moratorium in place at that time to amend certain rules it identified in that report: R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-202, R19-1-205, R19-1-207, R19-1-305, R19-1-315, R19-1-320, R19-1-327, R19-1-504, R19-1-603, R19-1-704, and R19-1-705. The Department stated in the previous 5YRR that if an exception from the rulemaking moratorium was granted, it would complete a rulemaking by June 30, 2017.

The Department indicates in this 5YRR that due to the moratorium and resource limitations in hiring or contracting with a professional rulewriter, it did not amend the rules since the last 5YRR.

Proposed Action

Note: As described in the "Rules Action Plan" dated July 12, 2021, "[t]he Department will not take action on some items in the five-year review report as the author(s) of the report made errors in their analysis; for example, one author appeared to be using unknown-origin rulemaking draft notes from seven years ago and referenced rule changes that are not official code as recorded by the Secretary of State. Current leadership believes some items are sufficient as-is."

The proposed course of action in the original 5YRR is summarized below:

In this 5YRR, the Department notes that legislation from 2018, Laws 2018, Ch. 240, required the Department to amend its rules to add provisions regarding the training of security personnel. The Department states that it will work with the Council to determine if any rulemaking is required. Rules relating to the training of security personnel are not currently in Title 19, Chapter 1. Further, the Department states that due to pending legislation (HB2050) and other bills that may affect Title 4, it believes that any required rulemaking should be postponed until the end of the legislative session in May 2021.

However, if it is able to obtain an exception to the rulemaking moratorium, it proposes to amend the following rules: R19-1-101, R19-1-102, R19-1-103, R19-1-104, R19-1-105, R19-1-206,

R19-1-207, R19-1-209, R19-1-304, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-401, R19-1-501, R19-1-504, R19-1-603, and R19-1-604, as discussed in the 5YRR.

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

   Yes. The Department cites both general and specific statutory authority for the rules under review. Council staff notes that there are several statutes that correspond to the rules. Therefore, the applicable statutes are not included in the final materials. Council members may access the relevant statutes at: https://www.azleg.gov/arsDetail/?title=4.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

   The Department works to protect public safety, and support economic growth through the responsible sale and consumption of liquor. The Department states that even though statutory changes happened since 2014, the economic impact of the 2014 rule changes remains minimal.

   Since the 2014 rulemaking, the number of licensees substantially increased. The regulations have not slowed the number of licensees, which increased by 23 percent since FY 2015.

   The stakeholders include: the Department, licensees, and the general public.

   The Department oversees the enforcement of the rules, and reviews licensee applications. Despite a substantial increase in the number of licensees, and a reduction in Department staff, the Department's licensing times decreased. The Department does not report additional costs due to the regulations.

   The rules minimally affect licensees, which are commonplace for liquor licensing. These regulations include: maintaining records of liquor sales, notifying the Department when there are operational changes, and complying with liquor training courses.

   The general public does not bear the cost burden of these regulations, but benefits from increased public safety associated with the rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Department states that the rules achieve their objective with the least burden and cost to those regulated. The Department further states that although compliance costs are imposed on those regulated, the benefits to the health, safety, and welfare of Arizonans outweigh these costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   Yes. The Department states that the rules are generally clear, concise, understandable, and consistent with current rule writing standards.

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

   Yes. The Department states that the rules are consistent with federal law and the U.S. Constitution. The Department notes that pursuant to the 21st Amendment, regulation of spirituous liquors is delegated to the states. However, the Department indicates that due to recent changes to Arizona statutes, there are minor inconsistencies between the statutes and the rules under review.

   In the 5YRR, for each affected rule, the Department describes the inconsistency(s) with the relevant statute(s).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

   Yes. The Department states that the rules are effective in achieving their objectives because it is "able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety, and welfare of Arizona citizens, without finding that the rules hinder, delay, or complicate its processes."

   However, the Department notes that due to statutory changes since 2014, some rules have inconsistent statutory references due to renumbering. The Department states that those changes have not interfered with the effectiveness of the rules.

8. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Department indicates that it enforces the rules. However, it states that where there is an inconsistency with statute, the Department enforces the statute.

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

   The corresponding federal regulations to these rules are located in 27 CFR Chapter 1, Subchapter A. The rules are not more stringent than the corresponding federal regulations.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 are general permits in compliance with A.R.S. § 41-1037.

11. Conclusion

Council staff finds that the Department completed an adequate analysis of the rules under review pursuant to A.R.S. § 41-1056. In light of the supplemental information submitted, Council staff encourages the Council to discuss with DLLC its plan for amending the rules outlined in its "Rules Action Plan." Council staff notes that in the Rules Action Plan, the Department states that "it can have final rules to the Council no later than four months from the receipt of the approved waiver."

Department of Liquor Licenses and Control
2021 Five-Year Review Report Intended Course of Action
July 12, 2021

The Department of Public Safety is reviewing the five-year review report submitted to the Council and has identified items that will be conducted through an expedited rulemaking, regular rulemaking or no action will be taken.

The Department is developing initial draft rules for an expedited rulemaking and will apply for a rulemaking moratorium waiver from the Governor's Office in August pending approval of the draft rules from both DLLC and DPS. The Department believes it can have final rules to the Council no later than four months from the receipt of the approved waiver.

The Department will begin the process to conduct a regular rulemaking for items identified in the report and any items identified as a result of new or amended legislation chaptered in HB2050 during this last legislative session; for example, alcohol-to-go. The Department, due to staffing shortages, expects final rules to be delivered to the Council within one year following the finalization of the expedited rulemaking.

The Department will not take action on some items in the five-year review report as the author(s) of the report made errors in their analysis; for example, one author appeared to be using unknown-origin rulemaking draft notes from seven years ago and referenced rule changes that are not official code as recorded by the Secretary of State. Current leadership believes some items are sufficient as-is.

The following table summarizes the changes identified in the report and the action the Department intends to take.

Rule	Statute	Explanation	Department Course of Action
101	1. ARS 4-205.10, -227.01, -241 2. ARS 4-206.01 3. ARS 4-244(32)(e) 4. ARS 4-203.02(E) 5. ARS 4-213(E) 6. ARS 4-205.08	1. Definitions of words and phrases is incomplete. 2. 101(A)(2)(b) and (3)(b) reference from 206.01(F) to (G). 3. ARS amended so a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of only glass. 101(A)(2)(c), (A)(3)(c), (A)(4)(b),	Expedited Rulemaking: Items 1-4 and 6. No Action: Item 5. Will remain as-is. The Department is not issuing new continuation authorizations. The Department still has existing continuation authorizations that it must account for as they can continue to be renewed.

		(A)(16), (A)(27) reference only a glass container. 4. ARS amended to change the types of entities that can obtain a special event license. 101(41) 5. Dept's authority to issue a restaurant continuation authorization expired under the ARS. 101(A)(38) which defines "restaurant continuation authorization" is obsolete. 6. ARS increased maximum amount of beer a microbrewery may produce to 6.2 million gallons. 101(16) needs the limit updated.	
102	1. ARS 4-213(E) 2. 4-205.02(G), 207.01(B),(J), 206.01(K)	1. Authority to issue a restaurant continuation authorization expired. 102(D) which established a fee is obsolete. 2. ARS removed specific date limitation on various licensing fees. "Until the Date Specified" language in 102(G) through (J) is now obsolete.	Expedited Rulemaking. Items 1,2.
103	ARS 4-112(G)(2)	ARS requires rules pertaining to Title IV training include various security procedures for security personnel requiring an amendment to 103 to add those requirements.	Regular Rulemaking. Requires complex, substantive policy development and research to add requirements for security personnel.
104	ARS 4-205.8, 205.10	Regards craft distillers so each can ship spiritous liquor to a retail licensee. 104(C)(1) and (C)(2) amend to add these license types to make it clear they	Expedited Rulemaking

		may also ship to retail licenses as well as wholesalers.	
105	4-101	Cross reference updates 105(B)	Expedited Rulemaking
206	4-205.02	ARS was renumbered, change statutory reference in 206(A),(B) and (C)	Expedited Rulemaking.
207	4-101	Cross reference updates 207(A)	Expedited Rulemaking
209	1. 4-101 2. 4-201, 202, 203	1. Cross reference updates 209(I) 2. Licensing timeframes. Dept's timeframe is 75 day administrative completeness review, 30 days for substantive review. Dept generally meets the 105 days. Statute provides for a longer substantive review.	Expedited Rulemaking for Item 1. No Action Item 2. The Department does not intend to lengthen its licensing time-frames. The Department under normal operating conditions can meet or exceed the licensing timeframes currently established.
304	4-203(B), 207.01	Pertains to off-premises storage of spiritous liquor, requires licensees to notify only wholesalers of authorization to store liquor off premises. Amend to clarify that in addition to wholesalers, farm wineries, craft distillers and microbreweries may also deliver spirituous liquor to retailers.	Expedited Rulemaking.
308	Law 2017, Ch 54 reduced the minimum age of employees who could handle spiritous liquor from 19 to 18, Members of the industry inquired if erotic entertainers required to be at least 19 would also be amended to reduce the minimum age of erotic entertainers to 18.	Criticism received from industry.	Regular Rulemaking. The Department does not intend to lower the age requirement for erotic entertainers. More research and evaluation is required.

315	4-112(B)(1)(d), 203(J),(M), 205.04(C)(9),(D); 205.08(C)(1); 205.10(C)(7)	Amend 315(A),(B) to clarify that microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.	Expedited Rulemaking
316	4-206.01	ARS renumbered. 316(A) amend from 206.01(J) to (K).	Expedited Rulemaking
317	4-205.02	ARS renumbered. 317(D) amend from 205.02(H) to (J)	Expedited Rulemaking
318	4-203.02(E),(G),(H),(O)	ARS amended related to special event contractors to create the concept of a special event contractor including granting express authority to create rules to carry out these new provisions. The Department has not determined whether any rules are necessary at this time.	Regular Rulemaking. Requires complex, substantive policy development and discussion.
320	4-243(B)(3)(c)	320(M) amend regarding a wholesaler or producer providing samples of spiritous liquor on an off-sale retailers premises.	Expedited Rulemaking
327	4-205.10	New craft distiller license which also has sampling privileges. There is no corresponding rule. The Department has not determined whether any rules are necessary at this time.	Regular Rulemaking. Requires complex, substantive policy development and discussion.
401	4-244(22)	The statutory reference is inapplicable. Remove the reference.	No Action. This is an error by the report's author. This statutory reference does not exist in the official code as published by the Secretary of State.
501	4-241	Change statutory reference from 241(K) to 241(B),(C),(D), and (I)	Expedited Rulemaking

504	4-112(B)(1)(d); 203(J),(M); 203.04(H),(J); 205.04(C)(10),(H); 205.08(C)(1); 205.10(C)(7),(E)	Amend 504(A),(C),(D),(E) to clarify microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.	Expedited Rulemaking
604	41-1092.11(B)	4-210 has no authority for the Director to suspend a licensee for a future act of violence. The statutory authority is 41-1092.11(B) which gives agencies power to summarily suspend licensees to protect the public health, safety and welfare.	Expedited Rulemaking

NOTICE OF PROPOSED EXPEDITED RULEMAKING

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

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R19-1-101	Amend
R19-1-102	Amend
R19-1-104	Amend
R19-1-105	Amend
R19-1-206	Amend
R19-1-207	Amend
R19-1-209	Amend
R19-1-304	Amend
R19-1-315	Amend
R19-1-316	Amend
R19-1-317	Amend
R19-1-320	Amend
R19-1-501	Amend
R19-1-504	Amend
R19-1-604	Amend

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

Authorizing statute: A.R.S. § 4-112(B)(1)(a)

Implementing statute: A.R.S. §§ 4-101(26); 112(B)(1)(d),(G)(10); 201(E); 202(B); 203(B),(J),(M); 203.04(H),(J); 205.01; 205.02(E); 205.04(C)(9),(D); 206.01; 207.01(B); 209; 210; 242; 243; 244(3),(19); 244.05; 35-142(K); 41-1073

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

Notice of Rulemaking Docket Opening: PENDING ## A.A.R. Page #, <date> (in this issue)

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

Name: Sergeant Wesley Kuhl, acting assistant director

Address: Arizona Department of Liquor Licenses and Control

Phoenix, AZ 85086

Telephone: (###) ###-####

E-mail: wes.kuhl@azliquor.gov

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

The following amendments were identified in a five-year review report pursuant to A.R.S. § 41-1056 and submitted to the Governor's Regulatory Review Council in 2021.

R19-1-101

1. Definitions for *production and storage spaces* and *public area* were added to reflect the statutory definitions in A.R.S. §§ 4-205.10, 227.01 and 241.
2. 101(A)(2)(b) and (3)(b) were amended to correct the statutory reference from A.R.S. § 206.01(F) to 206.01(G).
3. 101(A)(2)(c), (A)(3)(c), (A)(4)(b), (A)(16) and (A)(27) were amended to reflect the statutory reference of A.R.S. § 4-244(32)(e). The statute no longer specifies that the container into which a licensee dispenses beer for consumption off-sale is no longer required to be made only of glass.
4. The definition for *special event license* was amended to reflect the statutory changes in A.R.S. § 4-203.02(E) on the types of entities that can obtain a special event license.
5. 101(16) was amended to reflect the statutory change in A.R.S. § 4-205.08 which increased the maximum amount of beer a microbrewery may produce from 1.24 million gallons to 6.2 million gallons.

R19-1-102

1. 102(D). The statutory authority in A.R.S. § 4-213 to issue a new restaurant continuation authorization was repealed. The rule which establishes a fee is obsolete and has been deleted.
2. Renumbering to account for the deletion of 102(D).

3. 102(old G through J)(new F through I) were amended to strike the language *until the date specified* and the statutory authorities corrected to A.R.S. §§ 4-205.02(G), 206.01(K), 207.01(B) and 244.05(J)(4). The statutes removed the specific date limitation on various license fees.

R19-1-104

1. 104(C)(1) was amended to reflect the new statutory authority under A.R.S. § 4-205.10(C)(5) regarding distilled spirits that are being shipped by a craft distiller licensee.
2. 104(C)(2)(b) was amended to reflect new statutory authorities under A.R.S. §§ 4-203.01(J), 205.04(C)(7)(9), 205.08(D)(5) which create exceptions for wine that is being shipped by a domestic farm winery licensee, beer that is being shipped by a domestic microbrewery licensee and distilled spirits that are being shipped by a craft distiller licensee.

R19-1-105

105(B) was amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(29).

R19-1-206

206(A)(B)(C) were amended to correct the statutory reference from A.R.S. § 4-205.02(H)(2) to A.R.S. § 4-205.02(J)(2).

R19-1-207

207(A)(C) were amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(29).

R19-1-209

209(I) was amended to strike the statutory reference of A.R.S. § 4-101(9) as it is not related to the rule.

R19-1-304

304(C) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-315

315(A)(B) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-316

316(A) was amended to correct the statutory reference from A.R.S. § 4-206.01(J) to 4-206.01(K).

R19-1-317

317(D) was amended to correct the statutory reference from A.R.S. § 4-205.02(H) to 4-206.02(J).

R19-1-320

320(M) was amended to reflect the new statutory authority in A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spiritous liquor on an off-sale retailers premises.

R19-1-501

501(E) was amended to strike the statutory reference to A.R.S. 4-241(K) as the statute is not relevant to the rule.

R19-1-504

504(A)(C)(D) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-604

604(B) was amended to correct the statutory reference from A.R.S. § 4-210 to A.R.S. § 41-1092.11(B).

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

The Department did not rely on any study.

7. 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:

The rulemaking does not diminish authority of a political subdivision.

8. **The preliminary summary of the economic, small business, and consumer impact:**

Under A.R.S. § 41-1027, the rulemaking is exempt from this requirement.

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

See Items #4 and #8.

10. **The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: PENDING

Time:

Location:

Close of record: PENDING

11. **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 reason why a general permit is not used:**

All the licenses, authorizations and registrations required under A.R.S. Title 4 comply with A.R.S. § 41-1037 as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

The rules are not more stringent than 27 CFR, Chapter 1, Subchapter A.

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

The Department did not receive an analysis.

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

There is no incorporated by reference material for this expedited rulemaking.

13. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL
ARTICLE 1. GENERAL PROVISIONS

Section

R19-1-101. Definitions

A. The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:

1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:
   a. Spirituous liquors in individual portions for consumption on the licensed premises;
   b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under ~~A.R.S. § 4-206.01(F)~~ A.R.S. § 4-206.01(G); and
   c. ~~Beer in a clean glass container that is sealed and labeled as described in~~ In accordance with ~~A.R.S. § 4-244(32)~~ A.R.S. § 4-244(32)(c).
3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
   a. Beer and wine in individual portions for consumption on the licensed premises;
   b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
   c. ~~Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ In accordance with A.R.S. § 4-244(32)(c).
4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
   a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and
   b. ~~Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ In accordance with A.R.S. § 4-244(32)(c).
5. "Business" means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
6. "Business premises" means real property and improvements from which a business operates.
7. "Catering establishment" means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
8. "Club license" (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
9. "Cocktail mixer" means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.

10. “Conveyance license” (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
11. “Cooler product” means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
12. “Deal” means to sell, trade, furnish, distribute, or do business in spirituous liquor.
13. “Department” means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
14. “Direct shipment license” (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
15. “Domestic farm winery license” (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a domestic farm winery is considered an “other producer.”
16. “Domestic microbrewery license” (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than ~~1.24~~ 6.2 million gallons of beer annually and includes authorization to sell beer in a clean ~~glass~~ container that is sealed and labeled as described in A.R.S. § 4-244(32). For the purposed of A.R.S. § 4-243, a domestic microbrewery is considered an “other producer.”
17. “Entertainment,” as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.
18. “Erotic entertainer,” as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.
19. “Government license” (Series 5) has the meaning set forth at A.R.S. § 4-101.
20. “Hotel-motel license” (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.
21. “Incidental convenience,” as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.
22. “In-state producer license” (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.
23. “Interim permit” means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.
24. “Licensed” means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.
25. “Licensed retailer” means an on-sale or off-sale retailer.

26. “Limited out-of-state producer license” (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.
27. “Liquor store license” (Series 9) means authorization issued to an off-sale retailer to sell:
    a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and
    b. Beer in a clean ~~glass~~ container that is sealed and labeled as described in A.R.S. § 4-244(32).
28. “Non-technical error” means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
29. “Nonuse” means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
30. “Out-of-state producer license” (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
31. “Party” has the same meaning as prescribed in A.R.S. § 41-1001.
32. “Physical barrier” means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
33. “Producer” means the holder of an in-state, out-of-state, or limited out-of-state producer license.
34. “Product display” means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.
35. ~~“Quota license” means a bar, beer and wine bar, or liquor store license.~~ “Production and storage spaces” means the same as in A.R.S. § 4-205.10.
36. ~~“Rectify” means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.~~ “Public area” means the same as in A.R.S. § 4-205.10.

~~35.~~ 37. “Quota license” means a bar, beer and wine bar, or liquor store license.

~~36.~~ 38. “Rectify” means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.

~~37.~~ 39. “Reset” means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.

~~38.~~ 40. “Restaurant continuation authorization” means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.

~~39.~~ 41. “Restaurant license” (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.

~~40.~~ 42. “Second-party purchaser” means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.

~~41.~~ 43. “Special event license” (Series 15) means ~~authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.~~ the same as the authorization provided in A.R.S. § 4-203.02(E).

~~42.~~ 44. “Tapping equipment” means beer, wine, and distilled spirit dispensers as stated in R19-1-326.

~~43.~~ 45. "Technical error" means a mistake on an application that does not mislead regarding the truthfulness of the information provided.

~~44.~~ 46. "Transfer" means to:

a. Move a license from one location to another location within the same county; or

b. Change ownership, directly or indirectly, in whole or in part, of a business.

~~45.~~ 47. "Wholesaler license" (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.

~~46.~~ 48. "Wine festival or fair license" (Series 16) means authorization issued for a specified period to a domestic farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19-1-102. Fees and Surcharges; Service Charges

A. Most of the fees and surcharges collected by the Department are established by statute.

B. After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.

C. After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.

~~**D.** After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of $30,000.~~

~~**E.**~~ **D.** A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of $150 in addition to the renewal fee.

~~**F.**~~ **E.** At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of $20.

~~**G.**~~ **F.** ~~Until the date specified in~~ Pursuant to A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of $50.

~~**H.**~~ **G.** ~~Until the date specified in~~ Pursuant to A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed

premises to a maximum of $50.

~~I.~~ **H.** ~~Until the date specified in~~ Pursuant to ~~A.R.S. § 4-206.01(J)~~ A.R.S. § 4-206.01(K), the Director establishes and shall collect a fee of $100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and $60 to renew the sampling privilege.

~~J.~~ **I.** ~~Until the date specified in~~ Pursuant to A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of $50.

~~K.~~ **J.** If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:

1. As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of $25;
2. Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
3. Require the applicant or licensee to pay all future fees to the Department by money order.

~~L.~~ **K.** As allowed under A.R.S. §35-142(K), the Department may impose a convenience fee for accepting payment made by credit or debit card.

~~M.~~ **L.** This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K).

R19-1-104. Shipping Container Labeling; Shipping Requirements

A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:

1. Name of the individual or entity consigning or shipping the spirituous liquor,
2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
3. Identification of the spirituous liquor.

B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:

1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
   a. Name and address of the wholesaler,
   b. Name and address of the licensed retailer, and
   c. Quantity and type of the spirituous liquor sold and transported; and
2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.

C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:

1. With the exception of wine that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or

(9) by a domestic farm winery licensee or beer that is being shipped under A.R.S. § 4-205.08(D)(5) by a domestic microbrewery licensee, or distilled spirits that are being shipped under ARS 4-205.10(C)(5) by a craft distiller licensee, the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and

2. The spirituous liquor is placed for shipping with:
   a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
   b. The wholesaler to whom the spirituous liquor is consigned with the exception of wine that is being shipped under A.R.S. § 4-203.04(J) by a common carrier or A.R.S. § 4-205.04(C)(7)(9) by a domestic farm winery licensee or beer that is being shipped under A.R.S. § 4-205.08(D) by a domestic microbrewery licensee, or distilled spirits that are being shipped under ARS 4-205.10(C)(5) by a craft distiller licensee.

D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:

1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.

E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.

F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:

1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises;
2. The non-contiguous area does not violate A.R.S. § 4-207;
3. The non-contiguous area will be a permanent part of the licensed premises;
4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
6. Construction of the business premises in the non-contiguous area will comply with all applicable building

and safety standards before spirituous liquor is sold or served in the non-contiguous area; and

7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.

B. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(29).

ARTICLE 2. LICENSING

Section

R19-1-206. Criteria for Issuing a Restaurant License

A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(J)(2).

B. The following criteria are evidence of an ability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(J)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;
3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.

C. The following criteria are evidence of an inability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(J)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. More than 60 percent of the public seating area consists of barstools, cocktail tables, and similar seating indicating the area is used primarily for consumption of spirituous liquor;
2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
4. Proposed business premises contain bar games and equipment.

D. This Section is authorized by A.R.S. § 4-205.02(E).

R19-1-207. Extension of Premises

A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined ~~at A.R.S. § 4-101(26)~~ in A.R.S. § 4-101(29), without first making application for an extension of premises.

B. An application under subsection (A) is required for either a temporary or permanent extension of premises.

C. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(29) and 4-203(B).

R19-1-209. Licensing Time-frames

A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes time-frames that apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame as defined in A.R.S. § 41-1072.

B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:

1. Every piece of information required by the form prescribed by the Department is provided;
2. All required materials specified on the form prescribed by the Department are attached to the form;
3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
4. If required, a questionnaire and complete set of fingerprints are attached to the form from:
    a. Every individual who is a controlling person of the business to be licensed,
    b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
    c. Every individual who owns at least 10 percent of the business to be licensed,
    d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
    e. The agent and managers of the business to be licensed.

C. Except as provided in subsection (D), the time-frame for the Department to act on a license application is as follows:
1. Administrative completeness review time-frame: 75 days;
2. Substantive review time-frame: 30 days; and
3. Over-all time-frame: 105 days.

D. The time-frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:
1. Administrative completeness review time-frame: 10 days;
2. Substantive review time-frame: 20 days; and
3. Over-all time-frame: 30 days.

E. Administrative completeness review time-frame.
1. The administrative completeness review time-frame begins when the Department receives an application. During the administrative completeness review-time-frame, the Department shall determine whether the application is:
    a. Complete,
    b. Contains a technical error, or
    c. Contains a non-technical error.
2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.
4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all time-frames are suspended from the date of the notice

referenced under subsection (E)(3) until the date the technical error is corrected.

5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

F. Substantive review time-frame.

1. The substantive review time-frame begins when an application is administratively complete or at the end of the administrative completeness review time-frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review time-frame.
2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the Department. Both the substantive review and over-all time-frames are suspended from the date of the Department's request until the date that the Department receives the additional information.
3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

G. Within the overall time-frame, the Department shall:

1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.

H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial; and
3. The time for appealing the denial.

I. This Section is authorized by A.R.S. §§ 41-1073, ~~4-101(9)~~, 4-201(E), and 4- 202(B).

ARTICLE 3. LICENSEE RESPONSIBILITIES

Section

R19-1-304. Storing Spirituous Liquor on Unlicensed Premises

A. Except as provided in subsection (B), a licensee shall not accept delivery of or store spirituous liquor at any premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. The Department shall authorize a licensee to accept delivery of or store spirituous liquor at a premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter if:

1. The licensee submits a written request to the Department that:
   a. Identifies the unlicensed premises,
   b. Provides a diagram that shows the geographical location of the unlicensed premises in relation to the business premises, and
   c. Explains how the licensee will safeguard the spirituous liquor at the unlicensed premises; and
2. The Department determines that the licensee will safeguard the spirituous liquor at the unlicensed premises in a manner that protects the public health, safety, and welfare and that authorizing the licensee to store spirituous liquor at the unlicensed premises is consistent with the best interest of the state.

C. A licensee granted authorization under subsection (B) shall provide evidence of the authorization to a wholesaler, common carrier and domestic farm winery under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under ARS 4-205.10(C)(5) before asking the wholesaler to make delivery of spirituous liquor at the unlicensed premises.

D. This Section is authorized by A.R.S. § 4-203(B).

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

A. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under ~~A.R.S. § 4-205.04(C)(9)~~ A.R.S. § 4-203.04(J) common carrier or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under A.R.S. § 4-205.10(C)(5) shall ensure that delivery of spirituous liquor:

1. Is made only to an individual who is at least 21 years old,
2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
3. Is made only during the hours of lawful service of spirituous liquor,
4. Is not made to an intoxicated or disorderly individual, and
5. Is not made to the licensed premises of a licensed retailer.

B. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under ~~A.R.S. § 4-205.04(C)(9)~~ A.R.S. § 4-205.04(C)(7)(9), common carrier under A.R.S. § 4-203.04(J), a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under A.R.S. § 4-205.10(C)(5) shall refuse to complete a delivery if the licensee believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

C. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

A. Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § ~~4-206.01(J)~~ 4-206.01(K), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.

B. This Section is authorized by A.R.S. § 4-244(19).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

A. If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.

B. If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.

C. If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.

D. In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(J), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(J).

E. To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:

1. Vendor invoices. Sorted by vendor by year;
2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;
3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
5. Transaction privilege tax returns. Sorted by month by year;
6. Income tax returns. Sorted by year; and
7. Payroll records. Sorted by pay period by year.

F. If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.

G. This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

R19-1-320. Practices Permitted by a Producer or Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Participating in a special event.

1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
    a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
    b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
    c. The special event license is not issued to a political committee or organization;
    d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and
    e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.
2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.

4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.

D. Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:

1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
2. The item provided has a value less than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
3. The item provided has a value more than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed $100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or
2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or

wholesaler ensures that:

a. All sponsorship proceeds are provided to the unlicensed organization, and

b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, "concert" is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:

1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),
2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;
2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day if consumed on the premises. If the sample provided is for ~~off-sale~~ off premises they are limited to 72 ounces of beer and 2 ounces of distilled spirits per person per day ~~consumption, the producer or wholesaler shall ensure the sample is in an unbroken package~~; or
3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:

1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;

3. All research participants are of legal drinking age;
4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:

1. Wine. Three liters;
2. Beer. Three gallons; and
3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

Q. Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:

1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and
2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.

R. A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.

S. Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Section

R19-1-501. General Recordkeeping

A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.

B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.

C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.

D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.

E. This Section is authorized by A.R.S. §§ 4-210(A)(7), 4-119, and ~~4-241(K)~~.

R19-1-504. Record of Delivery of Spirituous Liquor

A. A retail licensee having off-sale privileges, or a licensed domestic farm winery under A.R.S. § 4-205.04(C)(7)(9), common carrier under A.R.S. § 4-203.04(J) a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under A.R.S. § 4-205.10(C)(5) that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) or 4-205.04(C)(9) and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee shall ensure that the record provides the following information:

1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and
7. Printed name and signature of the individual making the delivery.

B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:

1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

C. A licensed domestic farm winery under A.R.S. § 4-205.04(C)(7)(9), common carrier under A.R.S. § 4-203.04(J), a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under A.R.S. § 4-205.10(C)(5) that delivers spirituous liquor~~, as authorized by A.R.S. § 4-205.04(C)(9),~~ may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the

requirements in subsection (A).

D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D) or craft distiller under A.R.S. § 4-205.10(C)(5) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9) and (D).

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

Section

R19-1-604. Closure Due to Violence

A. If the Director determines that an act of violence is apt to occur at a licensed premises and that action is needed to protect the public health, safety, or welfare, the Director shall order that:

1. The licensee closes the doors of the licensed premises to the public;
2. No spirituous liquor be sold or served to any individual on the licensed premises; and
3. Only the licensee, employees of the licensee, and peace officers are allowed on the licensed premises.

B. This Section is authorized by ~~A.R.S. § 4-210~~ A.R.S. § 41-1092.11(B).

July 6, 2021

The Honorable Douglas A. Ducey
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Ducey:

In accordance with Executive Order 2021-02, *Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative Rules*, the Department of Liquor Licenses and Control is requesting approval to conduct an expedited rulemaking for the purpose of revising 19 A.A.C. 1, *Department of Liquor Licenses and Control,* Sections R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-304, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-501, R19-1-504, R19-1-604. The justification under the Executive Order Paragraph 1 for this request is to: (a) fulfill an objective related to job creation, economic development or economic expansion in this State. (f) comply with new state statutory requirements. (j) eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.

The Department intends to conduct an expedited rulemaking under A.R.S. § 41-1027(A)(1)(3)(4)(6) to amend rules and repeal rules due to changes in statutory authority, correct typographical items due to renumbering that does not change the rule's effect, adopt new state statutes, repeals parts of rules that are outdated, redundant or no longer necessary. This rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce the rights of persons regulated.

In the last five years the Department has not engaged in any rulemaking. During the same five years, the Legislature has amended the Department's statutes several times through omnibus bills that made numerous changes. *See* Laws 2016, Ch. 76; Laws 2016, Ch. 91, Laws 2016, Ch. 161; Laws 2016, Ch. 184; Laws 2016, Ch. 285; Laws 2016, Ch. 290; Laws 2016, Ch. 345; Laws 2017, Ch. 54; Laws 2017, Ch. 168; Laws 2017, Ch. 258; Laws 2018, Ch. 159; Laws 2018, Ch. 240; Laws 2019, Ch. 136.

The Department intends to make the following changes:

R19-1-101

1. Definitions for *production and storage spaces* and *public area* were added to reflect the statutory definitions in A.R.S. §§ 4-205.10, 227.01 and 241.
2. 101(A)(2)(b) and (3)(b) were amended to correct the statutory reference from A.R.S. § 206.01(F) to 206.01(G).
3. 101(A)(2)(c), (A)(3)(c), (A)(4)(b), (A)(16) and (A)(27) were amended to reflect the statutory reference of A.R.S. § 4-244(32)(e). The statute no longer specifies that the container into which a licensee dispenses beer for consumption off-sale is no longer required to be made

only of glass.

4. The definition for *special event license* was amended to reflect the statutory changes in A.R.S. § 4-203.02(E) on the types of entities that can obtain a special event license.
5. 101(16) was amended to reflect the statutory change in A.R.S. § 4-205.08 which increased the maximum amount of beer a microbrewery may produce from 1.24 million gallons to 6.2 million gallons.

R19-1-102

1. 102(D). The statutory authority in A.R.S. § 4-213 to issue a new restaurant continuation authorization was repealed. The rule which establishes a fee is obsolete and has been deleted.
2. Renumbering to account for the deletion of 102(D).
3. 102(old G through J)(new F through I) were amended to strike the language *until the date specified* and the statutory authorities corrected to A.R.S. §§ 4-205.02(G), 206.01(K), 207.01(B) and 244.05(J)(4). The statutes removed the specific date limitation on various license fees.

R19-1-104

1. 104(C)(1) was amended to reflect the new statutory authority under A.R.S. § 4-205.10(C)(5) regarding distilled spirits that are being shipped by a craft distiller licensee.
2. 104(C)(2)(b) was amended to reflect new statutory authorities under A.R.S. §§ 4-203.01(J), 205.04(C)(7)(9), 205.08(D)(5) which create exceptions for wine that is being shipped by a domestic farm winery licensee, beer that is being shipped by a domestic microbrewery licensee and distilled spirits that are being shipped by a craft distiller licensee.

R19-1-105

105(B) was amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(29).

R19-1-206

206(A)(B)(C) were amended to correct the statutory reference from A.R.S. § 4-205.02(H)(2) to A.R.S. § 4-205.02(J)(2).

R19-1-207

207(A)(C) were amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(29).

R19-1-209

209(I) was amended to strike the statutory reference of A.R.S. § 4-101(9) as it is not related to the rule.

R19-1-304

304(C) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-315

315(A)(B) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-316

316(A) was amended to correct the statutory reference from A.R.S. § 4-206.01(J) to 4-206.01(K).

R19-1-317

317(D) was amended to correct the statutory reference from A.R.S. § 4-205.02(H) to 4-206.02(J).

R19-1-320

320(M) was amended to reflect the new statutory authority in A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spiritous liquor on an off-sale retailers premises.

R19-1-501

501(E) was amended to strike the statutory reference to A.R.S. 4-241(K) as the statute is not relevant to the rule.

R19-1-504

504(A)(C)(D) was amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7)(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5) and craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-604

604(B) was amended to correct the statutory reference from A.R.S. § 4-210 to A.R.S. § 41-1092.11(B).

Draft rules are enclosed. This waiver request is limited to only the rules listed. The Department was unable to find alternatives to address the amendments outside of rulemaking. The Department determined a rulemaking to address the amendments is in the best interests of not only the state of Arizona, but the citizens of Arizona.

My staff and I are available to answer any questions or provide additional information.

Sincerely,

Frank L. Milstead, Colonel
Director

Enc 1

DEPARTMENT OF LIQUOR LICENSES AND CONTROL

5YRR
19 A.A.C. 1, Articles 1 through 7

Submitted January 29, 2021
Approved ____ 2021

INTRODUCTION

The Department of Liquor Licenses and Control consists of the seven-member State Liquor Board and the Office of the Director of the Department. A.R.S. § 4-111. The Board meets in monthly open meetings primarily to hold hearings to grant or deny protested license applications and to resolve appeals of the Director's final decisions. *Id.*; A.R.S. § 4-210.02. The Director is responsible for administering Title IV and conducting the Department's day-to-day operations, including its investigations. A.R.S. § 4-112(B). Unlike most agencies, members of the neighboring public and local governing bodies (cities, towns, and counties) participate in the licensing process. A.R.S. § 4-201, -202, and -203. The public, local governing bodies, and the Director may protest liquor license applications, which requires a hearing before the Board. A.R.S. § 4-201(E). If no party protests, however, the Director may grant an application. *Id.*

The mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently.

Arizona, like many other states, regulates the sale and service of spirituous liquor under a three-tier system that separates producers, wholesalers, and retailers into generally distinct categories with limited exceptions.

Since the time of the Department's June 2016 five year rule review, the Department has not engaged in any rulemaking but the Legislature has amended the Department's statutes several times through omnibus bills that made numerous unrelated changes. *See* Laws 2016, Ch. 76; Laws 2016, Ch. 91, Laws 2016, Ch. 161; Laws 2016, Ch. 184; Laws 2016, Ch. 285; Laws 2016, Ch. 290; Laws 2016, Ch. 345; Laws 2017, Ch. 54; Laws 2017, Ch. 168; Laws 2017, Ch. 258; Laws 2018, Ch. 159; Laws 2018, Ch. 240; Laws 2019, Ch. 136, Highlights from these bills included the following:

Laws 2019, Ch. 136

- Allowed for the use of biometric identify verification devices.
- Allowed the Department to suspend or revoke noncompliant Title IV trainers.
- Expanded delivery privileges related to online ordering and the use of contractors.

- Created the joint premises license for contiguous licenses of the same type.
- Created a pilot program for up to ten regional shopping centers to designate a retail licensee who can extend its licensed premises to encompass pedestrian areas within the shopping center.

Laws 2018, Ch. 240

- Required that after January 1, 2019, the Department's rules for Title IV training include de-escalation procedures for security personnel, required that licensees attempt to verify the validity of a security guard's registration certification, and required the Department to adopt a form for licensees to use to for evaluating certain security guards' criminal history.
- Clarified when a transfer of control of a liquor license occurs.
- Required local governing bodies to submit approval or disapproval of a special event license, farm-winery festival, or craft-distillery festival license to the Department within sixty days and modified festival license requirements and privileges.
- Modified the manner of calculating how may quota licenses (bar and liquor store) licenses the Department may issue each year and the method of license valuation.

Laws 2018, Ch. 159

- Clarified that peace officers may carry firearms in licensed premises even if they are off-duty.

Laws 2017, Ch. 258

- Modified the definition of "permanent occupancy."

Laws 2017, Ch. 168

- Modified when an acquisition of control of a liquor license occurs and the process for local governing bodies to submit recommendations to the Department.
- Modified who may obtain a special event license, created the role of special event contractor and related requirements, and stated that the Department may create rules to implement and administer the new section.

- Modified how the Department calculates how many beer and wine bar licenses the Department may issue each year and how participants may enter the Department's liquor-license lottery.
- Modified the fee structure for entities making numerous licensure changes simultaneously.
- Modified restaurant audit procedures.
- Provided for jurisdiction over out-of-state businesses conducting business in this state that requires a liquor license and specified penalties for unlicensed conduct.

Laws 2017, Ch. 54

- Changed the lawful age of employees who can handle spirituous liquor from nineteen to eighteen.

Laws 2016, Ch. 290

- Added improper use of EBT cards at a liquor store and carrying firearms into licensed premises to the list of violations that constitute class 3 misdemeanors.

Laws 2016, Ch. 285.

- Permitted the Director to issue a license of any series to a trustee in bankruptcy that has acquired a debtor's spirituous liquor.
- Added retired law enforcement officers to the list of individuals who may carry a firearm inside a licensed premises.

Laws 2016, Ch. 345

- Modified the requirements for bars to obtain sampling privileges.

Laws 2016, Ch. 184

- Added a requirement for the Director to report on the use of license surcharge fees.

Laws 2016, Ch. 161

- Modified what constitutes "repeated acts of violence" based on an establishment's occupancy limits.
- Required licensees to notify the Department within thirty days of a change of agent.
- Allowed certain licensees to apply for "growler" permits and established criteria for licensure using forms that the Director furnishes.
- Increased the limit on the amount of beer that a licensee can serve one patron at one time from thirty-two to fifty ounces.
- Increased the amount of producers or wholesalers who can participate in a sampling event to two per event.

Laws 2016, Ch. 91

- Modified the acceptable forms of identification that licensees may accept.

Laws 2016, Ch. 76

- Created the Direct-Shipment license for qualifying in-state and out-of-state wineries.

Statute that generally authorizes the agency to make rules: A.R.S. § 4-112(A)(2) and (B)

1. Specific statute authorizing the rule:
   R19-1-101: A.R.S. § 4-112(B)(1)(a)
   R19-1-102: A.R.S. §§ 4-112(G)(10), 4-205.02, 4-205.04(B), 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K)
   R19-1-103: A.R.S. § 4-112(G)(2)
   R19-1-104: A.R.S. § 4-112(B)(1)(a)
   R19-1-105: A.R.S. § 4-101(29)
   R19-1-106: A.R.S. § 4-112(B)(1)(b)
   R19-1-107: A.R.S. § 4-112(G)(11)
   R19-1-110: A.R.S. §§ 4-112(G)(4) and 4-243(A)(4)
   R19-1-201: A.R.S. §§ 4-202(A) and 41-1080
   R19-1-202: A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228

R19-1-203: A.R.S. §§ 4-112(B)(1)(d) and 4-222

R19-1-204: A.R.S. § 4-206.01

R19-1-205: A.R.S. § 4-203.02(I)

R19-1-206: A.R.S. § 4-205.02(E)

R19-1-207: A.R.S. §§ 4-101(28), 4-203(B), and 4-207.01(B)

R19-1-208: A.R.S. §§ 4-201(B) and 4-205.07(B)

R19-1-209: A.R.S. §§ 41-1073, 4-101(10), 4-201(E), and 4-202(B)

R19-1-302: A.R.S. § 4-112(G)(4)

R19-1-303: A.R.S. § 4-203(B)(1)

R19-1-304: A.R.S. §§ 4-203(B) and 4-207.01

R19-1-305: A.R.S. §§ 4-112(B)(1)(c), 4-205.04(I)(1), 4-205.08(H)(1), 4-205.10(G)(1), and 4-210(A)(5)

R19-1-306: A.R.S. § 4-112(B)(1)(a)

R19-1-307: A.R.S. §§ 4-244(21), (32), and (45)

R19-1-308: A.R.S. § 4-112(G)(6)

R19-1-309: A.R.S. § 4-112(B)(1)(b)

R19-1-310: A.R.S. § 4-112(B)(1)(b)

R19-1-312: A.R.S. § 4-243

R19-1-314: A.R.S. § 4-112(B)(1)(b)

R19-1-315: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-205.04(C)(9) and (D), 205.08(C)(1), and 4-205.10(C)(7)

R19-1-316: A.R.S. §§ 4-112(B)(1)(b) and 4-244(19)

R19-1-317: A.R.S. §§ 4-112(B)(1)(b), 4-205.01, and 4-205.02

R19-1-318: A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(I)

R19-1-319: A.R.S. § 4-243(A)

R19-1-320: A.R.S. §§ 4-242, 4-243, and 4-244(3)

R19-1-321: A.R.S. §§ 4-203.02(I) and 4-243

R19-1-322: A.R.S. § 4-222

R19-1-323: A.R.S. §§ 4-112(B)(1)(b), 4-210(M) and 4-244(22)

R19-1-324: A.R.S. § 4-244.05

R19-1-325: A.R.S. §§ 4-229, 4-261, and 4-262

R19-1-326: A.R.S. § 4-243(A)(4)

R19-1-327: A.R.S. § 4-244.04

R19-1-401: A.R.S. §§ 4-203, 4-203.01, 4-205.02, and 4-210(I)

R19-1-402: A.R.S. § 4-222

R19-1-403: A.R.S. §§ 4-205.01(E) and 4-205.02(F)

R19-1-404: A.R.S. §§ 4-243(B)(3)(b) and 4-244.04

R19-1-405: A.R.S. § 4-203

R19-1-406: A.R.S. § 4-202(C)

R19-1-407: A.R.S. §§ 4-112(B)(3) and 4-210(J)

R19-1-408: A.R.S. §§ 4-112(B)(3) and 4-203(B)

R19-1-501: A.R.S. §§ 4-119 and 4-210(A)(7)

R19-1-502: A.R.S. § 4-119

R19-1-503: A.R.S. § 4-222

R19-1-504: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(10) and (H), 4-205.08(C)(1), and 4-205.10(C)(7) and (E)

R19-1-505: A.R.S. §§ 4-112(B)(1)(b) and 4-244(37)

R19-1-601: A.R.S. § 4-210(H)

R19-1-602: A.R.S. § 4-244(1)

R19-1-603: A.R.S. §§ 4-244 and 4-244.05(F)

R19-1-604: A.R.S. § 4-210

R19-1-701: A.R.S. § 4-111(C)

R19-1-702: A.R.S. § 4-201(I)

R19-1-703: A.R.S. §§ 4-210.02 and 41-1092.09

R19-1-704: A.R.S. §§ 4-112(A)(2) and 4-201(E)

R19-1-705: A.R.S. §§ 4-211 and 12-901 et seq.

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

R19-1-101: Definitions. The objective of the rule is to define words and phrases used in the rules in a manner that is more specific to the liquor industry to control interpretation over the ordinary meaning of the words and phrases. The definitions are designed to avoid ambiguity for the public and the Department and improve due process.

R19-1-102: Fees and Surcharges; Service Charges. The objective of the rule is to inform applicants of the timing and amount of statutorily-imposed licensing fees, surcharges, and service charges. This increases transparency for the public regarding the expenses of obtaining and holding a license.

R19-1-103: A.R.S. Title 4 Training Course: Minimum Standards. The objective of the rule is to establish minimum standards for Title IV training courses. The rule allows providers to create courses that comply with minimum standards, increases efficiency in the Department's course-approval process, and promotes quality educational programs for the public.

R19-1-104: Shipping Container Labeling; Shipping Requirements. The objective of the rule is to establish requirements regarding shipping or transporting spirituous liquor into or within the state. The rule protects public health and safety by creating a chain of custody for spirituous liquor and supporting the Department's goals of preventing unlicensed or unlawful activity.

R19-1-105: Standards for Non-contiguous Area of a Licensed Premise. The objective of the rule is to establish standards for approving inclusion of a non-contiguous area in a licensed premise. The rule protects public health and safety because non-contiguous areas within a licensed premises pose greater risks of underage service and overservice. The rule also provides transparency to the public regarding the Department's approval process.

R19-1-106: Severability. The objective of the rule is to state the principle that each rule provision is separate from the others and can be applied separately. This ensures an invalid provision does not impair the Department's ability to carry out the remaining provisions.

R19-1-107: Electronic Signatures. The objective of the rule is to permit licensees to submit all required forms and documents electronically. This increases efficiency for the public and the Department in both licensing and disciplinary actions.

R19-1-110: Sign Limitations. The objective of the rule is to establish exemptions to the general rule in A.R.S. § 4-243(A)(4) against producers and wholesalers giving or lending anything of value to retailers. The rule facilitates effective and efficient advertising across the three tiers of the industry while maintaining the three-tier system and preventing commercial coercion across tiers.

R19-1-201: Who May Apply for a License. The objective of the rule is to clearly specify the pre-requisites for licensure. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-202: Application Required. The objective of the rule is to require the public to submit an application to obtain a license or other approval from the Department. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-203: Registration of a Retail Agent. The objective of the rule is to establish minimum requirements for becoming a retail agent. The rule increases efficiency in the registration process and promotes transparency.

R19-1-204: Obtaining a Quota License. The objective of the rule is to require the Department to provide notice to the public of available quota licenses and to use a random-selection process to choose who obtains the licenses. The rule provides fairness to members of the public competing to obtain new quota licenses and promotes transparency.

R19-1-205: Requirements for a Special Event License. The objective of the rule is to create minimum standards for special event licenses and to establish a limit on the number of special event licenses that the Department will issue annually to an entity. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-206: Criteria for Issuing a Restaurant License. The objective of the rule is to identify criteria that the Department will use to determine whether there is sufficient evidence that an application for a restaurant license can operate a bona-fide restaurant. The rule promotes

transparency and also increases efficiency in the licensing process allowing applicants to structure their operations to facilitate Department approval.

R19-1-207: Extension of Premises. The objective of the rule is to emphasize that spirituous liquor may be served only on a licensed premises and that an application is required to extend a licensed premise. The rule protects public health and safety by identifying and controlling where spirituous liquor is served and providing local governing bodies the opportunity to provide input regarding their communities. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-208: Notice of Application for a Conveyance License. The objective of the rule is to clearly identify where applicants for conveyance licenses must post public notice of their application. The rule protects public health and safety and promotes due process by ensuring that interested parties receive notice of conveyance license applications. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-209: Licensing Time-frames. The objective of this rule is to specify time frames within which the Department will act on a license or other approval application. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-302: Knowledge of Law. The objective of this rule is to specify the individuals who must affirmatively acquire knowledge of A.R.S. Title 4, and related rules. The rule protects public health and safety by ensuring that every licensee's key persons are familiar with applicable statutes and rules governing the conduct of their business.

R19-1-303: Authorized Spirituous Liquor. The objective of this rule is to emphasize that licensees may only sell or deal in the categories of spirituous liquor that their license authorizes. The rule protects public health and safety by controlling the availability of spirituous liquor.

R19-1-304: Storing Spirituous Liquor on Unlicensed Premises. The objective of this rule is to provide licensees with an opportunity to store spirituous liquor off of their licensed premises. The rule promotes transparency for licensees regarding the Department's approval process and protects public health and safety by ensuring that licensees safeguard spirituous liquor stored off of their licensed premises.

R19-1-305: Paying Taxes Required. The objective of the rule is to limit the Director's power to issue interim permits on quota licenses where the applicants have unpaid state or local tax obligations. The rule promotes the satisfaction of tax-debt obligations and thereby assists the Department of Revenue to serve and protect the state's taxpayers.

R19-1-306: Bottle Labeling Requirements. The objective of the rule is to require licensees to comply with federal bottle-labeling laws. The rule protects public health and safety by ensuring a consumer knows what is being purchased or consumed.

R19-1-307: Bottle Reuse or Refilling Prohibited. The objective of the rule is to require all licensees to ensure that alcohol in their control complies with Federal bottling, packaging, and labeling laws. The rule protects public health and safety by preventing licensees from selling or dealing in inaccurately labeled or adulterated spirituous liquor.

R19-1-308: Age Requirement for Erotic Entertainers. The objective of the rule is to establish a minimum age requirement for erotic entertainers who perform on licensed premises. The rule protects the public disallowing persons who are 18 years old and minors from performing in sexually-oriented businesses.

R19-1-309: Prohibited Acts. The objective of the rule is to define a clear limit to behavior that is prohibited on licensed premises. The rule protects public health and safety by not exposing the public to conduct that violates public norms.

R19-1-310: Prohibited Films and Pictures. The objective of the rule is to define a clear limit regarding the nature of films and pictures that are prohibited on licensed premises. The rule

protects public health and safety by not exposing the public to indecent pornographic material.

R19-1-312: Accurate Labeling of Dispensing Equipment Required. The objective of the rule is to require that licensees accurately label dispensing equipment. The rule protects the public from possible fraud regarding the spirituous liquor purchased.

R19-1-314: Prohibited Inducement to Purchase or Consume Spirituous Liquor. The objective of the rule is to establish a clear limit to conduct that might induce a customer to purchase or consume spirituous liquor. The rule protects public health and safety by preventing licenses from rewarding patrons for consuming spirituous liquor and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-315: Responsibilities of a Licensee that Operates a Delivery Service. The objective of the rule is to require that a licensee that delivers spirituous liquor delivers only to an individual and at a time consistent with the law. The rule protects public health and safety by ensuring delivery is not made to a minor or intoxicated or disorderly individual.

R19-1-316: Responsibilities of a Liquor Store or Beer and Wine Store Licensee. The objective of the rule is to require that, except in limited circumstances, licensed liquor or beer and wine stores make spirituous liquor available to consumers in only unopened bottles. The rule protects public health and safety and ensures that an off-sale retailer does not engage in on-sale retailing.

R19-1-317: Responsibilities of a Hotel-Motel or Restaurant Licensee. The objective of the rule is to specify the standards for a hotel-motel or restaurant licensee, including required recordkeeping. The rule ensures that a hotel-motel or restaurant licensee does not operate as a bar.

R19-1-318: Responsibilities of a Special Event Licensee. The objective of the rule is to specify the manner in which spirituous liquor is to be dispensed, sold, or served at a special

event depending on whether the special event occurs on or off the premises of a licensed retailer. The rule ensures that spirituous liquor is dispensed, sold, or served in a manner consistent with the license under which it is dispensed, sold, or served and protects the three-tier system.

R19-1-319: Commercial Coercion or Bribery Prohibited. The objective of the rule is to specify conduct that amounts to unlawful coercion between licensed retailers and producers or wholesalers. The rule provides a level playing field among producers and wholesalers and retailers and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-320: Practices Permitted a Producer or Wholesaler. The objective of the rule is to specify conduct that is permitted by a producer or wholesaler because it does not amount to unlawful coercion of a licensed retailer. The rule provides a level playing field among producers and wholesalers and protects the public and licensees from the consequences of unlawful coercion in the spirituous liquor industry. The rule also promotes due process for licensees by defining the boundaries of their conduct.

R19-1-321: Practices Permitted a Wholesaler. The objective of the rule is to specify conduct that is permitted by a wholesaler because it does not amount to unlawful coercion and is a permitted industry practice. The rule provides a level playing field among wholesalers and protects the public and licensees from the consequences of unlawful coercion in the spirituous liquor industry. The rule also promotes due process for licensees by defining the boundaries of their conduct.

R19-1-322: Responsibilities of a Registered Retail Agent. The objective of the rule is to specify the manner in which a registered retail agent is to fulfill the purchases of those in the cooperative. The rule protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-323: Underage Individuals on Licensed Premises. The objective of the rule is to specify the circumstances under which an underage individual is allowed to be on licensed

premises. The rule protects public health and safety by not exposing underage individuals to consumption of spirituous liquor.

R19-1-324: Standards for Exemption of an Unlicensed Business. The objective of the rule is to specify the circumstances and conditions under which spirituous liquor may be served and consumed on unlicensed premises. The rule protects public health and safety by imposing limitations of serving and consuming spirituous liquor on unlicensed premises and protects the value of on-sale retail licenses.

R19-1-325: Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms. The objective of the rule is to require that all licensed retailers post a sign warning about consumption of alcohol during pregnancy and licensed on-sale retailers that wish to prohibit possession of weapons on the licensed premises. The rule protects public health and safety by ensuring that licensees warn customers of the risks of alcohol consumption.

R19-1-326: Tapping Equipment. The objective of the rule is to specify the tapping equipment that a wholesaler may provide to a retailer without violating commercial coercion regulations. The rule provides a level playing field among wholesalers and retailers and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-327: Domestic Farm Winery Sampling. The objective of the rule is to specify limits of sampling that a farm winery conducts on a retailers licensed premises. The rule protects public health and safety by ensuring that customers only receive samples. The rule also protects the three tier system by ensuring that producers are not engaging in retail sales, rather than sampling.

R19-1-401: Notice of License Surrender or Application Withdrawal. The objective of the rule is to inform a licensee that notice is required if the licensee intends to surrender the license and informs applicants that notice is required to withdraw an application. The rule also specifies the circumstances under which a license will be deemed surrendered and the

circumstances under which surrender will be denied. The rule protects public health and safety by ensuring the Department knows which licensees are not operating. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-402: Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members. The objective of the rule is to inform a registered retail agent that notice is required when a member of a cooperative-purchase agreement changes. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-403: Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility. The objective of the rule is to inform hotel-motel or restaurant licensees that notice is required before licensees alter the licensed premises' seating capacity or dimension. The rule protects public health and safety by ensuring that a hotel-motel or restaurant licensee is operating as a hotel-motel or restaurant and not as a bar.

R19-1-404: Notice of Sampling on a Licensed Off-sale Retail Premises. The objective of the rule is to inform licensed producers and wholesalers that they must provide the Department with notice before conducting a sampling event at an off-sale retail premises. The rule protects public health and safety by limiting the circumstances under which consumption of spirituous liquor is allowed on licensed off-sale retail premises.

R19-1-405: Notice of Change in Status: Active or Nonuse. The objective of the rule is to inform all licensees that notice is required to move the license from active to nonuse status or vice versa. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-406: Notice of Change in Manager. The objective of the rule is to inform all licensees that notice is required when there is a change in the designated manager. The rule protects public health and safety by ensuring the Department knows who is responsible for managing licensed premises.

R19-1-407: Notice of Legal or Equitable Interest. The objective of the rule is to inform all persons having a legal or equitable interest in a license that they may provide the Department notice of their interests. This protects public health and safety by ensuring that the Department knows who owns or claims an interest in a license. It also protects the holder of the legal or equitable interest by enabling the Department to provide notice of actions affecting the license.

R19-1-408: Notice of Change in Business Name, Address, or Telephone Number. The objective of the rule is to provide notice that the Department communicates with a licensee using the information that the licensee has provided and the importance of updating that information with the Department. The rule protects the public health and safety by ensuring that the Department and the public has up to date contact information for licensees and promotes due process by ensuring that licensees receive notice of Department actions.

R19-1-501: General Recordkeeping. The objective of the rule is to establish minimum recordkeeping standards for licensees. The rule protects public health and safety by enabling the Department to conduct audits to determine whether a licensee is complying with A.R.S. Title 4 and related rules.

R19-1-502: On-sale Retail Personnel Records. The objective of the rule is to establish minimum standards for records regarding on-sale retail personnel. This protects public health and safety by enabling the Department to ensure that on-sale retailers do not employ minors and by identifying persons that may have information about licensee and patron conduct during Department investigations.

R19-1-503: Records Regarding Cooperative Purchases. The objective of the rule is to establish minimum standards for recordkeeping regarding cooperative-purchase agreements and cooperative purchases. The rule protects the public health and safety by ensuring licensees purchase alcohol lawfully and it protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-504: Record of Delivery of Spirituous Liquor. The objective of the rule is to establish minimum standards for recordkeeping by licensees authorized to deliver spirituous liquor. The rule protects public health and safety by tracking deliveries and ensuring delivery is not made to an underage or overly intoxicated individual or at unauthorized times.

R19-1-505: Report of Act of Violence. The objective of the rule is to inform licensees that they must document and report acts of violence on their licensed premises to the Department or a law enforcement agency. The rule protects public health and safety by requiring contemporaneous accounts of acts of violence to enable the Department to conduct investigations and ensure licensed premises are safe for employees and patrons.

R19-1-601: Appeals and Hearings. The objective of the rule is to inform a party that they may appeal final decisions that the Director makes to the State Liquor Board and that hearings will be conducted under Title 41 uniform procedures. The rule protects the due process rights of a party by informing them of appeal rights and ensuring that hearings conform to uniform procedures.

R19-1-602: Actions During License Suspension. The objective of the rule is to inform the holder of a suspended license that it may not sell or deal in spirituous liquor during suspension and to inform consumers that a license is suspended. The rule protects public health and safety by making it clear to licensees and consumers when a licensee can lawfully sell spirituous liquor.

R19-1-603: Seizure of Spirituous Liquor. The objective of the rule is to provide notice that a peace officer is required to seize spirituous liquor if there is probable cause to believe the spirituous liquor is being or is intended to be used contrary to law. The rule protects public health and safety by ensuring that spirituous liquor is used only as provided by law.

R19-1-604: Closure Due to Violence. The objective of the rule is to provide notice that the Director is authorized to order a licensee to close its premises if the Director determines that an act of violence is apt to occur at the licensed premise. The rule protects public health and

safety by minimizing the chance that consumers can be harmed by an anticipated act of violence at a licensed premise.

R19-1-701: Election of Officers. The objective of the rule is to specify the Board officers and how the Board elects officers. The rule provides transparency regarding Board actions and the authority of its members.

R19-1-702: Determining Whether to Grant a License for a Certain Location. The objective of the rule is to specify the criteria considered by the Board to determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license to a specific unlicensed location. The rule promotes efficiency in the licensing process and provides transparency regarding the basis of Board licensing decisions.

R19-1-703: Rehearing or Review of Decision. The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. The rule protects licensees due process rights by letting them know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R19-1-704: Submitting Documents to the Board. The objective of the rule is to specify the format and time for submitting documents for Board review and action. The rule promotes efficiency in the licensing process and protects the due process rights of parties to Board hearings.

R19-1-705: Judicial Review. The objective of the rule is to inform a party of the right to judicial review of a Board decision and to require that a complaint for judicial review be served on the Director. This increases efficiency in Board operations.

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

When the Department's rules were made in 2013 and 2014, they were consistent with statute and agency and industry practice. Although statutory changes have occurred since 2014, the changes, which have resulted in some of the rules having a few inconsistent statutory references due to renumbering, have not interfered with the effectiveness of the rules. The Department believes that the rules are effective in achieving their objectives because it is able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety, and welfare of Arizona citizens, without finding that the rules hinder, delay, or complicate its processes. The Department has not experienced and is not aware of any industry or public complaints regarding the effectiveness of any rules. Data supporting these conclusions, including increased efficiency in licensing processes, is provided in section 8, below.

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:

State statutes applicable to the rules are found at A.R.S. Title 4. Applicable federal law is found at 27 CFR, Chapter 1, Subchapter A. Generally speaking, under the 21st Amendment to the United State Constitution, regulation of spirituous liquors is delegated to the states. Nevertheless, the rules are consistent with federal law. As a result of recent changes to A.R.S. Title 4, there are minor inconsistencies between the statutes and rules. These include the following:

R19-1-101:

- By Legislative amendments and prior omissions, the list of statutes that contain definitions of words and phrases in Title IV in R19-1-101 is incomplete. The rule could be amended to also include A.R.S. §§ 4-205.10, -227.01, and -241.
- A.R.S. § 4-206.01 was amended and renumbered requiring a change to R19-1-101(A)(2)(b) and (3)(b)'s references from A.R.S. § 4-206.01(F) to subsection (G).
- A.R.S. § 4-244(32)(c) was amended so a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of only glass. R19-1-101(A)(2)(c),

(A)(3)(c), (A)(4)(b), (A)(16), (A)(27) reference only a glass container, which is not consistent with the current statutes.

- A.R.S. § 4-209 was amended eliminating the out-of-state producer license and creating an out-of-state winery license with different production limitations. This rendered R19-1-101(26) obsolete.
- A.R.S. § 4-203.02(E) was amended to change the types of entities that can obtain a special event license, requiring a change to R19-1-101(41).
- The Department's authority to issue a restaurant continuation authorization expired under A.R.S. § 4-213(E). This rendered R19-1-101(A)(38), which defines "restaurant continuation authorization," obsolete.
- The legislature amended A.R.S. § 4-205.08 to increase the maximum amount of beer a microbrewery may produce to six million, two hundred thousand gallons. Rule R19-1-101(16) lists the former, lower limits and must be amended.

R19-1-102:

- The Department's authority to issue a restaurant continuation authorization expired under A.R.S. § 4-213(E). This rendered R19-1-102(D), which establishes a related licensee fee, obsolete.
- The legislature removed date-specific limitations on various licensing fees in A.R.S. §§ 4-205.02(G), 4-207.01(B),(J), and 4-244.05(J)(4). This rendered the "until the date specified" language in R19-1-102(G) through (J) obsolete. As of the date of this review, the licensing fee amounts referenced in the rule are unchanged.

R19-1-103:

- The legislature amended A.R.S. § 4-112(G)(2) to require that Department rules pertaining to Title IV training include various security procedures for security personnel, requiring an amendment to R19-1-103 to add this requirement.

R19-1-104:

- The legislature amended A.R.S. § 4-205.08 regarding microbreweries and added A.R.S. § 4-205.10 regarding craft distillers so each can ship spirituous liquor to a retail licensee.

This requires that R19-1-104(C)(1) and (C)(2) be amended to add these license types to make it clear that they may also ship to retail licensees as well as wholesalers.

R19-1-105:

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-206:

- The legislature amended A.R.S. § 4-205.02 which resulted in renumbering of that section, which requires an amendment to the statutory reference in A.A.C. R19-1-206(A), (B), and (C).

R19-1-207:

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-209:

- The Department has identified R19-1-209, which deals with the Department's licensing time frames, as a rule deserving of possible amendment. Specifically, the unique nature of liquor licensing under A.R.S. §§ 4-201, -202, and -203 is that after receiving an application and determining that it is administratively complete, the Department forwards it to a local governing body (city, town, county), which in turn undertakes its own substantive review. The Department has a seventy-five day administrative completeness review process and only thirty days for substantive review. While the Department consistently meets the overall 105 day period for licensing, the rule is not consistent with the statutory time frames in that the statute provides a longer period of time for substantive review than the rule.

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-304

- By legislative amendment and prior omissions, R19-1-304, which pertains to off-premises storage of spirituous liquor, requires licensees to notify only "wholesalers" of authorization to store liquor off premises. This section can be amended to clarify that in addition to wholesalers, farm wineries, craft distillers, and microbreweries may also deliver spirituous liquor to retailers.

R19-1-315:

- Because of legislative changes regarding microbreweries and craft distillers that permit the sale of spirituous liquor to retailers, amendments are needed to R19-1-315(A) and (B) and R19-1-504(A), (C), (D), and (E).to clarify that microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.

R19-1-316:

- The legislature amended A.R.S. § 4-206.01 which resulted in renumbering requiring an amendment to R19-1-316(A)'s reference from A.R.S. § 4-206.01(J) to (K).

R19-1-317:

- The legislature amended A.R.S. § 4-205.02 which resulted in renumbering requiring an amendment to R19-1-317(D)'s reference from A.R.S. § 4-205.02(H) to (J).

R19-1-318:

- The legislature amended laws relating to special event contractors to create the concept of a "special event contractor" in A.R.S. § 4-203.02(E), (G), (H), and (O), including granting express authority to create rules to carry out these new provisions. The Department has not determined whether any rules are necessary at this time.

R19-1-320:

- The legislature amended A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spirituous liquor on an off-sale retailer's premises. This requires that R19-1-320(M) be amended.

R19-1-327:

- R19-1-327 pertains to farm winery sampling. The legislature has created the craft distiller license in A.R.S. § 4-205.10 which also has sampling privileges. There is no corresponding rule governing conducting sampling for craft distiller licenses. The Department has not determined whether any rule are necessary at this time.

R19-1-401:

- A.A.C. R19-1-401 lists A.R.S. § 4-244(22) as authority for the rule. This reference is inapplicable, which requires amendment of the rule to remove the reference.

R19-1-501:

- A.A.C. R19-1-501 lists A.R.S. § 4-241(K) as authority for the rule. A.R.S. 4-241 permits licensees to record and retain records of checking purchasers. Subsection (K) only references acceptable forms of identification. Subsections (B), (C), (D), and (I) discuss keeping a record of checking identification. The rule can be amended to reflect the more accurate subsections of the statute that give authority for the rule.

R19-1-504:

- Because of legislative changes regarding microbreweries and craft distillers that permit the sale of spirituous liquor to retailers, amendments are needed to R19-1-315(A) and (B) and R19-1-504(A), (C), (D), and (E).to clarify that microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.

R19-1-604:

- A.A.C. R19-1-604, which pertains to the Director's power to require licensees to close their premises and cease alcohol sales when an act of violence is apt to occur at the

licensed premises, lists A.R.S. § 4-210 as authority for the rule. Section 4-210 has no authority for the Director to suspend a licensee for a future act of violence. The more accurate statute to list as authority for the rule is A.R.S. § 41-1092.11(B), which gives agencies the power to summarily suspend licensees to protect the public health, safety, and welfare.

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

   The Department enforces the rules. When there is an inconsistency with statute, such as the production limit for an out-of-state winery or a microbrewery described above, the Department enforces the statute. The Department has not experienced any inabilities to enforce its statutes and existing rules based on inconsistencies with statute. It has not had the enforceability of any of its rules under Title 41 challenged.

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

   The rules are generally clear, concise, and understandable and consistent with current rule writing standards.

7. Summary of written criticisms of the rule received by the agency within 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 Department has no record of any written criticisms of its rules. It is aware, however, that upon the passage of Laws 2017, Ch. 54, which reduced the minimum age of employees who could handle spirituous liquor from nineteen to eighteen, that members of the industry inquired whether A.A.C. R19-1-308, which requires erotic entertainers to be at least nineteen years of age, would also be amended to reduce the minimum age of erotic entertainers to eighteen. The Department did not intend to amend the rule then and has no intention of amending the rule today.

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:

In its last five-year-rule-review process, the Department compared its rules to the economic, small business, and consumer impact statements presented in rulemaking it had undertaken in 2013 and 2014, finding that there was minimal impact from the last rulemaking. The Department has not engaged in any further rulemaking in the intervening five-year-period. The Department's prior rule-review submission provided numerous key statistics regarding its licensing and investigative processes. Below are the most recent data for comparison to the 2015 data.

Comparing the data after five years from the last rule review, the Department continues to believe that its rules have minimal economic, small business, and consumer impact. No members of the public have raised concerns that the Department's rules, in the intervening five years, created any new impacts based on changing circumstances. While there were substantial increases in the number of licensees and a reduction in Department staff, the Department has decreased licensing times and increased enforcement revenues with fewer disruptive contacts. Below are key statistics regarding the Department's operation for FY2020, with the corresponding 2015 figures in parentheses for comparison.

As of FY 2020, the Department has 14,744 (FY 15 – 12,006) active licensees. Out-of-state licensees comprise 18.7 percent (FY15 - 15.5) of the total. In FY 2020, the Department issued 4,805 (FY15 – 4,888) new licenses, including special event permits and interim permits. Of these licenses, 31 (FY15 – 22) were for quota licenses, which the Department issued through its annual liquor-license lottery.

In FY2020, the Department collected $10,816,782 (FY15 – $7,246,392) in licensing fees. The increase from FY15 is largely comprised of $212,050 of renewal fees for direct shipment

licenses that the Department began to receive in FY17 and $2,836,241 of additional revenues from the annual lottery license (FY2020 – $4,383,866 / FY15 – $1,547,625). In addition to licensing fees, the Department collected late-renewal penalty fees of $76,950 (FY15 – $107,700). This decrease is likely attributable to the Department's implementation of a new e-licensing platform in FY18. Late renewal fees were up to $200,400 in FY18, before they dropped to $134,250 in FY19, before dropping substantially again for FY2020. Customer use of this e-licensing platform in FY2019 was 27 percent, increasing to 33.7 percent in FY2020. Visits from walk-in customers decreased from 5,435 by the end of FY18 to 4,203 customers at the end of FY2020. When customers do visit the Department, they experience processes that have grown in efficiency. At the end of FY18, time spent with a walk-in customer averaged 30 minutes, as compared to only 15 minutes in FY2020. Lastly, the Department has substantially decreased the time it takes to process most license applications. In FY16, the Department resolved bar, liquor store, and restaurant applications in approximately 89 days. At the end of FY20, the Department reduced this time frame nearly 20 percent down to approximately 67 days.

In addition to its e-licensing system, the Department attributes its improvements to its implementation of the Arizona Management System and LEAN strategies in consultation with the Governor's Transformation Office.

Regarding investigations and enforcement actions, in FY2020 the Department collected $570,498 of fines for liquor-law violations (FY15 – $472,490). In FY2020, the Department employed 10 nonsupervisory sworn enforcement officers (FY15 – 11). The ratio of officers to licensees was 1:1,474 (FY15 – 1:1095). Despite the increase in licensees and decrease in manpower, the Department reduced the average number of days it takes to resolve a priority citizen complaint by 42 days, from an average of 70 days in July 2016 to an average of 28 days at the end of FY2020.

In FY2020, the Department conducted audits of 42 restaurants (FY15 – 91) to ensure that they met the required 40% of gross sales derived from the sale of food. Of those audited, 14 licensees (FY15 –25) failed to meet the required food sale percentage. The reduction in audits does not arise from any rule-based factors, because the rules have not changed. Instead, the Department attributes the change to that fact that in FY15, the Department

employed two full-time auditors, whereas the Department currently has no employee dedicated to perform audits on a full-time basis.

Because the rules have not changed, and as the Department continues to enforce its regulations and does so more efficiently than in previous years, the Department does not believe that its rules have had any impact on its ability to enforce Title IV to protect the public health and safety.

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:

   The Department has not receiving any analyses.

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

    In its previous five-year review, the Department indicated it had a number of primarily technical changes due to statutory renumbering and the creation of new license types. In 2015, Governor Ducey issued a moratorium on new rulemaking. The Department has therefore not engaged in any rulemaking in that time. In addition to the moratorium, the Department has resource limitations in hiring or contracting with a professional rule writer. Moreover, as noted herein, the Department has not experienced any substantial interruption or inefficiencies in licensing and enforcement actions due to any identified potential rule amendments.

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:

    Title IV liquor law is constantly evolving. As noted herein, stakeholders from all three tiers of the liquor industry come together and pass a liquor omnibus bill, which—in addition to any separately passed bills—has consistently molded Title IV to address new or developing regulatory issues in the industry. For this reason, statutes—not rules—largely establish the licensing and enforcement authorities for the industry. The Department's rules have remained unchanged since this last five-year review, but as noted above, the Department has

increased the efficiency of its licensing and investigative processes despite a substantial reduction in the employee-to-licensee ratio. Furthermore, as noted above, the Department has received very limited public comment on the quality of its rules, despite the industry's close involvement year-over-year in the amendment of Title IV and other policy issues.

The Department's rules are generally either mundane, commonplace rules that most state agencies have to guide licensing and enforcement actions or they are liquor-specific regulations widely accepted at the federal and state level in the industry and well-known to licensees. Specifically, the following standard rule requirements result in minimal costs to licensees or others:

- Completing and submitting an initial and renewal license application;
- Complying with the minimum standards for a liquor law training course;
- Making application before extending license premises;
- Providing notice to the Department when changes are made regarding the licensee's operations and key personnel; and
- Maintaining required records of employees and liquor purchases and sales.

In addition, many other Department rules are well known in the industry, having undergone very little change over the years and given that they are generally consistent with federal regulations or the regulations of other similarly-situated three-tier system states. These include, for example:

- Storing spirituous liquor only on licensed or otherwise approved premises and only selling liquor from the approved premises;
- Ensuring employees handling spirituous liquor are at least 18 years old and that an erotic entertainer is at least 19 years old;
- Labeling shipping containers and ensuring liquor delivery is made to only individuals who may lawfully purchase spirituous liquor;
- Taking actions to educate key employees and maintain records for the purpose of preventing the overservice of alcohol and underage drinking;
- Accurately labeling alcohol dispensing equipment;

- Avoiding conduct that creates threats of commercial coercion between the three tiers of the liquor industry that are largely consistent with federal regulations and the regulations of other three-tier system states.

As noted above, the number of licensees has increased by several thousand since FY15, or approximately 23 percent. Interest in quota licensees has resulted in revenues from the liquor-license lottery nearly tripling. It does not appear that any rule-based issues have had a negative impact on the substantial growth that the industry has shown year-over-year, and the Department is unaware of any public comment that its regulations have any deterring effects to entering into or remaining in the marketplace. It is common knowledge that the liquor industry is "highly regulated," but it is generally accepted that the Department's regulations are no impediment to operating a successful liquor-licensed business.

For these reasons, the Department concludes that the probable benefits of its rules outweigh within this state the probable costs of the rules and that the rules impose the least burdens and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

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:
    None of the rules is more stringent than the applicable federal law, 27 CFR, Chapter 1, Subchapter A.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
    All the licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 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:

On April 26, 2021, the Department of Public Safety (DPS) assumed temporary control and oversight of the Department of Liquor License and Control (LLC). This report was submitted to the Council prior to DPS control of LLC. At the Council's Study Session On April 27, 2021, DPS indicated it is not able to provide any substantive answers on this report or any definitive course of action. This is due to several reasons. First, DPS employees are unfamiliar with LLC operations, statutes and rules and the content of this report requiring study and examination. Second, the entire leadership team of LLC are no longer employed and not available to answer any questions. Third, during the months of May, June and July agencies are heavily burdened with FY22 strategic plan and Governor's Scorecard metrics development and finalizations. DPS has one staff person that handles strategic planning, Scorecard and administrative rules. That staff person will continue their regular DPS duties and temporarily assume the same duties at LLC. The best timeframe DPS can provide is DPS employees will attempt to educate themselves about LLC, this report, the rules and statutory authorities during May, June and July 2021. Portions of August will be lost due to DPS employee annual vacations. DPS will attempt to begin engaging expedited rulemaking items in this report in August. However, DPS cannot provide a date as to when the LLC will submit final expedited rules, when it will start a regular rulemaking, or when final rulemaking rules will be provided to the Council. The reasoning behind this is DPS involvement is only temporary. When the Governor appoints and the Senate confirms new leadership for LLC, DPS involvement will likely cease. DPS will do its best to help facilitate rulemaking processes during the leadership transition phases at LLC.

These following paragraphs were submitted by the LLC in the original report and are retained here for historical and reference purposes:

In its last five-year review, the Department indicated that it intended to seek an exception to Governor Ducey's rulemaking moratorium to enable it to address the issues identified in its report. Due to uncertainty about the availability of an exemption, recourse limitations, and

the fact that the Department had not experienced any substantial inefficiencies or impediments to carrying out its regulatory function from the issues that merited consideration for rulemaking, that did not occur. As noted above, in Laws 2018, Ch. 240, the legislature *required* the Department to amend its rules to add provisions regarding the training of security personnel. The Department will work with the Council to determine if any rulemaking is required. Any rulemaking will be done in close and substantial contact with the members of the regulated industry, which could delay and complicate the initial drafting of proposed rules. Moreover, given that the industry presently has a new omnibus liquor bill (HB2050) pending, along with numerous other bills that may substantially impact Title IV, the Department believes it would be wise to postpone any required rulemaking until the end of the legislative session in May 2021. Other than any rulemaking that the Council requires, the Department does not currently intend to engage in rulemaking at any specific time.

Assuming the Department is able to obtain an exception, it has identified possible amendments to the following rules, and detailed in Section 4.

R19-1-101, R19-1-102, R19-1-103, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-304, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-401, R19-1-501, R19-1-504, R19-1-603, and R19-1-604.

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

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

(Authority: A.R.S. § 4-101 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).

Editor's Note: Some Sections of this Chapter were amended, adopted, and repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Chapter 307, § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and conduct a hearing. The changes were not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Some Sections of this Chapter were amended, adopted, and repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Chapter 234, § 22. Although exempt from certain portions of the rulemaking process, the Department was required to provide a notice of hearing and a public hearing before adopting these changes. At the time the Sections were amended, adopted, and repealed the Office of the Secretary of State was not allowed by law to file and publish exempt rules. The Department has now filed these changes with the Office of the Secretary of State as required pursuant to Laws 1991, Chapter 136 §§ 2 and 3 (Supp. 96-4).

19 A.A.C. 1, consisting of R19-1-101 through R19-1-111, and R19-1-201 through R19-1-257 recodified from 4 A.A.C. 15 consisting of R4-15-101 through R4-15-111, and R4-15-201 through R4-15-257 pursuant to R1-1-102 (Supp. 95-1).

Portions of this Chapter have been adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1993, Ch. 133, § 49 and Laws 1994, Ch. 373, § 9. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

(A.R.S. § 4-112(A))

Article 1 heading amended effective September 14, 1990, under an exemption from the provisions of the Administrative Procedure Act (Supp. 96-4).

Section

ARTICLE 2. LICENSING

(A.R.S. § 4-112(B)(1))

Article 2 heading amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act (Supp. 97-2).

Article 2 heading amended effective September 14, 1990, under an exemption from the provisions of the Administrative Procedure Act (Supp. 96-4).

Section

ARTICLE 3. LICENSEE RESPONSIBILITIES

Article 3, consisting of R19-1-301 through R19-1-304, adopted effective September 14, 1990 (Supp. 96-4).

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

Article 4, consisting of R19-1-401 through R19-1-408 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Article 5, consisting of R19-1-501 through R19-1-505 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

Article 6, consisting of R19-1-601 through R19-1-604 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 7. STATE LIQUOR BOARD

Article 7, consisting of R19-1-701 through R19-1-705 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-101. Definitions

A. The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:

1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:
   a. Spirituous liquors in individual portions for consumption on the licensed premises;
   b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percent-

age of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).

3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
   a. Beer and wine in individual portions for consumption on the licensed premises;
   b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
   c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
   a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and
   b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
5. "Business" means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
6. "Business premises" means real property and improvements from which a business operates.
7. "Catering establishment" means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
8. "Club license" (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
9. "Cocktail mixer" means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.
10. "Conveyance license" (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
11. "Cooler product" means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
12. "Deal" means to sell, trade, furnish, distribute, or do business in spirituous liquor.
13. "Department" means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
14. "Direct shipment license" (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
15. "Domestic farm winery license" (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a domestic farm winery is considered an "other producer."
16. "Domestic microbrewery license" (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than 1.24 million gallons of beer annually and includes authorization to sell beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32). For the purposed of A.R.S. § 4-243, a domestic microbrewery is considered an "other producer."
17. "Entertainment," as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.
18. "Erotic entertainer," as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.
19. "Government license" (Series 5) has the meaning set forth at A.R.S. § 4-101.
20. "Hotel-motel license" (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.
21. "Incidental convenience," as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.
22. "In-state producer license" (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.
23. "Interim permit" means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.
24. "Licensed" means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.
25. "Licensed retailer" means an on-sale or off-sale retailer.
26. "Limited out-of-state producer license" (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.
27. "Liquor store license" (Series 9) means authorization issued to an off-sale retailer to sell:
   a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and
   b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
28. "Non-technical error" means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
29. "Nonuse" means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
30. "Out-of-state producer license" (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
31. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
32. "Physical barrier" means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
33. "Producer" means the holder of an in-state, out-of-state, or limited out-of-state producer license.
34. "Product display" means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.

35. "Quota license" means a bar, beer and wine bar, or liquor store license.
36. "Rectify" means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.
37. "Reset" means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.
38. "Restaurant continuation authorization" means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.
39. "Restaurant license" (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.
40. "Second-party purchaser" means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.
41. "Special event license" (Series 15) means authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.
42. "Tapping equipment" means beer, wine, and distilled spirit dispensers as stated in R19-1-326.
43. "Technical error" means a mistake on an application that does not mislead regarding the truthfulness of the information provided.
44. "Transfer" means to:
    a. Move a license from one location to another location within the same county; or
    b. Change ownership, directly or indirectly, in whole or in part, of a business.
45. "Wholesaler license" (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.
46. "Wine festival or fair license" (Series 16) means authorization issued for a specified period to a domestic farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 1; Former Section R4-15-01 renumbered as Section R4-15-101 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-101 recodified from R4-15-101 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-102. Fees and Surcharges; Service Charges

A. Most of the fees and surcharges collected by the Department are established by statute.

B. After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.

C. After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.

D. After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of $30,000.

E. A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of $150 in addition to the renewal fee.

F. At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of $20.

G. Until the date specified in A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of $50.

H. Until the date specified in A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed premises to a maximum of $50.

I. Until the date specified in A.R.S. § 4-206.01(J), the Director establishes and shall collect a fee of $100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and $60 to renew the sampling privilege.

J. Until the date specified in A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of $50.

K. If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:
1. As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of $25;
2. Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
3. Require the applicant or licensee to pay all future fees to the Department by money order.

L. As allowed under A.R.S. §35-142(K), the Department may impose a convenience fee for accepting payment made by credit or debit card.

M. This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K).

Historical Note

Former Rule 2; Former Section R4-15-02 renumbered as Section R4-15-102 without change effective October 8, 1982 (Supp. 82-5). Repealed effective July 11, 1983 (Supp. 83-4). New Section adopted effective March 3,

1993 (Supp. 93-1). R19-1-102 recodified from R4-15-102 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5119, effective January 9, 2006 (Supp. 05-4). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-103. A.R.S. Title 4 Training Course: Minimum Standards

A. As authorized by A.R.S. § 4-112(G)(2), the Department establishes the following minimum standards for an A.R.S. Title 4 training course.

1. A provider of a training course shall ensure that course content, training materials, and examination provide current reference and practical application of statute and this Chapter for:
   a. Basic liquor law applicable to an on-sale retail licensee,
   b. Management training applicable to an on-sale retail licensee,
   c. Basic liquor law applicable to an off-sale retail licensee, and
   d. Management training applicable to an off-sale retail licensee;
2. A provider of a Basic On-sale training course shall ensure that the course is a minimum of three hours, excluding sign-in and break times, and course content includes the following topics:
   a. General law regarding spirituous liquor.
      i. Review of requirements for licensees and employees in Title 4 and this Chapter,
      ii. Role and function of the Arizona Department of Liquor Licenses and Control,
      iii. Potential legal risks to an on-sale retail licensee,
      iv. Potential legal risks to an employee of an on-sale retail licensee,
      v. Distinction between off- and on-sale license privileges, and
      vi. Types and privileges of on-sale retail licenses,
   b. Law regarding a licensed premises.
      i. The licensed premises defined;
      ii. Entertainment within or on the licensed premises, private parties, special events, or gambling;
      iii. Spirituous liquor brought onto or removed from the licensed premises; and
      iv. Extending or changing the licensed premises.
   c. Law regarding age.
      i. Selling spirituous liquor to persons of legal age;
      ii. When to require identification of legal age;
      iii. Recognizing acceptable forms of identification;
      iv. Recognizing invalid forms of identification;
      v. Documenting identification inspection by using an ID Log;
      vi. Underage individuals in a bar or restaurant at which spirituous liquor is served;
      vii. The Covert Underage Buyer Program; and
      viii. Refusing to sell spirituous liquor to an underage individual using policy, procedure, and skill assessment;
   d. Law regarding intoxication.
      i. The effects of spirituous liquor and recognizing signs of obvious intoxication;
      ii. Responsibility for the safety of customers;
      iii. Service limitations of spirituous liquor at a licensed premises, special event, or sampling event;
      iv. Monitoring customer consumption and intervention techniques using skill assessment; and
      v. Refusing spirituous liquor service or sale to an intoxicated individual using policy, procedure, and skill assessment;
   e. Law regarding second-party sales of spirituous liquor.
      i. Definition of second-party sale,
      ii. Licensee responsibilities regarding second-party sales,
      iii. Recognizing a second-party purchaser,
      iv. Preventing a second-party sale, and
      v. Refusing to sell to a second-party purchaser;
   f. Employee consumption of spirituous liquor;
   g. Law regarding legal hours of sale and payment for spirituous liquor at retail locations;
   h. Disorderly conduct and acts of violence.
      i. Defining disorderly conduct and acts of violence;
      ii. Maintaining order on the licensed premises using policy, procedures, and skill assessment;
      iii. Locating forms and reporting requirements for an act of violence;
      iv. Repeated acts of violence; and
      v. Firearms on the licensed premises;
   i. Management of problem situations.
      i. Kinds of problem situations that may arise,
      ii. Recognizing a problem situation, and
      iii. Employee responsibilities in a problem situation; and
   j. Course review.
      i. Summarize course content,
      ii. Administer to all participants the examination required under subsection (A)(10),
      iii. Have all participants complete the Course Evaluation Form required under subsection (A)(9), and
      iv. Issue to qualifying participants the Certificate of Completion required under subsection (A)(11).
3. A provider of a Management On-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, is preceded by the Basic On-sale training course outlined in subsection (A)(2), and management content includes the following topics:
   a. Making changes to and deactivating a liquor license.
      i. Liquor license application requirements;
      ii. The "capable, qualified, and reliable" requirements for licensure;
      iii. Definition of controlling person, types of ownership, and ownership that is unlawful;

iv. Local government approval of liquor license application, including an application for a special event;
v. Distinction between the Director and the Board; and
vi. License application protests, requirements, and procedure;

b. Law enforcement regarding spirituous liquor.
i. Routine liquor inspection of premises,
ii. Common liquor law violations,
iii. Compliance meetings and actions,
iv. Office of Administrative Hearings,
v. Grounds for suspension or revocation,
vi. Administrative liability,
vii. Criminal liability, and
viii. Civil liability;

c. Licensed premises.
i. Diagramming licensed premises, including hotel and motel locations;
ii. Altering licensed premises;
iii. Changing name of business;
iv. Patio requirements; and
v. Unlicensed locations;

d. Liquor license.
i. Posting the liquor license,
ii. Required and optional signs,
iii. Renewing license,
iv. Recordkeeping requirements,
v. Employee log, and
vi. Change in active or nonuse status;

e. Management requirements.
i. Defining on-site manager, responsibilities, and completion of the required questionnaire;
ii. Managing employee and customer safety;
iii. Changing managers;
iv. Changing agents;
v. Restructure; and
vi. Locating forms and required reporting;

f. Spirituous liquor marketing.
i. Coupons and rebates,
ii. Happy hour,
iii. Advertising and signage, and
iv. Promotional and novelty items;

g. General business practices.
i. Sources of spirituous liquor;
ii. Credit purchase of spirituous liquor;
iii. Delivering, shipping, and internet selling of spirituous liquor;
iv. Off-premise storage of spirituous liquor;
v. Wholesaler and retailer relationship and inducements;
vi. Sampling events of spirituous liquor;
vii. Special events and auction of spirituous liquor;
viii. Wine and food clubs;
ix. Cooperative purchase of spirituous liquor,
x. Locking entrance to licensed premises and private parties,
xi. Limiting service to and consumption of spirituous liquor by employees, and
xii. Owner service and consumption of spirituous liquor;

h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and

i. Course review. The activities specified under subsection (A)(2)(j).

4. A provider of a Basic Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and course content includes the following topics:
a. General law regarding spirituous liquor.
i. The information specified under subsections (A)(2)(a)(i) and (ii),
ii. Potential legal risks to an off-sale retail licensee,
iii. Potential legal risks to an employee of an off-sale retail licensee, and
iv. Types and privileges of off-sale retail licenses;
b. Law regarding a licensed premises. The information specified under subsections (A)(2)(b)(i), (ii), and (iv);
c. Law regarding age. The information specified under subsections (A)(2)(c)(i) through (v) and (vii) and (viii);
d. Law regarding intoxication. The information specified under subsections (A)(2)(d)(i) through (iii), and (v);
e. Law regarding second-party sales of spirituous liquor. The information specified under subsections (A)(2)(e);
f. Employee consumption of spirituous liquor.
g. Law regarding legal hours of sale.
i. Legal hours of sale in Arizona, and
ii. Refusing an after-hour sale using skill assessment;
h. Law regarding sale of broken packages and on-premises consumption.
i. Definition of broken package and on-premises consumption,
ii. Advising a customer of off-sale consumption restrictions using skill assessment,
iii. Refusing to allow a customer to open or consume spirituous liquor on the licensed premises using skill assessment, and
iv. Refusing to allow a customer to consume spirituous liquor in parking area or property adjacent to licensed premises using skill assessment;
i. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h);
j. Management of problem situations. The information specified under subsections (A)(2)(i); and
k. Course review. The activities specified under subsection (A)(2)(j).

5. A provider of a Management Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and is preceded by the Basic Off-sale training course outlined in subsection (A)(4), and management content includes the following topics:
a. Making changes to and deactivating a liquor license. The information specified under subsection (A)(3)(a);
b. Law enforcement regarding spirituous liquor. The information specified under subsection (A)(3)(b);
c. Licensed premises. The information specified under subsection (A)(3)(c);
d. Liquor license. The information specified under subsection (A)(3)(d);
e. Management requirements. The information specified under subsection (A)(3)(e);

f. Spirituous liquor marketing. The information specified under subsections (A)(3)(f)(i), (iii), and (iv);
g. General business practices.
i. The information specified under subsections (A)(3)(g)(i) through (vii) and (ix) though (xii), and
ii. Drive-through purchase of spirituous liquor;
h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and
i. Course review. The activities specified under subsection (A)(2)(j).

6. A provider of a Basic Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(2) and (4).
7. A provider of a Management Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(3) and (5).
8. A provider of a management training course shall ensure that a sign-in roster is completed and provides the following information:
a. Name of the course provider,
b. Date on which the course was conducted,
c. Location at which the course was conducted,
d. Name of individual who taught the course,
e. Printed name and signature of each participant, and
f. Form of identification accepted by the provider to verify each participant's identity and the number and expiration date of the identification;
9. The Department shall provide a training provider with a Course Evaluation Form that allows a course participant to evaluate the knowledge and competence of the course trainer and the quality of the course.
10. A provider of a training course shall administer an objective examination to measure each participant's completion of the course.
11. The Department shall provide a training provider with an authorized Certificate of Completion form to issue to each participant who attends the course in its entirety, takes the examination required under subsection (A)(10), and completes the Course Evaluation form required under subsection (A)(9). The Department shall ensure that the Certificate of Completion contains the following information:
a. Name of the participant who completed the course,
b. Date on which the course was attended,
c. Notice that the Certificate of Completion expires three years from the date of issuance,
d. Whether the completed course addressed on-sale or off-sale retail requirements or a combination of both,
e. Whether the completed course addressed basic or management information or a combination of both,
f. Name of individual who taught the training course, and
g. Name of the course provider.
12. A provider of a training course shall:
a. Maintain for two years:
i. A record of all Certificates of Completion issued under subsection (A)(11),
ii. Course Evaluation Forms completed by participants as required under subsection (A)(9),
iii. Examination results for each course participant as required under subsection (A)(10), and
iv. Course sign-in rosters required under subsection (A)(8); and
b. Submit to the Department by August 1 of each year, either by mail or electronically, an updated syllabus, examination, and other course materials for each training course provided. The provider shall ensure that the updated syllabus, course materials, and examination clearly indicate:
i. Whether the course is on-sale, off-sale, or a combination of both;
ii. Whether the course is basic or basic plus management;
iii. The name of each trainer authorized by the provider to teach each course;
iv. A list of individuals who are no longer authorized by the provider to teach its courses; and
v. The name, daytime telephone number, and e-mail address of the person responsible for the course provider.

B. Before providing a training course to participants, the provider of the training course shall apply to the Department for approval of the course content.
C. The provider of an approved training course shall, upon request, make the following available to the Department:
1. Record of the Certificates of Completion maintained under subsection (A)(11);
2. All current training course syllabi, course materials, examinations, and Employee Information Forms;
3. A copy of all materials provided to course participants;
4. A copy of all teaching aids used in the training course; and
5. A copy of the Course Evaluations Forms completed under subsection (A)(9).

D. The Department may, at any time, review an approved training course to determine that the course continues to meet the minimum standards specified in this Section. A provider shall inform the Department, upon request, of the date, time, and location of all scheduled training courses and allow the Department to audit the courses for:
1. Compliance with this Section, and
2. Quality and accuracy of the training course content.

E. If the Department determines that a training course fails to meet the minimum standards specified in this Section, the Department shall give notice to the course provider regarding the areas of non-compliance, the steps required to be in compliance, and the date by which compliance must be achieved.
F. If the Department determines that a provider who received notice under subsection (E) failed to achieve compliance by the date specified, the Department may take action to suspend or revoke approval of the training course.
G. This Section is authorized by A.R.S. § 4-112(G)(2).

Historical Note

Former Rule 3; Former Section R4-15-03 renumbered as Section R4-15-103 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-103 recodified from R4-15-103 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-104. Shipping Container Labeling; Shipping Requirements

A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:
1. Name of the individual or entity consigning or shipping the spirituous liquor,
2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
3. Identification of the spirituous liquor.

B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:
1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
   a. Name and address of the wholesaler,
   b. Name and address of the licensed retailer, and
   c. Quantity and type of the spirituous liquor sold and transported; and
2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.

C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. With the exception of wine that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee or beer that is being shipped under A.R.S. § 4-205.08(D)(5) by a domestic microbrewery licensee, the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and
2. The spirituous liquor is placed for shipping with:
   a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
   b. The wholesaler to whom the spirituous liquor is consigned.

D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.

E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.

F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 4; Former Section R4-15-04 renumbered as Section R4-15-104 without change effective October 8, 1982 (Supp. 82-5). Repealed effective March 3, 1993 (Supp. 93-1). R19-1-104 recodified from R4-15-104 (Supp. 95-1). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Chapter 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:
1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises;
2. The non-contiguous area does not violate A.R.S. § 4-207;
3. The non-contiguous area will be a permanent part of the licensed premises;
4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
6. Construction of the business premises in the non-contiguous area will comply with all applicable building and safety standards before spirituous liquor is sold or served in the non-contiguous area; and
7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.

B. This Section is authorized by A.R.S. § 4-101(26).

Historical Note

Former Rule 5; Former Section R4-15-05 renumbered as Section R4-15-105 without change effective October 8, 1982 (Supp. 82-5). R19-1-105 recodified from R4-15-105 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section renumbered to R19-1-108, new Section R19-1-105 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-106. Severability

A. In this Chapter, the subsections of each Section are severable and each Section is severable from the Chapter. If a Section or subsection or the application of a Section or subsection to a particular individual, entity, or circumstance is held to be invalid, the invalidity does not affect the validity of other Sections or subsections and does not affect the validity of the Sec-

tion or subsection to a different individual, entity, or circumstance.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

Former Rule 6; Former Section R4-15-06 renumbered as Section R4-15-106 without change effective October 8, 1982 (Supp. 82-5). Amended effective July 11, 1983 (Supp. 83-4). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-106 recodified from R4-15-106 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-107. Electronic Signatures

A. An applicant, licensee, or other person that submits to the Department a form or document required under A.R.S. Title 4 or this Chapter may submit the form or document electronically.

B. This Section is authorized by A.R.S. § 4-112(G)(11).

Historical Note

Adopted effective April 26, 1977 (Supp. 77-2). Former Section R4-15-07 renumbered as Section R4-15-107 without change effective October 8, 1982 (Supp. 82-5). Amended effective January 28, 1987 (Supp. 87-1). R19-1-107 recodified from R4-15-107 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-108. Repealed

Historical Note

New Section R19-1-108 renumbered from R19-1-105 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-109. Repealed

Historical Note

Adopted as an emergency effective September 30, 1981, pursuant to A.R.S. § 1003, valid for only 90 days (Supp. 81-5). Former Section R4-15-09, Quota license selection process, adopted as an emergency, renumbered as Section R4-15-109, expired (Supp. 82-5). Adopted effective December 9, 1982 (Supp. 82-6). Spelling correction, subsection (B), paragraph (3) to adoption effective December 9, 1982 (Supp. 87-1). R19-1-109 recodified from R4-15-109 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-110. Sign Limitations

A. A person, firm, or corporation engaged in business as a manufacturer, distiller, brewer, vintner, or wholesaler or any officer, director, agent, or employee of such person may lend, to the retailer any sign for interior or exterior use provided:

1. The sign must bear conspicuous and substantial advertising matter about a product of the manufacturer, distiller, brewer, vintner, or wholesaler.
2. The cost of the sign may not exceed $400.
3. A sign may not be utilitarian except as to its advertising or information content.
4. No such signs shall be offered or furnished by any manufacturer, distiller, brewer, vintner or wholesaler or by any officer, director, agent, or employee thereof, or by any other person as an inducement to the retailer to purchase or use the products of such manufacturer, distiller, brewer, vintner or wholesaler to the exclusion in whole or in part of the product of any competitor.

B. No signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall be obscene as determined by applying contemporary state standards.

C. Licensed special events are not subject to the limitations of subsections (A)(1) through (3).

Historical Note

New Section R19-1-110 renumbered from R19-1-210 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-111. Repealed

Historical Note

Adopted effective March 3, 1993 (Supp. 93-1). R19-1-111 recodified from R4-15-111 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-112. Repealed

Historical Note

New Section R19-1-112 renumbered from R19-1-228 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-113. Repealed

Historical Note

New Section R19-1-113 renumbered from R19-1-315 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

ARTICLE 2. LICENSING

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-201. Who May Apply for a License

A. Except as provided in subsection (B) and not withstanding any other law, the following pre-requisites apply for a license under A.R.S. Title 4 and this Chapter.
1. If an individual applies for a license, the individual shall be:
   a. A citizen of the United States or a legal resident alien, and
   b. A bona fide resident of Arizona;
2. If a partnership applies for a license, each partner shall meet the criteria in subsection (A)(1);
3. Except as provided in subsection (A)(6), if a corporation or limited liability company applies for a license, the corporation or limited liability company shall:
   a. Be qualified to do business in Arizona, and
   b. Hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
4. If a limited partnership applies for a license:
   a. An individual general partner, but not a limited partner, shall meet the criteria in subsection (A)(1); and
   b. A corporate general partner shall meet the criteria in subsection (A)(3);
5. If a club or governmental entity applies for a license, the club or governmental entity shall hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
6. If an out-of-state entity applies for a license, the out-of-state entity shall hold the license through an agent who meets the standard described in A.R.S. § 4-202(A).

B. An entity organized outside the U.S. that applies for an out-of-state producer or limited out-of-state producer license is not required to meet the pre-requisites in subsection (A) if the person makes application through an agent who meets the criteria listed in A.R.S. § 41-1080(B).

C. The Department shall accept as evidence that an individual is a citizen of the United States or a legal resident alien the documents listed in A.R.S. § 41-1080(A).

D. The Department shall accept a driver license or voter registration card as evidence that an individual is a bona fide resident of Arizona.

E. The Department shall accept the following, provided by or filed with the Arizona Corporation Commission, as evidence that an entity is qualified to do business in Arizona:
1. Corporation file number, or
2. L.L.C. file number.

F. This Section is authorized by A.R.S. §§ 4-202(A) and 41-1080.

Historical Note

Former Rule 1; Former Section R4-15-20 renumbered as Section R4-15-201 without change effective October 8, 1982 (Supp. 82-5). R-19-1-201 recodified from R4-15-201 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-201 recodified to R19-1-314; new Section R19-1-201 recodified from R19-1-301 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-202. Application Required

A. An individual or entity that wishes to obtain a license or other approval from the Department shall complete and submit to the Department an application using a form that is available from the Department at its office or online.

B. This Section is authorized by A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228.

Historical Note

Former Rule 2; Former Section R4-15-21 renumbered as Section R4-15-202 without change effective October 8, 1982 (Supp. 82-5). R19-1-202 recodified from R4-15-202 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-203. Registration of a Retail Agent

A. Pre-requisites for registration as a retail agent. A person may act as a retail agent only if the person:
1. Holds one of the licenses listed in A.R.S. § 4-222(A);
2. Has a written Cooperative-purchase Agreement, using a form available from the Department, with one or more licensees; and
3. Submits the materials required under subsections (B) and (C) to the Department.

B. To register as a retail agent, a licensee shall submit to the Department the application form prescribed by the Department. The licensee registering shall include the licensee's notarized signature affirming that the licensee will comply with all laws and this Chapter regarding cooperative purchases and that all information provided is true, correct, and complete.

C. In addition to submitting the application form required under subsection (B), an applicant for registration as a retail agent shall submit:
1. A copy of every Cooperative-purchase Agreement reached with another licensee, and
2. The fee prescribed at A.R.S.§ 4-222(B).

D. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d) and 4-222.

Historical Note

Former Rule 3; Former Section R4-15-22 renumbered as Section R4-15-203 without change effective October 8, 1982 (Supp. 82-5). R19-1-203 recodified from R4-15-203 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-204. Obtaining a Quota License

A. The number of quota licenses that the Department may issue in a county is limited.

B. Before issuing a new quota license in a particular county, the Department shall provide notice through available media of its intent to issue a new quota license, the particular kind of quota license to be issued, and invite interested persons in the county

to inform the Department of their interest in the manner prescribed by the Department.

C. If the number of interested persons in a particular county exceeds the number of specified quota licenses available, the Department shall use a random selection method to determine priority of individuals who have applied for a new quota license.

D. Before a new quota license is issued to a successful applicant, the applicant shall pay:
1. The issuance fee and applicable surcharges prescribed under A.R.S. § 4-209;
2. One-half of the annual renewal fee if the license will be issued less than six months before it is scheduled to be renewed; and
3. The fair market value of the quota license, as determined by the Department.

E. This Section is authorized by A.R.S. § 4-206.01.

Historical Note

Former Rule 4; Amended effective September 10, 1979 (Supp. 79-5). Former Section R4-15-23 renumbered as Section R4-15-204 without change effective October 8, 1982 (Supp. 82-5). R19-1-204 recodified from R4-15-204 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended by exempt rulemaking at 7 A.A.R. 5252, effective November 2, 2001 (Supp. 01-4). Former Section R19-1-204 recodified to R19-1-210; new Section R19-1-204 recodified from R19-1-220 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-205. Requirements for a Special Event License

A. To apply for a special event license, an entity authorized under A.R.S. § 4-203.02 (B) shall submit to the Department an application form, which is available from the Department.

B. At the same time application is made to the Department under subsection (A), the entity shall submit a copy of the application form to the board of supervisors if the special event is to be held in an unincorporated area or to the governing body of a city or town if the special event is to be held in a city or town. The Department shall issue a special event license subject to the approval of the board of supervisors or governing body.

C. The Department shall issue a special event license to an entity authorized under A.R.S. § 4-203.02 (B) for no more than 10 days in each calendar year.

D. This Section is authorized by A.R.S. § 4-203.02.

Historical Note

Former Rule 5; Former Section R4-15-24 renumbered as Section R4-15-205 without change effective October 8, 1982 (Supp. 82-5). R19-1-205 recodified from R4-15-205 (Supp. 95-1). Former Section R19-1-205 recodified to R19-1-211; new Section R19-1-205 recodified from R19-1-253 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1993, Ch. 133, § 49. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-1-206. Criteria for Issuing a Restaurant License

A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined at A.R.S. § 4-205.02(H)(2).

B. The following criteria are evidence of an ability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;
3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.

C. The following criteria are evidence of an inability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
1. More than 60 percent of the public seating area consists of barstools, cocktail tables, and similar seating indicating the area is used primarily for consumption of spirituous liquor;
2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
4. Proposed business premises contain bar games and equipment.

D. This Section is authorized by A.R.S. § 4-205.02(E).

Historical Note

Former Rule 6; Former Section R4-15-25 renumbered as Section R4-15-206 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective May 26, 1993, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1993, Ch. 133, § 49 (Supp. 93-2). R19-1-206 recodified from R4-15-206 (Supp. 95-1). Former Section R19-1-206 recodified to R19-1-221; new Section R19-1-206 recodified from R19-1-217 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-207. Extension of Premises

A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined at A.R.S. § 4-101(26), without first making application for an extension of premises.

B. An application under subsection (A) is required for either a temporary or permanent extension of premises.

C. This Section is authorized by A.R.S. §§ 4-101(26) and 4-203(B).

Historical Note

Former Rule 7; Former Section R4-15-26 renumbered as Section R4-15-207 without change effective October 8, 1982 (Supp. 82-5). R19-1-207 recodified from R4-15-207 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-207 recodified from R19-1-221 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-208. Notice of Application for a Conveyance License

A. An individual or entity qualified under R19-1-201 who submits an application under R19-1-202 for a conveyance license shall post a copy of the application and the notice required under A.R.S. § 4-201(B) conspicuously at the location from which the applicant conducts its principal business in Arizona.

B. This Section is authorized by A.R.S. § 4-201(B).

Historical Note

Former Rule 8; Former Section R4-15-27 renumbered as Section R4-15-208 without change effective October 8, 1982 (Supp. 82-5). R19-1-208 recodified from R4-15-208 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-208 recodified to R19-1-219; new Section R19-1-208 recodified from R19-1-231 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-209. Licensing Time-frames

A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes time-frames that apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame as defined in A.R.S. § 41-1072.

B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:

1. Every piece of information required by the form prescribed by the Department is provided;
2. All required materials specified on the form prescribed by the Department are attached to the form;
3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
4. If required, a questionnaire and complete set of fingerprints are attached to the form from:
   a. Every individual who is a controlling person of the business to be licensed,
   b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
   c. Every individual who owns at least 10 percent of the business to be licensed,
   d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
   e. The agent and managers of the business to be licensed.

C. Except as provided in subsection (D), the time-frame for the Department to act on a license application is as follows:

1. Administrative completeness review time-frame: 75 days;
2. Substantive review time-frame: 30 days; and
3. Over-all time-frame: 105 days.

D. The time-frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:

1. Administrative completeness review time-frame: 10 days;
2. Substantive review time-frame: 20 days; and
3. Over-all time-frame: 30 days.

E. Administrative completeness review time-frame.

1. The administrative completeness review time-frame begins when the Department receives an application. During the administrative completeness review-time-frame, the Department shall determine whether the application is:
   a. Complete,
   b. Contains a technical error, or
   c. Contains a non-technical error.

2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.
4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all time-frames are suspended from the date of the notice referenced under subsection (E)(3) until the date the technical error is corrected.
5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

F. Substantive review time-frame.
1. The substantive review time-frame begins when an application is administratively complete or at the end of the administrative completeness review time-frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review time-frame.
2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the Department. Both the substantive review and over-all time-frames are suspended from the date of the Department's request until the date that the Department receives the additional information.
3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

G. Within the overall time-frame, the Department shall:
1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.

H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial; and
3. The time for appealing the denial.

I. This Section is authorized by A.R.S. §§ 41-1073, 4-101(9), 4-201(E), and 4- 202(B).

Historical Note
Former Rule 9; Former Section R4-15-28 renumbered as Section R4-15-209 without change effective October 8, 1982 (Supp. 82-5). R19-1-209 recodified from R4-15-209 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-209 recodified to R19-1-232; new Section R19-1-209 recodified from R19-1-210 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-210. Renumbered

Historical Note
Former Rule 10; Former Section R4-15-29 renumbered as Section R4-15-210 without change effective October 8, 1982 (Supp. 82-5). R19-1-210 recodified from R4-15-210 (Supp. 95-1). Former Section R19-1-210 recodified to R19-1-209; new Section R19-1-210 recodified from R19-1-204 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-110 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-211. Repealed

Historical Note
Former Rule 11; Former Section R4-15-30 renumbered as Section R4-15-211 without change effective October 8, 1982 (Supp. 82-5). R19-1-211 recodified from R4-15-211 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-211 recodified to R19-1-224; new Section R19-1-211 recodified from R19-1-205 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-212. Repealed

Historical Note
Former Rule 12; Former Section R4-15-31 renumbered

as Section R4-15-212 without change effective October 8, 1982 (Supp. 82-5). R19-1-212 recodified from R4-15-212 (Supp. 95-1). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-212 recodified from R19-1-228 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-213. Repealed

Historical Note

Former Rule 13; Former Section R4-15-32 renumbered as Section R4-15-213 without change effective October 8, 1982 (Supp. 82-5). R19-1-213 recodified from R4-15-213 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were made under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-213 recodified to R19-1-234; new Section R19-1-213 recodified from R19-1-235 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 1564, effective June 4, 2005 (Supp. 05-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1991, Ch. 136, § 2 and 3. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-214. Repealed

Historical Note

Former Rule 14; Former Section R4-15-33 renumbered as Section R4-15-214 without change effective October 8, 1982 (Supp. 82-5). Former Section R4-15-214 repealed, new Section R4-15-214 adopted effective April 26, 1984 (Supp. 84-2). R19-1-214 recodified from R4-15-214 (Supp. 95-1). Section repealed, new Section adopted effective April 1, 1992, under an exemption from the Administrative Procedure Act pursuant to Laws 1991, Ch. 136, §§ 2 and 3; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-214 recodified to R19-1-235; new Section R19-1-214 recodified from R19-1-236 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1564, effective June 4, 2005 (Supp. 05-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-215. Repealed

Historical Note

Former Rule 15; Former Section R4-15-34 renumbered as Section R4-15-215 without change effective October 8, 1982 (Supp. 82-5). R19-1-215 recodified from R4-15-215 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-215 recodified to R19-1-225; new Section R19-1-215 recodified from R19-1-237 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-216. Repealed

Historical Note

Former Rule 16; Former Section R4-15-35 renumbered as Section R4-15-216 without change effective October 8, 1982 (Supp. 82-5). R19-1-216 recodified from R4-15-216 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-216 recodified to R19-1-222; new Section R19-1-216 recodified from R19-1-255 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-217. Repealed

Historical Note

Former Rule 17; Former Section R4-15-36 renumbered as Section R4-15-217 without change effective October 8, 1982 (Supp. 82-5). R19-1-217 recodified from R4-15-217 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Pro-

cedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-217 recodified to R19-1-206; new Section R19-1-217 recodified from R19-1-248 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-218. Repealed

Historical Note

Former Rule 18; Former Section R4-15-37 renumbered as Section R4-15-218 without change effective October 8, 1982 (Supp. 82-5). R19-1-218 recodified from R4-15-218 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-218 recodified to R19-1-305; new Section R19-1-218 recodified from R19-1-222 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-219. Repealed

Historical Note

Former Rule 19; Former Section R4-15-38 renumbered as Section R4-15-219 without change effective October 8, 1982 (Supp. 82-5). R19-1-219 recodified from R4-15-219 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-219 recodified to R19-1-306; new Section R19-1-219 recodified from R19-1-208 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-220. Repealed

Historical Note

Former Rule 20; Former Section R4-15-39 renumbered as Section R4-15-220 effective October 8, 1982 (Supp. 82-5).* R19-1-220 recodified from R4-15-220 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-220 recodified to R19-1-204; new Section R19-1-220 recodified from R19-1-229 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-221. Repealed

Historical Note

Former Rule 21; Former Section R4-15-40 renumbered as Section R4-15-221 without change effective October 8, 1982 (Supp. 82-5). R19-1-221 recodified from R4-15-221 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-221 recodified to R19-1-207; new Section R19-1-221 recodified from R19-1-206 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-222. Repealed

Historical Note

Former Rule 22; Former Section R4-15-41 renumbered as Section R4-15-222 without change effective October 8, 1982 (Supp. 82-5). R 19-1-222 recodified from R4-15-222 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-222 recodified to R19-1-218; new Section R19-1-222 recodified from R19-1-216 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and a new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-223. Repealed

Historical Note

Former Rule 23; Former Section R4-15-42 renumbered as Section R4-15-223 without change effective October 8, 1982 (Supp. 82-5). R19-1-223 recodified from R4-15-223 (Supp. 95-1). Section repealed, new Section adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-223 recodified to R19-1-312; new Section R19-1-223 recodified from R19-1-226 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-224. Repealed

Historical Note

Former Rule 24; Former Section R4-15-43 renumbered as Section R4-15-224 without change effective October 8, 1982 (Supp. 82-5). R-19-1-224 recodified from R4-15-224 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-224 recodified from R19-1-211 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-225. Repealed

Historical Note

Former Rule 25; Former Section R4-15-44 renumbered as Section R4-15-225 without change effective October 8, 1982 (Supp. 82-5). R19-1-225 recodified from R4-15-225 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-225 recodified to R19-1-307; new Section R19-1-225 recodified from R19-1-215 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-226. Repealed

Historical Note

Former Rule 26; Former Section R4-15-45 renumbered as Section R4-15-226 without change effective October 8, 1982 (Supp. 82-5). R19-1-226 recodified from R4-15-226 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-226 recodified to R19-1-223; new Section R19-1-226 recodified from R19-1-245 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-227. Repealed

Historical Note
Former Rule 27; Former Section R4-15-46 renumbered as Section R4-15-227 without change effective October 8, 1982 (Supp. 82-5). R19-1-227 recodified from R4-15-227 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-227 recodified from R19-1-254 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-228. Renumbered

Historical Note
Former Rule 28; Former Section R4-15-47 renumbered as Section R4-15-228 without change effective October 8, 1982 (Supp. 82-5). R19-1-228 recodified from R4-15-228 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-228 recodified to R19-1-212; new Section R19-1-228 recodified from R19-1-250 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-112 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-229. Repealed

Historical Note
Former Rule 29; Former Section R4-15-48 renumbered as Section R4-15-229 without change effective October 8, 1982 (Supp. 82-5). R-19-1-229 recodified from R4-15-229 (Supp. 95-1). Former Section R19-1-229 recodified to R19-1-220; new Section R19-1-229 recodified from R19-1-247 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-230. Repealed

Historical Note
Former Rule 30; Former Section R4-15-49 renumbered as Section R4-15-230 without change effective October 8, 1982 (Supp. 82-5). R19-1-230 recodified from R4-15-230 (Supp. 95-1). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-230 recodified from R19-1-241 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-231. Repealed

Historical Note
Former Rule 31; Former Section R4-15-50 renumbered as Section R4-15-231 without change effective October 8, 1982 (Supp. 82-5). R19-1-231 recodified from R4-15-231 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-231 recodified to R19-1-208; new Section R19-1-231 recodified from R19-1-246 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-232. Repealed

Historical Note
Former Rule 32; Former Section R4-15-51 renumbered as Section R4-15-232 without change effective October 8, 1982 (Supp. 82-5). R19-1-232 recodified from R4-15-231 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-232 recodified from R19-1-209 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-233. Repealed

Historical Note
Former Rule 33; Former Section R4-15-52 renumbered as Section R4-15-233 without change effective October 8, 1982 (Supp. 82-5). R19-1-233 recodified from R4-15-233 (Supp. 95-1). Amended effective September 14,

1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-233 recodified to R19-1-311; new Section R19-1-233 recodified from R19-1-305 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-234. Repealed

Historical Note

Former Rule 34; Former Section R4-15-53 renumbered as Section R4-15-234 without change effective October 8, 1982 (Supp. 82-5). R19-1-234 recodified from R4-15-234 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-234 recodified from R19-1-213 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-235. Repealed

Historical Note

Former Rule 35; Former Section R4-15-54 renumbered as Section R4-15-235 without change effective October 8, 1982 (Supp. 82-5). R19-1-235 recodified from R4-15-235 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-235 recodified to R19-1-213; new Section R19-1-235 recodified from R19-1-214 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-236. Recodified

Historical Note

Former Rule 36; Former Section R4-15-55 renumbered as Section R4-15-236 without change effective October 8, 1982 (Supp. 82-5).* R19-1-236 recodified from R4-15-236 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-236 recodified to R19-1-214 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-237. Recodified

Historical Note

Former Rule 37; Former Section R4-15-56 renumbered as Section R4-15-237 without change effective October 8, 1982 (Supp. 82-5). R19-1-237 recodified from R4-15-237 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-237 recodified to R19-1-215 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-238. Repealed

Historical Note

Former Rule 38; Former Section R4-15-57 renumbered as Section R4-15-238 without change effective October 8, 1982 (Supp. 82-5). R19-1-238 recodified from R4-15-238 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-239. Recodified

Historical Note

Former Section R4-15-58 renumbered as Section R4-15-239 without change effective October 8, 1982 (Supp. 82-5). R19-1-239 recodified from R4-15-239 (Supp. 95-1).

Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-239 recodified to R19-1-302 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act. Exemption from this Act means that the rule was not reviewed by the Governor's Regulatory Review Council; the rule not submitted to the Secretary of State's Office for publication as a proposed rule in the Arizona Administrative Register; the public did not have an opportunity to comment on the rule; and the rule was not certified by the Attorney General.

R19-1-240. Recodified

Historical Note

Adopted effective October 11, 1977 (Supp. 77-5). Repealed effective January 5, 1979 (Supp. 79-1). Former Section R4-15-59 renumbered as Section R4-15-240 effective October 8, 1982 (Supp. 82-5). Amended effective August 3, 1994, under an exemption from the Administrative Procedure Act (Supp. 94-3). R19-1-240 recodified from R4-15-240 (Supp. 95-1). Section R19-1-240 recodified to R19-1-310 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-241. Recodified

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). R19-1-241 recodified from R4-15-241 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-241 recodified to R19-1-230 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-242. Recodified

Historical Note

Adopted effective April 9, 1979; Amended effective April 10, 1979 (Supp. 79-2). Former Section R4-15-61 renumbered as Section R4-15-242 without change effective October 8, 1982 (Supp. 82-5). R19-1-242 recodified from R4-15-242 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-242 recodified to R19-1-303 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-243. Recodified

Historical Note

Adopted effective Aug. 2. 1982 (Supp. 82-4). Former Section R4-15-62 renumbered as Section R4-15-243 without change effective October 8, 1982 (Supp. 82-5). Correction, (A)(3)(a) (Supp. 83-3). R19-1-243 recodified from R4-15-243 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-243 recodified to R19-1-308 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-244. Recodified

Historical Note

Adopted effective March 31, 1981 (Supp. 81-2). Former Section R4-15-63 renumbered as Section R4-15-2 without change effective October 9, 1982 (Supp. 82-5). R19-1-244 recodified from R4-15-244 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws

1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-244 recodified to R19-1-309 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-245. Recodified

Historical Note

Adopted effective January 29, 1982 (Supp. 82-1). Former Section R4-15-64 renumbered and amended subsection (A), paragraph (1) effective October 8, 1982 (Supp. 82-5). Correction, (A)(1) and (4) (Supp. 83-3). R19-1-245 recodified from R4-15-245 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-245 recodified to R19-1-226 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and a new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-246. Recodified

Historical Note

Adopted as an emergency effective Feb. 8, 1985 pursuant to A.R.S. SS 41-1003, valid for only 90 days (Supp. 85-1). Emergency expired. Adopted as a permanent rule effective Aug. 6, 1985 (Supp. 85-4). R19-1-246 recodified from R4-15-246 (Supp. 95-1). Section repealed, new Section adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-246 recodified to R19-1-231 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-247. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-247 recodified to R19-1-229 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-248. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-248 recodified to R19-1-217 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-249. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-250. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the

Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Amended by exempt rulemaking at 7 A.A.R. 5252, effective November 2, 2001 (Supp. 01-4). Section R19-1-250 recodified to R19-1-228 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Adoption was made under a different exemption (Supp. 96-4).

R19-1-251. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Adoption was made under a different exemption (Supp. 96-4).

R19-1-252. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-252 recodified to R19-1-313 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-253. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-253 recodified to R19-1-205 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-254. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-254 recodified to R19-1-227 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-255. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-255 recodified to R19-1-216 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended and then repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Adoption was made under a different exemption (Supp. 96-4)

R19-1-256. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; repealed effective June 10, 1997. Both actions were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: The following Section was adopted under an exemption from the provisions of the Arizona Administrative Pro-

cedure Act. Exemption from this Act means that the rule was not reviewed by the Governor's Review Council; the rule was not submitted to the Secretary of State's Office for publication as a proposed rule in the Arizona Administrative Register; the public did not have an opportunity to comment on the rule; and the rule was not certified by the Attorney General.

R19-1-257. Recodified

Historical Note

Adopted effective August 3, 1994, under an exemption from the Administrative Procedure Act (Supp. 94-3). R19-1-257 recodified from R4-15-257 (Supp. 95-1). Section R19-1-257 recodified to R19-1-304 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-301. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-301 recodified to R19-1-201 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

R19-1-302. Knowledge of Liquor Law; Responsibility

A. A licensee shall take reasonable steps to ensure the following individuals acquire knowledge of A.R.S. Title 4 and this Chapter:
1. The licensee;
2. The manager;
3. Any employee who serves, sells, or furnishes spirituous liquor to a retail customer; and
4. Any individual who will be physically present and operating the licensed premises.

B. This Section is authorized by A.R.S. § 4-112(G)(2).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-302 recodified to R19-1-315; new Section R19-1-302 recodified from R19-1-239 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-303. Authorized Spirituous Liquor

A. A licensee shall not directly or indirectly manufacture, sell, or deal in spirituous liquor in Arizona other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. A licensee shall ensure that no spirituous liquor other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter is on the licensed premises for any purpose.

C. This Section is authorized by A.R.S. § 4-203(B)(1).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Adopted by final rulemaking at 5 A.A.R. 386, effective January 8, 1999 (Supp. 99-1). Former Section R19-1-303 recodified to R19-1-317; new Section R19-1-303 recodified from R19-1-242 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-304. Storing Spirituous Liquor on Unlicensed Premises

A. Except as provided in subsection (B), a licensee shall not accept delivery of or store spirituous liquor at any premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. The Department shall authorize a licensee to accept delivery of or store spirituous liquor at a premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter if:
1. The licensee submits a written request to the Department that:
   a. Identifies the unlicensed premises,
   b. Provides a diagram that shows the geographical location of the unlicensed premises in relation to the business premises, and
   c. Explains how the licensee will safeguard the spirituous liquor at the unlicensed premises; and
2. The Department determines that the licensee will safeguard the spirituous liquor at the unlicensed premises in a manner that protects the public health, safety, and welfare and that authorizing the licensee to store spirituous liquor at the unlicensed premises is consistent with the best interest of the state.

C. A licensee granted authorization under subsection (B) shall provide evidence of the authorization to a wholesaler before asking the wholesaler to make delivery of spirituous liquor at the unlicensed premises.

D. This Section is authorized by A.R.S. § 4-203(B).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-304 recodified to R19-1-316; new Section R19-1-304 recodified from R19-1-257 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-305. Paying Taxes Required

A. The Director shall not issue an interim permit on a quota license if the Director has notice that the quota-license licensee is delinquent in paying any tax to the state or a political subdivision unless:

1. The licensee or transferee enters into an agreement with the taxing authority to pay the delinquent tax; and
2. The taxing authority submits written verification of the agreement to the Director.

B. This Section is authorized by A.R.S. §§ 4-112(B)(1)(c), 4-205.04(E), and 4-210(A)(5).

Historical Note
Adopted effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Amended effective November 24, 1998, under an exemption from provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 259, § 23 (Supp. 98-4). Former Section R19-1-305 recodified to R19-1-233; new Section R19-1-305 recodified from R19-1-218 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-306. Bottle Labeling Requirements

A. A licensee and any officer, director, agent, or employee of the licensee shall not directly or indirectly or through an affiliate sell, ship, deliver for sale or shipment, or receive or remove from federal custody any bottled spirituous liquor unless the spirituous liquor is bottled, packaged, and labeled in conformity with all federal requirements.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note
New Section R19-1-306 recodified from R19-1-219 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-307. Bottle Reuse or Refilling Prohibited

A. Except as authorized under A.R.S. § 4-244(32), a retail licensee shall ensure that a bottle or other container authorized by law for packaging spirituous liquor:
1. Is not reused to package spirituous liquor after the spirituous liquor originally packaged in the bottle or other container is removed from the bottle or other container, and
2. Bears a label that accurately indicates the kind and brand of spirituous liquor in the bottle or other container.

B. Except as authorized under A.R.S. § 4-244(32) and (45), a retail licensee shall ensure that no substance is added to a bottle or other container authorized by law for packaging spirituous liquor that has the effect of increasing the amount of liquid originally packaged or remaining in the bottle or other container.

C. This Section is authorized by A.R.S. § 4-244(21), (32), and (45).

Historical Note
New Section R19-1-307 recodified from R19-1-225 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-308. Age Requirement for Erotic Entertainers

A. A licensee shall ensure that an individual employed by or performing as an erotic entertainer at the licensed premises is at least 19 years old.

B. This Section is authorized by A.R.S. § 4-112(G)(6).

Historical Note
New Section R19-1-308 recodified from R19-1-243 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-309. Prohibited Acts

A. A licensee or an employee of a business shall take reasonable steps to ensure that an individual on the licensed premises, including an employee or independent contractor of the licensed premises, does not:
1. Expose any portion of the individual's anus, vulva, or genitals;
2. Grope, caress, or fondle or cause to be groped, caressed, or fondled the breasts, anus, vulva, or genitals of another individual with any part of the body; or
3. Perform an act of sexual intercourse, masturbation, sodomy, bestiality, or oral copulation.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note
New Section R19-1-309 recodified from R19-1-244 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-310. Prohibited Films and Pictures

A. A licensee shall ensure that a film, slide picture, or other reproduction is not shown on the licensed premises if the film, slide picture, or other reproduction depicts:
1. An act of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or a sexual act prohibited by law;
2. An individual being touched, caressed, or fondled on the breast, anus, vulva, or genitals;
3. An individual displaying a portion of the individual's pubic hair, anus, vulva, or genitals; or
4. Use of an artificial device or inanimate object to depict an activity described under subsections (1) through (3).

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note
New Section R19-1-310 recodified from R19-1-240 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-311. Repealed

Historical Note
New Section R19-1-311 recodified from R19-1-233 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-312. Accurate Labeling of Dispensing Equipment Required

A. A licensee shall ensure that equipment through which spirituous liquor is dispensed is accurately labeled with the brand, grade, or class of spirituous liquor, including wine and beer, dispensed and that nothing on the equipment label directly or indirectly misleads the public regarding the spirituous liquor dispensed, sold, or used.

B. Except as provided in subsection (C), a licensee shall ensure that a faucet, spigot, or other outlet from which spirituous liquor is dispensed is clearly and conspicuously labeled with the name or brand adopted by the manufacturer of the spirituous liquor being dispensed.

C. If a faucet, spigot, or other outlet from which spirituous liquor is dispensed is not located in the area in which the spirituous liquor is served, a licensee shall post a notice in the area in which the spirituous liquor is served that lists the names or brands adopted by the manufacturers of only the spirituous liquors served.

D. This Section is authorized by A.R.S. § 4-243.

Historical Note

New Section R19-1-312 recodified from R19-1-223 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-313. Repealed

Historical Note

New Section R19-1-313 recodified from R19-1-252 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor

A. Except as specified in subsection (B), an on-sale retailer shall not offer or furnish to a customer an inducement such as a gift, prize, coupon, premium, or rebate, including assumption of an excise or transaction privilege tax, if receipt of the inducement is contingent on the purchase or consumption of spirituous liquor.

B. A bar or beer and wine bar licensee may offer or furnish a coupon to a customer if the coupon can be used only for an off-sale purchase.

C. An on-sale retailer may furnish to a customer an advertising novelty of nominal value or a service that is a customary trade practice if receipt of the novelty or service is not contingent on the purchase or consumption of spirituous liquor.

D. This Section is authorized by A.R.S. § 4-112(B)(1).

Historical Note

New Section R19-1-314 recodified from R19-1-201 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

A. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall ensure that delivery of spirituous liquor:

1. Is made only to an individual who is at least 21 years old,
2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
3. Is made only during the hours of lawful service of spirituous liquor,
4. Is not made to an intoxicated or disorderly individual, and
5. Is not made to the licensed premises of a licensed retailer.

B. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall refuse to complete a delivery if the licensee believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

C. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D).

Historical Note

New Section R19-1-315 recodified from R19-1-302 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-113, new Section R19-1-315 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

A. Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § 4-206.01(J), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.

B. This Section is authorized by A.R.S. § 4-244(19).

Historical Note

New Section R19-1-316 recodified from R19-1-304 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

A. If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.

B. If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.

C. If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.

D. In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at A.R.S. § 4-205.02(H), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at A.R.S. § 4-205.02(H).

E. To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:

1. Vendor invoices. Sorted by vendor by year;
2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;

3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
5. Transaction privilege tax returns. Sorted by month by year;
6. Income tax returns. Sorted by year; and
7. Payroll records. Sorted by pay period by year.

F. If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.

G. This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

Historical Note
New Section R19-1-317 recodified from R19-1-303 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-318. Responsibilities of a Special Event Licensee

A. If a special event occurs at an otherwise unlicensed location, the special event licensee shall conduct all dispensing, serving, and selling of spirituous liquor;

B. If a special event occurs at the licensed premises of a licensed retailer, the special event licensee shall ensure that one of the following occurs during the special event:
1. The licensed retailer places the license in non-use status and ceases to sell spirituous liquor and the special event licensee dispenses and serves spirituous liquor and ensures that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
2. The licensed retailer dispenses and serves all spirituous liquor under the licensed retailer's license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
3. The licensed retailer dispenses and serves all spirituous liquor under the special event license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased by or donated to the special event licensee. Both the licensed retailer and special event licensee shall ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; or
4. The licensed premises of the licensed retailer are divided into two areas as follows:
   a. In the first area, the licensed retailer shall dispense and serve spirituous liquor that is purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; and
   b. In the second area, the special event licensee shall dispense and serve spirituous liquor purchased by or donated to the special event licensee and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter.

C. If a special event involving sampling of spirituous liquor occurs at the licensed premises of a licensed retailer, the special event licensee shall comply with the procedures in A.R.S. § 4-243(B).

D. This Section is authorized by A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(E).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-319. Commercial Coercion or Bribery Prohibited

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not directly or indirectly or through an affiliate engage in any of the following activities unless specifically authorized under A.R.S. Title 4 or this Chapter:
1. Furnishing, giving, renting, lending, or selling to a licensed retailer an article of primary utilitarian value in the conduct of the business;
2. Selling food or food products to a licensed retailer at less than the cost that the producer or wholesaler paid for the food or food products;
3. Selling non-alcoholic malt beverage, non-alcoholic wine, or other non-alcoholic beverage or cocktail mixer to a licensed retailer at less than the cost that the producer or wholesaler paid for the non-alcoholic malt beverage, non-alcoholic wine, or cocktail mixer.
4. Extending credit or furnishing financing to a licensed retailer through the licensed retailer's purchase of spirituous liquor or other products;
5. Providing a service to a licensed retailer, including stocking, resetting, or pricing merchandise;
6. Paying or crediting a licensed retailer for a promotion, advertising, display, public relations effort, or distribution service;
7. Sharing with a licensed retailer the cost of a promotion or advertising through any medium;
8. Guaranteeing a loan to or repayment of a financial obligation of a licensed retailer;
9. Providing financial assistance to a licensed retailer;
10. Engaging in a practice that requires a licensed retailer to take and dispose of a quota of spirituous liquor;
11. Offering or giving a meal, local ground transportation, or event ticket to a licensed retailer unless the item is deductible as a business entertainment expense under the Internal Revenue Code;
12. Offering a product to an on-sale licensee at a price not available to all on-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all on-sale licensees; or
13. Offering a product to an off-sale licensee at a price not available to all off-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all off-sale licensees.

B. A licensed retailer shall not require that a producer or wholesaler provide stocking or resetting services as a condition for being allocated shelf, cold box, or product display space.

C. A licensed retailer shall not solicit from a distiller, vintner, brewer, rectified, blender, or other producer or wholesaler any activity outlined in subsections (A)(1) through (A)(13) unless specifically authorized under A.R.S. Title 4 or this Chapter.

D. This Section is authorized by A.R.S. § 4-243(A).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-320. Practices Permitted by a Producer or Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Participating in a special event.

1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
   a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
   b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
   c. The special event license is not issued to a political committee or organization;
   d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and
   e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.
2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.

D. Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:

1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
2. The item provided has a value less than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
3. The item provided has a value more than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed $100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or
2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:
   a. All sponsorship proceeds are provided to the unlicensed organization, and
   b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, "concert" is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the

licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:

1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),
2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;
2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day. If the sample provided is for off-sale consumption, the producer or wholesaler shall ensure the sample is in an unbroken package; or
3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:

1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
3. All research participants are of legal drinking age;
4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:

1. Wine. Three liters;
2. Beer. Three gallons; and
3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use

by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

Q. Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:
1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and
2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.

R. A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.

S. Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-321. Practices Permitted by a Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the following practices allow a wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the wholesaler to the exclusion, in whole or in part, of another wholesaler. A wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a wholesaler any activity not outlined in subsections (C) through (N) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Providing stocking services. A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:
1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
2. Shall be performed at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:
   a. A designated delivery entrance, and
   b. A storage area; and
3. May include:
   a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point-of-sale area; and
   b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.

D. Providing resetting services. A wholesaler may reset spirituous liquor sold to a licensed retailer if requested by the licensed retailer and the resetting does not alter or disturb the product of another wholesaler. The resetting services provided by a wholesaler:
1. Shall be performed only in a point-of-sale area, including a cold box;
2. Shall not be performed unless the retailer provides at least two working days' notice to any other wholesaler whose product needs to be affected so the resetting can be performed; and
3. Shall not be performed more frequently than once per year if the resetting involves a substantial reconfiguration of the spirituous liquor department of a retailer.

E. Furnishing tapping equipment. A wholesaler may furnish tapping equipment under R19-1-326 to a retail licensee.

F. Making a driver sale. A wholesaler may sell to a licensed retailer, through a driver sale, at the current market price, spirituous liquor not previously ordered.

G. Delivering a specially discounted quantity purchase. A wholesaler may provide a licensed retailer with a specially discounted price for a quantity purchase if the wholesaler delivers the entire quantity purchased to an approved storage facility of the licensed retailer.

H. Accepting returned spirituous liquor products.
1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and
3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 C.F.R. Subchapter A, Part 11.

I. Selling tobacco products or foodstuffs. A wholesaler may sell tobacco products or foodstuffs to a licensed retailer if the price paid by the retailer equals or exceeds the cost to the wholesaler.

J. Furnishing promotional items. A wholesaler may provide promotional items to an on-sale retailer. Promotional items, as defined and limited by A.R.S. § 4-243(D) does not include spirituous liquor.

K. Facilitating a special event. A wholesaler may facilitate a special event by:
1. Donating spirituous liquor directly to the special event licensee and issuing a net zero cost billing invoice in the name of the special event licensee,
2. Leaving a delivery vehicle and other equipment necessary for the sale or service of spirituous liquor on the premises of the special event for the duration of the special event and up to one business day before and after the special event,
3. Leaving spirituous liquor at the special event if:
   a. The spirituous liquor is properly described on a preliminary billing invoice issued in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee,
   b. The wholesaler issues a final billing invoice in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee within five business days after the special event ends, and
   c. The spirituous liquor is stored securely to ensure only intended persons gain access to the spirituous liquor; and
4. Selling spirituous liquor directly to the special event licensee at the same price the wholesaler sells the spiritu-

ous liquor to on-sale retailers. If the wholesaler sells spirituous liquor directly to the special event licensee, both the preliminary and final billing invoices shall be in the name of the special event licensee.

L. Providing shelves, bins, or racks. A wholesaler may lend a shelf, bin, or rack to a licensed off-sale retailer if the following conditions are met:
1. The shelf, bin, or rack lent to the licensed off-sale retailer is located in a point-of-sale area.
2. The shelf, bin, or rack lent to the licensed off-sale retailer does not have an actual cost of more than $300 per brand, as defined at 27 C.F.R. Subchapter A, Section 6.11, at any one time in the licensed premises. The cost of the shelf, bin, or rack excludes the cost of transporting and installing the shelf, bin, or rack. The wholesaler shall not pool or combine dollar limitations to provide the licensed off-sale retailer with a shelf, bin, or rack that exceeds the dollar limitation in this subsection;
3. The shelf, bin, or rack bears advertising regarding spirituous liquor available from the wholesaler that is conspicuous, substantial, and permanently inscribed or securely affixed. The name and address of the licensed off-sale retailer may appear on the shelf, bin, or rack;
4. The primary function of the shelf, bin, or rack is to hold and display spirituous liquor available from the wholesaler;
5. The spirituous liquor on the shelf, bin, or rack is only the spirituous liquor advertised on the shelf, bin, or rack by the wholesaler. The shelf, bin, or rack may also hold non-spirituous-liquor products that are being promoted or advertised with the spirituous liquor available from the wholesaler; and
6. The shelf, bin, or rack is not temperature controlled.

M. Providing product display enhancers. A wholesaler may lend to a licensed off-sale retailer a non-functional copy or reproduction of an item that enhances the display of spirituous liquor sold from the display.

N. Providing staff assistance. A wholesaler may use its staff to provide a licensed retailer with assistance in performing the activities outlined in this Section. A wholesaler shall not maintain full-time staff or permanently occupy office space on the licensed premises or at the corporate office of a licensed retailer.

O. This Section is authorized by A.R.S. §§ 4-203.02(H) through (J) and 4-243.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-322. Responsibilities of a Registered Retail Agent

A. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall provide a licensee that enters into a cooperative-purchase agreement with the registered retail agent a copy of the cooperative-purchase agreement. The licensee shall make the copy of the cooperative-purchase agreement available for inspection on request by the Department or a peace officer.

B. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall:
1. Display the Certificate of Registration obtained from the Department on request by the Department, a peace officer, or a licensee;
2. Place all cooperative-purchase orders with a wholesaler;
3. Pay the wholesaler for all cooperative-purchase orders;
4. Not attempt to exchange merchandise after it is delivered by the wholesaler but may request that a delivery error be corrected if the error is recognized at the time of delivery and documented;
5. Provide each licensee under subsection (A) with a copy of the master invoice prepared by the wholesaler from which a cooperative purchase is made; and
6. Charge each licensee under subsection (A) the price listed on the master invoice prepared by the wholesaler for spirituous liquor delivered to the licensee.

C. A retail agent registered under A.R.S. § 4-222 and R19-1-203 may charge a licensee with which the registered retail agent has a cooperative-purchase agreement a fee for services provided to the licensee.

D. This Section is authorized by A.R.S. § 4-222.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-323. Underage Individuals on Licensed Premises

A. An individual under the legal drinking age may be on the licensed premises of an on-sale retailer under the conditions established in A.R.S. § 4-244(22).

B. Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:
1. The licensed premises have an occupancy limit of at least 1,000 as determined by the fire marshal;
2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts;
3. The on-sale retailer ensures that spirituous liquor is sold only to individuals who are of the legal drinking age; and
4. The on-sale retailer implements security measures necessary to ensure that an individual under the legal drinking age does not purchase, possess, or consume spirituous liquor on the licensed premises.

C. Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:
1. The licensed premises have an occupancy limit less than 1,000 as determined by the fire marshal;
2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts; and
3. The on-sale retailer establishes a physical barrier that prevents an underage individual from:
   a. Entering a portion of the licensed premises where spirituous liquor is sold, possessed, or served; and
   b. Receiving, purchasing, possessing, or consuming spirituous liquor in that portion of the licensed premises.

D. This Section is authorized by A.R.S. § 4-210(M) and 4-244(22).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-324. Standards for Exemption of an Unlicensed Business

A. The owner of a small restaurant or business establishment, business premises, or association hosting a private social function may act under A.R.S. § 4-244.05 if the owner of the small restaurant or business establishment, business premises, or association hosting a private social function:
1. Submits a Request for Exemption form, which is available from the Department and on its web site;
2. Pays the inspection fee specified in R19-1-102(J); and
3. Ensures that:

a. Possession or consumption of spirituous liquor on the business premises is permitted only as an incidental convenience to customers;
b. Possession or consumption of spirituous liquor on the business premises is limited as follows:
i. Small restaurant: between noon and 10:00 p.m.; and
ii. Business establishment, business premises, or association hosting a private social function: between 4:00 p.m. and 2:00 a.m.
c. A customer is allowed to possess or consume no more than:
i. Forty ounces of beer,
ii. Seven hundred fifty milliliters of wine, or
iii. Four ounces of distilled spirits;
d. The occupancy limitation of the small restaurant or business establishment, business premises, or association hosting a private social function does not exceed the following maximum:
i. Small restaurant: 50; and
ii. Business establishment, business premises, or association hosting a private social function: 300; and
e. The owner, manager, comptroller, controlling person, and any employee of the small restaurant or business establishment, business premises, or association hosting a private social function complies with all applicable provisions of A.R.S. Title 4 and this Chapter.

B. As provided under A.R.S. § 4-244.05 (J)(4), the Director, agent of the Director, or peace officer empowered to enforce A.R.S. Title 4 and this Chapter may visit and inspect a small restaurant, business establishment, business premises, or association operating under A.R.S. § 4-244.05 and this Section during business hours of the premises.

C. This Section is authorized by A.R.S. § 4-244.05.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-325. Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms

A. As prescribed under A.R.S. § 4-261, a licensed retailer shall post one or more warning signs, which are available without charge from the Department, regarding consumption of alcohol during pregnancy.

B. An on-sale retailer that wishes to prohibit possession of a weapon on the licensed premises shall post the notice described in A.R.S. § 4-229, which is available without charge from the Department,:
1. In a conspicuous location accessible to the general public, and
2. Immediately adjacent to the license posted as required under A.R.S. § 4-262 and R19-1-301.

C. This Section is authorized by A.R.S. §§ 4-229, 4-261 and 4-262.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-326. Tapping Equipment

A. A wholesaler may furnish, install, and maintain tapping equipment for a licensed retailer for use with all spirituous liquor. The wholesaler shall maintain ownership of the tapping equipment that is provided free.

B. A wholesaler that sells tapping equipment listed in subsection (C) to a licensed retailer shall maintain a written record of the name and address of the licensed retailer to which the tapping equipment is sold, the equipment sold, and an invoice indicating payment was made. The wholesaler shall make these records available to the Department upon request.

C. A wholesaler may only sell the following items to a licensed retailer for cash at the market value for the items:
1. CO2 or other dispensing gas,
2. CO2 or other dispensing gas regulator,
3. CO2 or other dispensing gas filter,
4. Faucet or complete faucet standard,
5. Shank or bent tube,
6. Air distributor,
7. Blower assembly,
8. Switch;
9. Drip pan,
10. P.V.C. pipe;
11. Sanitizing materials,
12. Backflow device,
13. Coupling gasket,
14. Beer pump,
15. Tower,
16. Trunk line, and
17. Another item necessary to prepare and maintain a tapping-equipment system in proper operating condition.

D. A wholesaler may replace at no charge to a licensed retailer the following items:
1. Bonnet washer;
2. Friction ring;
3. Valve stem;
4. Hardware, unions, clamps, air tees, and screws;
5. Tapping devices, including tower heads; and
6. Single air and beer lines.

E. A wholesaler may clean a tapping-equipment system for a licensed retailer at no charge to the licensed retailer.

F. This Section is authorized by A.R.S. § 4-243(A)(4).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-327. Domestic Farm Winery Sampling

A. A licensed domestic farm winery that conducts sampling of the product of the licensed domestic farm winery on the premises of an off-sale retailer or a retailer with off-sale privileges, as allowed by A.R.S. § 4-244.04, shall ensure that:
1. No more than six ounces of the product of the licensed domestic farm winery is served to each consumer each day,
2. An employee of the licensed domestic farm winery serves or supervises the serving of the product of the licensed domestic farm winery, and
3. There is no violation of A.R.S. Title 4 or this Chapter.

B. As provided in A. R. S. § 4-205.04(C)(2), a licensed domestic farm winery may provide samples of the product of the licensed domestic farm winery on the premises of the domestic farm winery.

C. This Section is authorized by A.R.S. § 4-244.04.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Table A. Repealed

Historical Note

Table adopted by final rulemaking at 5 A.A.R. 386, effective January 8, 1999 (Supp. 99-1). Table A recodified from a position after R19-1-305 to a position after R19-1-317 under A.R.S. § 41-1011 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Table A repealed by final

rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

R19-1-401. Notice of License Surrender or Application Withdrawal

A. A licensee that intends to surrender a license that is not a quota license or an applicant that intends to withdraw an application shall submit to the Department a file deactivation form prescribed by the Department.

B. The Department shall deem a license surrendered if all of the following apply:
1. The licensed premises are vacant during normal operating hours for at least 30 consecutive days;
2. The licensee fails to notify the Department of the licensee's intention to suspend the business authorized by the license, as required under A.R.S. § 4-203;
3. The Department is unable to contact the licensee using information available in the Department's records; and
4. The individual who informs the Department that the licensee has abandoned the license submits to the Department:
   a. The license, if available; and
   b. A signed and notarized statement indicating that to the best of the individual's knowledge, the licensed premises have been vacant during normal operating hours for at least 30 consecutive days and the licensee has abandoned the license and licensed premises.

C. The Department shall deny surrender of a license if the Department determines that:
1. It has notice that the licensee is delinquent in paying taxes to the state or a political subdivision,
2. A complaint is pending against the licensee alleging violation of A.R.S. Title 4 or this Chapter,
3. Ownership of the license is contested,
4. Civil proceedings involving the license are pending before any court, or
5. A hearing is pending before the Board.

D. This Section is authorized by A.R.S. §§ 4-203, 4-203.01, 4-205.02 and 4-210(I).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-402. Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members

A. As required under A.R.S. § 4-222(A), a retail agent registered under R19-1-203 shall provide written notice to the Department within 10 days after a licensee with whom the registered retail agent has a cooperative-purchase agreement terminates the registered retail agent's authority. The registered retail agent shall ensure that the notice identifies the licensee terminating the cooperative-purchase agreement and shall send a copy of the notice to all affected wholesalers.

B. A retail agent registered under R19-1-203 shall submit to the Department a copy of a new cooperative purchase agreement between the registered retail agent and another licensee within 10 days after entering into the cooperative-purchase agreement.

C. In addition to submitting a copy of each cooperative-purchase agreement to the Department, a retail agent registered under R19-1-203 shall submit to the Department a list that includes the following information regarding each licensee with which the registered retail agent has a cooperative-purchase agreement:
1. Name of licensee,
2. Address of licensed premises, and
3. License numbers of each licensee with which the registered retail agent has a cooperative-purchase agreement.

D. A registered retail agent shall report to the Department a change in any of the information submitted under subsection (C) within 10 days of the change.

E. This Section is authorized by A.R.S. § 4-222.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-403. Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility

A. Under A.R.S. § 4-205.01(E) or 4-205.02(F), a hotel-motel or restaurant licensee that intends to alter the seating capacity or dimensions of a restaurant facility shall provide advance notice to the Department.

B. To provide the notice required under subsection (A), a hotel-motel or restaurant licensee shall complete and submit to the Department the form prescribed by the Department.

C. This Section is authorized by A.R.S. § 4-205.02(F).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-404. Notice of Sampling on a Licensed Off-sale Retail Premises

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler that intends to conduct a sampling under A.R.S. § 4-243(B)(3) or 4-244.04 on the licensed premises of a licensed off-sale retailer shall submit a Store Sampling Notice, which is a form available from the Department, to the Department at least 10 days before the sampling.

B. This Section is authorized by A.R.S. §§ 4-243(B)(3)(b) and 4-244.04.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-405. Notice of Change in Status: Active or Nonuse

A. A licensee that ceases to manufacture, sell, or deal in spirituous liquor for 30 consecutive days shall submit notice to the Department, on a form that is available from the Department.

B. Except as provided in subsection (D), a licensee that puts a license on nonuse status by complying with subsection (A) may put the license on active status by submitting notice to the Department, on a form that is available from the Department.

C. If a license is on nonuse status for more than five months, the licensee shall pay the surcharge prescribed at A.R.S. § 4-203(G) when the license is returned to active status by complying with subsection (B).

D. Under A.R.S. § 4-203(G), if a license is on nonuse status for 36 months, the license automatically reverts to the state unless extended by the Director for good cause.

E. This Section is authorized by A.R.S. § 4-203.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-406. Notice of Change in Manager

A. As required under A.R.S. § 4-202(C), a licensee shall provide notice to the Department and file a manager's agreement within 30 days after a change in manager.

B. If a licensee is designated as the manager, the licensee shall comply with subsection (A) when the licensee will be away from the licensed premises, while under normal operating conditions, for more than 30 days.

C. This Section is authorized by A.R.S. § 4-202(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-407. Notice of Legal or Equitable Interest

A. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), a person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department a statement of the interest. A person filing a statement of legal or equitable interest shall use a form that is available from the Department.

B. A person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department an amended statement of the interest by complying with subsection (A) when:

1. Any of the information provided in a previous statement of interest changes, or
2. The person's legal or equitable interest terminates.

C. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), the Department shall periodically request that the holders of a legal or equitable interest in a license verify in writing to the Director that the statement on file with the Department is correct and accurate. If the holder of a legal or equitable interest in a license fails to respond within 30 days to the Department's request for verification of interest, the Department shall deem the interest terminated.

D. The Department shall provide notice to a person that files a statement of interest under subsection (A) when there is a disciplinary or compliance action or transfer affecting the license in which the person has an interest and shall allow the person to participate in any proceeding regarding the license.

E. This Section is authorized by A.R.S. § 4-112(B)(3).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-408. Notice of Change in Business Name, Address, E-mail, or Telephone Number

A. A licensee shall not change the name of the business as specified on the license issued by the Department without first providing notice, using a form that is available from the Department.

B. The Department shall communicate with a licensee using the business name, U.S. Postal Service address on file with the Department, and e-mail, when provided. To ensure timely communication from the Department, a licensee shall provide the Department with current contact information for the licensee. When contact information for a licensee changes, the licensee shall submit a notice, using a form that is available from the Department.

C. If the name or U.S. Postal Service address of a business changes and notice is provided under subsection (A) or (B), the Department shall issue a replacement license that reflects the current name and U.S. Postal Service address of the business.

D. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

R19-1-501. General Recordkeeping

A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.

B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.

C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.

D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.

E. This Section is authorized by A.R.S. §§ 4-210(A)(7), 4-119, and 4-241(K).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-502. On-sale Retail Personnel Records

A. As required by A.R.S. § 4-119, an on-sale retail licensee shall maintain a record of every employee of the business that includes the following information about the employee:

1. Full legal name,
2. Residential address,
3. Date of birth, and
4. Description of the employee's responsibilities.

B. A licensee shall maintain the records required under subsection (A) for two years after an individual ceases to be an employee of the business.

C. A licensee shall make the records maintained under subsection (A) available, upon request, to the Department for examination.

D. This Section is authorized by A.R.S. § 4-119.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-503. Records Regarding Cooperative Purchases

A. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain a copy of every cooperative-purchase agreement between the registered retail agent and another licensee for two years after termination of the cooperative-purchase agreement.

B. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain in accordance with R19-1-501:

1. A copy of a cooperative purchase order placed with a wholesaler,
2. A copy of a cooperative-purchase invoice provided by a wholesaler, and
3. A record of the following regarding each cooperative member:
   a. The kind and quantity of spirituous liquor ordered and delivered,
   b. Monies received from the cooperative member, and
   c. The date on and location at which spirituous liquor is delivered to the cooperative member.

C. A wholesaler that fills a cooperative-purchase order submitted by a retail agent registered under A.R.S. § 4-222 and R19-1-203 shall prepare and provide to the registered retail agent a master invoice of the cooperative purchase that shows the spir-

ituous liquor purchased by each cooperative member and the amount of the discount provided for the cooperative purchase.

D. This Section is authorized by A.R.S. § 4-222.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-504. Record of Delivery of Spirituous Liquor

A. A retail licensee having off-sale privileges or licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) or 4-205.04(C)(9) and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee shall ensure that the record provides the following information:
1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and
7. Printed name and signature of the individual making the delivery.

B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:
1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

C. A licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-205.04(C)(9), may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the requirements in subsection (A).

D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9) and (D).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-505. Report of Act of Violence

A. As required under A.R.S. § 4-244(37), a licensee shall report an act of violence that occurs on the licensed premises.

B. A licensee shall report an act of violence that occurs on property immediately adjacent to the licensed premises if the act of violence involves a customer who is entering or leaving the licensed premises and if the licensee knew or reasonably should have known of the act of violence.

C. A licensee shall submit the report required under subsection (A) to the Department or a law enforcement agency. A licensee shall submit the report required under subsection (B) to the Department.

D. A licensee shall submit the report required under subsection (A) or (B) within seven days after the act of violence occurs.

E. A licensee that submits a report under subsection (A) or (B) to the Department shall use a form that is available from the Department and provide the following information to the best of the licensee's knowledge:
1. Name of licensee or licensee's agent;
2. License number;
3. Name of business;
4. Address of licensed premises;
5. Date of the report;
6. Date and time of the incident being reported;
7. A statement whether the police were summoned and if so:
   a. Name of the police jurisdiction summoned,
   b. Name of the individual who placed the call to the police,
   c. Police report number, and
   d. A statement whether an arrest was made;
8. A statement whether emergency services were summoned and if so, the name of the individual who placed the call for emergency services;
9. Names or description of participants in the incident;
10. Names of individuals injured in the incident and a description of the injury;
11. Detailed description of the incident; and
12. Name, title, and signature of the individual preparing the report affirming that the information provided is true and accurate to the best of the individual's knowledge.

F. This Section is authorized by A.R.S. § 4-244(37).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

R19-1-601. Appeals and Hearings

A. Under A.R.S. § 4-210.02(A), a decision of the Director, except as provided under A.R.S. § 4-203.01(E), is not final until it is appealed to and ruled on by the Board or until the time for appeal expires.

B. As required by A.R.S. § 4-210(H), the Department, Board, or a panel of the Board established under A.R.S. § 4-111(D) shall ensure that all hearings are conducted according to the procedures at A.R.S. Title 41, Chapter 6, Article 10.

C. This Section is authorized by A.R.S. § 4-210(H).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-602. Actions During License Suspension

A. If the Director suspends a license issued under A.R.S. Title 4 and this Chapter, the licensee:
1. Shall not take any action on or about the business premises for which a license is required under A.R.S. Title 4 or this Chapter, and
2. Shall prominently display the notice of suspension on the business premises during the suspension.

B. This Section is authorized by A.R.S. § 4-244(1).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-603. Seizure of Spirituous Liquor

A. If a peace officer has probable cause to believe that a spirituous liquor is being or is intended to be used in a manner that is inconsistent with a provision of A.R.S. Title 4 or this Chapter, the peace officer shall seize the spirituous liquor.

B. This Section is authorized by A.R.S. § 4-244.05(F).

Historical Note
New Section made by final rulemaking at 19 A.A.R.

1338, effective July 6, 2013 (Supp. 13-2).

R19-1-604. Closure Due to Violence

A. If the Director determines that an act of violence is apt to occur at a licensed premises and that action is needed to protect the public health, safety, or welfare, the Director shall order that:
1. The licensee closes the doors of the licensed premises to the public;
2. No spirituous liquor be sold or served to any individual on the licensed premises; and
3. Only the licensee, employees of the licensee, and peace officers are allowed on the licensed premises.

B. This Section is authorized by A.R.S. § 4-210.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 7. STATE LIQUOR BOARD

R19-1-701. Election of Officers

A. The Board shall elect a chairperson and vice chairperson in February of each year.

B. If a vacancy occurs in the chairperson or vice chairperson office, the Board shall hold an election for the vacant office at its next scheduled meeting.

C. This Section is authorized by A.R.S. § 4-111(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-702. Determining Whether to Grant a License for a Certain Location

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-703. Rehearing or Review of a Decision

A. As permitted under A.R.S. § 41-1092.09, a party may file with the Board a motion for rehearing or review of a decision issued by the Board.

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

C. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Director or Board, Department staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

E. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for five additional days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.

G. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.

H. This Section is authorized by A.R.S. §§ 4-210.02 and 41-1092.09.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-704. Submitting Documents to the Board

A. To facilitate the Board's review of documents submitted to it, a party shall submit documents to the Board in printed form and:
1. In an electronic format directed by the Board, or
2. By means of a removable data-storage device such as a compact disc or flash drive.

B. To provide the Board with time to consider adequately documents requiring its action, the following deadlines apply:
1. An applicant, local governing body, or aggrieved party that wishes to submit information regarding an application shall submit the information at least 15 calendar days before the meeting at which the Board will consider the application;
2. An applicant, local governing body, or aggrieved party that wishes to rebut information submitted under subsection (B)(1) shall submit the rebuttal information within five calendar days before the meeting at which the Board will consider the application; and
3. An appellant shall submit a brief at least 21 calendar days before the meeting at which the Board will consider the appeal.

C. A party who is unable to submit documents in an electronic format or by means of a removable data storage device may ask the Board for an exemption from the requirement in subsection (A).

D. This Section is authorized by A.R.S. §§ 4-112(A)(2) and 4-201(E).

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-705. Judicial Review

A. A party may file a complaint for judicial review of a final decision of the Board under A.R.S. § 12-901 et seq.

B. A party that files a complaint for judicial review of a final decision of the Board shall serve a copy of the complaint for judicial review on the Director at the Department's office in Phoenix, Arizona.

C. This Section is authorized by A.R.S. §§ 4-211 and 12-901et seq.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 19, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 11, 2021

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 19, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials

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Summary:

This Five Year Review Report (5YRR) from the Department of Health Services (Department), relates to rules in Title 9, Chapter 7, Article 19, regarding Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials.

As described in R9-7-1901 (Purpose):

"This Article has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A to this Article. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this Article authorizes possession of licensed material."

Proposed Action

The Department states that minor items and possible changes described in paragraphs 3, 4, and 6 are not substantive, and most cannot be made without NRC [Nuclear Regulatory Commission] approval. The Department plans to review the entire Chapter, and after completing all reviews, will determine whether a rulemaking is necessary and establish a timeframe. According to the review schedule, the last 5YRR for this Chapter is due in December 2021. Based on the reviews of the Articles that have been completed, the Department indicates that the Chapter may need to be extensively revised and reorganized.

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

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that the rules in this Article regulate persons that possess or use at any site, transport or deliver to a carrier for transport in a single shipment, or export an aggregated category 1 or category 2 quantity of radioactive material. They indicate that according to the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967, almost all of the requirements in this Article must be consistent with requirements of the Nuclear Regulatory Commission (NRC). As of May 19, 2021, the Department licenses 12 persons under these rules, with another eight operating under reciprocity.

The Department states that little or no economic impact was anticipated to occur as a result of the rulemakings because all licensees are required to comply with NRC requirements, regardless of whether the requirements are in the rules. The Department believes that these changes do not increase the cost of compliance, increase a fee, or reduce a procedural right of regulated persons, and adopt without material change, federal statutes and regulations.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that these rules must conform to NRC requirements to enable the Department to maintain Agreement State status, without which licensees, the State, and the general public may incur substantial costs and significant risks of unnecessary exposure to radiation. The Department believes that the rules are the minimum necessary to protect health and safety.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department did not receive any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. For the reasons indicated in the report for individual and multiple rules, the Department states that the rules are not clear, concise, and understandable.

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

Yes. In Item 4 of the 5YRR, the Department identifies certain rules that are inconsistent with other rules and statutes for the reasons indicated therein.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Department states that the rules are effective but indicates that the effectiveness of certain rules under review could be improved.

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

Yes. The Department states that the rules are enforced as written.

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

No. The Department states that the rules are not more stringent than corresponding federal regulations, 10 CFR 73 and 10 CFR 37.7.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department states that a general permit issued under the rules in this Chapter applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

11. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

June 4, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 19, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 19, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, for which the extended due date is June 28, 2021. The Department is not reviewing the following Sections and allowing them to expire: R9-7-19105, R9-7-19107, and R9-7-19109. Please place the Report on the agenda for the Study Session on July 27, 2021, and the Council meeting on August 3, 2021.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov or 602-364-1230.

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 19. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials

June 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657 and 30-673

2. The objective of each rule:

Rule	Objective
R9-7-1901	To specify that the rules in the Article establish requirements for the physical protection of large quantities of radioactive materials (Category 1 and Category 2 quantities) to try to ensure security and deter theft or diversion.
R9-7-1903	To specify the persons to which the requirements in the Article apply.
R9-7-1905	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-1907	To specify how communications with the Department concerning the rules in the Article should be made.
R9-7-1909	To specify that, except as specifically authorized in writing, only written interpretations of the rules in this Article by the Office of the Attorney General of Arizona are binding on the Department.
R9-7-1911	To specify circumstances in which a person may be exempt from certain requirements in the Article.
R9-7-1921	To require an access authorization program for licensees subject to the Article and specify who is subject to the access authorization program.
R9-7-1923	To establish requirements for an access authorization program.
R9-7-1925	To specify requirements for the components of an initial background investigation, for who is not subject to an initial background investigation, and for re-investigation.
R9-7-1927	To specify how a criminal records check is conducted and require safeguards on the use of the information.
R9-7-1929	To specify those who are exempt from requirements for a background investigation.
R9-7-1931	To establish requirements for the safeguarding of information obtained from background investigations.
R9-7-1933	To require the periodic review of the licensee's access authorization program.

R9-7-1941	To establish a requirement for a licensee possessing category 1 or category 2 quantities of radioactive material to establish a security program.
R9-7-1943	To specify general requirements for the security program required in R9-7-1941.
R9-7-1945	To require that a licensee coordinate security, to the extent practicable, with a local law enforcement agency or notify the Department of a failed attempt.
R9-7-1947	To establish requirements related to security zones.
R9-7-1949	To specify requirements for monitoring for and responding to unauthorized entry into security zones or to actual or attempted removal of radioactive materials.
R9-7-1951	To specify requirements for maintenance and testing of the systems used to secure or detect unauthorized access to radioactive material.
R9-7-1953	To specify security requirements for mobile devices.
R9-7-1955	To require the periodic review of the licensee's security program.
R9-7-1957	To specify requirements for reporting an unauthorized entry into security zones that resulted in actual or attempted removal of radioactive materials.
R9-7-1971	To specify requirements for the transfer of category 1 or category 2 quantities of radioactive material.
R9-7-1973	To establish to whom requirements for the physical protection of category 1 or category 2 quantities of radioactive material during shipment apply.
R9-7-1975	To specify requirements for the planning and coordination of the shipment of category 1 or category 2 quantities of radioactive material.
R9-7-1977	To specify requirements for the advance notification of the shipment of category 1 or category 2 quantities of radioactive material.
R9-7-1979	To specify requirements for the physical protection of category 1 or category 2 quantities of radioactive material during shipment.
R9-7-1981	To specify requirements for reporting an event in which category 1 or category 2 quantities of radioactive material are lost or missing or upon discovering that an actual or attempted theft or diversion of a shipment or other suspicious activities occurred.
R9-7-19101	To establish requirements for the form in which required records must be maintained and the duration of retention for transferred material.
R9-7-19103	To specify general requirements for retention of records.
Appendix A	To specify the threshold activities of specific radioactive materials that make them category 1 or category 2 quantities of radioactive materials.

3. <u>Are the rules effective in achieving their objectives?</u> **Yes _X_ No __**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-7-1907, R9-7-1909, R9-7-19101, and R9-7-19103	The rule would be more effective if it were part of Article 1 of the Chapter and applied to other Articles as well.

4. <u>Are the rules consistent with other rules and statutes?</u> **Yes _X_ No __**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-7-1905	The definition of "license" in this rule differs from the definition of "license" in R9-7-102, but it is intended to be narrower in scope.
R9-7-1911, R9-7-1921, R9-7-1925, R9-7-1927	The incorporations by reference in R9-7-1911(B), R9-7-1921(C)(4), R9-7-1925(B)(2), R9-7-1927(A)(4), and R9-7-1927(C)(1) are all to NRC regulations. The specified revision date for 10 CFR 73 in the first three of these rules is January 1, 2015, which is incorrect, but the correct revision date of December 12, 2018, is specified in R9-7-1927(A)(4). However, a licensee has to comply with the most recent version of the regulation, regardless of the date specified in rule. Therefore, the rules are essentially consistent with these federal regulations since the revision date could be removed as unnecessary.

5. Are the rules enforced as written? **Yes _X_ No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Multiple	To comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967, almost all of the requirements in this Article must be consistent with requirements of the U.S. Nuclear Regulatory Commission (NRC). Therefore, although some wording could be clearer or more concise, as specified below, the Department cannot make these changes to the rules without approval by the NRC.
Multiple	The rules would be more understandable if they were reformatted and grammatical/ punctuation errors were corrected.
Multiple, as specified	The following rules would be clearer if the rules stated that the specified actions were required to be performed "at least" every 10 years: R9-7-1923(B)(2) for recertification; and R9-7-1925(C) for reinvestigation. The following rules would be clearer if the rules stated that the specified records were required to be maintained for "at least" three years: R9-7-1923(B)(3) and (H); R9-7-1929(A)(12) and (13) and (B); R9-7-1931(E); R9-7-1933(C); R9-7-1943(A)(4), (B)(3), (C)(4), and (D)(8); R9-7-1945(C); R9-7-1951(B); R9-7-1955(C); R9-7-1971(4); R9-7-1975(E); and R9-7-1977(5).

R9-7-1903	Some of the requirements in the rule are very similar to requirements in Article 15 of the Chapter. During the revision of the Chapter, wording should be explored that will meet the requirements of the Agreement while limiting duplication.
R9-7-1905	The rule would be more understandable if the following terms were defined or described: "fuel assembly," "subassembly," "fuel rod," and "fuel pellet" in the definitions of "category 1 quantity of radioactive material" and "category 2 quantity of radioactive material"; "safeguards information"; and "safeguards information-modified handling." In addition, the term most often used in the Article is "category 1 or category 2 quantities of radioactive materials," while the defined terms are "category 1 quantity of radioactive material" and "category 2 quantity of radioactive material." If allowed, the defined terms should be "category 1" and "category 2." The rule could be more understandable if the following terms were able to be defined or described in the location used: "government agency" used only in the definition of "person"; "license issuing authority" used only in R9-7-1971; "mobile device" used only in R9-7-1953; "movement control center" used only in R9-7-1979; "no-later-than arrival time" used only in R9-7-1975; "safe haven" used only in R9-7-1975; and "telemetric position monitoring system" used only in R9-7-1979. The term "fingerprint orders" is only used twice in the rules, in R9-7-1925(B)(1) and R9-7-1927(A)(4), with capitalization, and could possibly be described in these locations. "Local law enforcement agency (LLEA)" is not used as stated. However, both "local law enforcement agency" and "LLEA" are used. The rule would be more understandable if one or the other were used consistently or the definition were reformatted. Similarly, the term "trustworthiness and reliability" is defined and used nine times in the Article, but the undefined term "trustworthy and reliable" is used 14 times. Because the term is used in the definition of "background investigation," which is also included as part of this definition, the two definitions are circular and should be changed if allowed. The rule would be more concise if the following terms were removed because they are already defined in R9-7-102: "approved individual"; "becquerel"; "byproduct material"; "curie"; and "lost or missing licensed material," which is also not used in the rules. The terms "State" and "United States" should be removed as unnecessary. In addition, the term "Act" should be removed because it is defined differently in R9-7-102, is used as part of the titles of other federal Acts in the Article, and used as part of the full name of the Atomic Energy Act in R9-7-1929. The term "Commission" should also be removed because the term "NRC" is already defined in R9-7-102. While "person" is defined in the rule, it is used many times in the Chapter without another definition. However, the Agreement requires that the definition be included in these rules.
R9-7-1907	The rule would be improved if the lead-in and subsection (3) were reworded to be clearer.
R9-7-1911	Subsection (B) would be clearer if "NRC-licensed activities" were replaced by "activities licensed under 10 CFR 73." In addition, the subsection could be reworded so "its" is not used. Subsection (C) is poorly worded in that the subsection states that a licensee with radioactive waste is only exempt from the security provisions in the Article, then gives exceptions to the exemption and specifies alternate security requirements. The subsection would be more understandable if the terms "ion-exchange resins," "activated material," and "access control points" were defined or described and if the terms defined in R9-7-1905 were used in subsection (C)(4), rather than "category 1 or category 2 quantities of radioactive materials."

R9-7-1921	The rule would be more understandable if it cited to R9-7-1923 when referring to an "access authorization program." Subsection (A) could be clearer if "category 2" and "Security Orders" were defined/described and if subsections (A)(1) and (2) were reworded so "its" is not used. Subsection (B) would be clearer if the defined term were used rather than "trustworthy and reliable." Subsection (C)(2) could be clearer if it contained a cross-reference to the "investigation elements" of the access authorization program. Subsection (C)(4) would be more understandable if changed to clarify the meaning of the subsection.
R9-7-1923	Subsections (A)(1), (D), (E)(1), (E)(2), and (G)(1) would be more understandable if "this Article" were replaced with "this Section." The rule would be clearer if the defined term were used rather than "trustworthy and reliable" in multiple subsections of the rule. Subsection (B) would be more understandable if it were reordered to be more chronological in nature: first designate an individual to be a reviewing official, then ensure fingerprints are taken, then complete the background check, etc. The rule could also be clearer if it cited to R9-7-1925 rather than just using the term "background investigation." In addition, the rule would be more concise if it cited to R9-7-1907, rather than restating the address of the Bureau of Radiation Control. The rule would be improved if "appropriate radiation safety training" in subsection (B)(3) were replaced with wording that the training should be applicable to the areas for which a reviewing official will have unescorted access. Subsection (B)(5) would be improved if it included that documentation of a previous background investigation needed to be provided and if it included a time-frame within which such a background investigation were valid. The third sentence in subsection (C)(1) does not pertain to consent and could be moved or removed if allowed by the NRC, since the content appears to restate what is in subsection (G). The fifth sentence in subsection (C)(1) could be reworded to remove passive language. In subsection (E)(5), the numeral "7" should be spelled out, and the term "the material" could be clarified to specify to what material the requirement applies. Subsection (F) would be clearer if the many provisions were listed out in separate subsections. Subsection (G)(2) would be improved if it were clearer that the "criminal history record" is the result of the fingerprint check and only part of the background investigation. Since the subsection cites to 28 CFR 16.30, it does not seem necessary for the process to be restated or to specify what the FBI would be doing. However, the subsection must be word-for-word with federal requirements.
R9-7-1925	The rule would be clearer if the defined term were used rather than "trustworthy and reliable" in multiple subsections of the rule. Subsections (A) and (B) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material" and if the numeral "7" were spelled out in subsections (A) and (A)(3). The subsection could also be reformatted to be consistent with Arizona rulemaking style requirements, including not having multiple sentences in a subsection ending with a semicolon. Although it is unclear that the term "education process" in (A)(4) refers to the educational classes/program completed by the individual and the final sentence in subsection (C) appears to be redundant with the first sentence of the subsection, the subsections need to be identical to federal requirements. Subsection (A)(7) would be more understandable if the term "business day" were defined. Subsection (B)(1) would be clearer if it contained a cross-reference to the "reinvestigation requirement." Subsection (B)(2) could be clearer if "security orders" were defined/described earlier in the subsection, rather than in the next-to-last sentence in the subsection, and either the term were capitalized, as in R9-7-1921 and R9-7-1941, or the use in these other two rules were not capitalized. Subsection (B)(2) would also be more understandable if "safeguards information," "safeguards information-modified handling," and "risk significant material" were better defined/described.
R9-7-1927	The rules could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material" in multiple places in the rule. Subsection

	(A)(1) would be clearer if the last sentence in the paragraph contained a cross reference to subsection R9-7-1925(A) related to required background investigations. Subsection (A)(3) would be more understandable if the term "favorable conditions" were defined/described. Subsections (A)(4) and (5) would also be more understandable if "safeguards information" and "safeguards information-modified handling" were better defined/described. Subsection (C)(2) would be more understandable if the defined term "NRC" were used rather than the "Commission" and "U.S. Nuclear Regulatory Commission."
R9-7-1929	Multiple locations in subsection (A) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material." Subsection (A)(12) could be clearer if the term "active Federal security clearance" were defined/described. Subsections (A)(12) and (B) would be clearer if the numerals "3" and "5" were spelled out. Subsection (B) states that "written confirmation" "shall be provided from the agency/employer." However, the Department does not have authority over an agency/employer, so all that the rule can require is for a licensee using the exception under this subsection to obtain documentation that the individual meets the exception.
R9-7-1931	Since the Article contains more than requirements related to background investigations, subsection (A) should cite to specific Sections of the Article, rather than to the entire Article. Subsections (B) and (E) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material" and if "safeguards information" and "safeguards information-modified handling" were better defined/described in subsection (B). Subsection (C) would be more understandable if clarified to include that the licensee is receiving the transferred information in lieu of the licensee doing a separate background investigation and if passive language were removed. Subsection (E) would be clearer if the numeral "3" were spelled out.
R9-7-1933	It is unclear why the first sentence in subsection (A) uses the singular "access authorization program," while the second sentence in subsection (A) has the plural "access authorization programs." Subsection (A) could also be clarified to specify that "Each licensee shall be responsible for the continuing effectiveness of the licensee's access authorization program." The third sentence in subsection (A) would be more understandable if "review program" were replaced with "program review." The subsection would also be more concise if the second and last sentences in subsection (A) were combined. Subsection (B) would be clearer if broken out to better specify what a review report is required to contain and reworded to remove passive language. Subsection (C) would be clearer if the numeral "3" were spelled out.
R9-7-1941	The rule would be more concise if the provisions of subsections (A), (B), and (C) could be combined. Subsections (A)(1) and (2) and (B) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material" and if "Security Orders" in subsection (A)(3) were defined/described. Also in subsection (A)(3), the rule should refer to "this Section" not to "R9-7-1941," as well as to the other rule Sections.
R9-7-1943	The rule would be more understandable if subsections (A)(1) and (3) were reworded so "its" is not used, and if "of Department requirements" in subsections (A)(3) and (C)(1)(b) were changed to refer to the Article/Chapter. Subsections (A)(2)(a), (B)(2), and (C)(1) would be clearer if the rule included how "the individual with overall responsibility for the security program" was identified, and the rule better explained/cited to how the "security plan" fit into the "security program" required in R9-7-1941. Subsections (B)(2) and (C)(3) could also be changed to remove passive language. Subsection (C)(1)(c) would be more understandable if the wording were changed so the licensee was not being required to "report promptly to the …licensee any actual or attempted theft" and rather were required

	to report to the Department. Subsection (C)(2) would be clearer if the subsection stated or cited to who decides the content of the training. Subsection (C)(3) would be improved by clarifying what is meant by "requirements of subsection (c)" in subsection (C)(3)(a) and that the "reports" in subsection (C)(3)(b) actually refer to information provided by the licensee about "any relevant security issues, problems, and lessons learned." Subsections (C)(1)(a) and (c), (C)(2), and (D)(3)(b) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material," if the defined term were used rather than "trustworthy and reliable" in subsections (D)(4)(b) and (5), and if "safeguards information" and "safeguards information-modified handling" were better defined/described in subsection (D)(3)(b). Subsections (D)(1) and (2) could be broken into subsections to make subsection (D)(9) more understandable. Subsection (D)(4) would be improved if the phrase "need not" were replaced with "are not required." Subsection (D)(7) would be improved if not only information "stored in non-removable electronic form" but also that on devices such as laptops or thumb drives were included in the security plan and required to be encrypted. Subsection (D)(9) would be clearer if it could cite to subsections of subsections (D)(1) and (D)(2) that are relevant to the content of subsection (D)(9).
R9-7-1945	Subsections (A)(1) and (2) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material." Subsection (B) would be clearer if "3" were spelled out and "business days" were defined. The subsection would be more concise if "of this Article" were removed as unnecessary. The rule would be more concise if the two sentences in subsection (C) were combined into one and if subsection (D) were incorporated into subsection (A). Subsection (D) could better specify what "material."
R9-7-1947	Subsections (A), (C)(1), and (E) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material." Subsections (B) and (C) could be reworded to remove passive language. Subsection (C)(1) could be clearer if "access control points" were defined or described.
R9-7-1949	Subsection (A)(1) could be reworded so "its" is not used and that "this capability" were replaced with "the capability to monitor and detect." Subsection (A)(2) could be reworded to remove passive language and so subsection (A)(2)(a) specifies a "monitored intrusion detection system that is linked to a central monitoring facility, which may be onsite or offsite." Subsection (A)(2)(e) could be a subsection under subsection (A)(2)(d). Subsection (B) and (D) would be improved if the meaning of "immediately" were better described. Subsection (C) would be more understandable if any differences between "automated" and "electronic" systems were described, "site security systems" were better described/explained/cited to, and "failure modes" were defined or better described. Subsection (D) could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material."
SR9-7-1951	Subsection (A) would be improved if "subject to this R9-7-1941 through R9-7-1957" were replaced with "subject to this Article, "this part" were replaced with "this Article," and the duplication in "annually, not to exceed 12 months" were eliminated.
R9-7-1953	The rule would be improved if subsections (A) and (B) were renumbered to (1) and (2) to conform to rule-style requirements and could be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material." In subsection (A), the term "tangible" could be better described. In subsection (B), the phrase "the licensee shall" is not needed and could be removed. The content of the second sentence of the subsection could be incorporated into the first.
R9-7-1955	Both subsection (A) and subsection (B) could be clearer if broken out into subsections, rather than including multiple sentences. The first sentence in subsection (B) could be reworded to remove passive language, and the phrase "review the findings" revised to clarify that it means to review the content of the review report specified in the second sentence. Subsection (C) would be clearer if the numeral "3" were spelled out.

R9-7-1957	It appears that the requirement in subsection (A) to "immediately notify the LLEA" may duplicate part of R9-7-1951(D). Subsections (A) and (B) would be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material" and the numeral "4" were spelled out. The subsections would also be clearer if notifications and submissions to the Department were in a different subsection than notifications to the LLEA and included the content of subsection (C). Subsection (B) would be clearer if what constitutes "suspicious activity" were better described and stated whether this notification to the Department could be via voicemail or email. Subsection (C) would be more understandable if the rule better described what "sufficient information for Department analysis and evaluation" means.
R9-7-1971	The Title and lead-in could specify the Section(s), most in Article 15 of the Chapter, for which these requirements are "additional." The lead-in would be clearer if the defined terms were used rather than "category 1 or category 2 quantities of radioactive material." Because the definition of "licensee" in R9-7-102 specifies "any person who is licensed by the Department under this Chapter," the term should not be used when describing a person licensed by "the NRC, or an Agreement State." In subsections (1) through (4), the terms "transferee" and "transferor" are used, rather than "receiving licensee" and "shipping licensee" and as in other Sections of the Article and Article 15 of the Chapter. Subsections (1) and (2) would be more understandable if the rule better described what "transfers within the same organization" means. Since both subsections are identical, except that one specifies category 1 quantities of radioactive material and the other category 2 quantities of radioactive material, it is unclear why they cannot be combined into one subsection for "category 1 or category 2 quantities of radioactive material" as is done in other locations. Subsections (1) through (3) refer variously to "the Department's license verification system," "the license verification system," and "the NRC's license verification system," and it is unclear that all three are actually referring to the same National Source Tracking System that is maintained through the NRC. Subsection (3) would be clearer if the kind of situation that would constitute an "emergency" were better described. Subsection (4) would be clearer if the numeral "3" were spelled out.
R9-7-1973	Although this rule just summarizes what is required in the other Sections without adding to those requirements, except by citing to Article 15 (which a licensee would already be required to do under the requirements in Article 15), it is required by the NRC. The Article would be clearer if the requirements cited for category 1 quantities of radioactive material were grouped into one Section and those for category 2 quantities in a separate Section, rather than being so jumbled together so as to require a separate Section to make requirements easier to understand. It is unclear what R9-7-1971 is included in subsection (C) because it specifies administrative protective measures, rather than those for physical protection. Subsections (D) and (E) would be clearer and more concise if they cross referenced to subsections (A) and (B), respectively, "for the domestic portion of the shipment."
R9-7-1975	Subsection (A) is very similar to R9-7-1512(A), but it is unclear why tribal coordination is not included. Since the related R9-7-1977(1) is so descriptive of contact information, it is unclear why the two Sections could not be combined or additional information specifying how coordination occurs added to this subsection. Given budgetary constraints experienced by local law enforcement agencies, it is unclear whether subsection (A)(2)(a) should be "to discuss whether the State intends to provide law enforcement escorts" rather than the current language. It is also unclear what "safe havens," specified in subsection (A)(2)(b), are, and they should be better described or defined. Subsections (B) and (C) would be clearer if they were broken into subsections, rather than having multiple sentences. In subsection (C), "sending licensee" could be used instead of "originator" for consistency in term usage. In subsection (D), it is unclear what "promptly" means. Subsection (E) would be clearer if the numeral "3" were spelled out.

R9-7-1977	The lead-in for the Section could be more specific to Arizona, rather than stating "of a State" It is also unclear whether the NRC must also be notified and how that should occur. Information about contacting tribes is included in subsection (1)(a), but there does not appear to be a requirement for such notification. Nor is notification of tribes included in subsection (3). In subsection (1)(a), there is no mention of a mailed notification, but subsection (1)(b) provides the timeframe for such notification. Subsections (1) and (2) could be reworded to remove passive language. Subsections (1)(b) and (c) would be clearer if the numerals "7" and "4" were spelled out. Subsections (2)(a) and (b) would be clear if "shipping licensee" and "receiving licensee" were used instead of "shipper" and "receiver" for consistency with other rules in the Article. It is also unclear what "promptly" and "immediately" mean in subsection (3)(b), and whether there is a difference between them. In subsection (3)(b), it is also unclear whether "with subsections (B) and (C)(1)" should be "with subsections (2) and (3)(a)." Subsection (4) would also be clearer if reworded, especially since "Department Director" is used and not "Department," as used elsewhere. Subsection (5) would be clearer if the numeral "3" were spelled out and if the rule specified "3 years" after what: the start of shipment, when the destination was reached, when notification took place, or something else. In subsection (6), "of this Article" is unnecessary and should be removed.
R9-7-1979	In subsection (A)(1)(a), the defined term "movement control centers" could be used rather than "control centers" and "seven" should be spelled out rather than the numeral "7" being used. Subsections (A)(1)(a) through (d) could be reworded to eliminate multiple sentences being used in subsections with a lead-in. It is unclear why "law enforcement agencies" is used in subsections (A)(1)(a) and (e)(i), rather than LLEAs. In subsection (A)(1)(b), it is unclear what "interference factors" are and where they are described. In subsection (A)(1)(c), it is unclear what is meant by "promptly" and where the "preplanned procedures" are required. Subsection (A)(1)(d) would be more understandable if it included where the maximum hours are specified, possible through a reference to a URL or to Arizona Department of Transportation rules. In subsection (A)(1)(e), it is unclear what a "communications center" is, where there are requirements for it, and whether it is different from a "movement control center." The subsection might also be improved if procedures to deal with suspicious activity were better specified. Subsection (A)(1)(f) does not fit with the lead-in in subsection (A)(1), and the rule could be improved if the subsection were changed to a new subsection (A)(2). The rule would also be clearer if it cited to the "normal and contingency procedures" in subsection (A)(1)(e). Subsection (A)(2) would be more understandable if "constant control and/or surveillance" were described, and the rule specified from whom assistance would be requested. Subsection (B)(1) would be improved if it could be reworded to eliminate separate sentences. It is unclear which "communications center" is meant in subsection (B)(1)(a), the railroad's or the licensee's. It is also unclear why the term "communications center" is used in this subsection, but "communication center" is used in subsection (A)(1)(e). Subsection (B)(1)(b) would be more understandable if the subsection specified by whom the periodic reports are to be made and to whom. Subsection (B)(2) is duplicates verbatim the requirements in subsection (A)(3), and the rule would be more concise if it could be reformatted to eliminate the duplication. Since all other subsections, as well as requirements in many other Sections, separate requirements for category 1 from category 2 quantities of radioactive materials, subsection (C) would be improved if it could be broken out to separate requirements for category 1 from category 2 quantities of radioactive materials.
R9-7-1981	The rule could be improved if the single emergency response number was listed for reporting events, rather than both the Bureau main number and DPS main number, from either of which a call would be transferred to the emergency response number. The rule also vacillates between requirements for category 1 and category 2 quantities of radioactive material. The rule would be clearer if the requirements in subsections (A) and (C) followed one another, with requirements in subsections (B) and (D) being grouped together as well,

	to make it easier for regulated entities to read and follow. Alternately, the requirements for category 1 quantities of radioactive materials could be in one Section, while the requirements for category 2 quantities of radioactive materials could be in a separate Section. It is unclear what is meant in subsections (B) and (C) by "immediately" and "as soon as possible" and how the latter differs from "promptly." In subsections (D) and (F), it is unclear why only the Department would be notified and not the LLEA. In subsection (E), the term "Agency" should be replaced by "Department." Subsection (G) would be more understandable if reworded to make clearer when written reports are required. In subsection (G)(2), it is unclear why the circumstances surrounding an attempted theft/diversion would not be required to be in a report.
R9-7-19101	Subsection (A) would be clearer if what constitutes "adequate safeguards" were described. Subsection (B) should better specify what "material." It is also unclear why subsection (B) is needed considering the requirements in R9-7-19103.
Appendix A	In the lead-in and subsection (1) of the Note, should be changed to replace "this part" with "this Article." The typographical error of "robadding" in subsection (2) should be corrected to "adding." The last paragraph could be changed to remove passive language, and the terms "RN" and "ARN" should be replaced with "R_n" and "AR_n."

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No _X_

If yes, please fill out the table below:

Rule	Explanation

8. Economic, small business, and consumer impact comparison:

The rules in this Article regulate persons that possess or use at any site, transport or deliver to a carrier for transport in a single shipment, or import or export an aggregated category 1 or category 2 quantity of radioactive material. According to the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967, almost all of the requirements in this Article must be consistent with requirements of the NRC. As of May 19, 2021, the Department licenses 12 persons under these rules, with another eight operating under reciprocity.

They were first adopted in 12 A.A.C. 1, Article 19, in a rulemaking effective February 2, 2016. An economic impact statement (EIS) is available to the Department for this rulemaking. Six of the rules have subsequently been revised through two expedited rulemakings, for which no EISs were required. Upon assuming responsibility for oversight of ionizing or non-ionizing radiation in Arizona, under Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department recodified the rules, without substantive changes, into 9 A.A.C. 7, Article 19, and the current codification is used when describing the economic impact of the rules, even though the original rulemaking was in 12 A.A.C. 1.

In the EIS for the 2016 rulemaking, costs/benefits were considered minimal if $1,000 or less, moderate when greater than $1,000 but less than or equal to $10,000, and substantial when greater than $10,000. The EIS stated that the regulating agency and any persons that are regulated under the rules, which may include other state agencies and political subdivisions, would be affected by the rulemaking. However, little or no economic impact

was anticipated to occur as a result of the rulemaking because all licensees are required to comply with NRC requirements, regardless of whether the requirements are in the rules. However, the rulemaking allowed these rules to be consistent with NRC requirements and protected Arizona's Agreement State status. Without this status, licensees would need to pay more than twice as much for licenses and be subject to a different oversight entity. The Department believes the actual costs/benefits are as anticipated. In addition, the Department believes that the general public received a significant benefit (a real benefit not readily subject to quantitation) from the rulemaking in that the rules help keep the "public safe and prevent unnecessary exposure to radiation."

Four rules in the Article were revised in an expedited rulemaking effective July 12, 2018, and two were not further revised. This rulemaking was undertaken to make changes to conform to the NRC's Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that are required to be incorporated by Agreement States. In R9-7-1943, anyone who gains access to a licensee's security plan, implementing procedures, or the list of individuals that have been approved for unescorted access are required to keep the information confidential. In R9-7-19101, a subsection was added to specify how long records needed to be maintained. The Department still believes that the changes do not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons, and adopt without material change, federal statutes and regulations.

The Department made further changes to rules in the Article in an expedited rulemaking effective May 6, 2020. In this rulemaking, R9-7-1907 was revised to correct a grammatical error and simplify electronic submission requirements. Contact information was added to R9-7-1923 to clarify how a licensee needs to provide to the Department a certification that a reviewing official is deemed trustworthy and reliable. In R9-7-1927, licensees were required to submit fingerprints of individuals to be permitted unescorted access to category 2 or category 2 quantities of radioactive material directly to the NRC, not the Department, a cross-reference was revised, and contact information for the NRC was updated. Contact information for the NRC was updated and unnecessary language removed in R9-7-1977. As with the previous expedited rulemaking, these changes were made to conform to RATS IDs or simplify the rules, and the Department still believes that the changes do not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons, and adopt without material change, federal statutes and regulations.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Not applicable. This is the first five-year-review report for these rules.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

These rules must conform to NRC requirements to enable the Department to maintain Agreement State status, without which licensees, the State, and the general public may incur substantial costs and significant risks of unnecessary exposure to radiation. The Department believes that the rules are the minimum necessary to protect health and safety. While some issues identified in this report may impose a regulatory burden, almost all of these rules must conform to NRC requirements, and no changes may be made to them without NRC approval.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules rely on the following federal regulations, but are not more stringent than the regulations:

10 CFR 73 and 10 CFR 37.7

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The minor items and possible changes described in paragraphs 3, 4, and 6 are not substantive, and most cannot be made without NRC approval. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised and reorganized.

2016

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

Title 12, Chapter 1, Articles 1, 3, 4, 7, 13, 15, 18 and 19

1. Identification of the rulemaking: RMP-0078

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

   This rulemaking package amends several rules to create security requirements mandated by the Agreement State document that Arizona entered into with the U.S. Nuclear Regulatory Commission (formerly the Atomic Energy Commission) authorized by A.R.S. §30-656 authorizing the governor of Arizona to enter into the agreement. In accordance with Public Law 83-703, Title 1- Atomic Energy, Chapter 19, Section 274, as well as Article VI of the Agreement signed the 30th day of March 1967 by Jack Williams, Governor of Arizona [F.R. Doc. 67-4212; Filed, Apr. 17, 1967 8:48 a.m.], Agreement States delegated authority to regulate nuclear material will substantially adopt the rules and language used by the U.S. NRC in order to be compatible nationally to standards of protection. In addition, A.R.S. §30-654(B)(6) requires the Agency to be as nearly as possible in conformity with the regulations of the NRC.

   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 rules provide the minimum level of protection necessary to operate, and keep the public safe and prevent unnecessary exposure to radiation. Failure to amend the rules might lead to unsafe practices continuing and a potential loss of the Agreement Sate status currently enjoyed by Arizona. Loss of this status will return jurisdiction and regulatory authority to the U.S. Nuclear Regulatory Commission, raise the costs of conducting business in Arizona from approximately 2 million per year in regulatory fees to approximately 5 million per year in federal equivalent fees, and remove onsite regulatory response for incidents and possible emergencies currently investigated and

resolved by local Arizona agency staff that would need to be covered by individuals out of Region IV out of Texas in the event that Arizona loses its Agreement State status.

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

It is not known how many entities are voluntarily maintaining bonds for financial assurance to remedy nuclear clean-up of facilities when abandoned or fingerprinting and otherwise vetting contractors using nuclear material voluntarily.

However, adoption and amendment of the rules is required in order to remain compliant with and maintain the Agreement State status signed by the Governor of Arizona and the United States Atomic Energy Commission in March of 1967.

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

No new FTE's were needed for this rulemaking package so additional notice was not sent to Joint Legislative Budget Committee (JLBC).

The proposed rules and amendments are written in an effort to protect the health and safety of the Arizona pubic in order to meet the obligations of A.R.S. § 30-654.

Unless context otherwise implies, for the purposes of this report, the following definitions apply:

"Minimal" means a possible cost increase of less than $1000.00

"Moderate" means a possible cost of $1000.00 to $10,000.00

"Substantial" means a possible cost greater than $10,000.00

Currently there are approximately 365 licenses, 8,500 certified technologists, 200 industrial radiographers, and 250 physicists in Arizona that use the rules in these articles. In addition, there are hundreds of thousands of users not covered above, such as other medical professionals and practitioners in dental, chiropractic, podiatry, veterinary,

mammography, medical, and hospital facilities; industrial and legal facilities; and patients along with the general public in Arizona along with interested parties from other states and federal agencies.

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

   a. Name: Jerry W. Perkins

   b. Address: Arizona Radiation Regulatory Agency
      4814 South 40th Street
      Phoenix, Arizona 85040

   c. Telephone number: (602) 255-4833

   d. Fax number: (602) 437-0705

   e. E-mail address: jperkins@azrra.gov

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

   This rulemaking package amends several rules and adds rules found in Article 19 specific to security requirements of source material to ensure that Arizona meets the obligations set forth by the Agreement State document signed by the Governor of Arizona on March 30th, 1967. The changes meet the Health and Safety or Compatibility Category A, B, and C designation assigned to changes required to state regulations that address portions of Title 10 of the Code of Federal Regulations. These rules affect all persons authorized to possess, use, or transport radioactive material in Arizona.

5. Cost-benefit analysis:

   a. Costs and benefits to state agencies directly affected by the rulemaking:

      Other agencies, including the Radiation Regulatory Agency and any other State Agency with a radioactive materials license, should not be affected as any license that was issued was already subject to any new conditions and the definitions as

required in the regulation of radioactive material. State agencies that allow state employees to possess, use, or transport nuclear material should have already vetted employees and any increase in costs will be related to fingerprinting individuals every ten years and retention of the security clearance documents. These costs are believed to be minimal per individual and care should be conducted in state agencies to limit the number of individuals that may use, posses, or transport quantities that would require this security clearance. Financial assurance by state agencies is documented by a legislative promissory letter so unless the state were to abandon a radioactive facility without mitigating the radiation, there should be no economic impact.

The number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

None

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions should not be affected unless they employ individuals subject to a license issued by this Agency. In such a case the political subdivision was already subject to any new conditions and the definitions proposed. The Agency is not aware of any political subdivision that is authorized to use, posses, or transport quantities that would require this security clearance as licenses are written based upon facility use that requires specialized training of operators.

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

There is little or minimal economic impact from any of the proposed rules in this rulemaking. Businesses that allow employees to possess, use, or transport nuclear material should have already vetted employees and any increase in costs

will be related to fingerprinting individuals every ten years and retention of the security clearance documents. These costs are believed to be minimal per individual and care should be conducted in businesses to limit the number of individuals that may use, posses, or transport quantities that would require this security clearance.

Financial assurances by a business that may possess quantities that may potentially contaminate a facility were already required in the rules and as a condition of the license. The amendment to these rules clarifies and updates the language used in the code of federal regulations and adoption is required in order to maintain the Agreement State status enjoyed by Arizona as previously stated.

6. Impact on private and public employment:

   The rules and amendments in this package will have little or no impact on employment except for those positions that may require the additional security clearance. These individuals will be required to pass a FBI fingerprinting requirement in order to possess, use, or transport nuclear material of certain quantities and types as listed in Article 19 of the rules.

7. Impact on small businesses:

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

      Industrial, pharmaceutical, dental, podiatry, veterinary, chiropractic, medical, and hospital facilities that use or possess radioactive material are subject to the rules and listed within these articles. These individuals will be required to pass a FBI fingerprinting requirement in order to possess, use, or transport nuclear material of certain quantities and types as listed in Article 19 of the rules.

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

In general the rule amendments are proposed in an effort to adopt the current use requirements of the U.S. Nuclear Regulatory Commission as a portion of the radiation control program for Arizona in accordance with our Agreement State status. This package has no fee increase requirement that would markedly change the way businesses operate with radiation safety concerns in mind except for those positions that may require the additional security clearance. These individuals will be required to pass a FBI fingerprinting requirement in order to possess, use, or transport nuclear material of certain quantities and types as listed in Article 19 of the rules.

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

i. Establish less costly or less stringent compliance or reporting requirements:

The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact. This is the minimum protective level to operate and keep the public safe and prevent unnecessary exposure to radiation.

ii. Establish less costly schedules or less stringent deadlines for compliance:

This is the minimum protective level to operate and keep the public safe and prevent unnecessary exposure to radiation.

iii. Consolidate or simplify compliance or reporting requirements:

This is the minimum protective level to operate and keep the public safe and prevent unnecessary exposure to radiation.

iv. Establish separate performance standards:

This is the minimum protective level to operate and keep the public safe and prevent unnecessary exposure to radiation.

v. Exempt small businesses from any or all requirements:

This is the minimum protective level to operate and keep the public safe and prevent unnecessary exposure to radiation.

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

There is minimal cost to the public from these rule amendments. The benefit to the public is that unnecessary radiation exposure from high activity or lager quantity sources are reduced or monitored. These rules also protect the public from the possession of high activity or large source material by individuals that may not pass minimal security requirements including a background check and fingerprinting.

9. Probable effects on state revenues:

There is no anticipated impact to State Revenues or job creation from this rulemaking package.

10. Less intrusive or less costly alternative methods considered:

a. Monetizing of the costs and benefits for each option:

A less intrusive or less costly method has not been investigated, because of the minimal effect the rule will have on the affected licensees and the general compatibility agreement stipulations in the document signed the 30th day of March 1967 by Jack Williams, Governor of Arizona [F.R. Doc. 67-4212; Filed, Apr. 17, 1967 8:48 a.m.].

b. Rationale for not using non-selected alternatives:

A less intrusive or less costly method has not been investigated, because of the minimal effect the rule will have on the affected licensees and the general compatibility agreement stipulations in the document signed the 30th day of March

1967 by Jack Williams, Governor of Arizona [F.R. Doc. 67-4212; Filed, Apr. 17, 1967 8:48 a.m.].

ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

Section

ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

R9-7-1901. Purpose

This Article has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A to this Article. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this Article authorizes possession of licensed material.

R9-7-1903. Scope

A. R9-7-1921 through R9-7-1957 of this Article apply to any person who, under the rules in this chapter, possesses or uses at any site, an aggregated category 1 or category 2 quantity of radioactive material.

B. R9-7-1971 through R9-7-1981 of this Article applies to any person who, under the rules of this chapter:

1. Transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or
2. Imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

R9-7-1905. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

"Access control means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

"Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

"Aggregated" means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

"Agreement State" means any state with which the Atomic Energy Commission or the U.S. Nuclear Regulatory Commission has entered into an effective agreement under subsection 274b. of the Act. Non-agreement State means any other State.

"Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with R9-7-1921 through R9-7-1933 of this Article and who has completed the training required by R9-7-1943(C).

“Background investigation” means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

“Becquerel (Bq)” means one disintegration per second.

“Byproduct material” means the same as in R9-7-102.

“Category 1 quantity of radioactive material” means a quantity of radioactive material meeting or exceeding the category 1 threshold in Table 1 of Appendix A to this Article. This quantity is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

“Category 2 quantity of radioactive material” means a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Appendix A to this Article. This quantity is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

“Commission” means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

“Curie” means the same as in R9-7-102.

“Diversion” means the unauthorized movement of radioactive material subject to this Article to a location different from the material’s authorized destination inside or outside of the site at which the material is used or stored.

“Escorted access” means accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

“Fingerprint orders” means the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

“Government agency” means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality

of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

"License", except where otherwise specified, means a license for byproduct material issued pursuant to the rules in Articles 3, 5, 7, and 15 of this chapter.

"License issuing authority" means the licensing agency that issued the license, i.e. the Department, the U.S. Nuclear Regulatory Commission, or the appropriate agency of an Agreement State.

"Local law enforcement agency (LLEA)" means a public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

"Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

"Mobile device" means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or is otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

"Movement control center" means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

"No-later-than arrival time" means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

"Person" means:

> Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the DOE (except that the DOE shall be considered a person within the meaning of the rules in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and

section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842)), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

Any legal successor, representative, agent, or agency of the foregoing.

"Reviewing official" means the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

"Sabotage" means deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

"Safe haven" means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

"Security zone" means any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Telemetric position monitoring system" means a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

"Trustworthiness and reliability" means characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

"Unescorted access" means solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

"United States" when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

R9-7-1907. Communications

Except where otherwise specified or covered under licensing program as provided in this Chapter, all communications and reports concerning the rules in this Article may be sent as follows:

1. By mail addressed to: ATTN: Arizona Department of Health Services; Bureau of Radiation Control; Radioactive Materials Program; 4814 South 40th Street, Phoenix, Arizona 85040;
2. By hand delivery to the Department's offices at 4814 South 40th Street, Phoenix, Arizona 85040; or
3. Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions shall be made in a manner that enables the Department to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Electronic submissions can be made by email to ram@azdhs.gov.

R9-7-1909. Interpretations

Except as specifically authorized by the Department in writing, no interpretations of the meaning of the rules in this Article by any officer or employee of the Department other than a written interpretation by the Arizona Assistant Attorney General counsel assigned to the Department will be recognized as binding upon the Department.

R9-7-1911. Specific Exemptions

A. The Department may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the rules in this Article as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

B. Any licensee's NRC-licensed activities are exempt from the requirements of R9-7-1921 through R9-7-1957 of this Article to the extent that its activities are included in a security plan required by 10 CFR part 73 revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

C. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of R9-7-1921 through R9-7-1981 of this Article, except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs.) is not exempt from the requirements of this Article. The licensee shall implement the following requirements to secure the radioactive waste:

1. Use continuous physical barriers that allow access to the radioactive waste only through established access control points;

2. Use a locked door or gate with monitored alarm at the access control point;

3. Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

4. Immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

R9-7-1921. Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of Radioactive Material

A. General:

1. Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this Article.

2. An applicant for a new license and each licensee that would become newly subject to the requirements of this Article upon application for modification of its license shall implement the requirements of this Article, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

3. Any licensee that has not previously implemented the Security Orders or been subject to the provisions of R9-7-1921 through R9-7-1933 shall implement the provisions of R9-7-1921 through R9-7-1933 before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

B. General performance objective:

The licensee's access authorization program shall ensure that the individuals specified in subsection (C)(1) are trustworthy and reliable.

C. Applicability:

1. Licensees shall subject the following individuals to an access authorization program:

   a. Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

   b. Reviewing officials.

2. Licensees need not subject the categories of individuals listed in R9-7-1929(A) to the investigation elements of the access authorization program.

3. Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

4. Licensees may include individuals in the access authorization program under R9-7-1921 through R9-7-1933 and needing access to safeguards information-modified handling under 10 CFR part 73 revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

R9-7-1923. Access Authorization Program Requirements

A. Granting unescorted access authorization:

1. Licensees shall implement the requirements of this Article for granting initial or reinstated unescorted access authorization.
2. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by R9-7-1943(C) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

B. Reviewing officials:

1. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.
2. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification, to the ATTN: Bureau Chief, Bureau of Radiation Control, Arizona Department of Health Services, 4814 S. 40th Street, Phoenix, Arizona 85040, that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official shall be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with R9-7-1925(C).
3. Reviewing officials shall be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling. Reviewing officials permitted unescorted access to category 1 or category 2 quantities of radioactive materials shall receive appropriate radiation safety training initially and at a frequency not to exceed 12 months. The licensee shall maintain records of the initial and refresher training for three years from the date of training for Department review.
4. Reviewing officials cannot approve other individuals to act as reviewing officials.

5. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:
    a. The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or
    b. The individual is subject to a category listed in R9-7-1929(A).

C. Informed consent:

1. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent shall include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of R9-7-1925(B). A signed consent shall be obtained prior to any reinvestigation.
2. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:
    a. If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and
    b. The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

D. Personal history disclosure: Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this Article is sufficient cause for denial or termination of unescorted access.

E. Determination basis:

1. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this Article.

2. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this Article and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

3. The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

4. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

5. Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

F. Procedures: Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures shall include provisions for the notification of individuals who are denied unescorted access. The procedures shall include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures shall contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

G. Right to correct and complete information:

1. Prior to any final adverse determination, licensees shall provide each individual subject to this Article with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification shall be maintained by the licensee for a period of 1 year from the date of the notification.

2. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law

enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees shall provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

H. Records:

1. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.
2. The licensee shall retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.
3. The licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

R9-7-1925. Background Investigations

A. Initial investigation:

Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation shall encompass at least the 7 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation shall include at a minimum:

1. Fingerprinting and an FBI identification and criminal history records check in accordance with R9-7-1927;

2. Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with R9-7-1931. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;
3. Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent 7 years before the date of application;
4. Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;
5. Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this section shall be limited to whether the individual has been and continues to be trustworthy and reliable;
6. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual); and
7. If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

B. Grandfathering:

1. Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.
2. Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR part 73 revised January 1, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments; or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR part 73 revised January 1, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments; or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

C. Re-investigations: Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with R9-7-1927. The re-investigations shall be completed within 10 years of the date on which these elements were last completed.

R9-7-1927. Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material

A. General performance objective and requirements:

1. Except for those individuals listed in R9-7-1929 and those individuals grandfathered under R9-7-1925(B), each licensee subject to the provisions of this Article shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to

determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

2. The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

3. Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

   a. The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

   b. The previous access was terminated under favorable conditions.

4. Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this Article, the Fingerprint Orders, or 10 CFR part 73, revised December 12, 2018, incorporated by reference, available under R9-7-101, and containing no future editions or amendments. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of R9-7-1931(C).

5. Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

B. Prohibitions:

1. Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

   a. An arrest more than 1 year old for which there is no information of the disposition of the case; or

   b. An arrest that resulted in dismissal of the charge or an acquittal.

2. Licensees may not use information received from a criminal history records check obtained under this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall

licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

C. Procedures for processing of fingerprint checks:

1. For the purpose of complying with this Article, licensees shall use an appropriate method listed in 10 CFR 37.7, revised November 29, 2019, incorporated by reference, available under R9-7-101, and containing no future editions or amendments; to submit to the U.S. Nuclear Regulatory Commission, Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-8B20, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing MAILSVS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at https://www.nrc.gov/security/chp.html.
2. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by e-mailing Crimhist.Resource@NRC.gov.) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at https://www.nrc.gov/security/chp.html and see the link for "How do I determine how much to pay for the request?".)
3. The U.S. Nuclear Regulatory Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application or applications for criminal history records checks.

R9-7-1929. Relief From Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials

A. Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background

investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

1. An employee of the U.S. Nuclear Regulatory Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;
2. A Member of Congress;
3. An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;
4. The Governor of a State or his or her designated State employee representative;
5. Federal, State, or local law enforcement personnel;
6. State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;
7. Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;
8. Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;
9. Emergency response personnel who are responding to an emergency;
10. Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;
11. Package handlers at transportation facilities such as freight terminals and railroad yards;
12. Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check shall be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and
13. Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider shall be provided to the licensee. The licensee shall retain the documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

B. Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check shall be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

1. National Agency Check;
2. Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572;
3. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR part 555;
4. Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR part 73;
5. Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR part 1572; and
6. Customs and Border Protection's Free and Secure Trade (FAST) Program.

R9-7-1931. Protection of Information

A. Each licensee who obtains background information on an individual under this Article shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

B. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

C. The personal information obtained on an individual from a background investigation may be provided to another licensee:

1. Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

2. The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

D. The licensee shall make background investigation records obtained under this Article available for examination by an authorized representative of the Department to determine compliance with the rules and laws.

E. The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

R9-7-1933. Access Authorization Program Review

A. Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this Article and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access program content and implementation.

B. The results of the reviews, along with any recommendations, shall be documented. Each review report shall identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

C. Review records shall be maintained for 3 years.

R9-7-1941. Security Program

A. Applicability:

1. Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this Article.
2. An applicant for a new license and each licensee that would become newly subject to the requirements of this Article upon application for modification of its license shall implement the requirements of this Article, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.
3. Any licensee that has not previously implemented the Security Orders or been subject to the provisions of R9-7-1941 through R9-7-1957 shall provide written notification to the

Department, as specified in R9-7-1907, at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

B. General performance objective:

Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

C. Program features:

Each licensee's security program shall include the program features, as appropriate, described in R9-7-1943, R9-7-1945, R9-7-1947, R9-7-1949, R9-7-1951, R9-7-1953, and R9-7-1955.

R9-7-1943. General Security Program Requirements

A. Security plan:

1. Each licensee identified in R9-7-1941(A) shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this Article. The security plan shall, at a minimum:
    a. Describe the measures and strategies used to implement the requirements of this Article; and
    b. Identify the security resources, equipment, and technology used to satisfy the requirements of this Article.
2. The security plan shall be reviewed and approved by the individual with overall responsibility for the security program.
3. A licensee shall revise its security plan as necessary to ensure the effective implementation of Department requirements. The licensee shall ensure that:
    a. The revision has been reviewed and approved by the individual with overall responsibility for the security program; and
    b. The affected individuals are instructed on the revised plan before the changes are implemented.
4. The licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

B. Implementing procedures:

1. The licensee shall develop and maintain written procedures that document how the requirements of this Article and the security plan will be met.

2. The implementing procedures and revisions to these procedures shall be approved in writing by the individual with overall responsibility for the security program.

3. The licensee shall retain a copy of the current procedure as a record for 3 years after the procedure is no longer needed. Superseded portions of the procedure shall be retained for 3 years after the record is superseded.

C. Training:

1. Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training shall include instruction in:

   a. The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

   b. The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Department requirements;

   c. The responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

   d. The appropriate response to security alarms.

2. In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training shall be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

3. Refresher training shall be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training shall include:

   a. Review of the training requirements of subsection (c) and any changes made to the security program since the last training;

   b. Reports on any relevant security issues, problems, and lessons learned;

   c. Relevant results of Department inspections; and

   d. Relevant results of the licensee's program review and testing and maintenance.

4. The licensee shall maintain records of the initial and refresher training for 3 years from the date of the training. The training records shall include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

D. Protection of information:

1. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.
2. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.
3. Before granting an individual access to the security plan or implementing procedures, licensees shall:
    a. Evaluate an individual's need to know the security plan or implementing procedures; and
    b. If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee shall complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in R9-7-1925(A)(2) through (A)(7).
4. Licensees need not subject the following individuals to the background investigation elements for protection of information:
    a. The categories of individuals listed in R9-7-1929(A); or
    b. Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in R9-7-1925(A)(2) through (A)(7), has been provided by the security service provider.
5. The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.
6. Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer

needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

7. When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in non-removable electronic form shall be password protected.

8. The licensee shall retain as a record for 3 years after the document is no longer needed:
   a. A copy of the information protection procedures; and
   b. The list of individuals approved for access to the security plan or implementing procedures.

9. State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in subsection (D)(1) shall protect that information against unauthorized disclosure as specified in subsection (D)(2).

R9-7-1945. Local Law Enforcement Agency (LLEA) Coordination

A. A licensee subject to this Article shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA shall include:

1. A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with this Article; and
2. A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

B. The licensee shall notify the Department as listed in R9-7-1907 of this Article within 3 business days if:

1. The LLEA has not responded to the request for coordination within 60 days of the coordination request; or
2. The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

C. The licensee shall document its efforts to coordinate with the LLEA. The documentation shall be kept for 3 years.

D. The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

R9-7-1947. Security Zones

A. Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

B. Temporary security zones shall be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

C. Security zones shall, at a minimum, allow unescorted access only to approved individuals through:

1. Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or
2. Direct control of the security zone by approved individuals at all times; or
3. A combination of continuous physical barriers and direct control.

D. For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

E. Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material shall be escorted by an approved individual when in a security zone.

R9-7-1949. Monitoring, Detection, and Assessment

A. Monitoring and detection:

1. Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.
2. Monitoring and detection shall be performed by:

a. A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility; or

b. Electronic devices for intrusion detection alarms that will alert nearby facility personnel; or

c. A monitored video surveillance system; or

d. Direct visual surveillance by approved individuals located within the security zone; or

e. Direct visual surveillance by a licensee designated individual located outside the security zone.

3. A licensee subject to this Article shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability shall provide:

a. For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability shall be provided by:

i. Electronic sensors linked to an alarm; or

ii. Continuous monitored video surveillance; or

iii. Direct visual surveillance.

b. For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

B. Assessment:

Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

C. Personnel communications and data transmission:

For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

1. Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

2. Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

D. Response:

Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

R9-7-1951. Maintenance and Testing

A. Each licensee subject to this R9-7-1941 through R9-7-1957 shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this part shall be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing shall be performed at least annually, not to exceed 12 months.

B. The licensee shall maintain records on the maintenance and testing activities for 3 years. The record shall include:

1. The date of activity;
2. Type of activity performed;
3. A list of the equipment involved;
4. The results of the activity;
5. The name of the individual that conducted the activity;
6. The repair or maintenance (if applicable) that was performed.

R9-7-1953. Requirements for Mobile Devices

Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material shall:

A. Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

B. For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

R9-7-1955. Security Program Review

A. Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this Article and that comprehensive actions are taken to correct any noncompliance that is identified. The review shall include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

B. The results of the review, along with any recommendations, shall be documented. Each review report shall identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

C. The licensee shall maintain the review documentation for 3 years.

R9-7-1957. Reporting of Events

A. The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Department. Notification shall be to a live person, a voice mail is not considered adequate notification. In no case shall the notification to the Department be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

B. The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the Department.

C. The initial telephonic notification required by subsection (A) shall be followed within a period of 30 days by a written report submitted to the Department by an appropriate method listed in R9-7-1907. The report shall include sufficient information for Department analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

R9-7-1971. Additional Requirements for Transfer of Category 1 and Category 2 Quantities of Radioactive Material

A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the Department, the NRC, or an Agreement State shall meet the license verification provisions listed below instead of those listed in sections of this chapter:

1. Any licensee transferring category 1 quantities of radioactive material to a licensee of the Department, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the Department's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.
2. Any licensee transferring category 2 quantities of radioactive material to a licensee of the Department, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the Department's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.
3. In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification shall include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification shall be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.
4. The transferor shall keep a copy of the verification documentation as a record for 3 years.

R9-7-1973. Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Transit

A. For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in Sections R9-7-1975(A) and (E); R9-7-1977; R9-7-1979(A)(1), (B)(1), and (C); and R9-7-1981(A), (C), (E), (G) and (H).

B. For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in R9-7-1975(B) through (E); R9-7-1979(A)(2), (A)(3), (B)(2), and (C); and R9-7-1981(B), (D), (F), (G), and (H). For those shipments of category 2 quantities of radioactive material that meet the criteria of Article 15 of this Chapter, the shipping licensee shall also comply with the advance notification provisions of R9-7-1508 or R9-7-1512 as appropriate.

C. The shipping licensee shall be responsible for meeting the requirements of R9-7-1971 through R9-7-1981 unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under R9-7-1971 through R9-7-1981.

D. Each licensee that imports or exports category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in R9-7-1975(A)(2) and (E); R9-7-1977; R9-7-1979(A)(1), (B)(1), and (C); and R9-7-1981(A), (C), (E), (G), and (H) for the domestic portion of the shipment.

E. Each licensee that imports or exports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in R9-7-1979(A)(2), (A)(3), and (B)(2); and R9-7-1981(B), (D), (F), (G), and (H) for the domestic portion of the shipment.

R9-7-1975. Preplanning and Coordination of Shipment of Category 1 or Category 2 Quantities of Radioactive Material

A. Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

1. Preplan and coordinate shipment arrival and departure times with the receiving licensee;
2. Preplan and coordinate shipment information with the governor or the governor's designee of any State through which the shipment will pass to:
    a. Discuss the State's intention to provide law enforcement escorts; and
    b. Identify safe havens; and
3. Document the preplanning and coordination activities.

B. Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

C. Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

D. Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (B), shall promptly notify the receiving licensee of the new no-later-than arrival time.

E. The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for 3 years.

R9-7-1977. Advance Notification of Shipment of Category 1 Quantities of Radioactive Material

Each licensee shall provide advance notification to the Department and the governor of a State, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

1. Procedures for submitting advance notification:
    a. The notification shall be made to the Department and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees and participating Tribes is available on the NRC's website at https://scp.nrc.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Material Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the Department may be made by email to ram@azdhs.gov or by fax to (602) 437-0705.
    b. A notification delivered by mail shall be postmarked at least 7 days before transport of the shipment commences at the shipping facility.
    c. A notification delivered by any means other than mail shall reach the Department at least 4 days before the transport of the shipment commences and shall reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.
2. Information to be furnished in advance notification of shipment:
    Each advance notification of shipment of category 1 quantities of radioactive material shall contain the following information, if available at the time of notification:

a. The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

b. The license numbers of the shipper and receiver;

c. A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

d. The point of origin of the shipment and the estimated time and date that shipment will commence;

e. The estimated time and date that the shipment is expected to enter each State along the route;

f. The estimated time and date of arrival of the shipment at the destination; and

g. A point of contact, with a telephone number, for current shipment information.

3. Revision notice:

a. The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the State or the governor's designee and to the Department at the contact information available in R9-7-1907.

b. A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with subsections (B) and (C)(1). The licensee shall also immediately notify the Department at the contact information available in R9-7-1907 of any such changes.

4. Cancellation notice: Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified and to the Department Director at the contact information available in R9-7-1907. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

5. Records: The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.

6. Protection of information: State officials, State employees, and other individuals, whether or not licensees of the Department, the NRC, or an Agreement State, who receive

schedule information of the kind specified in this Section shall protect that information against unauthorized disclosure as specified in R9-7-1943(D) of this Article.

R9-7-1979. Requirements for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Shipment

A. Shipments by road:

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:
    a. Ensure that movement control centers are established that maintain position information from a remote location. These control centers shall monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.
    b. Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.
    c. Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center shall provide positive confirmation of the location, status, and control over the shipment. The movement control center shall be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.
    d. Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.
    e. Develop written normal and contingency procedures to address:
        i. Notifications to the communication center and law enforcement agencies;

ii. Communication protocols. Communication protocols shall include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

iii. Loss of communications; and

iv. Responses to an actual or attempted theft or diversion of a shipment.

f. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

2. Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

3. Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

a. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system shall allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

b. Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

c. Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

B. Shipments by rail:

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

a. Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to

deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

b. Ensure that periodic reports to the communications center are made at preset intervals.

2. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

a. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system shall allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

b. Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

c. Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

C. Investigations:

Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

R9-7-1981. Reporting of Events

A. Within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing, a shipping licensee shall notify the appropriate LLEA and the Department. The Department shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212. The appropriate LLEA is the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by R9-7-1979(C), the shipping licensee shall provide agreed upon updates to the Department on the status of the investigation.

B. Within four (4) hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing, a shipping licensee shall notify the appropriate LLEA and the Department. The Department shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the Department.

C. The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Department upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material. The Department shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212.

D. The shipping licensee shall notify the Department as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material. The Department shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212.

E. The shipping licensee shall notify the Department and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material. The Agency shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212.

F. The shipping licensee shall notify the Department as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material. The Department shall be notified by calling (602) 255-4845 during business hours, or by calling the after-hours emergency Department of Public Safety dispatch line, at (602) 223-2212.

G. The initial telephonic notification required by subsections (A) through (D) shall be followed within a period of 30 days by a written report submitted to the Department by an appropriate method listed in R9-7-1907. A written report is not required for notifications on suspicious activities required by subsections (C) and (D). The report shall set forth the following information:

1. A description of the licensed material involved, including kind, quantity, and chemical and physical form;
2. A description of the circumstances under which the loss or theft occurred;
3. A statement of disposition, or probable disposition, of the licensed material involved;
4. Actions that have been taken, or will be taken, to recover the material; and
5. Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

H. Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

R9-7-19101. Form of Records

A. Each record required by this Article shall be legible throughout the retention period specified by each Department rule. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

B. The licensee who transferred the material shall retain each record of the transfer of source or byproduct material until the Department terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

R9-7-19103. Record Retention

Licensees shall maintain the records that are required by the rules in this Article for the period specified by the appropriate rule. If a retention period is not otherwise specified, these records shall be retained until the Department terminates the facility's license. All records related to this Article may be destroyed upon Department termination of the facility's license.

R9-7-19105. Inspections

A. Each licensee shall afford to the Department, at all reasonable times, opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

B. Each licensee shall make available to the Department for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

R9-7-19107. Violations

A. The Department may obtain an injunction or other court order to prevent a violation of the provisions of:

1. A.R.S. § 30-685, as amended;
2. A.A.C. Title 9, Chapter 7; or
3. A rule or order issued by the Department pursuant to Statute or the rules under A.A.C. Title 9, Chapter 7.

B. The Department may obtain a court order for the payment of a civil penalty imposed under A.R.S. § 30-687, as amended:

1. For violations of:
   a. The rules in A.A.C. Title 9, Chapter 7, as amended;
   b. Nonpayment of fees listed in A.A.C. Title 9, Chapter 7, Article 13;
   c. Any rule, or order issued pursuant to the sections specified in subsection (B)(1)(a);
   d. Any term, condition, or limitation of any license issued under the sections specified in subsection (B)(1)(a).
2. For any violation for which a license may be revoked.

R9-7-19109. Criminal Penalties

Arizona Revised Statutes § 30-673, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any rule issued under A.A.C. Title 9, Chapter 7. For purposes of this section, all the rules in this Article are issued under A.R.S. § 30-673 or the rules of the Department.

Appendix A. - Table 1 - Category 1 and Category 2 Threshold

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2

Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

***Note**: Calculations Concerning Multiple Sources or Multiple Radionuclides*

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this part.

1. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides shall be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this part apply.
2. First determine the total activity for each radionuclide from Table 1. This is done by robadding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation.

Calculations shall be performed in metric values (i.e., TBq) and the numerator and denominator values shall be in the same units.

R1 = total activity for radionuclide 1
R2 = total activity for radionuclide 2
RN = total activity for radionuclide n
AR1 = activity threshold for radionuclide 1
AR2 = activity threshold for radionuclide 2
ARN = activity threshold for radionuclide n

$$\sum_{i}^{n} \left[\frac{R1}{AR1} + \frac{R2}{AR2} + \frac{Rn}{ARn} \right] \geq 1.0$$

Statutory Authority for Rules in A.A.C. 7, Article 19

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, the first $300,000 in fees collected each fiscal year pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. 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.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for 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. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district

if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

DEPARTMENT OF REVENUE
Title 15, Chapter 3, Articles 2, 3, and 5, Department of Revenue - Luxury Tax Section

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 12, 2021

SUBJECT: **DEPARTMENT OF REVENUE**
Title 15, Chapter 3, Articles 2, 3, and 5, Department of Revenue - Luxury Tax Section

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Summary:

This Five Year Review Report (5YRR) from the Department of Revenue (Department) relates to rules in Title 15, Chapter 3, Articles 2, 3, and 5, regarding the Luxury Tax Section. The rules under review address the following:

- **Article 2: General;**
- **Article 3: Taxes on Tobacco Products; and**
- **Article 5: Administration.**

In the previous 5YRR for these rules, which the Council approved in October 2013, the Department did not propose to take any action on the rules. Thereafter, pursuant to Laws 2015, Chapter 85, § 41, the Department amended these rules through an exempt rulemaking at 22 A.A.R. 1843 in 2016. Due to the 2016 rule amendments, the Department requested and the Council granted a reschedule request for this 5YRR, making it due on June 30, 2021.

Proposed Action

The Department does not propose to take any action on the rules under review. The Department notes that due to rule amendments in 2016, the Department intends to retain the current rules until additional substantive changes are necessary.

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

Yes. The Department cites both general and specific statutory authority for the rules under review. Due to the number of applicable statutes to the rules under review, they are not included with the materials herein. The applicable statutes can be found at: https://www.azleg.gov/arstitle/.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to the Department, the economic impact of the tax regulatory scheme is generally derived from the statutes themselves and not the rules adopted to interpret the application of a tax. It is only when a rule imposes requirements not specifically required by statute (e.g., to prepare a form, submit documentation, or maintain records) that the rule has an economic impact.

The Department believes that the impact of all rules under review is the same as what it determined at the time of the rulemaking(s) when the rules were adopted.

The stakeholders include the Department, other state agencies, tobacco distributors, and various private entities subject to taxes.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

Whenever rules could possibly impact the regulated community, and small businesses in particular, with additional burden and costs, the Department always reviews its regulatory objectives and methods to achieve the rules' objectives to ensure their effects were minimized to the extent possible, given statutory requirements.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department states that it did not receive any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Department states that all of the rules under review are clear, concise, and understandable.

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

Yes. The Department states that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Department states that all of the rules are effective in achieving their objectives.

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

Yes. The Department states that all of the rules reflect established policy and procedures and are consistently and fairly enforced.

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

The rules under review are based on state law. There are no corresponding federal laws or regulations to the rules under review.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates that R15-3-301 (Licensing) discusses the issuance of a tobacco distributor's license. The Department states that this license constitutes a general permit as defined in A.R.S. § 41-1001(11). Upon review of the applicable rule and statutes, Council staff agrees. The Department complies with A.R.S. § 41-1037.

11. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

STATE OF ARIZONA
Department of Revenue

Douglas A. Ducey
Governor

Robert Woods
Director

June 18, 2021

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Revenue, A.A.C. Title 15, Chapter 3, Articles 2, 3 and 5, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Revenue for A.A.C. Title 15, Chapter 3, Articles 2, 3 and 5, which is due on June 30, 2021.

The Department of Revenue hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Howard Cohen at HCohen@azdor.gov.

Sincerely,

Robert Woods
Director

DEPARTMENT OF REVENUE
5 YEAR REVIEW REPORT
A.A.C Title 15 Revenue
Chapter 5 Department of Revenue
Luxury Tax Section
Articles 2, 3, and 5
June 2021

1. Authorization of the rule by existing statutes

General Statutes Authorizing the Rules:

All of the rules are generally authorized by A.R.S. § 42-1005, which provides that the Director of the Arizona Department of Revenue ("ADOR") may make administrative rules as he deems necessary and proper to effectively administer ADOR and enforce A.R.S. Titles 42 and 43. A.R.S. § 42-3004 further vests in ADOR the power of enforcing luxury tax through rulemaking.

Specific Statutes Authorizing the Rules:

Rule	Authorization
R15-3-201	A.R.S. §§ 4-243.01, 42-3001, 42-3052, 42-3151, 42-3401, and 44-7111
R15-3-301	A.R.S. §§ 42-1102, 42-3003, 42-3151, 42-3151, and 42-3401
R15-3-304	A.R.S. §§ 41-1092.11, 42-3003 and 42-3401
R15-3-305	A.R.S. §§ 42-3003, and 42-3401
R15-3-306	A.R.S. §§ 42-3151, 42-3405, and 42-3462
R15-3-307	A.R.S. §§ 41-1092.11, 42-3401, 42-3461, and 44-7111
R15-3-308	A.R.S. §§ 41-1092.11, 42-3401, 42-3461, and 44-7111
R15-3-309	A.R.S. §§ 42-3003, 42-3010, 42-3151, and 42-3154
R15-3-310	A.R.S. § 42-3003, 42-3151, 42-3455, and 42-3456
R15-3-312	A.R.S. §§ 42-3006, 42-3303.01, 42-3453, 42-3455, and 42-3456
R15-3-313	A.R.S. §§ 42-3003 and 42-3456

R15-3-314	A.R.S. §§ 42-3009, 42-3010, and 42-3462
R15-3-315	A.R.S. §§ 42-3003 and 42-3459
R15-3-316	A.R.S. §§ 42-1108, 42-3453, 42-3456 and 42-3462
R15-3-317	A.R.S. §§ 36-798.06, 37-1406, 37-1407, 42-3401, 42-3561, 44-7101, and 44-7111
R15-3-318	A.R.S. §§ 42-3008, 42-3452, and 42-3460
R15-3-319	A.R.S. §§ 42-3456, 42-3457, and 42-3503
R15-3-501	A.R.S. §§ 42-3003, 42-3501, 42-3462, and 42-3051 through 42-3053

2. <u>The objective of each rule:</u>

Rule	Objective
R15-3-201	This rule provides definitions for the enumerated terms as they are used in A.A.C. Title 15, Chapter 3.
R15-3-301	This rule provides the conditions under which a person must obtain a distributor's license in this state. It outlines the licensing procedures to be followed when: (a) there is a change in ownership or legal entity status or (b) a licensed business is liquidated, goes insolvent, or declares bankruptcy. It also requires the conspicuous display of a license at a licensee's business location and prohibits the transfer of a license to a new owner upon the sale of a business.
R15-3-304	This rule explains that a licensee must provide ADOR with written notice of a name change to its business operation within 30 days and request reissuance of its license for each business location.
R15-3-305	This rule explains that a licensee must provide ADOR with written notice of a change in the physical location of its business operation within 30 days and request

	reissuance of its license for each business location.
R15-3-306	This rule explains record keeping requirements for licensees. It also requires licensees to electronically file invoices from non-participating manufacturers relayed to cigarettes and roll your own tobacco.
R15-3-307	This rule provides that a licensee must provide ADOR with written notification of the sale or termination of its business within 30 days, and that ADOR will cancel the license as of the date of sale or termination.
R15-3-308	This rule provides the circumstances under which ADOR may suspend, revoke, or refuse to issue a distributor's license, and specifies the means by which ADOR must give written notice of such action. The rule also provides the timing and procedure for notice and appeal of the revocation.
R15-3-309	This rule provides the conditions under which a tobacco product retailer must maintain its books, papers, records, invoices, and luxury inventories, including situations in which various documents are maintained electronically.
R15-3-310	This rule provides the manner in which owners, operators, or persons in possession of vending machines must display cigarettes sold in vending machines and provide the ability for ADOR agents to visually inspect the cigarette packs.
R15-3-312	This rule enforces the secure transfer of stamps from ADOR to a specific licensed distributor by providing that licensed distributors must obtain tax stamps from ADOR and may not sell or otherwise transfer stamps to another person. The rule also specifies that ADOR will only provide stamps

	to holders of valid distributor's licenses and that distributors must remit payment for stamps as specified.
R15-3-313	This rule specifies that a distributor of non-cigarette tobacco products must issue invoices for sales, purchases, or consignments to customers and that such invoices must include the distributor's license number.
R15-3-314	This rule informs distributors of the circumstances under which tobacco products are exempt from tobacco tax when sold in interstate or foreign commerce. The rule also provides the required period that distributors must maintain returns or reports that they file with ADOR on their tobacco products.
R15-3-315	This rule explains that distributors may increase their credit limits for tax stamp purchase by increasing their bond amount with ADOR.
R15-3-316	This rule provides that distributors, except as otherwise provided in A.R.S. Tit. 42, Ch. 3, Art. 5, must file monthly returns showing that they have purchased enough tax stamps to affix to all cigarettes distributed during the reported period, or else ADOR will presume that the distributor has sold unstamped cigarettes and issue a proposed deficiency assessment for tax due, which will become final if the distributor does not timely protest. The rule further provides that cigarettes the retailer maintains in loose or repackaged condition will be presumed to be offered for sale in violation of A.R.S. § 42-3456.
R15-3-317	The rule provides for conditions under which ADOR will destroy seized tobacco products or

	return products to a licensee who prevails in the appeal of a seizure.
R15-3-318	This rule provides general conditions under which ADOR does not redeem, refund, or otherwise bear the risk for cigarette tax stamps and specifies the particular conditions under which ADOR will provide redemption or refunds for the stamps.
R15-3-319	This rule lays out provides conditions for distributing cigarettes and other tobacco product samples.
R15-3-501	This rule provides that reports or returns must be filed electronically and sets timing requirements for taxpayers in filing any report or return for luxury tax purposes.

3. **Are the rules effective in achieving their objectives?**
   Yes X No _

The stated objectives of all of the rules are effectively met.

4. **Are the rules consistent with other rules and statutes?**
   Yes X No _

All of the rules are consistent with state statutes and rules, as listed in this report. There are no federal statutes or regulations with which the rules at issue in this review must be consistent.

5. **Are the rules enforced as written?**
   Yes X No _

All of the rules reflect established policy and procedures and are consistently and fairly enforced.

6. **Are the rules clear, concise, and understandable?**
   Yes X No_

All of the rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?**
   Yes _ No X

ADOR has not received any written criticisms or analyses of the rules during the past five years.

8. Economic, small business, and consumer impact comparison:

Generally, the economic impact of the tax regulatory scheme is derived from the statutes themselves and not the rules adopted to interpret the application of a tax. It is only when a rule imposes requirements not specifically required by statute (*e.g.*, to prepare a form, submit documentation, or maintain records) that the rule has an economic impact.

Rules in A.A.C. Title 15, Chapter 3, Article 2

ADOR amended A.A.C. R15-3-201 in rulemaking that became effective on May 14, 1993. ADOR prepared an economic impact statement at that time.

ADOR expected to operate more efficiently from having terms defined in the rule correspond to statutory terminology and by deleting superfluous or inaccurate information. ADOR personnel were expected to experience time and cost savings from the dissemination of accurate information to the public. Other state agencies were expected to incur only minimal costs in obtaining copies of the new rule.

Private entities were anticipated to incur a direct cost only from obtaining a revised version of the rule and to benefit from the increased accuracy of the terms defined in the amended rule and from the deletion of inaccurate or superfluous information.

No direct or indirect costs or benefits were anticipated for consumers.

The proposed rulemaking was not expected to cause any additional reporting or compliance requirements for any luxury tax taxpayers.

ADOR believes that the economic impact projected at the time of this rulemaking is accurate.

Rules in A.A.C. Title 15, Chapter 3, Article 3

With the exception of A.A.C. R15-3-302 and R15-3-303, ADOR amended the rules in Article 3 through rulemaking that became effective on June 15, 1999. ADOR prepared an economic impact statement at that time.

Overall, ADOR believed that it and other state agencies would incur only minimal costs in obtaining copies or disseminating copies of the rules, and that ADOR would experience savings in administering tobacco taxes without the need for additional personnel. The rulemaking was also believed to provide time and cost savings to ADOR because it would not be necessary for personnel to explain to taxpayers the requirements and procedures that would be explained in the rules.

Private entities were expected to incur a direct cost only insofar as obtaining copies of the new rules and to benefit from having definitive requirements and procedures to follow.

ADOR did not anticipate any direct or indirect costs or benefits to consumers.

The rulemaking was not predicted to cause any additional reporting or compliance requirements for small businesses. Small businesses were predicted to benefit both directly and indirectly from the increased clarity of tobacco tax imposition with the amendment and repeal of the rules.

ADOR believes that the economic impact projected at the time of this rulemaking is accurate.

A.A.C. R15-3-302

ADOR amended A.A.C. R15-3-302 in rulemaking that became effective on January 10, 2002. ADOR prepared an economic impact statement at that time.

Overall, ADOR predicted it would incur minimal to moderate costs in revising tobacco forms and instructions and moderate annual costs in collecting and analyzing data under the rule. It anticipated that ADOR personnel would benefit from the reduced need to conduct audits of tobacco distributors to gather necessary information.

Other state agencies were predicted to incur minimal costs in obtaining copies of the rule, and it was anticipated that the rule and the information gathered thereby would enhance the state's ability to enforce full compliance with the statutory escrow requirements.

Tobacco distributors were expected to incur a minimal cost in obtaining copies of the rule and in providing the additional information required by the rule. They were expected to benefit from having accurate and definitive requirements and procedures to follow, and from the reduced need for ADOR to gather necessary information through audits. There was no other anticipated effect on revenues or payroll expenditures of employers subject to the rulemaking. ADOR expected some tobacco distributors to constitute small businesses, but did not expect any difference in costs or benefits to them by virtue of such status.

The rule was anticipated to have an indirect minimal impact on nonparticipating manufacturers, such that it would be unlikely that distributors would stop buying products from them.

The rule was not anticipated to have an impact on consumers or political subdivisions of this state.

There was no impact anticipated on private employment in any affected businesses due to the minimal costs imposed on distributors. Likewise, no impact was anticipated on public employment.

ADOR believes that the economic impact projected at the time of this rulemaking is accurate.

A.A.C. R15-3-303

ADOR amended A.A.C. R15-3-303 in rulemaking that became effective on December 5, 2006. ADOR prepared an economic impact statement at that time.

ADOR expected to benefit from the time saved by customer service and taxpayer assistance personnel in answering questions from distributors resulting from the confusion caused by the statutory amendment as to whether they would need to continue to remit tobacco taxes by return, as well as time saved by the Tobacco Tax Audit personnel in explaining this same information and having to review amended returns or issue tax assessments.

No impact was anticipated for political subdivisions because of state preemption for tobacco tax purposes.

ADOR did not anticipate any effect on the revenues or payroll expenditures of employers subject to the rulemaking. Licensed distributors of other tobacco products are subject to tobacco tax on their products and remit the tax by filing monthly tax returns. The rulemaking clarified that these taxpayers should continue to remit taxes due and owing in the same manner as they did before the legislative changes made to the statutory provisions.

ADOR anticipated no impact on private and public employment in business, agencies, and political subdivisions directly affected by the rulemaking. It did not anticipate any changes in compliance with the rulemaking that would necessitate administrative or other costs on the part of small businesses. ADOR noted that it answered taxpayer questions through the Taxpayer Information and Assistance Section and conducted informational seminars through programs organized by the Community Outreach and Education Section to specifically inform small businesses of tax compliance matters. Similar to the benefits the rulemaking would provide to businesses generally, the clarification made in the rulemaking would benefit private persons currently engaged in or planning to engage in the distribution of other tobacco products in Arizona.

ADOR predicted that the rulemaking would have no effect on state revenue. To the extent that it would eliminate taxpayer confusion over the method by which tobacco taxes should be remitted on other tobacco products, the rule was expected to protect the erosion of current revenue derived from taxing the products.

ADOR believes that the economic impact projected at the time of this rulemaking is accurate.

Rules in A.A.C. Title 15, Chapter 3, Article 5

ADOR amended A.A.C. R15-3-501 in rulemaking that became effective on June 20, 1990. ADOR prepared an economic impact statement at that time.

ADOR anticipated that it would incur costs in holding required public hearings and meeting Administrative Procedure Act requirements, but that the rulemaking would result in time and cost savings for agency personnel by not having to refer to rules that were inconsistent with their parent statutes or rules that were not in conformity with the approved regulatory scheme.

The Attorney General's Office and Office of Administrative Hearings were anticipated to experience time and cost savings from the improved regulatory formatting and standardization, with the Hearing Office experiencing time and cost savings because of a decrease in protests caused by taxpayer confusion.

Private entities subject to Arizona liquor tax were expected to benefit from the rulemaking through clearer language, improved in part through the elimination of rules that were inconsistent with their parent statutes. Moreover, taxpayers would indirectly benefit by no longer having to refer to ambiguous rules.

No direct or indirect costs to consumers were anticipated.

Small businesses were not expected to experience additional or more strenuous requirements.

ADOR believes that the economic impact projected at the time of this rulemaking is accurate.

9. **Has the agency received any business competitiveness analysis of the rules?**
   Yes_ No X

ADOR has not received any analysis of this nature.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review-report?**

N/A. The luxury tax statutes related to tobacco tax were amended through exempt rulemaking which became effective June 24, 2016.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

As discussed in the Estimated Economic, Small Business, and Consumer Impact section above, whenever rules could conceivably impact the regulated community—or, in particular, small businesses—in additional burdens and costs, ADOR always reviewed its regulatory objectives and methods to achieve such objectives to ensure that such effects were minimized to the extent possible, given statutory requirements.

12. **Are the rules more stringent then corresponding federal laws?**

The rules are based on state law. There are no federal statutes or regulation with which the rules would be compared for stringency.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

To the extent that A.A.C. R15-3-301 discusses the issuance of a tobacco distributor's license, this license complies with A.R.S. § 41-1037 in that it constitutes a general permit, as defined in A.R.S. § 41-1001(10).

14. **Proposed course of action**

Because of amendments to the rules made in 2016, the Department intends to retain the current rules until additional substantive changes are necessary (*e.g.*, due to statutory changes).

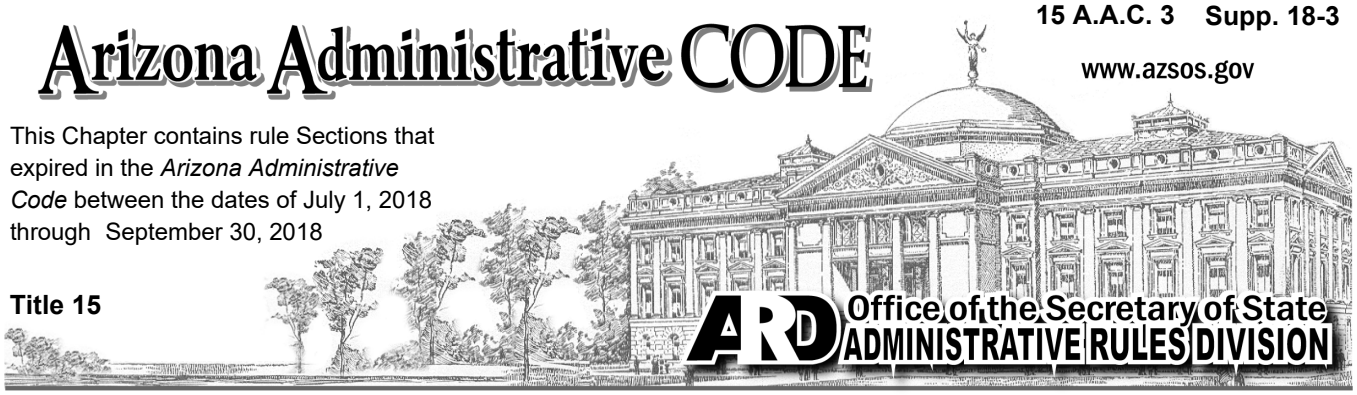
15 A.A.C. 3 Supp. 18-3

Arizona Administrative CODE

www.azsos.gov

This Chapter contains rule Sections that expired in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

Title 15



TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE - LUXURY TAX SECTION

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

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about the expired rules? Contact:

Council:	The Governor's Regulatory Review Council
Name:	GRRC
Address:	100 N. 15th Ave #305 Phoenix, AZ 85007
Telephone:	(602) 542-2058

The release of this Chapter in Supp. 18-3 replaces Supp. 18-1, 10 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE - LUXURY TAX SECTION

(Authority: A.R.S. § 42-1202 et seq.)

Article 1 consisting of Sections R15-3-101 through R15-3-104, Article 2 consisting of Sections R15-3-201 through R15-3-204, Article 3 consisting of Sections R15-3-301 through R15-3-322, Article 4 consisting of Sections R15-3-401 through R15-3-410, Article 5 consisting of Sections R15-3-501 through R15-3-512 adopted effective March 18, 1981.

Former Article 1 consisting of Sections R15-3-01 through R15-3-13 and Article 2 consisting of Sections R15-3-21 through R15-3-28 repealed effective March 18, 1981.

ARTICLE 1. REPEALED

Article 1, consisting of Sections R15-3-101 through R15-3-104, repealed effective May 14, 1993 (Supp. 93-2).

Section

ARTICLE 2. GENERAL

ARTICLE 3. TAXES ON TOBACCO PRODUCTS

ARTICLE 4. TAX ON ALCOHOLIC BEVERAGES

ARTICLE 5. ADMINISTRATION

CHAPTER 3. DEPARTMENT OF REVENUE - LUXURY TAX SECTION

ARTICLE 1. REPEALED

R15-3-101. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-102. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-103. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-104. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective May 14, 1993 (Supp. 93-2).

ARTICLE 2. GENERAL

R15-3-201. Definitions

In this Chapter, unless otherwise specified:

1. "Acquire" or any variation thereof means to receive, to come to own or have, or to come into possession or control of tobacco products, regardless of the means or manner and whether the tobacco products are later transferred, sold, distributed or otherwise given to another person.
2. "Alcoholic beverage" means cider, malt liquor, spirituous liquor, and vinous liquor, as these terms are defined in A.R.S. § 42-3001.
3. "Applicant" means a person applying for a distributor's license under A.R.S. § 42-3401.
4. "Business location" means either of the following:
   a. Pursuant to A.R.S. § 42-3151(A), any place where books, papers, invoices, or records of a wholesaler, distributor, or retailer are open for inspection by the Department; or
   b. Pursuant to A.R.S. § 42-3151(B), any place where luxuries are placed, produced, stored, or sold.
5. "Cigar" has the same meaning as prescribed in A.R.S. § 42-3001.
6. "Cigarette" has the same meaning as prescribed in A.R.S. § 42-3001.
7. "Consumer" has the same meaning as prescribed in A.R.S. § 42-3001.
8. "Department" means the Arizona Department of Revenue.
9. "Distributor" has the same meaning as prescribed in A.R.S. § 42-3001.
10. "Luxury" has the same meaning as prescribed in A.R.S. § 42-3001.
11. "Nonparticipating manufacturer" has the same meaning as prescribed in A.R.S. § 44-7111.
12. "Other tobacco products" has the same meaning as prescribed in A.R.S. § 42-3001.
13. "Participating manufacturer" has the same meaning as prescribed in A.R.S. § 44-7111.
14. "Place of business" has the same meaning as prescribed in A.R.S. § 42-3001.
15. "Primary source of supply" has the same meaning as prescribed in A.R.S. § 4-243.01(E)(1).
16. "Retailer" has the same meaning as prescribed in A.R.S. § 42-3001.
17. "Roll-your-own tobacco" has the same meaning as prescribed in A.R.S. § 42-3001.
18. "Sale" means the act of soliciting, receiving an order for, keeping or offering for sale, delivering for value, peddling, or keeping with intent to sell any of the luxuries taxable under this Chapter.
19. "Tobacco products" has the same meaning as prescribed in A.R.S. § 42-3001.
20. "Tobacco taxes" means all taxes imposed on tobacco products under A.R.S. Title 42, Chapter 3.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective May 14, 1993 (Supp. 93-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-202. Reserved

R15-3-203. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective July 23, 1985 (Supp. 85-4).

R15-3-204. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective July 23, 1985 (Supp. 85-4).

ARTICLE 3. TAXES ON TOBACCO PRODUCTS

R15-3-301. Licensing

A. A person shall obtain a distributor's license before engaging in business as a distributor. The Department shall issue a distributor's license to the person named in the license application for a business making the initial sale or distribution of tobacco products in this state, pursuant to the requirements of A.R.S. § 42-3401 and any applicable bonding requirements under A.R.S. § 42-1102(B).

B. The person shall disclose all places of business and business locations in its distributor's license application.

C. The Department shall issue a distributor's license only if the distributor maintains any books, papers, invoices, records, and tobacco products subject to the Department's inspection under A.R.S. §§ 42-3151, 42-3401(D), and 42-3405 in a place and manner at the business location that is accessible to the Department during normal business hours without a judicial warrant or prior written consent. For example, if a licensee or its agent uses the same property for residential purposes and as a business location, as that term is defined in A.A.C. R15-3-201, the books, papers, invoices, records, and tobacco products located on that property shall be maintained in a place and manner that is completely separate from the residential portion of the property so that the Department will not need a judicial warrant or written consent to inspect the business location of that property during normal business hours.

D. If an applicant remits payment of the licensee fee by cashier's check or money order, the payment shall bear the applicant's name as the purchaser or remitter; or, if the payment is made by company check, the check shall bear the applicant's name as the drawer or maker.

E. Pursuant to A.R.S. §§ 42-3004(1) and 42-3401(C), the Department may request an applicant to submit additional supporting documentation for the purpose of enforcing this section.

F. For purposes of licensing, "person" means any firm partnership, limited liability company, limited liability partnership or association, or corporation, and the person's members, officers, or owners who directly or indirectly own an aggregate amount of ten percent or more of ownership interest.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-301 repealed, new R15-3-301 renumbered from R15-3-302 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 19 A.A.R. 520, effective February 19, 2013 (Supp. 13-1). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-302. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-302 renumbered to R15-3-301, new Section R15-3-302 renumbered from R15-3-304 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). New Section made by final rulemaking at 8 A.A.R. 459, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Repealed by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-303. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-303 repealed, new Section R15-3-303 renumbered from R15-3-305 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). New Section made by final rulemaking at 12 A.A.R. 4892, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Repealed by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-304. Change of Licensee's Business Name
A licensee that changes the name under which its business operates shall notify the Department in writing within 30 days of the name change and request a reissuance of its distributor's license.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-304 renumbered to R15-3-302, new Section R15-3-304 renumbered from R15-3-306 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-305. Change of Licensee's Place of Business, Business Location or Mailing Address

A. Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in a place of business or business location and request a reissuance of its distributor's license that contains the licensee's change in information.

B. Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in the licensee's mailing address (where all correspondence is mailed). The licensee shall specify whether the change is for the mailing address only.

C. A licensee that has received a service of documents from the Department pursuant to A.R.S. § 41-1092.04 shall notify the Department of any change in the licensee's place of business, business location or mailing address that would affect the subsequent service of documents within five days of the change.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-305 renumbered to R15-3-303, new Section R15-3-305 renumbered from R15-3-307 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-306. Recordkeeping, Invoicing and Filing-related Requirements

A. A licensee shall maintain books and records subject to inspection under A.R.S. §§ 42-3151 and 42-3405, including invoices required under A.R.S. § 42-3462(A)(13) for transactions with nonparticipating manufacturers, in a manner that allows the Department to segregate transactions by the distributor's business location, regardless of how the distributor lists transactions on a monthly return for tobacco products.

B. A licensee shall submit electronic copies of invoices or equivalent documentation for any nonparticipating manufacturer's cigarettes or roll-your-own tobacco purchased, acquired, or exported by or to the licensee. Pursuant to A.R.S. §§ 42-3462(A)(13), copies of those invoices shall be submitted with the licensee's monthly returns required under A.R.S. § 42-3462.

1. This subsection applies to any nonparticipating manufacturer's cigarettes or roll-your-own tobacco entering or leaving the inventory of a business location or place of business in the state, and to any transaction in which a nonparticipating manufacturer's cigarettes or roll-your-tobacco leave an out-of-state business location for any location within the state.
2. "Equivalent documentation" means letters, memoranda, receipts, billing records or other written documentation that records or documents transactions for the purchase, acquisition or export of a nonparticipating manufacturer's cigarettes or roll-your-own tobacco in a manner that allows the Department to match those transactions with transactions recorded in a distributor's invoices, books and records. Equivalent documentation shall contain for each transaction:
   a. The purchase, acquisition or export date;
   b. The corresponding invoice number;
   c. The brand names and quantities of each brand of cigarettes or roll-your-own tobacco purchased, acquired or exported;
   d. The identification of any cigarette tax stamps affixed to each brand of cigarettes, if applicable; and
   e. The recipient's name and delivery address.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-306 renumbered to R15-3-304, new Sec-

tion R15-3-306 renumbered from R15-3-308 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-307. Cancellation of Distributor's License

A. If a licensee sells or terminates its business or voluntarily ceases all tobacco distribution activity, the licensee shall notify the Department in writing within 30 days of selling or terminating its business or ceasing its tobacco distribution activity, including the date of the sale, termination or cessation of tobacco distribution activity. The Department shall cancel the license, effective as of the date of sale, termination or voluntary cessation of tobacco distribution activity.

B. In the event a license is cancelled, the licensee shall file a final monthly return by the 20th day of the month immediately following the cancellation's effective date. Late or fraudulent filings are subject to civil and criminal penalties under A.R.S. §§ 42-1125(K), (U) and 42-1127(B)(1)–(2), (B)(4).

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-307 renumbered to R15-3-305, new Section R15-3-307 renumbered from R15-3-309 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-308. Revocation or Suspension of Distributor's License

A. The Department shall not issue or renew a distributor's license if any of the conditions listed under A.R.S. § 42-3401(E)–(F) applies. The Department shall give written notice of a denial to issue or renew a license to the applicant or licensee by delivering the notice by certified mail, return receipt requested, or by personal service, to the applicant or licensee's place of business.

B. Except as otherwise provided in A.R.S. § 42-3401 and this section, the Department may revoke or suspend a license for more than two violations within a three-year period of any provision of A.R.S. Title 42 or this Article pursuant to A.R.S. § 42-3401(G).

C. The Department may revoke a license for a violation of A.R.S. §§ 42-3401(F), 42-3461(A) or any other statute that permits revocation.

D. The Department shall give written notice of a revocation or suspension to a licensee by delivering the notice by certified mail, return receipt requested, or by personal service, to the licensee's place of business.

E. The applicant or licensee may request a hearing in writing within 30 days after receipt of the notice to appeal the Department's decision. If the notice is delivered by certified mail, return receipt requested, the applicant or licensee is presumed to have received notice upon the date shown on the return receipt signed by or on behalf of the applicant or licensee, or, if the receipt is unsigned, upon the date that the United States Postal Service attempted to deliver the notice. If the notice is delivered by personal service, the applicant or licensee is presumed to have received notice upon the date of service.

F. If the applicant or licensee does not file an appeal within the 30-day period, the Department's determination becomes final. The Department shall consider the appeal filed on the earlier of the date received by the Department or the date deposited in the United States mail as evidenced by a postmark. If the applicant or licensee files a timely appeal, the Department shall request a hearing by the Office of Administrative Hearings.

G. If the applicant or licensee appeals the revocation or suspension, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.

H. Pursuant to A.R.S. §§ 41-1092.11(B) and 42-3401(J), the Department may order the summary suspension of a license, pending a hearing by the Office of Administrative Hearings on the revocation or suspension, if the Department finds the public health, safety or welfare imperatively requires emergency action and incorporates that finding in the written notice described in subsection (D).

I. In the event a license is revoked, the person holding the revoked license is subject to the final monthly reporting requirement of A.A.C. R15-3-307(B).

J. In the event a license is suspended, the licensee remains subject to the final monthly reporting requirement as provided in A.R.S. §§ 42-3462 and 42-3501 during the period of suspension.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-308 renumbered to Section R15-3-306, new Section R15-3-308 renumbered from R15-3-310 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 19 A.A.R. 520, effective February 19, 2013 (Supp. 13-1). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-309. Inspection of Tobacco Product Retailers

A. A tobacco product retailer shall maintain any books, papers, invoices, records, and luxuries subject to the Department's inspection under A.R.S. § 42-3151 in a place and manner at the retail operation that is accessible to the Department during normal business hours without a judicial warrant or prior written consent. For example, if a retailer or agent of the retailer uses the same property for residential purposes and as a business location, the retailer shall maintain its books, papers, invoices, records, and luxuries in a place and manner that is separate and apart from the residential portion so that the Department does not need a judicial warrant or written consent to inspect the business location on that property during normal business hours.

B. If the retailer maintains any books, papers, invoices, or records electronically, the retailer shall provide access to the data for the Department's inspection at the business location, regardless of the data's storage location. The retailer shall provide access at the business location in a place and manner that is accessible to the Department during normal business hours without a judicial warrant or the retailer's prior written consent.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-309 renumbered to Section R15-3-307, new Section R15-3-309 renumbered from R15-3-311 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22

A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-310. Vending Machine Identification and Inspection

A. An owner, operator, or person in possession of a vending machine shall ensure that any agent of the Department is able to inspect all cigarettes that are offered for sale using the vending machine. Except as provided in subsection (B), the owner, operator, or person in possession of the vending machine shall visibly display cigarettes in the vending machine so the Department's agent is able to inspect the cigarettes in the machine to verify that the required cigarette tax stamps are properly affixed.

B. If the cigarettes cannot be visually inspected in a vending machine, the owner, operator, or person in possession of the machine shall have access to the cigarettes in the machine and shall permit the Department's agent to inspect the cigarettes as needed to ensure they are properly affixed with tax stamps.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-310 renumbered to R15-3-308, new Section R15-3-310 renumbered from R15-3-313 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-311. Repealed

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-311 renumbered to Section R15-3-309, new Section R15-3-311 renumbered from R15-3-314 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Section repealed by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-312. Purchase of Cigarette Tax Stamps

A. A distributor shall obtain unaffixed cigarette tax stamps only from the Department. The Department shall not provide cigarette tax stamps to a person who does not hold a valid distributor's license issued by the Department.

B. A distributor shall not sell, lend, give, purchase, or otherwise transfer cigarette tax stamps to or for another person at any time.

C. If a distributor remits payment for cigarette tax stamps by cashier's check, company check, or money order, the payment shall bear one of the following:

1. The name of the distributor purchasing the cigarette tax stamps as the purchaser or remitter, if the payment is made by cashier's check or money order; or
2. The name of the distributor purchasing the cigarette tax stamps as the drawer or maker, if the payment is made by company check.

Historical Note

Former Section R15-3-316 renumbered to R15-3-312 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-313. Invoice Issued by a Distributor

For the purpose of enforcing A.R.S. § 42-3452 and pursuant to A.R.S. § 42-3004, a distributor of tobacco products shall issue an invoice or equivalent documentation for each transaction that involves the sale, purchase, or consignment of tobacco products to a retailer or the distributor's customer. The invoice or equivalent documentation shall include the distributor's license number. A copy of the invoice or equivalent documentation shall be maintained in accordance with A.R.S. § 42-3405.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-313 renumbered to R15-3-310, new Section R15-3-313 renumbered from R15-3-318 effective June 20, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 4135, effective July 31, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-314. Sales in Interstate or Foreign Commerce

Tobacco products sold by licensed distributors to purchasers located outside the state are exempt from tobacco taxes if the following conditions are met:

1. The distributor ships or delivers the tobacco products to a location outside the state for use outside the state;
2. The distributor files with the Department the applicable monthly return or report for the tobacco products being sold, in the form and manner required by the Department;
3. In the appropriate section of the return or report filed under subsection (2), the distributor indicates the amount of out-of-state sales and the party to whom the sales were made;
4. The distributor provides to the Department a copy of either the invoice issued by the distributor to the out-of-state party to whom the sales were made or a copy of the return or report filed with the taxing authority of the state of destination of the cigarettes or other tobacco products; and
5. Pursuant to A.R.S. § 42-3405, the distributor retains one copy of each return or report for four years following the close of the calendar year in which the tobacco products are sold.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-314 renumbered to R15-3-311, new Section R15-3-314 renumbered from R15-3-319 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-315. Credit Purchases of Cigarette Tax Stamps

A distributor may increase its credit limit for cigarette tax stamp purchases by increasing the amount of its bond on file with the Department.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Amended effective November 5, 1986 (Supp. 86-6). Former Section R15-3-315 repealed, new Section R15-3-315 renumbered from R15-3-321 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5

A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-316. Sale of Unstamped Cigarettes

A. Except as otherwise provided in A.R.S. Title 42, Chapter 3, Articles 10 and 11, a distributor shall file the applicable monthly return with the Department in the form and manner required by the Department showing that the distributor purchased a sufficient number of cigarette tax stamps to be affixed to all cigarettes it distributes in this state during the period. If the distributor does not provide this information, the Department shall presume the distributor sold unstamped cigarettes. In that case, and in addition to any other applicable penalties, the Department shall determine the amount of unstamped cigarettes sold by the distributor and shall issue a proposed deficiency assessment for any luxury tax found due. The proposed deficiency assessment becomes final unless the distributor protests the assessment within 45 days under A.R.S. § 42-1108 and 15 A.A.C. 10, Article 1.

B. If a retailer maintains or possesses cigarettes at its place of business that, upon the Department's inspection, are loose or otherwise repackaged in a manner different from that distributed for sale by the cigarette manufacturer, the Department shall presume the retailer is offering the cigarettes for sale in violation of A.R.S. § 42-3456 unless the retailer establishes the contrary.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-316 renumbered to R15-3-312, new Section R15-3-316 renumbered from R15-3-322 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2). Amended to correct typographical error in citation to Arizona Revised Statues (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-317. Contraband and the Disposition of Seized Tobacco Products

A. Tobacco products considered to be contraband under A.R.S. § 42-3402 that are ordered, purchased or transported in violation of A.R.S. § 36-798.06 may be voluntarily reported by a person other than a licensed distributor and are subject to tax pursuant to A.R.S. § 36-798.06(E).

B. Except as provided in subsection (C), tobacco products seized by the Department under A.R.S. § 42-1124 are subject to return to a licensee that prevails in an appeal of the seizure.

C. Tobacco products shall be forfeited to the state and destroyed if the tobacco products constitute contraband tobacco products, as described in A.R.S. § 42-3402, or are subject to seizure and destruction under any other statute.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 520, effective February 19, 2013 (Supp. 13-1). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-318. Refunds, Rebates and Redemption of Cigarette Tax Stamps

A. The Department does not bear the risk of loss or theft of cigarette tax stamps sold to a licensee and are no longer in the Department's possession.

B. The Department is not obligated to issue a refund or rebate for or to redeem lost cigarette tax stamps or cigarette tax stamps rendered unusable due to a licensee's mistake in the handling, usage or recordkeeping of stamps in the licensee's possession.

C. The Department is not obligated to issue a refund for cigarette tax stamps unless the licensee proves it is entitled to a refund under one of the conditions of A.R.S. § 42-3008(A) and, if applicable, meets the requirements of A.A.C. R15-3-314.

D. Pursuant to A.R.S. § 42-3008(C), the Department will not issue a refund for cigarette tax stamps affixed to tobacco products that are deemed contraband under A.R.S. Title 42, Chapter 3.

E. Except as provided in subsections (A) and (B) above, the Department shall redeem unused or spoiled cigarette tax stamps that satisfy all conditions of A.R.S. § 42-3460, provided the Department first receives a complete request for redemption. To request a redemption, the licensee shall submit a request to the Department and the unused or spoiled stamps sought to be redeemed. The Department shall not issue a redemption unless the Department receives the cigarette tax stamps sought to be redeemed.

F. Except as provided in subsections (A) and (B) above, the Department may issue a rebate of taxes paid on tobacco products pursuant to Article 7 of A.R.S. Title 42, Chapter 3 if the licensee establishes entitlement to the rebate pursuant to A.R.S. § 42-3406. The request for a rebate and all supporting documentation shall be submitted through the electronic filing system established by the Department.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-318 renumbered to R15-3-313 effective June 20, 1990 (Supp. 90-2). New Section made by exempt rulemaking at 19 A.A.R. 520, effective February 19, 2013 (Supp. 13-1). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-319. Cigarette Samples

A. A person shall not distribute loose individual cigarettes or cigarette packs containing less than 20 cigarettes within the state regardless of whether the cigarettes or cigarette packs are distributed free of charge or as samples.

B. A person may distribute cigarettes packaged in quantities of 20 or 25 as samples if the samples were obtained from a licensed distributor that reported and affixed cigarette tax stamps to the cigarette packs in accordance with A.R.S. Title 42, Chapter 3.

C. A person may distribute tobacco products other than cigarettes as samples within Arizona if the samples were first obtained from a licensed distributor that timely reported and remitted payment of applicable state tobacco taxes on the samples.

D. Any person providing samples of cigarettes, as described under subsection (B), or samples of other tobacco products, as described under subsection (C), should retain invoices from the licensed distributor that reported the samples.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-319 renumbered to R15-3-314 effective June 20, 1990 (Supp. 90-2). New Section R15-3-319 made by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2).

R15-3-320. Repealed

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2).

Repealed effective June 20, 1990 (Supp. 90-2).

R15-3-321. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-321 renumbered to R15-3-315 effective June 20, 1990 (Supp. 90-2).

R15-3-322. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-322 renumbered to Section R15-3-316 effective June 20, 1990 (Supp. 90-2).

ARTICLE 4. TAX ON ALCOHOLIC BEVERAGES

R15-3-401. Tax Return Filing Requirements for a Malt Liquor Wholesaler
On or before the statutory deadline each month, each wholesaler of malt liquor shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor Licenses and Control, and identification number;
2. The itemized quantity of malt liquor purchased during the month the tax accrued, listed by supplier and invoice number;
3. The itemized quantity of tax-free sales of malt liquor during the month the tax accrued, listed by purchaser and invoice number;
4. The itemized quantity of out-of-state sales of malt liquor during the month the tax accrued, listed by purchaser and invoice number;
5. The itemized quantity of malt liquor purchased from other licensed Arizona wholesalers during the month the tax accrued, listed by supplier and invoice number;
6. The total quantity of malt liquor purchased in Arizona during the month the tax accrued;
7. The amount of luxury tax accrued during the month; and
8. Supporting documentation for the information provided in the return.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective July 23, 1985 (Supp. 85-4). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-402. Tax Return Filing Requirements for a Spirituous or Vinous Liquor Wholesaler
On or before the statutory deadline each month, each spirituous or vinous liquor wholesaler shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor Licenses and Control, and identification number;
2. The itemized quantity of spirituous or vinous liquor sold during the month the tax accrued, listed by purchaser and invoice number;
3. The itemized quantity of spirituous or vinous liquor received during the month the tax accrued, listed by supplier and invoice number;
4. The total quantity of spirituous or vinous liquor available at the beginning and at the end of the month the tax accrued;
5. The itemized quantity of tax-free sales of spirituous or vinous liquor during the month the tax accrued, listed by purchaser and invoice number;
6. The itemized quantity of out-of-state sales of spirituous or vinous liquor during the month the tax accrued, listed by purchaser and invoice number;
7. The itemized quantity of spirituous or vinous liquor sold to other licensed Arizona wholesalers during the month the tax accrued, listed by purchaser and invoice number;
8. The total quantity of spirituous or vinous liquor sold in Arizona during the month the tax accrued;
9. The amount of luxury tax accrued during the month; and
10. Supporting documentation for the information provided in the return.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective July 23, 1985 (Supp. 85-4). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-403. Tax Return Filing Requirements for a Domestic Microbrewery, Domestic Farm Winery, or Beer Manufacturer
On or before the statutory deadline each month, each domestic microbrewery, domestic farm winery, or beer manufacturer subject to A.R.S. § 42-3355 shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor Licenses and Control, and identification number;
2. The itemized quantity of tax-free sales to Arizona purchasers during the month the tax accrued, listed by purchaser and invoice number;
3. For taxpayers filing for locations physically within the state, the itemized quantity of out-of-state sales during the month the tax accrued, listed by purchaser and invoice number;
4. The itemized quantity of beer, malt liquor, or vinous liquor sold to other licensed Arizona wholesalers during the month the tax accrued, listed by purchaser and invoice number;
5. The total quantity of beer, malt liquor, or vinous liquor sold to Arizona purchasers during the month the tax accrued;
6. The amount of luxury tax accrued during the month; and
7. Supporting documentation for the information provided in the return.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-404. Taxes Remitted
Any domestic farm winery or domestic microbrewery required under A.R.S. Title 4, Chapter 2, Article 1 to remit transaction privilege tax shall remit the tax under the retail classification (see 15 A.A.C. 5, Article 1) on its gross receipts from the sale in addition to luxury tax, regardless of its business location.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Section repealed by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). New Section made by final rulemaking at 14 A.A.R. 4410, effective January 3,

2009 (Supp. 08-4).

R15-3-405. Alcoholic Beverage Samples
Samples of alcoholic beverages, whether intended for personal or commercial use and consumption, and whether provided for a consideration, are subject to luxury tax at the rates prescribed in A.R.S. § 42-3052 unless otherwise exempt under A.R.S. Title 42, Chapter 3.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Section repealed by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). New Section made by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-406. Metric Conversion
To compute the luxury tax for alcoholic beverages in metric containers, each taxpayer shall multiply the quantity in liters by 0.264172 to determine the equivalent quantity in gallons.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-407. Expired

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2702, effective July 28, 2018 (Supp. 18-3).

R15-3-408. Failure to Report Purchases from a Primary Source of Supply
If the Department determines that an Arizona wholesaler failed to transmit to the Department copies of all invoices for alcoholic beverages purchased from any primary source of supply as required by A.R.S. § 4-243.01, the Department shall report the failure to the Department of Liquor Licenses and Control.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

R15-3-409. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Section repealed by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3).

R15-3-410. Failure to File a Return or Pay Tax
The Department shall report any failure by a licensee to file a return or pay the tax due to the Department of Liquor Licenses and Control, and the Department shall request that the Department of Liquor Licenses and Control take any applicable action authorized under A.R.S. Title 4.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 5 A.A.R. 3768, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4).

ARTICLE 5. ADMINISTRATION

R15-3-501. Filing of Luxury Tax Reports and Returns
The Department shall deem a report or return required to be filed under A.R.S. Title 42, Chapter 3 or this Chapter timely filed if the taxpayer submits the report or return through the electronic filing system established by the Department on or before the statutory due date.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 14 A.A.R. 4410, effective January 3, 2009 (Supp. 08-4). Amended by exempt rulemaking at 22 A.A.R. 1843, effective June 24, 2016 (Supp. 16-2); when this Section was amended in Supp. 16-2 the preceding historical note was omitted due to a clerical error. The note was added at the request of the Department, file no. R18-90 (Supp. 18-1).

R15-3-502. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-503. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-504. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-505. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-506. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-507. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-508. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-509. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-510. Expired

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective June 20, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 4135,

effective July 31, 2003 (Supp. 03-3).

R15-3-511. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-512. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

ARIZONA OMBUDSMAN - CITIZENS' AIDE
Title 2, Chapter 16, Articles 1-5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 3, 2021

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

FROM: Council Staff

DATE: July 14, 2021

SUBJECT: **ARIZONA OMBUDSMAN - CITIZENS' AIDE**
Title 2, Chapter 16, Articles 1-5

Summary:

This Five-Year Review Report (5YRR) from the Arizona Ombudsman - Citizens' Aide (Ombudsman) relates to all rules in Title 2, Chapter 16, Articles 1 through 5 regarding procedures for receiving and processing complaints, including conducting investigations, incorporating agency responses in recommendations, and reporting findings. Additionally, the rules in Article 2 relate to handling of confidential information.

In the previous 5YRR for these rules, approved by the Council in July 2016, the Ombudsman did not propose to take any action related to these rules.

Proposed Action

In the current report, the Ombudsman does not propose to take any action regarding these rules.

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

Yes. The Ombudsman cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Ombudsman indicates the economic impact of the rules has not differed from the projected economic impact statement submitted for the June 4, 2006 rulemaking, which significantly revised the entire chapter, or the 2011 rulemaking and 2016 rulemaking, which reiterated the 2006 economic impact statement.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Ombudsman indicates the rules impose the least burden and costs to persons regulated by the rule. The Ombudsman states all required communication is the minimum required for the office to perform an effective investigation. The Ombudsman states the benefits of each rule outweigh the probable costs because the rules clarify how the office fulfills its statutory mandates and meets its statutory requirements but adds little additional cost to the office or the agencies over which the office has jurisdiction.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Ombudsman indicates it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Ombudsman indicates that the rules are clear, concise and understandable.

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

Yes. The Ombudsman indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Ombudsman indicates that the rules are effective in achieving their regulatory objectives.

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

Yes. The Ombudsman indicates that the rules are currently enforced as written.

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

Not applicable. The Ombudsman indicates that they are not aware of any corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Ombudsman indicates that none of the rules were adopted after July 29, 2010 nor do the rules require issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR relates to all rules in Title 2, Chapter 16, Articles 1 through 5 regarding procedures for receiving and processing complaints, including conducting investigations, incorporating agency responses in recommendations, and reporting findings as well as the handling of confidential information. The Ombudsman indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. The Ombudsman does not propose to take any action with regards to these rules.

Council staff recommends approval of this report.

Arizona Ombudsman-Citizens' Aide
7878 N. 16th St., Ste. 235
Phoenix, Arizona 85020
(602) 277-7292 (800) 872-2879

June 16, 2021

Via Email: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Arizona Ombudsman-Citizens' Aide, A.A.C. Title 2, Chapter 16, Articles 1 through 5, Five Year Review Report.

Dear Chair Sornsin:

The Arizona Ombudsman-Citizens' Aide has reviewed Arizona Administrative Code, Title 2, Chapter 16, Articles 1 through 5. Please find the Five Year Review Report for the Arizona Ombudsman-Citizens' Aide office attached.

As indicated in the report, the agency does not plan to take any action. Additionally, the Ombudsman believes that the agency complies with A.R.S. § 41-1091.

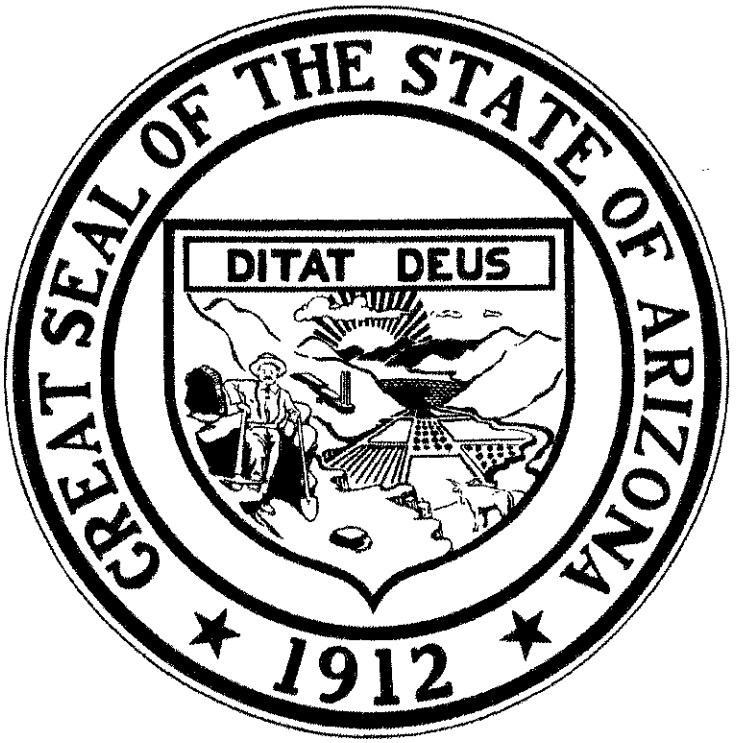
If you need any further information, please contact our attorney Danee Garone at (602) 544-8710, Deputy Ombudsman Joanne MacDonnell at (602) 544-8704, or myself at (602) 544-8709.

Sincerely,

Dennis Wells

Dennis Wells
Arizona Ombudsman-Citizens' Aide

Attachment



Arizona Ombudsman-Citizens Aide
Five-Year Review Report

A.A.C. Title 2, Chapter 16, Articles 1 through 5

Submitted to the

Governor's Regulatory Review Council (GRRC)

June 16, 2021

1. Authorization of the rules by existing statutes:

A.R.S. § 41-1376(A)(3) requires the office to adopt rules to ensure that confidential information that the office gathers will not be disclosed to unauthorized individuals. A.A.C. Title 2, Chapter 16, Article 2 contains the rules that fulfill this requirement.

A.R.S. § 41-1376(A)(5) requires the office to adopt rules that "establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings." A.A.C. Title 2, Chapter 16, Articles 1, 3, 4, and 5 contain the rules that fulfill this requirement.

2. The objective of each rule:

R2-16-101. Definitions
Objective:
This rule defines the terms used throughout Title 2, Chapter 16.

R2-16-201. Protecting the Identity of a Complainant or Witness
Objective:
This rule clarifies the prohibition contained in A.R.S. § 41-1378(F) that the office shall not release identifying information about a person making a complaint.

R2-16-203. Requirement to Close Case Before Violating Confidentiality
Objective:
This rule establishes a procedure for handling situations when a complainant has requested confidentiality and an investigation reaches a point when the office cannot proceed any further without revealing the complainant's identity.

R2-16-205. Protecting Confidential Agency Information
Objective:
This rule informs agencies and the public how the office will accomplish the requirements of A.R.S. § 41-1378(F) and protect confidential information received from a state agency.

R2-16-208. Returning a Confidential Document to a Complainant
Objective:
This rule assures a complainant that the office will not provide a confidential document that the office receives from the complainant to anyone else. It also informs complainants that the office will only return documents that the complainant is lawfully entitled to.

R2-16-209. Prohibition Against Discussing Open Complaint Investigations
Objective:
This rule informs the public that the office will not discuss open complaint investigations.

R2-16-210. Summaries of Closed Cases
Objective:

This rule establishes procedures for providing summaries of closed cases and screening those summaries to prevent the disclosure of confidential information.

R2-16-301. Exhausting Reasonable Alternatives within the Agency
Objective:
This rule informs the public how the office ensures that complainants have exhausted reasonable alternatives before intervening, as required by A.R.S. § 41-1376(A)(5).

R2-16-302. Inmate Complaints
Objective:
This rule informs the public that the office does not accept complaints from persons in the custody of the department of corrections. It also says that the office does not accept complaints on behalf of inmates.

R2-16-303. Resolution without Investigation
Objective:
This rule informs state agencies and the public that the office will resolve a complaint by mutual agreement instead of conducting a full investigation, when appropriate.

R2-16-304. Anonymous Complaints
Objective:
This rule establishes criteria for the office to use when deciding whether to accept an anonymous complaint.

R2-16-305. Filing Complaints
Objective:
This rule establishes procedures for submitting a complaint against a State agency or an employee.

R2-16-306. Complaints Alleging Employee Misconduct
Objective:
This rule establishes Due Process procedures for complaints alleging individual misconduct.

R2-16-401. Notice
Objective:
This rule establishes procedures for prior notification to agencies when the office exercises rights of access to records and staff. This rule also informs agencies of the timeframe to respond to these requests.

R2-16-403. Closing Cases
Objective:
This rule establishes criteria the office will use when deciding whether to close a case.

R2-16-404. Findings
Objective:
This rule specifies the four findings the office may use in an investigative report.

R2-16-405. Recommendations
Objective:
This rule informs state agencies and the public of how the office will fulfill the requirement contained in A.R.S. § 41-1376(B) to make recommendations to agencies.

R2-16-501. Preliminary Report
Objective:
This rule establishes procedures for incorporating agency responses into findings and recommendations.

R2-16-502. Final Report
Objective:
This rule prescribes the process the office and agencies will follow to produce a final report from a preliminary report.

R2-16-503. Advising the Complainant
Objective:
This rule informs citizens how the office will fulfill the statutory requirement contained in A.R.S. § 41-1379(D) to notify a complainant of the results of an investigation.

3. Are the rules effective in achieving their objectives? **Yes.**

4. Are the rules consistent with other rules and statutes? **Yes.**

5. Are the rules enforces as written? **Yes.**

6. Are the rules clear, concise, and understandable? **Yes.**

7. Has the agency receives written criticisms of the rules within the last five years? **No.**

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed from the projected economic impact statement submitted for the June 4, 2006 rulemaking, which significantly revised the entire chapter, or the 2011 rulemaking and 2016 rulemaking, which reiterated the 2006 economic impact statement.

9. Has the agency received any business competitiveness analyses of the rules? **No.**

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

No action was proposed in the last five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rules impose the least burden and costs to persons regulated by the rule. All required communication is the minimum required for the office to perform an effective investigation. The benefits of each rule outweigh the probable costs because the rules clarify how the office fulfills its statutory mandates and meets its statutory requirements but adds little additional cost to our office or the agencies over which we have jurisdiction.

12. Are the rules more stringent than corresponding federal laws? **N/A**.

We are not aware of any corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The agency has not adopted any rules after July 29, 2010, nor do any of its rules "require the issuance of a regulatory permit, license, or agency authorization."

14. Proposed course of action:

The office has no proposed action.

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN CITIZENS' AIDE

(Authority: A.R.S. § 41-1376 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1995, Ch. 281, Section 5. Exemption from A.R.S. Title 41, Chapter 6 means that the Office of the Ombudsman did not submit these rules to the Governor's Regulatory Review Council for review; the Office did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Office was not required to hold public hearings on these rules. According to Laws 1995, Ch. 281, Section 5, the Office of Ombudsman-Citizens' Aide is exempt from the requirements of A.R.S. Title 41, Chapter 6 until July 1, 1997. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R2-16-101, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-101. Definitions

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

Article 2, consisting of Sections R2-16-201 through R2-16-210, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-201. Protecting the Identity of a Complainant or Witness
R2-16-202. Expired
R2-16-203. Requirement to Close Case before Violating Confidentiality
R2-16-204. Expired
R2-16-205. Protecting Confidential Agency Information
R2-16-206. Expired
R2-16-207. Expired
R2-16-208. Returning a Confidential Document to a Complainant
R2-16-209. Prohibition against Discussing Open Complaint Investigations
R2-16-210. Summaries of Closed Cases

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

Article 3, consisting of Sections R2-16-301 through R2-16-306, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 3, consisting of Sections R2-16-301 through R2-16-306, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-301. Exhausting Reasonable Alternatives within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution without Investigation
R2-16-304. Anonymous Complaints
R2-16-305. Filing Complaints
R2-16-306. Complaints Alleging Employee Misconduct

ARTICLE 4. CONDUCTING INVESTIGATIONS

Article 4, consisting of Sections R2-16-401 through R2-16-405, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-401. Notice
R2-16-402. Expired
R2-16-403. Closing Cases
R2-16-404. Findings
R2-16-405. Recommendations

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

Article 5, consisting of Sections R2-16-501 through R2-16-503, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

Article 5, consisting of Sections R2-16-501 through R2-16-503, adopted effective October 30, 1996 (Supp. 96-4).

Section
R2-16-501. Preliminary Report
R2-16-502. Final Report
R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1371, the following apply in this Chapter:

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness requests not be disclosed.
3. "Document" means a paper or electronic: record, memorandum, form, book, letter, file, drawing, map, or plat.
4. "Misconduct" means any act or omission by an employee that constitutes a material or substantial breach of the employee's duties or obligations or that adversely affects a material or substantial interest of the employer.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-201. Protecting the Identity of a Complainant or Witness

The Office shall not release to an agency, the public, or anyone else, information that reveals the identity of a complainant or witness without permission from the complainant or witness.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-202. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-203. Requirement to Close Case before Violating Confidentiality
The Office shall stop an investigation and close a case if it cannot proceed further without releasing identifying information about a complainant who requested confidentiality. Before stopping the investigation and closing the case for this reason, the Office shall ask the complainant for permission to release identifying information.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-204. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-205. Protecting Confidential Agency Information
The Office shall give confidential information received from an agency the same degree of protection as provided by the agency. The Office shall not release confidential agency information to the complainant, or any other person, without the agency's prior authorization, unless ordered by a court or other lawful authority.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-206. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-207. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-208. Returning a Confidential Document to a Complainant
When requested, the Office shall return a confidential document received from a complainant to the complainant. The Office shall not release a confidential document to anyone other than the complainant unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.

Historical Note
Adopted effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-209. Prohibition against Discussing Open Complaint Investigations
The Office shall not discuss an open complaint investigation with the general public or the media.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-210. Summaries of Closed Cases
The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, respond to an inquiry about the performance of a state program, or inform the public about the activity and performance of the Office. The Office shall ensure that the summary does not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

R2-16-301. Exhausting Reasonable Alternatives within the Agency

A. The Office shall make inquiry of the complainant and the agency to determine whether a complainant has exhausted all reasonable alternatives to resolve a complaint within an agency before initiating an investigation.

B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.

C. The Office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens' aide determines that immediate action is necessary to protect the public health, safety, or welfare.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by

final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-302. Inmate Complaints
In accordance with A.R.S. § 41-1377, the Office shall refuse to investigate a complaint filed by a person in the custody of the Department of Corrections, filed by another person on behalf of an inmate, or concerning a rule or substantive policy statement about inmates.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-303. Resolution without Investigation
If a complaint can be resolved quickly by mutual agreement, the Office shall attempt to resolve the complaint informally, without resorting to an investigation.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-304. Anonymous Complaints
The Office shall not investigate an anonymous complaint. If the Office receives facts from an anonymous source that are compelling and can be reasonably independently verified, the Office may investigate the matter if it is within the scope of A.R.S. § 41-1377.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-305. Filing Complaints
A. A complaint against an agency shall be filed with the Office in person or by the U.S. Postal Service, telephone, electronic facsimile, or electronic mail.
B. A complaint that alleges misconduct by a state employee shall be in writing, signed by the complainant, and filed with the Office in person or by the U. S. Postal Service or electronic facsimile.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-306. Complaints Alleging Employee Misconduct
A. Before investigating an allegation of misconduct by a state employee, the Office shall provide written notice of the pending investigation to the employee and the chief executive officer of the employee's agency.
B. If an investigation of an allegation of misconduct by a state employee results in a preliminary report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the preliminary report before submitting the preliminary report to the agency and shall include the employee's written response, if any, with the preliminary report that is forwarded to the agency.
1. This consultation with the employee shall be confidential and shall not be publicly disclosed.
2. The employee shall have 15 working days to respond to the preliminary report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
3. An employee may request an extension of time in which to respond to the preliminary report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

C. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee's written response, if any, with the final report that is forwarded to the agency.
1. The employee shall have 15 working days to respond to the final report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 4. CONDUCTING INVESTIGATIONS

R2-16-401. Notice
When it will not compromise the effectiveness of an investigation, the Office shall exercise the right of access under A.R.S. § 41-1378 by giving the agency at least 10 days notice before conducting interviews, examining necessary records, or requiring the production of information. An agency may request an extension to this period for a compelling reason. The ombudsman-citizens' aide shall grant a request for extension unless the ombudsman-citizens' aide believes a delay will cause significant harm or damage.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-402. Expired

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-403. Closing Cases
The Office may close a case for any of the following reasons:
1. *Discontinued*. The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
   a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;

b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;
c. The complainant withdraws the complaint;
d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;
e. The Office forwards the complaint to an appropriate prosecutor because it involves possible criminal activity; or
f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation;

2. *Closed - not substantiated*. Following an investigation, the ombudsman-citizens' aide makes a finding that the allegations in the complaint are not substantiated;
3. *Closed - complaint resolved (before preliminary report)*. Following an investigation, the ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens' aide;
4. *Closed - complaint resolved (after preliminary report)*. Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and, after a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the ombudsman-citizens' aide;
5. *Closed - complaint unresolved*. Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens' aide; or
6. *Other*. Any other reason the Office determines requires that a complaint be closed.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-404. Findings
The Office shall make one of the following findings in an investigative report:

1. *Substantiated.* The investigation establishes that the administrative act did occur and the complainant's criticism of the administrative act is valid.
2. *Partially substantiated.*
   a. In a complaint having multiple allegations, the investigation establishes that at least one allegation is substantiated and at least one allegation is not substantiated or indeterminate; or
   b. The investigation establishes there is shared fault between the complainant and agency.
3. *Not substantiated*. The investigation establishes that:
   a. The administrative act did not occur; or
   b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
4. *Indeterminate*. The investigation does not provide sufficient evidence for the Office to determine conclusively:
   a. Whether the administrative act occurred; or
   b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-405. Recommendations
A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of "substantiated" or "partially substantiated."
B. The Office shall not recommend that a specific employee disciplinary action be imposed.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-501. Preliminary Report
A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.
B. In accordance with A.R.S. § 41-1379, the Office or agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.
C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by including a request for modification in a written response submitted within 15 working days of receiving the preliminary report.
D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency's request for extension, unless the ombudsman-citizens' aide believes an extension will cause significant harm or damage.
E. The Office shall consider an agency's request for modification of an opinion or recommendation before it prepares the final report and shall notify the agency of the acceptance or rejection of the request within 15 working days of receiving the request.
F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after the agency receives the preliminary report.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-502. Final Report
A. After the Office receives an agency's response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the agency.
B. If the Office requests that an agency respond to a final report, the agency shall respond to the Office, in writing, within 20 working days after receiving the final report. The agency shall include in the response the agency's decision to accept or reject a recommendation. If the agency accepts a recommen-

dation, the agency shall specify a date by which the recommendation will be implemented.

C. If the ombudsman-citizens' aide determines that an early response to a final report is necessary to protect the public health, safety, or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens' aide may extend a response period for good cause at the request of an agency.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-503. Advising the Complainant

A. The Office shall provide a final response to a complainant. If requested by the complainant, the Office shall provide the final response in writing.

B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the final report of any confidential information.

Historical Note
Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

41-1376. Powers and duties

A. The ombudsman-citizens aide shall:

1. Investigate the administrative acts of agencies pursuant to section 41-1377, subsections A and B except as provided in section 41-1377, subsections C, D and E. The ombudsman-citizens aide shall investigate the administrative acts of an agency without regard to the finality of the administrative act.

2. Annually before January 1 prepare a written report to the governor, the legislature and the public that contains a summary of the ombudsman-citizens aide's activities during the previous fiscal year. The ombudsman-citizens aide shall present this report annually before the legislative council and distribute copies of the report to the director of the governor's office of strategic planning and budgeting, the chairperson of the joint legislative budget committee and the cochairpersons of the administrative rules oversight committee. This report shall include:

(a) The ombudsman-citizens aide's mission statement.

(b) The number of matters that were within each of the categories specified in section 41-1379, subsection B.

(c) Legislative issues affecting the ombudsman-citizens aide.

(d) Selected case studies that illustrate the ombudsman-citizens aide's work and reasons for complaints.

(e) Ombudsman-citizens aide's contact statistics.

(f) A description of the public awareness and outreach activities conducted by the ombudsman-citizens aide.

(g) Ombudsman-citizens aide's staff.

3. Before conducting the first investigation, adopt rules that ensure that confidential information that is gathered will not be disclosed.

4. Appoint a deputy ombudsman and prescribe the duties of employees or, subject to appropriation, contract for the services of independent contractors necessary to administer the duties of the office of ombudsman-citizens aide. All staff serves at the pleasure of the ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6 of this title. All staff shall be subject to the conflict of interest provisions of title 38, chapter 3, article 8.

5. Before conducting the first investigation, adopt rules that establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings.

6. Notify the chief executive or administrative officer of the agency in writing of the intention to investigate unless notification would unduly hinder the investigation or make the investigation ineffectual.

7. Appoint an assistant to help the ombudsman-citizens aide investigate complaints relating to the department of child safety. The assistant shall have expertise in the department of child safety procedures and laws. Notwithstanding any law to the contrary, the ombudsman-citizens aide and the assistant have access to the department of child safety records and to any automated case management system used by the department of child safety.

B. After the conclusion of an investigation and notice to the head of the agency pursuant to section 41-1379, the ombudsman-citizens aide may present the ombudsman-citizens aide's opinion and recommendations to the governor, the legislature, the office of the appropriate prosecutor or the public, or any combination of these

persons. The ombudsman-citizens aide shall include in the opinion the reply of the agency, including those issues that were resolved as a result of the ombudsman-citizens aide's preliminary opinion or recommendation.