

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 6, Articles 1 and 3, Pesticides and Water Pollution Control



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 9, 2021

SUBJECT: **Department of Environmental Quality**
Title 18, Chapter 6, Articles 1 and 3

This Five-Year-Review Report (5YRR) from the Department of Environmental Quality (DEQ) relates to rules in Title 18, Chapter 6, regarding Pesticides and Water Pollution Control. The report covers the following:

Article 1: Numeric Values and Information Submittal
Article 3: Groundwater Protection List

In the last 5YRR of these rules the Department indicates it would amend four of its rules to improve the rules effectiveness in achieving their objectives. The Department indicates they did not complete the proposed changes due to strategic planning, priority, capacity and resource issues.

Proposed Action

The Department indicates they plan to further review criticisms received relating to R18-6-102 (A)(2)(b). As mentioned in the report, the Department indicates the rule needs additional stakeholder feedback and legal review before making any changes. DEQ plans to start the review process by January 2022. Additionally, DEQ indicates it plans to review R18-6-101, R18-6-102, R18-6-106 and R18-6-301(E) to determine if the rules could be eliminated or streamlined.

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 Department described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2005. Since the 2005 rulemaking made major amendments, the Department had to estimate some of the future economic impacts. The Department discussed that the Groundwater Protection List would be reduced. The Groundwater Protection List went from 223 listed active ingredients in 2004, to 101 in the draft 2020 Groundwater Protection List. Narrowing the Groundwater Protection List enables the Department to focus its statewide groundwater and soil monitoring activities.

Costs to develop new analytical methods for testing pesticides were lower than predicted. The Department did not have to develop new methods, but was able to use five existing approved methods used in testing safe drinking water. Also, with the new ADHS laboratory and more modern equipment, other existing methods became available.

The Department believes that the qualitative assessments of the economic impacts to the Chapter 6 rules were accurate. The Department believes that the Article's impact on the state's economy, small business and consumers has not changed since the effective date.

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 place a reasonable responsibility and cost on the regulated community. This includes paperwork and other compliance costs necessary to achieve the underlying regulatory and statutory objective of protecting groundwater.

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 to the rules over the last five years and properly responded to the criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable.

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 overall effective in achieving their objectives with the exception of the following:

R18-6-101 - Definitions

R18-6-102 - Agricultural Use Pesticide Submittal Requirements

R18-6-106 - Informational Requirements for a Pesticide Formulator

R18-6-301 - Groundwater Protection List

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

Yes, the Department indicates the rules are enforced as written, with the exception of the following:

R18-6-301 - Groundwater Protection List

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 there are no corresponding federal laws to the rules, but that they are compatible and not more stringent than the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq).

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 regulatory permit or license.

11. Conclusion

As mentioned above, the Department is proposing to further review R18-6-102 (A)(2)(b) in response to the criticisms they received. DEQ indicates before proposing any changes to the rule, they need additional stakeholder feedback and legal review. They propose to start the review process by January 2022. Additionally, the Department will review four other rules to determine if they can be eliminated or streamlined.

Council staff understands the further review is needed before making changes to R18-6-102 (A)(2)(b), staff believes the Department can complete changes mentioned in the report for the following rules: R18-6-101, R18-6-102, R18-6-106 and R18-6-301(E) prior to January 2022. The Department proposed the same changes to the rules in their last 5YRR in 2016.

Therefore, while Council staff recommends approval of the report, staff recommends the Council to further discuss with DEQ whether they can revise the rules sooner, which would result in the rules being more clear, concise, understandable, and effective.



ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor



Misael Cabrera
Director

Jan 20, 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 6, Articles 1 and 3 and A.A.C. Title 18, Chapter 9, Article 2

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 Title 18, Chapter 6, Articles 1 and 3, Pesticides and Water Pollution Control. Also included in this submission is a 5-Year Review Report for Title 18, Chapter 9, Article 2, Aquifer Protection Permits – Individual Permits.

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
Five-Year-Review Report
Title 18. Environmental Quality
Chapter 6 - Pesticides and Water Pollution Control
Article 1: Numeric Values and Information Submittal; and
Article 3: Groundwater Protection List

January 28, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority:
A.R.S. § 49-104(B)(4).

Specific Statutory Authority:

A.R.S. § 49-203(A)(9), A.R.S. § 49-302, A.R.S. § 49-303(A)-(B), A.R.S. § 49-305, A.R.S. §§ 49-307-309

2. The objective of each rule:

The purpose of the rules is to prevent or eliminate the pollution of groundwater aquifers of the state from routine use of agricultural pesticides.

Rule	Objective
R18-6-101	This rule provides specific explanation for certain terms used in this Article.
R18-6-102	This rule supplements the specific application requirements established in A.R.S. § 49-302 to enable ADEQ to determine whether a new agricultural-use pesticide has the potential to pollute groundwater. This rule also allows the Director to waive certain information requirements or ask for more information.
R18-6-103	This rule establishes the basis for ADEQ's evaluation of whether an active ingredient has the potential to pollute groundwater. Pesticides that exceed both mobility and persistence criteria will be placed on the Groundwater Protection List.
R18-6-104	This rule supplements A.R.S. § 49-307(A) in explaining that ADEQ conducts soil and groundwater monitoring for active ingredients, or their byproducts, on the Groundwater Protection List.
R18-6-106	This rule specifies the conditions under which a pesticide formulator can use data generated by other sources for the active ingredients used by the formulator.
R18-6-301	This rule describes the process by which ADEQ develops and maintains the Groundwater Protection List, which is a list of pesticides that have the potential to pollute groundwater, required by A.R.S. § 49-305.
R18-6-302	This rule lists the findings, determinations, and actions that can or must be made by the Director under the statutes and rules pertinent to 18 A.A.C. 6. ADEQ must report to the appropriate state or federal regulatory agency.

R18-6-303	This rule requires that any person who causes the soil application of an agricultural-use pesticide on the Groundwater Protection List to implement Best Management Practices (BMPs) to reduce or prevent the pollution of groundwater.
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3. Are the rules effective in achieving their objectives?

Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

The rules are effective in achieving their objectives except as stated below.

Rule	Explanation
R18-6-101	The rule could be more effective in terms of clarification if the term “environmental fate” was defined. However, the rule remains functional in achieving its objective without the definition.
R18-6-102	The rule could be more effective if additional available and demonstrable manners of waiver were listed in subsection (A)(3). The rule would also be more effective if the requirement for an applicant to submit a Letter of Authorization for usage of a third-party’s studies or an alternative arbitration method were listed in rule under subsection (A)(2)(b)(ii). See R18-6-102 criticisms in question no. 7, below. However, the rule remains functional in achieving its objective without the aforementioned additions.
R18-6-106	This rule could be more effective if it required an applicant to affirmatively distinguish itself as either a distributor or a manufacturer, as well as, requiring the applicant to submit evidence of a business relationship with a third party up front. Currently, ADEQ contacts the sources provided by the formulator and if the response is either negative or not forthcoming, then the formulator has to provide the additional documentation. However, the rule remains functional in achieving its objective without the aforementioned addition.
R18-6-301	This rule could be more effective if the language better reflected the on-going and unconfined nature of the appeal right, instead of the inaccurate curtailing date of 2005.

4. Are the rules consistent with other rules and statutes?

Yes 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.

5. Are the rules enforced as written?

Yes 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.

The rules are enforced as written except as stated below.

Rule	Explanation
R18-6-301	Subsection E is not enforced as written as the ability to appeal a pesticide’s listing on the Groundwater Protection List (GPL) did not end on the 2005 date listed in the rule.

6. Are the rules clear, concise, and understandable?

Yes No

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.

The rules are clear, concise, and understandable.

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	Explanation
R18-6-102	<p><u>Criticism 1:</u> The Department received a criticism of the rule stating that A.A.C. R18-6-102(A)(2) is operationally confusing. The commenter states that ADEQ is no longer allowing use of Subsection (A)(2)(b) without a Letter of Authorization (LOA) from the registrant who owns the groundwater data.</p> <p><u>Response 1:</u> A.A.C. R18-6-102(A)(2) allows an applicant to submit alternate information in lieu of the normal pre-registration data requirements for new agricultural use pesticides. (A)(2)(b) is entitled, "California registration." It allows an applicant to submit evidence that the California Department of Pesticide Regulations (CA DPR) has the pesticide registered. It also requires submission of data showing that the required studies upon the pesticide at issue were conducted in conditions similar to Arizona's. Under (A)(2)(b), evidence of registration in CA and evidence of the aforementioned data can be accepted in lieu of the (A)(1)(c) requirements.</p> <p>When these rules were written, the CA DPR required a LOA to use, cite, or rely on data from a certain company in the review of an application for pesticide registration from another company. Since that time, CA DPR adopted a new rule that does not require an LOA, but instead establishes a mechanism outside of the pesticide product review process for resolving compensation issues between the parties involved. ADEQ has not adopted such a mechanism.</p> <p>In 2018, ADEQ received a letter from a company holding the ownership rights to data allegedly used in another company's pesticide registration. The letter requested that ADEQ not accept data that is not owned by the applicant without an LOA. Since then, ADEQ has been requiring LOAs in the aforementioned situation.</p> <p>While the LOA requirement does not specifically exist in rule, discretion for the Director to require additional information and the authorizations necessary to use the information does reside in statute,</p> <p style="padding-left: 40px;"><i>"[t]he Director may accept information, studies and conclusions from other states and the federal government if the director finds them to be derived from standard protocol procedures consistent with the objective of this article as stated in subsection A. A.R.S. § 49-302(C)(4).</i></p> <p>As part of this review, however, the Department has received several criticisms for its LOA requirement to prove that the applicant has permission to use the data.</p> <p>The data ownership issue has turned out to be complex, and ADEQ is still in the process of looking into all of the implications of current Department practice and rule. Additional</p>

R18-6-102

stakeholder feedback and legal review is needed to determine whether any changes to practice, policy, or rule are required.

Criticism 2: The Department received a criticism of the rule, stating that R18-6-102 (A)(2)(b) is ambiguous. The process described is incomplete because it does not specify what documentation is required from California Department of Food and Agriculture (CA DFA). Will Arizona approve products under this clause?

Response 2: Yes, Arizona will approve products under R18-6-102(A)(2)(b). The language in (A)(2)(b) is broad by design. It gives the applicant flexibility rather than specificity. In this case, specificity would limit ADEQ's ability to accept a submission that does not exactly conform, even though the submission may meet the purpose of the rule.

Criticism 3: The Department received a criticism of the rule, stating that R18-6-102(A)(3) allows for waiver of data requirements by the Director. This waiver provision alleviates the need for conducting specified tests that will fail to obtain meaningful results (e.g. redundant data, verification of physical constants, etc.). In the case of a generic active ingredient submission, all data requirements have been fulfilled by the initial registration of active ingredient in Arizona. Therefore, conducting the redundant studies adds no scientific value and serves only to create a cost barrier to entry into the marketplace. When requested in connection with generic registrations, the waiver has been denied, not due to the merit of the waiver, but rather the lack of a LOA from the original registrant accompanying the request. The requirement for a LOA – which does not appear in statute – in effect gives the original registrant the ability to pick and choose its competition, or to block competition. Notwithstanding, generic submissions have multiple sources to cite that provide this data, such as EPA Reviews and other public literature. Moreover, if a product has already been approved by EPA as a “Me-Too” with the criteria of being substantially similar to an existing product registered in Arizona, that should fulfill the prescribed data requirements.

Response 3: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

Criticism 4: The Department received a criticism of the rule, requesting, on behalf of generic manufacturers and distributors, that ADEQ reconsider the rules in Subsection (A)(2)(b)(i) and (ii) and integrate input from both primary and secondary registrants that are having problems getting AZ registrations.

Response 4: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

Criticism 5: The Department received a criticism of the rule, requesting generic manufacturers and formulators be part of a formal review process to reconsider the rules in Subsection (A)(2)(a) and (b). Furthermore, the commenter requested that in the previously mentioned review, input from both primary and secondary registrants that are having problems getting AZ registrations be considered. Lastly, the commenter suggested adopting California’s regulation, where groundwater data can be cited by a secondary registrant by making an offer to pay for any data developed specifically for Arizona.

Response 5: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

R18-6-102

Criticism 6: The Department received a criticism of the rule, stating that applicant's only realistic option in moving forward is to obtain a Letter of Authorization (LOA) from the basic registrant who owns the groundwater data on file with DEQ. Frequently the basic registrant will not provide post-patent registrants LOAs to access the data, creating a barrier to free trade.

Response 6: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

Criticism 7: The Department received a criticism of the rule, bringing attention to the ADEQ New Agricultural Use Pesticide Form. Aside from the general company and product information, this form is confusing, outdated, and needs multiple revisions. And, if an active ingredient is already approved for use in AZ by ADEQ, and is listed in their database, then there should be no need to submit any form to ADEQ. Companies should be allowed to skip that procedure altogether. If that's not going to be an option, then there should be a question on the form that asks if the Active Ingredients (AIs) are in the ADEQ approved pesticides database. If yes, then skip to the end, sign, date and submit to receive your approval letter. Otherwise, all of the yes/no questions need a space for Not Applicable (N/A). And, when the product is a supplemental distributor product and there is an EPA stamped 8570-5 form, that should be sufficient authorization. No company should be required to hunt down an LOA from the original data/studies owner.

Response 7: ADEQ is planning to update the form and will do so in the near future. A rule update is not required to update this form. The pesticide program has been helping applicants with questions and providing guidance on the proper handling of the form. A new form is expected by Spring 2021, and it will be shared with the regulated community for comments.

Criticism 8: The Department received a criticism of the rule, stating that their company is often not the basic registrant and as such, do not have copies of the requested data or study reports. While we understand a LOA is an option, we often have not yet reached agreement with the basic registrant on data compensation or cost sharing, which often takes several months or as much as 2 years. And the basic registrant will typically not provide an LOA until agreement is reached. Therefore, while we are able to achieve US EPA registration and registration in other states, we are significantly delayed in Arizona which hurts both the growers and our company.

Response 8: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

Criticism 9: The Department received a criticism of the rule, implicating the rule as causing prevention of competition in the market place. Most companies have already settled data compensation after they have made offers to pay. So this is really a moot point if companies have already paid for use of all the data on file in support of the Active Ingredient (AI) contained in the bottle.

Response 9: As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.

Criticism 10: The Department received a criticism of the rule, citing a lack of clarity, putting Arizona at risk for legal issues. The current actions conflict with FIFRA. In recognition that data owners have certain rights with respect to their data, but those rights are time-limited, Congress included within FIFRA a limited 15-year period during which compensation is required. Thereafter, data may be relied upon freely. As applied,

	<p>Arizona's rule has the effect of providing a perpetual monopoly on selling Active Ingredients (AIs).</p> <p><u>Response 10:</u> If the applicant knows the data rights have expired and the data is in the public domain, the applicant can provide that information and register the active ingredient. If the data is on file with ADEQ or CA DPR, the applicant may provide a legal opinion with proof that the data rights have expired and that the data is in public domain. The Department starts its analysis of an application under the assumption that any data presented is protected by law. The burden is on the applicant to prove otherwise.</p> <p><u>Criticism 11:</u> The Department received a criticism of the rule, stating that, at this time, the commenter understands ADEQ to have adopted a new policy not to approve any products for a company based on studies owned by a 3rd party without a LOA from the data owner. This policy deprives Arizona growers of competitive prices for agricultural chemical in the marketplace.</p> <p><u>Response 11:</u> As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p> <p><u>Criticism 12:</u> The Department received a criticism of the rule, stating that the rule, as it is written, is not being followed. This is a cause for concern and a restriction on free trade.</p> <p><u>Response 12:</u> As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p> <p><u>Criticism 13:</u> The Department received a criticism of the rule, requesting ADEQ consider revising the rule to include an alternative to submit an 'Offer to Pay' letter to the basic registrant and be able to access and cite groundwater/environmental fate data in support of an application for Arizona registration.</p> <p><u>Response 13:</u> ADEQ assumes the "offer to pay letter" is a recommendation for submission in lieu of the R18-6-102(A)(2)(b)(ii) data.</p> <p>As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p> <p><u>Criticism 14:</u> The Department received a criticism of the rule, stating that the current provisions and implementation of the Arizona statute ignore that compensable data rights have been settled as a condition of Federal registration. LOAs specify studies that were determined as compensable in data compensation settlements. Data not specified in the settlement, was either not relied upon for federal registration purposes and/or was beyond compensable age under FIFRA. Requiring a LOA under these circumstances conflicts with FIFRA. The design of FIFRA's data compensation laws is to promote competition in pesticide markets. That design is frustrated if Arizona imposes barriers that preclude generic registrants from obtaining registrations in the state. Arizona needs to eliminate ambiguity and create a pathway consistent with FIFRA recognition of data rights.</p> <p><u>Response 14:</u> As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p> <p><u>Criticism 15:</u> The Department received a criticism of the rule from Company X claiming ADEQ accepted Company X's, previously filed with CA DPR, dissipation studies (See Subsection (A)(1)(c)(vi)), for the purposes of Company Y's pesticide application, without permission (an LOA) from Company X. Specifically, the studies were used to meet the</p>
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	<p>requirements of subsection (A)(1)(c)(vi) via (A)(2)(b)(ii)'s alternative information (required studies) documentation provision.</p> <p><u>Response 15:</u> As noted in Response 1, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p>
R18-6-103	<p><u>Criticism 1:</u> The Department received a criticism of the rule, stating,</p> <p><i>"[i]t is not known what impact the new evaluation process in R18-6-103B will have on the Department. Current evaluations of data based on the specific numeric values approach are time-consuming and require staff with significant chemistry knowledge. The new evaluation process, which will be based on an assessment of facts prepared by the registrant, may include computer modeling that will require additional training for existing staff or the need for staff with other specialized knowledge."</i></p> <p>As stated in:</p> <p style="text-align: center;">NOTICE OF PROPOSED RULEMAKING TITLE 18. ENVIRONMENTAL QUALITY CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY PESTICIDES AND WATER POLLUTION CONTROL 04/01/2005.</p> <p><u>Response 1:</u> While R18-6-103B was proposed in the 2005 rulemaking, it was ultimately not pursued. In fact, R18-6-103B does not exist in the rules.</p>
R18-6-106	<p><u>Criticism 1:</u> The Department received a criticism of the rule, stating that at R18-6-106(D) effectively grants a monopoly to the data generator, irrespective of the data reliance and compensation provisions detailed in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that Congress enacted to encourage competition in pesticide markets. Additionally, it raises question as to consistency with the Arizona Revised Statutes regarding Uniform State Antitrust Act (Title 44, Chapter 10, Article 1, 44-1402).</p> <p><u>Response 1:</u> ADEQ's pesticide program has received complaints from companies in possession of the Subsection (A)(2)(b)(ii) data, stating that the Department approved pesticide products for companies based on CA DPR approval in Subsection (A)(2)(b) for which the data on file with CA DPR was not owned by the applicant. In order to protect the ownership rights of the (A)(2)(b)(ii) data, ADEQ no longer accepts a CA DPR approval as a basis for approving a registration application if the data is filed with CA DPR but is not owned by the applicant. Ultimately, the Department will not approve a formulator without the consent of the data owner for that active ingredient.</p>
	<p><u>Criticism 1:</u> The Department received a criticism of the rule, stating that the rules are clear, but very rigid which makes it difficult for companies to get products approved before being cleared to register them with the AZDA. The commenter continued, I would also like to point out that if an Active Ingredient (AI) is already approved for use by ADEQ and is listed in the pesticide active ingredient database as such, there should be no need for ADEQ to require further documentation or LOAs from the original data/studies owner listed in the database. If the AI is already approved for use by ADEQ, why would there be a need to go any further? Some of the data/study owners on that list are on the other side of the world and obtaining an unnecessary LOA may not even be possible. We have been given pushback from a certain member of your department on this recently, after he first declared the AI was not approved for use by ADEQ, which it was. It's listed on the approved pesticides database spreadsheet that he provided. This type of pushback</p>

General	<p>and unnecessary requirement is frustrating for companies trying to register products in AZ.</p> <p><u>Response 1:</u> Every time a company wants to register a new ag use pesticide product, the product has to be reviewed by ADEQ even if the active ingredient has been approved for use in another product earlier. One reason this needs to be done is for verification of the ownership of the data/studies for the AI or the consent of the data/studies owner for the use of the AI by the applicant in the new product. Regarding the specific instance referenced here, ADEQ is open to re-examining submittal information and correcting any alleged mistakes, if the new information proves material.</p> <p><u>Criticism 2:</u> The Department received a criticism of the rule, stating that the rule can be clear if someone has the time to read it and decipher it, a summary would be beneficial.</p> <p><u>Response 2:</u> The ADEQ pesticide program staff are available to discuss and clarify any issues that the regulated community finds unclear.</p> <p><u>Criticism 3:</u> The Department received a criticism of the rule, stating that unclear language is burdensome by definition. We encourage ADEQ to revise its rule language as recommended by Bayer and Western Plant Health Association.</p> <p><u>Response 3:</u> ADEQ has not received a direct comment from the Bayer and Western Plant Health Association outside of this forum. ADEQ assumes the stakeholder is referring to the R18-9-102(A)(2)(b)(ii) data.</p> <p>As noted in Response 1 to Criticisms on R18-9-102, ADEQ is looking into this issue to determine if practice, policy, or rule changes are necessary.</p> <p><u>Criticism 4:</u> The Department received a criticism of the rule, stating, our company has had cases where a product previously registered in AZ transferred to us as a new registrant with a new registration number requiring a new registration in AZ. Because of this transfer and even though the product was the same as has existed in AZ, the new registrant could not get the product registered again in AZ without going through the ADEQ evaluation. There should be a way to refer to the prior registration at Dept. of Ag. without ADEQ involvement.</p> <p><u>Response 4:</u> If sufficient information is provided to AZDA, showing the case discussed above, AZDA may decide to do without ADEQ's review and approval.</p> <p><u>Criticism 5:</u> The Department received a criticism of the rule, requesting ADEQ accept EPA labeled products without further testing or data submissions.</p> <p><u>Response 5:</u> ADEQ is governed by the Arizona Revised Statutes, Title 49, Chapter 2, Article 6 and the Arizona Administrative Code, Title 18, Chapter 6, which do not require ADEQ to accept EPA labeled products without further testing or data submissions.</p> <p><u>Criticism 6:</u> The Department received a criticism of the rule, citing confusion as to why every product application has to go through this unless it is a new active ingredient in the state. The data is the data regardless of how many different products are registered with the same active ingredient. Once it is on file that should suffice.</p> <p><u>Response 6:</u> Sometimes new information is found out regarding certain active ingredients, making the subject dynamic. An active ingredient (AI) that has been there for so many years and was not put on the groundwater protection list (GWPL) could, at any time, start</p>
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General	<p>showing up in the groundwater. Furthermore, new studies could show that an AI's mobility is higher than earlier thought or more persistent than earlier thought. Based on the new review, this AI could be added to the GWPL. A product can also be removed from the GWPL based on the new review. ADEQ is responsible for maintaining the AI database and the GWPL; therefore, ADEQ must be involved in the introduction of every new pesticide product.</p> <p>Criticism 7: The Department received a criticism of the rule, citing difficulty in finding a published ADEQ list of approved pesticide active ingredients. The following link is inactive: https://azdeq.gov/node/4677</p> <p>Response 7: When the department migrated to a new website, not all parts of the pesticide program were included. The new website is in need of guidance for applicants, an active ingredients spreadsheet, the groundwater protection list, and the annual report. This work is in progress and will likely be done by the end of the calendar year.</p> <p>Criticism 8: The Department received a criticism of the rule, stating that the Council of Producers & Distributors of Agrotechnology (CPDA) understands the current administration of this rule to create a lack of ability for companies to sell products even though such companies have gained an ability to sell products through negotiations and agreements with other registrants.</p> <p>Response 8: ADEQ is committed to providing excellent customer service along with pursuing its mission to protect human health and the environment. ADEQ welcomes specific feedback from CPDA as to how the program and the rule could function better.</p> <p>Criticism 9: The Department received a criticism of the rule, citing hardship in obtaining products with the Agricultural Use box registered. Why do we need all this extra data when it has already gone through EPA review?</p> <p>Response 9: ADEQ's rules were tailored for Arizona, whereas EPA review was created with the entire nation in mind. Unfortunately, both sets of regulation do not function the same, nor serve the exact same purpose.</p> <p>Criticism 10: The Department received a criticism of the rule, requesting ADEQ consider revising the AZDA pesticide registration application to include a checkbox with the question:</p> <p style="padding-left: 40px;"><i>Are the active ingredients in this/these product(s) listed in the ADEQ's database of active ingredients that are approved for use in AZ? If yes, you may submit this application at this time.</i></p> <p>This would save everyone a heck of a lot of time and headaches! Thank you!</p> <p>Response 10: ADEQ has no authority to revise the AZDA pesticide registration form. Please contact AZDA directly for inquiries directed at AZDA. Concerning ADEQ's pesticide registration application form, the Department understands the need for a new application form which will be more friendly, clear, and easy to follow. Prospective revisions include the different classifications of active ingredients (25(b) exempt, biopesticides, low risk active ingredients, being on the ADEQ approved list of active ingredients, and data ownership issues). ADEQ anticipates a new form being available in Spring 2021.</p>
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8. Economic, small business, and consumer impact comparison:

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2005. Since the 2005 rulemaking made major amendments, ADEQ had to estimate some of the future economic impacts. ADEQ discussed that the Groundwater Protection List would be reduced. The Groundwater Protection List went from 223 listed active ingredients in 2004, to 101 in the draft 2020 Groundwater Protection List. Narrowing the Groundwater Protection List enables ADEQ to focus its statewide groundwater and soil monitoring activities.

Costs to develop new analytical methods for testing pesticides were lower than predicted. The Arizona Department of Health Services (ADHS) did not have to develop new methods, but was able to use five existing approved methods used in testing safe drinking water. Also, with the new ADHS laboratory and more modern equipment, other existing methods became available.

ADEQ believes that the qualitative assessments of the economic impacts to the Chapter 6 rules were accurate. ADEQ believes that the Article's impact on the state's economy, small business and consumers has not changed since the effective date.

9. Has the agency received any business competitiveness analyses of the rules? Yes No x

No such analysis was submitted for any rule in this Article.

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
R18-6-101	<p><u>Proposed Course of Action:</u></p> <ul style="list-style-type: none">• Define: “environmental fate”. <p>ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the standing moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the Article’s use of the term “environmental fate” and determined the term is sufficiently self-explanatory and reads well in context. Furthermore, no criticisms asking for a definition of “environmental fate” were requested in the past five years. However, ADEQ acknowledges that defining “environmental fate” would likely clarify the concept for a person without a scientific background.</p>

	<p><u>Proposed Course of Action:</u></p> <ul style="list-style-type: none"> Include additional grounds for waiver under subsection (A)(3), such as the use of naturally occurring substances that control pests. <p>ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.</p>
R18-6-102	<p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the standing moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the waiver subsection of the rule and the 2015 proposal that stated the addition of a new waiver under subsection (A)(3) would make the rule more effective. ADEQ continues to agree that listing all available waivers would benefit applicants. Additional waivers would include FIFRA 25(B), biopesticides and minimum risk pesticides.</p>
	<p><u>Proposed Course of Action:</u></p> <ul style="list-style-type: none"> Further distinguish applicants to include distributors, or manufacturers of generic pesticide ingredients who have obtained their technical product from other sources different from the primary registrant. Require the formulators (or distributors and other entities) to submit evidence of the business relationship up front. Currently ADEQ contacts the sources provided by the formulator and if response is either negative or not forthcoming, then the formulator has to provide the additional documentation. <p>ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.</p>
R18-6-106	<p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the standing moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2015 proposal that stated the rule could be more effective if it further distinguished applicants to include distributors, or manufacturers of generic pesticide ingredients who have obtained their technical product from other sources different from the primary registrant. Also, the process and rule could be more effective and streamlined if it required the formulators (or distributors and other entities) to submit evidence of the business relationship up front.</p>
	<p><u>Proposed Course of Action:</u></p> <ul style="list-style-type: none"> Subsection E is no longer used and should be deleted. <p>ADEQ anticipates submitting the amendment to the Council by December 2018, pending the status of the rule moratorium.</p>
R18-6-301	<p><u>Completed:</u> No.</p>

	<p><u>Explanation:</u> Due to the standing moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2015 proposal that stated subsection E is no longer used and could be deleted. ADEQ determined that subsection (E) is needed as the public has the right to appeal listings on the Groundwater Protection List (GPL). However, the language could be amended to reflect the on-going and unconfined nature of this appeal right.</p>
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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 place a reasonable responsibility and cost on the regulated community. This includes paperwork and other compliance costs necessary to achieve the underlying regulatory and statutory objective of protecting groundwater.

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 1 and 3 rules do not have a corresponding federal law, but they are compatible with, and not more stringent than the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.).

13. 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. Also, these rules do not require issuance of a regulatory permit, license or agency authorization; although, ADEQ is required to make a determination on whether a pesticide has the potential to pollute groundwater in Arizona. ADEQ's determination process must be done on an individual basis in order to meet the applicable statutory requirements of A.R.S. § 49-302(A).

14. Proposed course of action

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, generally provide the necessary information for the regulated community. By January 2022, ADEQ plans to look into the issue identified in the criticisms for R18-6-102(A)(2)(b). As noted, stakeholder feedback and legal review are required. As part of the proposed stakeholder solicitation, ADEQ will determine if the proposed amendments from 2015 (R18-6-101, R18-6-102, R18-6-106 and R18-6-301(E)) are still necessary, could be eliminated or streamlined.

TITLE 18. ENVIRONMENTAL QUALITY**CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY
PESTICIDES AND WATER POLLUTION CONTROL****ARTICLE 1. NUMERIC VALUES AND INFORMATION
SUBMITTAL**

Article 1 consisting of Sections R18-6-101 through R18-6-105 adopted effective May 10, 1988.

Section

- R18-6-101. Definitions
- R18-6-102. Agricultural Use Pesticide Submittal Requirements
- R18-6-103. Agricultural Use Active Ingredient Evaluation
- R18-6-104. Monitoring and Testing
- R18-6-105. Repealed
- R18-6-106. Informational Requirements for a Pesticide Formulator

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION

Article 2 consisting of Section R18-6-201 repealed effective September 23, 1992 (Supp. 92-3).

Article 2 consisting of Section R18-6-201 adopted effective August 27, 1987.

Section

- R18-6-201. Repealed

ARTICLE 3. GROUNDWATER PROTECTION LIST

Article 3 consisting of Section R18-6-302 adopted effective May 10, 1988.

Section

- R18-6-301. Groundwater Protection List
- R18-6-302. Findings and Determinations
- R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

**ARTICLE 1. NUMERIC VALUES AND INFORMATION
SUBMITTAL****R18-6-101. Definitions**

In addition to the definitions established in A.R.S. § 49-301, the following terms apply to this Chapter:

1. “Agricultural use pesticide” means any pesticide intended for use directly on a crop. An agricultural use pesticide does not include animal pesticide eartags or pesticides intended solely for use within and around a confined structure.
2. “Crop” means any plant, animal, plant product, or animal product produced for commercial or research purposes.
3. “Data generator” means any person providing information to support the registration in this state of an agricultural use pesticide in accordance with A.R.S. § 49-302(A).
4. “EPA” means the United States Environmental Protection Agency.
5. “Formulator” means any person who purchases an EPA-registered pesticide to reformulate or repackage and register the pesticide for sale in this state.
6. “Label” means the written, printed, or graphic matter on, or attached to, the pesticide container, and the outside container or wrapper of the retail package, if any, of the pesticide.
7. “Pest” means any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria, or other pathogenic organism, or any other form of terrestrial or aquatic plant or animal life, except virus, bacteria, or other

microorganism on or in living humans or other living animals, that is declared a pest by the Director of the Arizona Department of Agriculture.

8. “Soil-applied” means an agricultural use pesticide intended for application to or injection into the soil by ground-based application equipment or chemigation, or the label of the pesticide requires or recommends that the application is followed within 72 hours by flood or furrow irrigation.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-102. Agricultural Use Pesticide Submittal Requirements

- A. Pre-registration data requirements for new agricultural use pesticides.
 1. Before registering a new agricultural use pesticide under A.R.S. § 3-351, an applicant shall submit information that enables the Department to determine whether the new agricultural use pesticide has the potential to pollute groundwater in the state. This information shall include:
 - a. A transmittal letter;
 - b. The following information on a Data Summary form obtained from the Department:
 - i. The company name and address;
 - ii. The name and contact information of the person making the submittal;
 - iii. The date of filing;
 - iv. The product information, including the brand name, EPA registration number, formulation category, and intended use; and
 - v. The active ingredient technical name, Chemical Abstract Service (CAS) number, common name, molecular weight, and bulk density; and
 - c. The following information for each active ingredient:
 - i. Water solubility;
 - ii. Vapor pressure;
 - iii. Octanol-water partition coefficient;
 - iv. Soil adsorption coefficient;
 - v. Henry’s law constant;
 - vi. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, performed under conditions in Arizona, or similar environmental and use conditions, if that information exists in studies and conclusions from other states or the United States government. The studies shall, at a minimum, meet EPA testing methods and reporting guidelines.
 2. The applicant may submit the following alternate information:
 - a. Upon Director approval, alternate information to satisfy one or more of the data requirements in subsection (A)(1)(c). The alternate information shall

- accurately describe the relevant data required for each new agricultural use pesticide active ingredient under conditions in Arizona or under similar environmental and use conditions;
- b. California registration.
- i. Evidence that the California Department of Food and Agriculture registered the agricultural use pesticide following the data requirements under California Food and Agricultural Code Section 13143; and
 - ii. Documentation showing that required studies were performed under environmental and use conditions that are similar to those conditions in Arizona.
3. Waiver. The Director may waive some or all of the information required in subsection (A)(1)(c) if the applicant demonstrates that:
- a. Due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results for the specified tests; or
 - b. Due to the application or cultural practices for the active ingredient, it is not necessary to obtain some or all of the information.
- B. Pre-registration data submittal completeness.**
1. The Department shall notify the Arizona Department of Agriculture when the applicant submits all the information on the active ingredient required under subsection (A) and the Director has concluded that the information is sufficient to determine whether the active ingredient has the potential to pollute groundwater of the state.
 2. If the Director cannot determine that the data submittal requirements for agricultural use registration in Arizona have been met, the person may apply for a conditional registration under A.R.S. § 49-310.
- C. Information submittal for the product chemistry and environmental fate assessment evaluation.** After satisfying the data submittal required in subsection (A) and registering the pesticide with the Arizona Department of Agriculture:
1. A registrant may prepare an assessment of the product chemistry and environmental fate parameters for the Department to evaluate the potential for a new agricultural use pesticide to pollute groundwater. The assessment shall include:
 - a. Patterns for using the agricultural use pesticide in Arizona;
 - b. Cultural practices for those areas within Arizona where the agricultural use pesticide is intended for use;
 - c. Geological and meteorological conditions of the regions within Arizona where the agricultural use pesticide is intended for use; and
 - d. Any other information the Director determines is necessary to support the assessment.
 2. A registrant may submit any of the following information if it is directly relevant to the agricultural use pesticide active ingredient evaluation:
 - a. Relevant scientific data and summaries, including those submitted to or required by federal and state agencies that further support the studies required in R18-6-102(A)(1)(c);
 - b. Relevant evaluations and conclusions by federal and state agencies, including evaluations of the studies required in R18-6-102(A)(1)(c);
- c. Documentation that addresses whether the studies required in R18-6-102(A)(1)(c) were performed under environmental and use conditions that are similar to those in Arizona.
- D. If new information is available about the active ingredient of an agricultural use pesticide currently registered by the Arizona Department of Agriculture, the Director may require the registrant to submit the new information to the Director to assess whether the information is relevant to the Director's determination under subsection (B)(1).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-103. Agricultural Use Active Ingredient Evaluation

For each new or existing agricultural use pesticide registered in Arizona, the Director shall determine whether each active ingredient has the potential to pollute groundwater in the state. The Director shall either:

1. Base the evaluation on the information submitted in accordance with R18-6-102(A) to determine whether the active ingredient fails any of the following mobility factors and one or more of the following persistence factors; or

SPECIFIC NUMERIC VALUES

<u>MOBILITY FACTORS</u>	<u>PERSISTENCE FACTORS</u>
Water solubility	No greater than 30 ppm
Soil adsorption coefficient	K_d no less than 5
Hydrolysis	Half-life no greater than 25 weeks
Aerobic soil metabolism	Half-life no greater than 3 weeks
Anaerobic soil metabolism	Half-life no greater than 3 weeks
Field dissipation	Half-life no greater than 3 weeks

2. Base the evaluation on the product chemistry and environmental fate assessment submitted in accordance with R18-6-102(C).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-104. Monitoring and Testing

- A. The Director shall conduct soil and groundwater monitoring for active ingredients contained in agricultural use pesticides placed upon the Groundwater Protection List as required under A.R.S. § 49-307(A). The Department may conduct soil and groundwater monitoring for other specified ingredients or degradation products based on active ingredient test results or other information about the pesticide.
- B. The Director shall use the results of soil and groundwater monitoring and testing after considering the factors in A.R.S. §§ 49-307(C) to make the determination in 49-308(A) and 49-309(A), (B), or (D).
- C. If the Director determines that an agricultural use pesticide meets the criteria or conditions specified in A.R.S. § 49-308(A), the Director shall notify the registrant in writing.

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Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-105. Repealed**Historical Note**

Adopted effective May 10, 1988 (Supp. 88-2). Section repealed by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-106. Informational Requirements for a Pesticide Formulator

- A. A pesticide formulator may rely upon the data generated by another person to meet the requirements in R18-6-102. The pesticide formulator shall submit, to the Department, the name of every person who is a source of each agricultural use pesticide active ingredient.
- B. The Department shall request that each person identified under subsection (A) verify within 30 days, in writing, whether the person provides the pesticide formulator with the active ingredient in question.
- C. If a person advises the Department that the person is not a source for the active ingredient used by the pesticide formulator or if the person does not respond under subsection (B), the Department shall notify the pesticide formulator of that fact and shall require the pesticide formulator to provide either of the following documents attesting to a business relationship involving the active ingredient in question:
 - 1. A signed contract, or
 - 2. Any other documentation of a business arrangement, endorsed by each party.
- D. If the pesticide formulator does not produce acceptable documentation of a business relationship under subsection (C) or if a person identified by the pesticide formulator is not a data generator for the active ingredient in question, the Director shall find that a groundwater protection data gap exists for the agricultural use pesticide, and the formulator is subject to the provisions in A.R.S. § 49-304.
- E. Any pesticide formulator who relies on data submitted by a person identified as a source under subsection (A) shall notify the Department of any change in the source within 60 days of a similar notification to the EPA.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION**R18-6-201. Repealed****Historical Note**

Adopted effective August 27, 1987 (Supp. 87-3). Repealed effective September 23, 1992 (Supp. 92-3).

ARTICLE 3. GROUNDWATER PROTECTION LIST**R18-6-301. Groundwater Protection List**

- A. Groundwater Protection List. The Director shall, using an evaluation process specified in R18-6-103 and the addition and deletion criteria specified in subsections (B) and (C), annually develop and maintain a list of agricultural use pesticides that have the potential to pollute groundwater.
 - 1. The Department shall publish the proposed Groundwater Protection List in the *Arizona Administrative Register* and accept written comments from the public.

- 2. The written public comment period begins on the publication date of the list and extends for 30 calendar days.

- 3. The Department shall publish the final Groundwater Protection List each year in the *Arizona Administrative Register* on or before July 1. The list is effective on December 1 of the publication year.

- B. Adding an agricultural use pesticide. The Director shall add an agricultural use pesticide to the Groundwater Protection List for any of the following reasons:

- 1. An agricultural use pesticide active ingredient is identified under R18-6-103 as having the potential to pollute groundwater;
- 2. An agricultural use pesticide active ingredient is detected in Arizona consistent with the testing requirements of R18-6-104 and is found:
 - a. At or below the deepest of the following depths:
 - i. Eight feet below the soil surface, or
 - ii. Below the root zone of the crop where the active ingredient was found;
 - b. In the groundwater of this state;

- 3. An agricultural use pesticide degradation product or other specified ingredient that poses a threat to public health has been found under the conditions described in subsection (B)(2).

- C. Deleting an agricultural use pesticide. The Director shall delete an agricultural use pesticide from the Groundwater Protection List under any of the following circumstances:

- 1. The results of monitoring and testing conducted by the Department, a government agency, or other reliable source establish that the active ingredient has not been detected in Arizona under the conditions described in subsection (B)(2).

- 2. The Director no longer considers the agricultural use pesticide to have the potential to pollute groundwater in Arizona based on:
 - a. A change in a specific numeric value established in R18-6-103(1),
 - b. A revision in the specific numeric values established by new research studies or new procedures, or
 - c. The results of the evaluation under R18-6-103(2).

- 3. Agricultural use pesticide registration cancellation. The Arizona Department of Agriculture no longer registers the agricultural use pesticide under A.R.S. § 3-351(I).

- D. Pesticide review. Any person may request that the Director add or delete an agricultural use pesticide from the Groundwater Protection List by submitting an explanation of the request to the Department with studies and conclusions of support.

- 1. The Director shall notify the registrant in writing after receiving a request to add or delete an agricultural use pesticide from the Groundwater Protection List and again upon making the determination.

- 2. The Director shall consider whether the supporting documentation:

- a. Is based upon procedures consistent with those described in R18-6-104 and A.R.S. Title 49, Chapter 2, Article 6; and

- b. Justifies the addition or deletion of the agricultural use pesticide from the Groundwater Protection List.

- 3. Director determination.

- a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the Director shall add the pesticide to, or retain the pesticide on, the Groundwater Protection List.

- b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall, if the pesticide is on the Groundwater Protection List, delete it from the list.
- E. Reevaluation of an agricultural use pesticide. A registrant may request that the Director reevaluate whether an agricultural use pesticide placed on the Groundwater Protection List before [effective date of this Section] that has the potential to pollute groundwater in Arizona. The registrant shall submit the written request before December 1, 2005 and include the assessment and supporting documentation specified in R18-6-102(C).
 - 1. The Director shall not accept a request to reevaluate an agricultural use pesticide if:
 - a. An active ingredient has been detected in Arizona using the testing criteria in R18-6-104 and is found under conditions described in subsection (B)(2); or
 - b. An agricultural use pesticide degradation product or other specified ingredient relating to the agricultural use pesticide has been detected in Arizona consistent with the criteria in R18-6-104 and the agricultural use pesticide degradation product or other specified ingredient poses a threat to public health and has been found under the conditions described in subsection (B)(2);
 - 2. Director determination.
 - a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the pesticide shall remain on the Groundwater Protection List.
 - b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall delete the pesticide from the Groundwater Protection List.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3).
 Amended by final rulemaking at 11 A.A.R. 3949,
 effective November 22, 2005 (Supp. 05-3).

R18-6-302. Findings and Determinations

- A. If the Director discovers or becomes aware of the illegal sale or use of any agricultural use pesticide on the Groundwater Protection List, the Director shall report the sale or use to the appropriate regulatory agency and to the Office of the Attorney General.
- B. If the Director finds that an active ingredient, degradation product, or other specified ingredient of an agricultural use pesticide has been detected under the conditions specified in R18-6-104, the Director shall refer these findings to the state or federal agency responsible for further investigation and enforcement.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

- A. Any person who causes another person to soil-apply an agricultural use pesticide on the Groundwater Protection List shall implement Best Management Practices to reduce or prevent the pollution of groundwater. In implementing the Best Management Practices, the person shall consider the following factors:
 - 1. Application site characteristics, including soil texture, slope, organic matter, and depth to groundwater to determine site susceptibility. The person shall consider:
 - a. Selecting a pesticide based on the intended application site characteristics;
 - b. Minimizing or avoiding the use of any pesticide with high leaching or high runoff potential;
 - c. Incorporating erosion control practices to minimize runoff; and
 - d. Using an alternative pest control method, if practical.
 - 2. Protection of water resources from potential contamination during mixing, loading, or application. The person shall consider:
 - a. Applying the correct amount of pesticide according to the label and employ methods that avoid overspray or drift;
 - b. Weather patterns, soil moisture, and crop needs before pesticide application; and
 - c. Maintaining buffer zones, where applicable.
- B. The Director shall annually obtain the following information from the Arizona Department of Agriculture for each agricultural use pesticide on the Groundwater Protection List that is soil-applied:
 - 1. The pest condition that the agricultural use pesticide will control;
 - 2. The name of the crop and number of acres to which the agricultural use pesticide has been applied;
 - 3. The location of use including the county, township, range, and section;
 - 4. The name of the product used, including the EPA registration number; and
 - 5. The amount of agricultural use pesticide applied per acre.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3).
 Amended by final rulemaking at 11 A.A.R. 3949,
 effective November 22, 2005 (Supp. 05-3).

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.

49-203. 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.

49-302. Information submittal

A. An applicant shall submit to the director information that enables the department of environmental quality to determine whether a pesticide has the potential to pollute the groundwater in this state. This information shall include all of the following information for each active ingredient in the pesticide intended for registration with the Arizona department of agriculture:

1. Water solubility.
2. Vapor pressure.
3. Octanol-water partition coefficient.
4. Soil adsorption coefficient.
5. Henry's law constant.
6. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under conditions in this state or similar environmental use conditions, if that information exists in studies and conclusions from other states or the United States government.
7. The director may by rule require additional information that is required by the United States environmental protection agency for environmental fate parameters necessary to gain full registration under federal law.

B. The director may also require the information prescribed in subsection A for other specified ingredients and degradation products of an active ingredient in any pesticide, and all information submitted shall comply with subsection C. Any studies submitted pursuant to this subsection shall meet the same testing methods required for studies conducted on active ingredients. The director may also require testing protocols that are specific or adaptable to soil and climatic conditions in this state.

C. Information submitted pursuant to subsection A shall comply with all of the following:

1. Information shall be presented in English and summarized in tabular form with the actual studies, including methods and protocols, attached.
2. All information and studies concerning product chemistry and environmental fate shall at a minimum meet the testing methods and reporting guidelines established by the United States environmental protection agency.
3. With approval from the director, applicants may use specified alternative protocols as permitted by the United States environmental protection agency guidelines if the director finds use of the protocol is consistent with and accomplishes the objective of this article as stated in subsection A.
4. The director may accept information, studies and conclusions from other states and the federal government if the director finds them to be derived from standard protocol procedures consistent with the objective of this article as stated in subsection A.

D. The director may waive any information required by subsection A if the director determines that the applicant has demonstrated either of the following:

1. That due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results in the test or tests required to obtain the particular information for which a waiver is sought.
2. That due to the application or cultural practices for the active ingredient, it is not necessary to obtain the particular information for which a waiver is sought.

E. On approval of the director, an applicant may submit alternative information to satisfy a data requirement of subsection A. This alternative information shall accurately describe the relevant data requirement for each active ingredient of the pesticide under conditions in this state or under similar environmental use conditions.

F. Information requirements that the director waives pursuant to subsection D shall not constitute a groundwater protection data gap.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:

1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.
2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.
3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.
2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:
 - (a) Water solubility or soil adsorption coefficient.
 - (b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.
3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.
4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-305. Groundwater protection list; regulation of pesticides on list

- A. The director shall establish a groundwater protection list of pesticides that have the potential to pollute groundwater. The director shall immediately place all pesticides identified in section 49-303, subsection C, paragraphs 2 and 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended for application to or injection into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section.
- B. On notice from the director, a person who uses a pesticide on the groundwater protection list is required to report the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established by the Arizona department of agriculture for reporting custom applications.
- C. If a pesticide has not been detected in groundwater anywhere in this state in tests conducted by a governmental agency or other reliable source, the director may remove that pesticide from the groundwater protection list as provided in rule.

49-307. Monitoring and testing

- A. In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to section 49-303, subsection C, paragraphs 2 and 3 and those pesticides whose continued use is allowed pursuant to section 49-309 and to determine if these pesticides have migrated into groundwaters of this state, the director shall conduct soil and groundwater monitoring statewide in areas of this state where the pesticide is primarily used or where other factors identified pursuant to section 49-302, including physicochemical characteristics and use practices of pesticides, indicate a probability that the pesticide may migrate into the groundwaters of this state. The monitoring shall begin within one year after the pesticide is placed on the groundwater protection list and shall be conducted according to standard protocol and testing procedures established pursuant to subsection B of this section. Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate activities with other agencies that conduct soil and groundwater monitoring.
- B. Within ninety days after a pesticide is placed on the groundwater protection list pursuant to section 49-305, the director, in consultation with the department of health services, shall expeditiously develop a standard protocol and testing procedure for each pesticide identified pursuant to section 49-305.
- C. The director shall determine the probable source of the pesticides, specified ingredients or degradation products. The analysis of the pesticides, specified ingredients or degradation products shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of applying the pesticide, irrigation practices related to use of the pesticide and types of soil in areas where the pesticide is applied.
- D. The director shall report all monitoring results to the Arizona department of agriculture.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9, Article 2, Aquifer Protection Permits



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 9, 2021

SUBJECT: **Department of Environmental Quality**
Title 18, Chapter 9, Article 2

This Five-Year-Review Report from the Department of Environmental Quality relates to rules in Title 18, Chapter 9, Article 2, regarding Aquifer Protection Permits and Individual Permits. The purpose of these rules is to protect groundwater quality.

In the last 5YRR the Department proposed to amend several of its rules to improve overall clarity, conciseness, understandability, and effectiveness by December 2018. The Department indicates they did not complete their proposed course of action due to the ongoing rule moratorium and other agency priorities. Lastly, the Department indicates they would prefer to amend all of the rules in the Article all together, as opposed to piecemeal.

Proposed Action

While the Department identified rules that need to be amended to improve overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes, DEQ is not proposing a specific course of action at this time.

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

Yes, the Department cites both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department described probable economic impacts in qualitative terms in the economic impact statement prepared when the rules were last amended in November 2005. The Department believes that the qualitative assessments of the economic impacts of the rules remain accurate. The Department believes that the Article 2 rules impact on the state's economy, small business, and consumers has not changed since the November 2005 effective date. Approximately 507 facilities have individual Aquifer Protection Permits (APPs).

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, while still achieving the underlying regulatory and statutory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates they received written criticisms and adequately responded.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are clear, concise, and understandable.

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 with the exception of the following:

R18-9-A201 - Individual Permit Application

R18-9-A203 - Financial Requirements

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

R18-9-A210 - Temporary Individual Permit

R18-9-A211 - Permit Amendments

R18-9-A213 - Permit Suspension, Revocation, Denial, or Termination

R18-9-B201 - General Considerations and Prohibitions

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?

Not applicable. There are no 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 Department indicates rules were adopted before July 29, 2010.

11. Conclusion

As mentioned above, while the Department has identified rules that need to be amended to improve overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes, they are currently not proposing a course of action at this time.

Council staff notes that many of the issues identified in this 5YRR potentially qualify for expedited rulemaking pursuant to A.R.S. § 41-1027. Additionally, DEQ indicated it would amend these rules in its 2016 5YRR, but did not complete the changes. Therefore, Council staff recommends that the Council discuss with the Department whether they can revise the rules under review and come up with a reasonable proposed course of action timeframe.



ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor



Misael Cabrera
Director

Jan 20, 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 6, Articles 1 and 3 and A.A.C. Title 18, Chapter 9, Article 2

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 Title 18, Chapter 6, Articles 1 and 3, Pesticides and Water Pollution Control. Also included in this submission is a 5-Year Review Report for Title 18, Chapter 9, Article 2, Aquifer Protection Permits – Individual Permits.

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,

A handwritten signature in black ink, appearing to read "Misael Cabrera".

Misael Cabrera
Director
Arizona Department of Environmental Quality

Enclosure

Arizona Department of Environmental Quality

Five-Year-Review Report

Title 18. Environmental Quality

Chapter 9. Department of Environmental Quality – Water Pollution Control

Article 2. Aquifer Protection Permits - Individual Permits

January 28, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 49-104 (B)(13), 49-203(A)(4), (A)(7), (A)(10), (A)(11)

Specific Statutory Authority: A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. The objective of each rule:

The purpose of these rules is to protect groundwater quality. The Aquifer Protection Permit (APP) Program is the Arizona Department of Environmental Quality's (ADEQ) keystone program for protecting groundwater quality (Arizona Revised Statutes Title 49, Chapter 2, Article 3, Aquifer Protection Permits). An APP is required for a facility that discharges a pollutant either directly to an aquifer, to the land surface, or the vadose zone (the area between an aquifer and the land surface) in such a manner that there is a reasonable probability that the pollutant will reach an aquifer. ADEQ issues both general and individual APPs. Unless exempted by statute or covered by a general permit, every discharging facility, as defined in Arizona Revised Statutes § 49-241, must apply for an individual APP.

Rule	Objective
R18-9-A201	This rule explains the individual APP application process, including permit duration and permit issuance or denial. The standard for permit issuance is that the application must demonstrate compliance with the statutory and regulatory requirements of the Aquifer Protection Program.
R18-9-A202	This rule provides the specifics on what technical information an applicant for an APP must submit, including as-built designs of the facility, chemical information on the facility discharge, a description of the BADCT that will be used to achieve the greatest degree of discharge reduction, and a hydrogeologic study.
R18-9-A203	The rule informs applicants of the documentation necessary to demonstrate financial assurance.
R18-9-A204	This rule specifies the requirements of the contingency plan required in R18-9-A202(A)(7) to address discharges that result in violations of applicable permit conditions or present an imminent and substantial endangerment to the public health or environment. This Section lists a number of actions the contingency plan may include (depending upon specific site conditions), such as sampling or preparing a hydrogeologic study to assess the soil or water impact. Corrective action is a possible action but ADEQ must first approve any proposed corrective action.
R18-9-A205	This rule describes alert levels, discharge limitations, and aquifer quality limits.

R18-9-A206	This rule explains when ADEQ will require monitoring as an APP condition and establishes recordkeeping requirements. Monitoring records must be kept for at least ten years following the date of the monitoring.
R18-9-A207	This rule establishes that a permittee must notify ADEQ of a violation of a permit condition or an alert level being exceeded and must later submit a written report including the information specified in this Section. The permittee also must notify ADEQ if it files for bankruptcy or is subject to an environmental protection-related order or judgment.
R18-9-A208	This rule explains the permittee's responsibility under a compliance schedule, and the factors ADEQ considers in setting compliance schedule requirements. The compliance schedule cannot be used to defer BADCT requirements for a new facility.
R18-9-A209	The rule ensures that a facility does not continue to discharge pollutants even after it has ceased to operate as required under A.R.S. § 49-252, with the ideal outcome being clean closure, as defined in A.R.S. § 49-201(5). It explains the process for review of closure plans, closure, and post-closure requirements, and it requires the permittee to submit proposed measures for temporary cessation for ADEQ's approval prior to implementation. Even if the facility ceases discharging, it may still be necessary to monitor for some period of time.
R18-9-A210	This rule allows ADEQ to issue a temporary APP for a pilot project to develop data for an APP application for the full-scale project, or a facility with a discharge lasting no more than six months. This Section explains what information the applicant needs to submit and the level of public participation required. A temporary APP expires after one year and may be renewed for one additional year.
R18-9-A211	This rule classifies APP amendments as significant, minor, and other permit amendments, and lists examples of each classification. The classification affects the level of public notice required. The Section also prohibits an amendment with a lesser level of treatment technology than established in the individual APP previously issued, unless one of the listed criteria exists.
R18-9-A212	The rule informs permittees and potential permittees of their responsibilities when transferring ownership of a facility operating under an APP, operating under a Groundwater Quality Protection Permit or a Notice of Disposal, or when they have applied for an APP before December 27, 1989.
R18-9-A213	This rule lists the reasons ADEQ may suspend or revoke an individual permit, or deny an individual permit application. Under subsection (C), ADEQ will terminate a permit if each facility covered under the individual permit has been closed and ADEQ issues a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii), or if the facility is covered under another APP.
R18-9-A214	This rule describes the process for a person to request substitute coverage under a general permit for a facility covered under an individual permit. ADEQ first must determine that the discharge from the facility is covered under an existing general permit.
R18-9-B201	The rule informs owners or operators of sewage treatment facilities of the general considerations and prohibitions. The general considerations include references to other governing rules.
R18-9-B202	This rule informs applicants of the requirements for a design report which satisfies part of the technical requirements under R18-9-A202(A)(3).
R18-9-B203	This rule informs applicants when engineering plans and specifications satisfy part of the technical requirements under R18-9-A202(A)(3) and must be submitted for a sewage treatment facility with a design flow under one million gallons per days, will be required.
R18-9-B204	This rule informs the owner or operator of a new sewage treatment facility of the statutory and regulatory performance requirements.
R18-9-B205	This rule informs owners or operators of an existing sewage treatment facility of the requirements for treatment performance.

R18-9-B206	This rule informs owners and operators of an existing sewage treatment facility on what constitutes a major modification that requires compliance with new facility BADCT requirements. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).
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3. Are the rules effective in achieving their objectives?

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.

The rules are effective except as explained below.

Rule	Explanation
R18-9-A213	The rule effectively achieves its objective of informing applicants and permittees of the basis ADEQ will use to suspend or revoke an individual permit, or deny an individual permit application. The rule could be more effective without the incorrect citation in subsection (C)(1); the citation to R18-9-A209(B)(3)(a)(ii) should be R18-9-A209(B)(4)(a)(ii).

4. Are the rules consistent with other rules and statutes?

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.

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.

6. Are the rules clear, concise, and understandable?

Yes x No

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.

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	Explanation
	<p><u>Criticism 1:</u> The Department received the following criticism, stating R18-9-B201(I) should be revised to allow the permittee to show that components of a treatment facility are not odor-generating by analogy with other operating facilities or by monitoring.</p> <p><u>Response 1:</u> The setback requirements are based on design flow of the facility, and allow for both no odor and full odor control. Additionally, the rule allows for decreased setbacks through waivers and local ordinances. It is unclear what the commenter means by “analogy with other operating facilities” and these other facilities must currently</p>

R18-9-B201	comply with the same odor control requirements, given similar design flow and odor control devices, and possibly could obtain facility specific waivers and local ordinances that would not be analogous. With regard to monitoring, setting regulating odor control thresholds and monitoring requirements is a possibility but would be difficult to implement. It would require a great deal of research, and would have to account for many variables such as atmospheric conditions, (inversions, wind direction, speed, etc.) and the range of human sensitivity to odors induced by specific compounds (hydrogen sulfide, skatole, mercaptans ect.). The existing setbacks are a simple solution.
R18-9-A203 & A204	<p><u>Criticism 1:</u> The Department received the following criticism, stating that at R18-9-A203 & A204, the rule should make it clear that amendments to permits do not require an update of financial assurance or contingency plans unless these are substantially changed by the permit amendment or they are more than 10 years out of date.</p> <p><u>Response 1:</u> ADEQ disagrees with the recommendation of the commenter. Amendments are addressed in R18-9-A203(F) and R18-9-A211. Contingency plans are addressed in R18-9-A204(G), requiring an update to the plan upon any change to the information contained in the original plan. Arizona Revised Statutes, §49-243(N)(2)(a) & (b) require updates to financial assurance throughout the duration of the permit and for a significant amendment, but not more than once every five years. Currently, ADEQ has a policy that adheres to statute and bases the financial assurance update frequency on the type of financial assurance mechanism.</p>
R18-9-A209	<p><u>Criticism 1:</u> The Department received the following criticism, stating that the closure plan section mixes procedure and process, rendering the rule unclear.</p> <p><u>Response 1:</u> ADEQ is available for technical assistance for any specific questions. Since the rule as written does function as designed, no changes are planned at this time.</p>
R18-9-A211(C) & (D)	<p><u>Criticism 1:</u> The Department received the following criticism, stating that the following items from R18-9-A211(D) should be moved to R18-9-A211(C): e) replacement of monitoring equipment that results in equal or greater monitoring effectiveness; g) an adjustment of the permit to conform to changed rule or statutory provisions; h) calculation of an alert level, AQL, or other permit limit based on monitoring subsequent to permit issuance; k) adjustment or incorporation of monitoring requirements for Reclaimed Water Quality Standards.</p> <p><u>Response 1:</u> ADEQ does not agree that the list of amendments should be moved from the “Other” category to the “Minor” category. Minor amendments are those that are administrative in nature and do not require technical review by the agency. The commenter’s statement suggests placing amendments that require varying degrees of technical review by the agency into the minor amendment category. This would change the meaning of the distinction between the types of amendments, which ADEQ does not intend to do at this time.</p>
General	<p><u>Criticism 1:</u> The Department received the following criticism, stating that for developers and investors, the least possible burden is to let them build at any cost; which is wrong. No building should take precedence over water. Water is precious in an arid state; crucial to survival.</p> <p><u>Response 1:</u> The rules in A.A.C. R18-9 Article 2 are designed to allow for economic growth while simultaneously protecting the environment and Arizona’s water supplies.</p> <p><u>Criticism 2:</u> The Department received the following criticism, stating that the rule seems to entail too many requirements, including a hydrogeologic study as part of a contingency plan. The costs of the requirements also seem high.</p>

	<p><u>Response 2:</u> The rules requiring a contingency plan do not require hydrogeologic studies. Furthermore, A.A.C. R18-9-A202(A)(8) allows ADEQ discretion, based on a number of criteria, in deciding whether a hydrogeologic study is required, and if so, whether an abbreviated study is appropriate.</p>
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8. Economic, small business, and consumer impact comparison:

ADEQ described probable economic impacts in qualitative terms in the economic impact statement prepared when the rules were last amended in November 2005. ADEQ believes that the qualitative assessments of the economic impacts of the rules remain accurate. ADEQ believes that the Article 2 rules impact on the state's economy, small business, and consumers has not changed since the November 2005 effective date.

Approximately 507 facilities have individual APPs.

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.

In the previous Five-Year Review Report, approved by Council on January 5, 2016, ADEQ proposed submission of amendments to some sections in Article 2 (R18-9-A201, A203, A209, A210, A211, A213 and B201) by December 2018. ADEQ did not complete these actions due to the continued moratorium on rule making. Furthermore, the Department did not make a request for an exception to the rule moratorium as it did not see that all the proposed amendments would clearly qualify under the existing or previous executive orders.

Also, the Department must balance priority and capacity in triaging its resources. With this in mind, the minor suggested rulemakings above would not have a significant impact to ADEQ's mission; to protect human health and the environment. Therefore, their priority is set accordingly.

Lastly, due to the interrelated nature of this rule set, ADEQ would prefer to amend all of the rules in the Article together, as opposed to piecemeal.

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

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)?

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 rules in Article 2 govern the procedures and requirements for ADEQ to issue an individual permit. ADEQ issues general permits for the Aquifer Protection Permit; the rules governing general permits are in Article 3 and 4, as explained above in Part I.

14. Proposed course of action

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. Identified potential rulemakings could be made when the agency determines through strategic planning and consideration of priorities and resources that the time is right to open the rules consistent with Executive Order 2020-02.

However, at this time, there is no proposed course of action.

Arizona Administrative CODE

18 A.A.C. 9 Supp. 19-3

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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



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*.

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Questions about these rules? Contact:

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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.



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18 A.A.C. 9

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

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

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ARTICLE 6. REPEALED

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

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

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

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

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ARTICLE 8. REPEALED

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
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**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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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).

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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 pre-treatment 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 (PL. 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.

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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:

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- 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. 94-580; 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:

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- 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

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- 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-

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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;

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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-

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- 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

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- 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),

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- 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

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- 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;
- C. 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

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final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A205. Alert Levels, Discharge Limitations, and AQMs
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. AQMs. The Department may prescribe an AQL in an individual permit to ensure that the facility continues to meet the criteria under A.R.S. § 49-243(B)(2) or (3).

1. If the concentration of a pollutant in the aquifer does not exceed the Aquifer Water Quality Standard, the Department shall set the AQL at the Aquifer Water Quality Standard.
2. If the concentration of a pollutant in the aquifer exceeds the Aquifer Water Quality Standard, the Department shall set the AQL higher than the Aquifer Water Quality Standard.

Historical Note

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

R18-9-A206. Monitoring Requirements
A. Monitoring.

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

B. Recordkeeping.

1. A permittee shall make a monitoring record for each sample taken as required by the individual permit consisting of all of the following:
 - a. The date, time, and exact place of a sampling and the name of each individual who performed the sampling;
 - b. The procedures used to collect the sample;
 - c. The date sample analysis was completed;
 - d. The name of each individual or laboratory performing the analysis;

- e. The analytical techniques or methods used to perform the sampling and analysis;
- f. The chain of custody records; and
- g. Any field notes relating to the information described in subsections (B)(1)(a) through (f).

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

Historical Note

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

R18-9-A207. Reporting Requirements
A. A permittee shall notify the Department within five days after becoming aware of a violation of a permit condition or that an alert level was exceeded. The permittee shall inform the Department whether the contingency plan described in R18-9-A204 was implemented.

B. In addition to the requirements in subsection (A), a permittee shall submit a written report to the Department within 30 days after the permittee becomes aware of a violation of a permit condition. The report shall contain:

1. A description of the violation and its cause;
2. The period of violation, including exact date and time, if known, and the anticipated time period the violation is expected to continue;
3. Any action taken or planned to mitigate the effects of the violation or to eliminate or prevent recurrence of the violation;
4. Any monitoring activity or other information that indicates that a pollutant is expected to cause a violation of an Aquifer Water Quality Standard; and
5. Any malfunction or failure of a pollution control device or other equipment or process.

C. A permittee shall notify the Department within five days after the occurrence of any of the following:

1. The permittee's filing of bankruptcy, or
2. The entry of any order or judgment not issued by the Director against the permittee for the enforcement of any federal or state environmental protection statute or rule.

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

Historical Note

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

R18-9-A208. Compliance Schedule
A. A permittee shall follow the compliance schedule established in the individual permit.

1. If a compliance schedule provides that an action is required more than one year after the date of permit issuance,

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- 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 permitted 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

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- 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);	

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- 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 BACT 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 BACT 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 BACT is appropriate;
 2. The pollutant load has decreased or the pollutant composition has changed significantly to warrant a new assessment of the BACT;
 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.

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- 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.

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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).

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 pre-operational 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

Historical Note

New Section adopted by final rulemaking at 7 A.A.R.

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- 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-

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- 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:

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- 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-

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- 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

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- 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:

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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 practical 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
 - 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

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- 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

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- (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

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- 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

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- 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:

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- 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; consistency; 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;

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- 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

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- 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 $P = (15 / DS) \times IS$ 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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).
- G. 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.
- H. 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).
- I. 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:

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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: <ol style="list-style-type: none"> 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.

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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 b. Trench, bed, chamber technology, or gravel-less trench with: i. No limiting subsurface condition specified in R18-9-A310(D)(2), ii. A limiting subsurface condition. c. Subsurface drip lines.	10 20 50 3	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface. 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. 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.

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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

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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

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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 (Log₁₀ 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 (Log₁₀ 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.

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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 ($\text{Log}_{10}6$) 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

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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 invert;
 - 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

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- 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 amend-
- ments 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:

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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 require-

ments 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:
- Permanent surface markers for locating the septic tank access openings are provided for maintenance;
 - A septic tank installed under concrete or pavement has the required access openings extended to grade;
 - A septic tank effluent filter is installed on the septic tank. The filter shall:
 - Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
 - 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
 - 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.
 - 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:
 - After 24 hours, the tank is refilled to the invert, if necessary;
 - The initial water level and time is recorded; and
 - After one hour, water level and time is recorded.
 - 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:
- 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;
 - 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;
 - 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;

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- 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

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- 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.
- 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

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- 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;
- 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;

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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

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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 off-site 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

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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;

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- 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;

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- 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;
 - 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.

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- 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

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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;
- E. 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.
- F. 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

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- 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

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- 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 unau-thorized 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/ft³), 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,

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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 overtapped 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:

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- 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

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- 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 C₁₀ through C₃₂ hydrocarbons using a Department of Health Services certified method.
 2. If pH is not between 6.0 and 9.0 or the concentration of C₁₀ through C₃₂ hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitoring, 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.

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- 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.

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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

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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;

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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,

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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 = $17 d.u.^{0.42}$, 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/www/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;

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- 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 |

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| 18 to less than 36 | 600 | (2) Where the words "pipe" or "pipeline" are used, use the word "manhole" instead. |
| 36 to less than 60 | 800 | 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. |
| 60 or greater | 1300 | 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. |
- 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
- 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.
- 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;

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- 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

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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. BOD₅ 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 ($\text{Log}_{10} 8$) 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 invert 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

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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;

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- 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 with 18 A.A.C. 9, Article 7; and
- B.** Restrictions.
 - b. Soil conditions support subsurface disposal of all wastewater sources.
- 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;

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3. The capacity of the chamber and rate of composting are calculated based on:
- The lowest monthly average chamber temperature; or
 - 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.**
- Interceptor.** An applicant shall ensure that the design complies with the following:
 - Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
 - 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;
 - The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
 - Minimum interceptor size is based on design flow.
 - 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

- 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 trench or bed is used to disperse the wastewater into the subsurface;
 - 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);

- The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
- 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:

- Composting toilet.**
 - Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
 - Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
 - Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
 - If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
 - 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;
 - Ensure that any liquid end product is:
 - Sprayed back onto the composting waste material;
 - Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
 - Is drained to the interceptor described in subsection (F);
 - 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;
 - 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
 - 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;
- Wastewater Disposal Works.**
 - 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
 - Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.
- Reference design.**
 - 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.
 - The applicant shall file a form provided by the Department for supplemental information about the proposed

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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;

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- 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. BOD₅ 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 ($\text{Log}_{10} 8$) 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

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- 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 D₅₀ 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

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- 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 D₅₀ 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 |

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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. BOD₅ 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. BOD₅ 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

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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);

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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. BOD₅ 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 ($\text{Log}_{10} 6$) colony forming units per 100 milliliters, 95th percentile;
 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.

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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 ($\text{Log}_{10} 3$) 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 ($\text{Log}_{10} 5$ 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,

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- 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. BOD₅ 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 ($\text{Log}_{10} 5$) 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. Scourify 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

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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. BOD₅ 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.”

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- 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. BOD₅ 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 (Log₁₀ 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. BOD₅ of 30 milligrams per liter, 30-day arithmetic mean;

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- 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 ($\text{Log}_{10} 5.5$) 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 ($\text{Log}_{10} 7$) 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 ($\text{Log}_{10} 6$) 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;

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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 nitrate-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. BOD₅ 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

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- 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. BOD₅ of 20 milligrams per liter, 30-day arithmetic mean;
 3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
- 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

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. BOD₅ 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

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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 fil-

ter 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:

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pH of Waste-water (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. BOD₅ 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 Log₁₀ 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,

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- 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. BOD₅ 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. BOD₅ 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 ($\text{Log}_{10} 5.5$) 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

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- 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

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- 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

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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	Camping unit	30
Campground, overnight, flush toilets	Camping unit	75
Campground, overnight, flush toilets and shower	Camping unit	150
Campground, luxury	Person	100-150
Camp, youth, summer, or seasonal	Person	50
Church		
Without kitchen	Person (maximum attendance)	5
With kitchen	Person (maximum attendance)	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	Apartment	200
2 bedroom	Apartment	300
3 bedroom	Apartment	400
4 bedroom	Apartment	500
Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction)	Resident	100
Single Family Dwellings	see R18-9-A314(D)(1)	see R18-9-A314(D)(1)
Other than Single Family Dwelling, the greater flow value based on:		
Bedroom count		
1-2 bedrooms	Bedroom	300
Each bedroom over 2	Bedroom	150
Fixture count	Fixture unit	25
Fire Station	Employee	45
Hospital		
All flows	Bed	250
Kitchen waste only	Bed	25
Laundry waste only	Bed	40
Hotel/motel		
Without kitchen	Bed (2 person)	50
With kitchen	Bed (2 person)	60

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Industrial facility Without showers With showers Cafeteria, add	Employee Employee Employee	25 35 5
Institutions Resident Nursing home Rest home	Person Person Person	75 125 125
Laundry Self service Commercial	Wash cycle Washing machine	50 Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use) Picnic, with showers, flush toilets Picnic, with flush toilets only Recreational vehicle, no water or sewer connections Recreational vehicle, with water and sewer connections Mobile home/Trailer	Parking space Parking space Vehicle space Vehicle space Space	40 20 75 100 250
Restaurant/Cafeteria With toilet, add Kitchen waste, add Garbage disposal, add Cocktail lounge, add Kitchen waste disposal service, add	Employee Customer Meal Meal Customer Meal	20 7 6 1 2 2
Restroom, public	Toilet	200
School Staff and office Elementary, add Middle and High, add with gym & showers, add with cafeteria, add Boarding, total flow	Person Student Student Student Student Person	20 15 20 5 3 100
Service Station with toilets	First bay Each additional bay	1000 500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store Public restroom, add	Employee Square foot of retail space	20 0.1
Swimming Pool, Public	Person	10
Theater Indoor Drive-in	Seat Car space	5 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.

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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-

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- 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:

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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.

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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.

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.

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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

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- 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

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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:

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- 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-

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- 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

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- 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).

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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.

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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;

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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

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- 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 time-frame 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

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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

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- 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 Ameiuridae, 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.

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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

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- 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

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- 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;

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- 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:

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- 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 NPDDES 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-

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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.

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- 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

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- 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

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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.

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- 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.

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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

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- 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.

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- 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 dis-

charge 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

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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.

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- 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 wastewater 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.

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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 numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
 - The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
 - 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":
- Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
 - Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
 - 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, ciénegas, 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:
- Any person who:

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- 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;

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- 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

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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.

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- 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 ⁶⁰Cobalt and ¹³⁷Cesium 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 septicage 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);

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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;

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- 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

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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

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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 septic tank 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 septic tank);
 - 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);

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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.

$$APLR = C \times ABAR \times 0.001$$

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.

49-203. 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.

D-3

ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

Title 3, Chapter 9, Article 1, Arizona Iceberg Lettuce Research Council



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 12, 2021

SUBJECT: **Arizona Iceberg Lettuce Research Council**

Title 3, Chapter 9, Articles 1

This Five-Year-Review Report (5YRR) from the Arizona Iceberg Lettuce Research Council relates to rules in Title 3, Chapter 1, Article 1 regarding the Council.

In the last 5YRR of these rules the Council indicated it would expire one of its rules. The Council let the rule expire.

Proposed Action

The Council is not proposing any changes to the rules.

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

Yes, the Council cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Arizona Iceberg Lettuce Research Council (AILRC) supports the development of iceberg lettuce research programs and projects within Arizona. The AILRC is funded

from a \$0.004 tax per carton from Arizona iceberg lettuce producers. The council has determined that the rules have minimal economic impact to stakeholders.

The stakeholders include: iceberg lettuce producers, grower-shippers of lettuce, handlers, researchers and universities who are beneficiaries of grant program developed by AILRC, and the general public.

Iceberg lettuce producers and grower-shippers of lettuce are impacted by the \$0.004 tax on each carton, which helps fund AILRC's research efforts.

Researchers and universities are impacted by the money AILRC provides through grants to fund various research efforts. 90% of the money generated from the tax on producers and grower-shippers and lettuce is used for research projects.

The general public benefits from the research efforts of the AILRC. The research efforts help identify various pests and diseases that affect iceberg lettuce, leading to increased safety for consumers.

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 AILRC has determined that the rules outweigh the minimal cost of the rules.

The AILRC has determined that although iceberg lettuce producers, grower-shippers of lettuce, and small businesses bear the cost burden of the rule, the impact is estimated to be minimal. Any costs are outweighed by the benefits of the \$0.004 tax funding iceberg lettuce research.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Council indicates they have not received any written criticisms to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Council indicates the rules are clear, concise and understandable.

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

Yes, the Council indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Council indicates the rules are effective in achieving their objectives.

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

Yes, the Council 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?

Not applicable. There are no 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?

Not applicable. The rules do not require the issuance of a permit or license.

11. Conclusion

As mentioned above, the Council is not proposing any changes to the rules. The rules are overall clear, concise, and understandable. GRRC staff recommends approval of this report.

Arizona Iceberg Lettuce Research Council

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January 20, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Iceberg Lettuce Research Council (AILRC), A.A.C. Title 3, Chapter 9, Article 1,
Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Iceberg Lettuce Research Council for A.A.C. Title 3, Chapter 9, Article 1 which is due on January 31, 2021.

All rules in the Article have been reviewed, and there is no intention for a rule to expire under A.R.S. § 41-1056(J). Also enclosed are copies of the current rules, statutes, and a current economic impact statement.

The AILRC hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lisa James at (602) 542-3262 or l james@azda.gov.

Sincerely,



Christopher Clayton
Chairman

Enclosures: Five-Year Review Report
 Current Rules
 Statutes
 Economic Impact Statement

ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL (AILRC)

FIVE-YEAR REVIEW REPORT

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

JANUARY 20, 2021

1. Authorization of the rule by existing statutes

A.R.S. §§ 3-526.02, 3-526.04, and 3-526.05.

2. The objective of each rule:

Rule	Objective
R3-9-101	To establish definitions of additional terms used in the rules.
R3-9-102	To establish the time frame for the election and terms of elected officers.
R3-9-103	To establish the process used for reviewing a decision made by the AILRC for cause.
R3-9-104	To establish the time that the annual report will be prepared.
R3-9-105	Expired
R3-9-106	To establish the process for solicitation, evaluation and award of grants.

3. Are the rules effective in achieving their objectives?

Yes.

4. Are the rules consistent with other rules and statutes?

Yes.

The rules are consistent with the AILRC's statutes: A.R.S. Title 3, Chapter 3, Article 4.2. The AILRC's rules are also consistent with the rules of the Arizona Citrus Research Council and the Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Articles 2 & 5, though they need not be. The AILRC is exempt from the grant statutes in A.R.S. Title 41, Chapter 24 pursuant to A.R.S. § 41-2706(B)(4), which is why the Council has adopted its own grant rules. There are no other state and federal statutes and rules to consider.

5. Are the rules enforced as written?

Yes.

6. Are the rules clear, concise, and understandable?

Yes.

7. Has the agency received written criticisms of the rules within the last five years?

No.

8. Economic, small business, and consumer impact comparison:

Attached is a current 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?**
Yes.
The only course of action was to allow one of the rules to expire.
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 benefits of the rules outweigh the minimal cost of the rules and imposes the least burden and cost to any regulated persons.
12. **Are the rules more stringent than corresponding federal laws?**
There is no federal law that corresponds with these rules.
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:**
This section is not applicable because the AILRC does not issue any regulatory permits, or licenses and there are no rules adopted after July 29, 2010.
14. **Proposed course of action:**
None.

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

R3-9-101. Definitions

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "AILRC" means the Arizona Iceberg Lettuce Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the AILRC awards grant funds for research on a specific project.
4. "Department" means the Arizona Department of Agriculture.
5. "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
6. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-526.02(B) and (C)(5).
7. "Grant award agreement" means a document that advises an applicant of the amount of money awarded following receipt by the AILRC of the applicant's signed acceptance.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

R3-9-102. Elections

- A. The AILRC shall elect officers as specified in A.R.S. § 3-526.02(A)(2) during the first quarter of each calendar year.
- B. Officers continue in office until the next annual election.
- C. An officer may be reelected successively.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

R3-9-103. Hearings and Rehearings

- A. The AILRC shall follow the Uniform Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, for a hearing before the AILRC.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AILRC shall grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
 1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the AILRC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise that could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- D. The AILRC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

R3-9-104. Annual Report

The AILRC shall prepare a report according to A.R.S. § 3-526.02(A)(5), by October 31 of each year.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

R3-9-105. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective January 31, 2016 (Supp. 16-2).

R3-9-106. Grants

- A. Grant application process.
 - 1. The AILRC shall award grants according to the competitive grant solicitation requirements of this Article.
 - 2. The AILRC shall post the grant application and manual on the AILRC's web site at least four weeks before the due date of a grant application.
 - 3. The AILRC shall ensure that the grant application manual contains the following items:
 - a. Grant topics related to AILRC programs specified by A.R.S. § 3-526.02(B) and (C)(5);
 - b. A statement that the information contained in an application is not confidential;
 - c. A statement that the AILRC funding source is primarily from per carton assessments on iceberg lettuce grown in Arizona;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AILRC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AILRC award;
 - i. A copy of the AILRC grant solicitation rules; and
 - j. Any other information necessary for the grant application.
 - 4. The AILRC shall not consider an application received by the AILRC after the due date and time.
- B. Criteria. The AILRC shall consider the following when reviewing a grant application and deciding whether to award AILRC funds:
 - 1. The applicant's successful completion of prior research projects,
 - 2. The extent to which the proposed project identifies solutions to current issues facing the iceberg lettuce industry,
 - 3. The extent to which the proposed project addresses future issues facing the iceberg lettuce industry,
 - 4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
 - 5. The appropriateness of the budget request in achieving the project objectives,
 - 6. The appropriateness of the proposal time-frame to the stated project objectives, and
 - 7. Relevant experience and qualifications of the applicant.
- C. Public participation.
 - 1. The AILRC shall make all applications available for public inspection by the business day following the application due date.
 - 2. Before awarding a grant, the AILRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- D. Evaluation of grant applications.
 - 1. The AILRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
 - 2. The AILRC may modify an applicant's proposed project in awarding funding.
 - 3. The AILRC shall notify an applicant in writing of the AILRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AILRC decision. The AILRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- E. Awards and project monitoring.
 - 1. Before releasing grant funds, the AILRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AILRC to monitor the progress of the project by signing a grant award agreement.
 - 2. The AILRC shall pay no more than 50% of the grant in the initial payment to the awardee.
 - 3. During the term of the project, the awardee shall inform the AILRC of changes to the awardee's address, telephone number, or other contact information.
 - 4. The AILRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
 - 5. The AILRC shall not award grant funds remaining after the initial payment until the awardee submits to the AILRC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
 - 6. The AILRC shall make research findings and reports resulting from any grant awarded by the AILRC available to Arizona iceberg lettuce producers.
- F. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AILRC.
- G. Governmental units.
 - 1. The AILRC may request one or more governmental units to submit grant applications as prescribed in subsection (G)(3), without regard to subsections (A), (E)(2), and (E)(5).
 - 2. The AILRC may issue grants to governmental units without regard to subsections (A), (E)(2), and (E)(5).
 - 3. A governmental unit may apply to the AILRC for a grant when there is no pending request for grant applications under subsection (A) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AILRC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL
A.R.S. Title 3, Chapter 3, Article 4.2

3-526. Definitions

In this article, unless the context otherwise requires:

1. "Council" means the Arizona iceberg lettuce research council.
2. "Grower-shipper" means a person who is engaged in this state in the business of packing, shipping, transporting or selling iceberg lettuce of which he is a grower, producer or owner.
3. "Handler" means a person who engages in marketing iceberg lettuce on behalf of a grower, whether as a grower-shipper, owner, agent, employee, broker, dealer, consignor or commission merchant or otherwise.
4. "Iceberg lettuce" means varieties of lettuce produced in this state of the types which are distinguished as "crisphead" in the publication entitled "lettuce production in the United States, agricultural handbook no. 221", August 1974 revision, issued by the agricultural research service of the United States department of agriculture. Iceberg lettuce does not include the types of lettuce distinguished in such publication by the terms "butterhead", "cos or romaine" and "looseleaf".
5. "Producer" means a person engaged in this state in the business of producing or causing to be produced iceberg lettuce.

3-526.01. Arizona iceberg lettuce research council; appointment; term

- A. The Arizona iceberg lettuce research council is established consisting of seven producers appointed by the governor. The members shall be appointed as follows:
 1. Four producers from Yuma county.
 2. Three producers from any iceberg lettuce producing area in this state.
- B. The governor may consult with any recognized vegetable grower and shipper organizations in this state in appointing members to the council.
- C. The term of office of each council member is for three years beginning January 1 and ending December 31 of the appropriate year. Members are limited to two consecutive terms of office, except that a member who is appointed to fill a vacancy may serve two consecutive terms plus the unexpired term that fills the vacancy. A member who completes a second three-year term is ineligible for reappointment for one year. On the expiration of a term of a member or in the event of a vacancy, the governor shall appoint a successor.
- D. The office of a member is deemed vacant and the governor shall appoint a person to fill the remainder of the term under any of the following circumstances:
 1. The member is no longer a producer.
 2. The member is unable to perform the duties of the office.
 3. The absence of the member from four consecutive council meetings if the absences have not been excused by the council.
- E. Members of the council are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

3-526.02. Powers and duties of the council

- A. The council shall:
 1. Receive and disburse monies to be used in administering this article.
 2. Annually elect a chairman, secretary and treasurer from among its members.
 3. Meet at least once each calendar quarter or at such times as called by the chairman or when requested by four or more members of the council. A quorum consists of four or more members of the council.
 4. Keep a permanent record of its proceedings and make these records available for public inspection for any lawful purpose.
 5. Prepare for the governor and the iceberg lettuce industry an annual report of its activities, receipts and expenditures. A copy of the annual report shall be available to any interested iceberg lettuce producer and the general public on request.
 6. Organize and administer any referendum called under subsection C, paragraph 11 of this section.
 7. Prescribe fees to be assessed within the limits prescribed in section 3-526.04.
- B. The council may authorize or contract for:

1. Research, development and survey programs concerning varietal development.
 2. Programs for lettuce pest eradication.
 3. Programs concerning production, harvesting, handling and hauling from field to market.
 4. Any other programs, excluding sales or marketing, that the council deems to be appropriate for the purposes of this article.
- C. The council may:
1. Disseminate reliable information, including the results of research studies, surveys and information obtained as a result of research.
 2. Sue and be sued as a council, without individual liability, for acts of the council within the scope of the powers and duties conferred on it by this article.
 3. Enter into contracts to carry out the purposes of this article, including contracts for research and development of iceberg lettuce.
 4. Appoint advisory groups composed of representatives from organizations, institutions or businesses related to or interested in the welfare of the iceberg lettuce industry.
 5. Make grants to research agencies for financing appropriate studies, or for purchase or acquisition of equipment and facilities consistent with this article.
 6. Employ or retain and fix the compensation of a qualified person or a qualified entity to manage the affairs of the council on behalf of the council and other personnel that are necessary to carry out the provisions of this article.
 7. Cooperate with any local, state or nationwide organization or agency engaged in work or activities similar or related to those of the council and enter into contracts with such organizations or agencies for carrying on joint programs.
 8. Act jointly and in cooperation with this state or any other state or the federal government, and spend monies to administer any program deemed by the council to be beneficial to the iceberg lettuce industry of this state.
 9. Adopt rules necessary to promptly and effectively administer this article.
 10. Accept grants, donations, contributions, gifts, property or services or other assistance from public or private sources to further the objectives of this article.
 11. Refer to the iceberg lettuce producers in this state for an advisory vote the question of setting fees or establishing or continuing any program authorized by this article.
 12. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the authorized fees.
 13. Provide for an annual audit of its accounts by a qualified public accounting firm and, if an audit or financial statement is prepared, shall make the audit or financial statement available to the general public and the auditor general on request.

3-526.03. Administrative services; reimbursement

- A. The council may employ staff, to serve at the pleasure of the council, and may prescribe the terms and conditions of employment of employees as necessary to perform the functions prescribed by this article. The employees of the council are exempt from title 38, chapter 4 and chapter 5, article 2 and title 41, chapter 4, articles 5 and 6. The council may also enter into an interagency agreement pursuant to title 11, chapter 7, article 3 with the department to provide the necessary administrative services to the council including:
1. Providing secretarial and other services necessary for the council to carry out its activities.
 2. Establishing separate operating accounts for the council.
 3. Providing necessary financial and accounting services to the council including the issuance of checks, payment of bills approved by the council, annual audits, monthly or annual expenditure and receipt reports, preparation of an annual budget and any other financial activities requested by the council according to and under the provisions of state law.
 4. Receiving mail and other communications for the council.
 5. Receiving monies authorized under this article for deposit, pursuant to sections 35-146 and 35-147, in the appropriate funds.
 6. Accepting donated monies on behalf of the council to be credited to the account of the council.
 7. Providing space for the meetings of the council.
 8. Assisting in the adoption of rules proposed by the council.
 9. Providing any other administrative services which the council requests or finds necessary.

- B. If the department performs any function under this article, it acts as the agent of the council and has no authority or control over the council or the council's employees or assets.
- C. The council shall reimburse the department for administrative services from the monies received under this article in an amount agreed on by the council. Monies received by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the appropriate fund as required by section 3-108.
- D. Department employees under contract to the council under provisions of an interagency agreement pursuant to title 11, chapter 7, article 3 shall remain under the direct supervision of the department unless otherwise agreed to by the council and department.

3-526.04. Fees; collection; budget

- A. On or before July 1 of each calendar year, the council shall assess a fee of not more than one-half cent per carton of packed iceberg lettuce or bulk bins assessed according to forty-five pounds of equivalent weight of iceberg lettuce prepared for market or an equivalent basis.
- B. Each grower-shipper, shipper and handler shall keep a complete and accurate record of all iceberg lettuce handled by such entities and the producer. These records shall contain such information as required to be kept for the citrus, fruit and vegetable trust fund pursuant to articles 2 and 4 of this chapter and rules adopted pursuant to those articles.
- C. Assessments shall be collected from the grower-shipper, shipper or handler first marketing the iceberg lettuce being assessed. The grower-shipper, shipper or handler is a trustee of the monies until they are paid to the council at the time and in the manner prescribed by the council. An iceberg lettuce producer is responsible for paying the fee unless the fee is withheld for payment by the grower-shipper, shipper or handler first marketing the iceberg lettuce.
- D. Before establishing the annual fee, the council shall establish a budget. The budget is effective on approval of the council.
- E. Title 41, chapter 6 does not apply to setting and collecting the fee under this section, but the council shall provide thirty days' advance notice of the meeting at which any fee will be increased and the amount of the proposed fee. The council shall receive public testimony at the meeting regarding the fee.

3-526.05. Failure to pay fee; penalty; hearing; violation; classification

- A. A person who is required to pay fees pursuant to section 3-526.04 and who fails to pay the fee within the time required by the council shall be assessed a penalty of ten per cent of the amount of the total fee and two per cent interest per month on the unpaid balance. The penalty and interest shall be paid to the council. The person may request a hearing before the council to dispute or determine the amount of fee, penalty or interest imposed.
- B. The council shall hold a hearing if requested. The council shall, following the hearing, enter its order determining the amount of any fee, penalty or interest. The person shall pay the fee, penalty and interest assessed within ten days of notice of the council's decision.
- C. A person who knowingly fails to pay or remit any monies due or collected as required in this article is guilty of a class 2 misdemeanor.

3-526.06. Iceberg lettuce trust fund

- A. The iceberg lettuce trust fund is established for the exclusive purpose of implementing, continuing and supporting the agricultural program established by this article. Monies collected pursuant to section 3-526.04 shall be deposited in the trust fund.
- B. The council shall administer the trust fund as trustee. The state treasurer shall accept, separately account for and hold in trust any monies deposited in the state treasury, which are considered to be trust monies as defined in section 35-310 and which shall not be commingled with any other monies in the state treasury except for investment purposes. On notice from the council, the state treasurer shall invest and divest any trust fund monies deposited in the state treasury as provided by sections 35-313 and 35-314.03, and monies earned from the investment shall be credited to the trust fund.
- C. The beneficiary of the trust is the agricultural program established by this article. Monies in the trust fund shall be disbursed as approved by the council exclusively for the purposes prescribed in this article.

- D. Surplus monies, including any unexpended and unencumbered balance at the end of the fiscal year, do not revert to the state general fund.
- E. If the council is terminated, any monies in the trust fund shall be expended to meet existing legal obligations of the council. The council shall expend any remaining monies on any program consistent with this article.

3-526.07. Indemnification of council members

Each member of the council is indemnified by the council against reasonable costs and expenses, including attorney fees, incurred by him in connection with any action, suit or proceedings to which he may be a party by reason of his being or having been a member of the council, except in relation to matters as to which he is adjudged in such action, suit or proceeding to have acted in bad faith as a council member. The right of indemnification is in addition to other rights to which the member is entitled as a matter of law.

3-526.08. Termination of council

- A. The council may be terminated as provided in this section. The council shall conduct a referendum among the state's producers if either of the following occurs:
 1. If the council, by a two-thirds vote of its membership, determines that it is no longer in the best interest of the iceberg lettuce industry of this state to continue the existence of the council and its programs.
 2. On receipt by the council of a petition calling for a referendum signed by ten per cent or more of the state's contributing producers, which shall be signed not more than six months before its presentation to the council.
- B. The ballot for the referendum shall be in such form as to record a "Yes" or "No" answer to the question: "Shall the existence of the Arizona iceberg lettuce research council and its programs, as authorized in state statute, be continued?" If the majority or more of those producers voting votes in favor of discontinuing and terminating the council and its programs, the council shall recommend to the legislature that the council be terminated. If less than a majority of the producers who voted in the referendum favors termination of the council, no subsequent referendum may be conducted for at least two years. The council shall pay the expenses necessary to carry out the referendum.

DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 5, Article 4, Dealers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 11, 2021

SUBJECT: DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 4, Dealers

Summary:

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation (ADOT) relates to all rules in Title 17, Chapter 5, Article 4 related to the regulation of motor vehicle dealers in Arizona. Specifically, these rules assist ADOT in preventing any significant threats to public safety, provide members of the public with certain assurances that the regulated dealers are all following the same procedures when transferring ownership of any vehicle subject to the rules, and ensure that all lawful disclosures are adequately addressed.

ADOT indicates that it completed its prior proposed course of action in the last 5YRR for these rules, approved by the Council on April 5, 2016 by completing a regular rulemaking which became effective July 4, 2017. ADOT indicates that rulemaking consisted of technical changes to make these rules consistent with related statutes and other rules.

Proposed Action

ADOT does not propose to take any action regarding these rules. ADOT indicates that the rules meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable and no action is necessary.

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

Yes. ADOT cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

ADOT has the authority to adopt rules for tax collection, licensing fees, and public safety. ADOT has determined that the economic impact of the rules does not differ from what was estimated in the most recent rulemaking in 2017. The 2017 rulemaking did not impose any new fees or costs on dealers.

The stakeholders include: ADOT, consumers, the general public, and motor vehicles dealers.

ADOT is minimally economically impacted by enforcing the rules. However, ADOT does not collect fees for the rules, and does not require an additional full time employee to enforce the rules.

The rules benefit consumers and the general public. The rules ensure that motor vehicles dealers are regulated, and follow the same procedures when transferring ownership of a vehicle. ADOT has determined that no additional costs are imposed on consumers.

Motor vehicle dealers do not incur additional costs because of rules. The updated rules also provide dealers with a better understanding of the rules they are subjected to.

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?

ADOT has determined that the rules under review provide the least intrusive method of enforcing the regulatory objective. The rules impose no additional costs on motor vehicles dealers, consumers, ADOT, or other state agencies. The benefits of ensuring public safety and opportunities for businesses outweigh any costs from ADOT's regulation of dealers.

4. Has the agency received any written criticisms of the rules over the last five years?

No. ADOT indicates it has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

ADOT indicates that the rules are clear, concise, and understandable.

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

ADOT indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

ADOT indicates that the rules are effective in achieving their objectives.

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

ADOT 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. ADOT indicates there are no 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?

ADOT indicates that statutes require all types of dealers to be licensed by the Department before opening in the state. ADOT indicates these licences constitute general permits as defined by A.R.S. § 41-1001(11) since the activities and practices licensed or qualified are substantially similar in nature for all who perform each specified activity or function. Therefore, ADOT states the licenses issued comply with the requirements in A.R.S. § 41-1037.

11. Conclusion

As outlined above, ADOT indicates that the rules are clear, concise, understandable, consistent, effective, and enforced as written. ADOT does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

Douglas A. Ducey, Governor

John S. Halikowski, Director

Scott Omer, Deputy Director/Chief Operating Officer

Kevin Biesty, Deputy Director for Policy

Dallas Hammit, Deputy Director for Transportation

January 31, 2021

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

VIA EMAIL: grrc@azdoa.gov

RE: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 4, Five-year Review Report

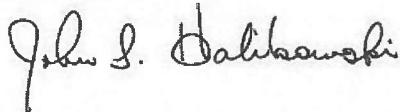
Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering all rules located under 17 A.A.C. Chapter 5, Article 4, which is due on January 31, 2021.

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at 602.712.8804 or email JLindley@azdot.gov.

Sincerely,



John S. Halikowski
Director

Enclosure



Government Relations & Rules Office of the Director

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 5. Department of Transportation

Commercial Programs

Article 4. Dealers

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Submitted to the Governor's Regulatory Review Council January 2021

Arizona Department of Transportation
5-YEAR REVIEW REPORT
Title 17. Transportation
Chapter 5. Department of Transportation - Commercial Programs
Article 4. Dealers
January 31, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority:

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 for these rules. This authority allows the Department to adopt rules for the collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent abuse and unauthorized use of all highways and routes under the jurisdiction of the Department.

Specific Statutory Authority:

R17-5-401 to R17-5-408	The specific statutory authority used by the Department for maintaining these rules is provided under A.R.S. §§ 28-2060, 28-4303, 28-4362, and 28-4410.
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2. The objective of each rule:

The stated objectives for each of the rules maintained by the Department under 17 A.A.C. 5, Article 4, are as follows:

Rule	Objective
R17-5-401	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-5-402	To prescribe the specific bond amount and form that each dealer, broker, or automotive recycler is required to submit to the Department under A.R.S. § 28-4362 on application for a dealer license for the protection of consumers who engage in motor vehicle transactions.
R17-5-404	To clarify that the reasonable indicia of ownership or right of possession required pursuant to A.R.S. § 28-4409(A), as approved by the Director, must record the dealer's name on the certificate of title as transferee or purchaser.
R17-5-405	To provide information regarding the minimum form and content required in a dealer acquisition contract that a motor vehicle, trailer, or semitrailer dealer may hold in lieu of having to possess a duly and regularly assigned certificate of title or other documents required for disclosure to buyers on reassignment of a certificate of title.

R17-5-406	To provide information regarding the minimum form and content required in a dealer consignment contract that a motor vehicle, trailer, or semitrailer dealer may hold in lieu of having to possess a duly and regularly assigned certificate of title or other documents required for disclosure to buyers on reassignment of a certificate of title.
R17-5-407	To prescribe the form and content of the repossession affidavit a lienholder of record is required to submit to the Department when transferring ownership of a motor vehicle for which a certificate of title has been issued in this state, or another state, and ownership is reverting through operation of state law to the lienholder of record through repossession pursuant to the terms of a security agreement or through another similar instrument that is valid in such state.
R17-5-408	To prescribe the form and content of the written notice a motor vehicle dealer must provide to a retail consumer, as prescribed under A.R.S. § 28-4422, if the vehicle being purchased was initially delivered to a previous purchaser.

3. **Are the rules effective in achieving their objectives?**

Yes No

If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.

The Department believes that these rules are effective in achieving all stated objectives.

4. **Are the rules consistent with other rules and statutes?**

Yes No

If not, please identify the rules that are not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rules.

The Department believes that these rules are consistent with all other rules and statutes.

5. **Are the rules enforced as written?**

Yes No

If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.

The Department enforces these rules as written.

6. **Are the rules clear, concise, and understandable?**

Yes No

If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.

The Department believes that these rules are clear, concise, and understandable as written.

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. Economic, small business, and consumer impact comparison:

These rules assist the Department in preventing any significant threats to public safety, provide members of the public with certain assurances that the regulated dealers are all following the same procedures when transferring ownership of any vehicle subject to the rules, and ensure that all lawful disclosures are adequately addressed.

The economic impact of each of these rules has been the same as estimated in the economic impact statement prepared by the Department and submitted to the Council in support of the last rulemaking effort completed for this Article at 23 A.A.R. 1434, effective July 4, 2017.

In July of 2016, the Department had a total of 3,824 licensed motor vehicle dealers in nine different license types. In December of 2020, the Department had a total of 4,146 licensed motor vehicle dealers in nine different license types.

Licensed Motor Vehicle Dealers (as of July 31, 2016)		Licensed Motor Vehicle Dealers (as of December 17, 2020)	
New vehicle dealers	770	New vehicle dealers	749
Used vehicle dealers	1,702	Used vehicle dealers	2,064
Public consignment auction dealers	13	Public consignment auction dealers	17
Brokers	26	Brokers	7
Wholesale dealers	845	Wholesale dealers	854
Wholesale auction dealers	13	Wholesale auction dealers	16
Manufacturers	198	Manufacturers	212
Distributors	60	Distributors	63
Automobile recyclers	197	Automobile recyclers	164
Total	3,824	Total	4,146

A.R.S. § 41-1001 defines a small business as a concern that is independently owned and operated, not dominant in its field, and which employs fewer than 100 full-time employees, or which had gross annual receipts of less than \$4,000,000 last fiscal year.

Some Arizona businesses that are licensed as a dealer are small businesses while other licensed dealers generate more revenue and employ more than 100 full-time employees.

9. Has the agency received any business competitiveness analyses of the rules? Yes No X

The Department has not received any business competitive analyses of these rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes X No Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The Department amended these rules as indicated in its last five-year review report (approved by the Council on April 5, 2016) by regular rulemaking at 23 A.A.R. 1434, effective July 4, 2017.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives:

The Department's last rulemaking effort involving these rules was completed by Final Rulemaking at 23 A.A.R. 1434, effective July 4, 2017, and consisted of technical changes needed to make the dealer rules consistent with the dealer statutes and other Department rules. The rulemaking did not impose any new fees or costs on dealers and did not increase the regulatory burden on dealers.

A.R.S. § 28-4362 prescribes the dealer bond requirements of at least \$20,000 for an automotive recycler's license and not more than \$100,000 for all other licenses. However, the Department collects no fees as a result of these rules and the rules do not impose any costs on consumers, the Department, or other state or local agencies.

The benefits of ensuring the public safety and the creation of private sector business opportunities far outweigh any costs resulting from the Department's regulation of dealers under these rules.

12. Are the rules more stringent than corresponding federal laws?

Yes No X

Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?

These rules prescribe the specific bond amounts required of each type of dealership operating in Arizona under a dealer license issued by the Department, and prescribe the minimum content the Department requires on certain forms that a motor vehicle, trailer, or semitrailer dealer may use in lieu of having to possess a duly and regularly assigned certificate of title or other documents required for disclosure to buyers on reassignment of a certificate of title, until ownership of the vehicle can be finally transferred. The rules are not more stringent than any applicable federal laws since there are no federal laws directly applicable to these types of contractual agreements.

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:

Arizona Revised Statutes, Title 28, Chapter 10, requires all of the various types of dealers to be licensed by the Department before operating in this state. However, these licenses are in compliance with the general permit criteria and requirements prescribed under A.R.S. § 41-1037, since the activities and practices licensed or qualified are substantially similar in nature for all who perform each specified activity or function.

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 action is necessary. All rules located in this Article were last amended by Final Rulemaking at 23 A.A.R. 1434, effective July 4, 2017, and generally meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

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- J. There shall be a clearly defined and visible separation between a school and any other business if a professional driver training school or traffic survival school is located in an office building, store, or other physical structure shared with any other business or enterprise.
- K. Any request by a school for inspection and approval of a site on a recognized Indian reservation shall contain the written permission of the appropriate Tribal authority.
- L. Any request by a school for inspection and approval of a site on a military base shall contain the written permission of the appropriate military authority.
- M. A school shall submit to the Department or private entity a copy of the written lease or contract agreement or deed of ownership, if the site is owned by the school, for each site, as applicable.
- N. Any request by a traffic survival school for inspection and approval of a site to be used for educational sessions shall include the approved fire safety capacity of the classroom(s) at that site and shall be signed by a principal of the traffic survival school.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-322. Cease and Desist Order; Hearing and Appeal

- A. The Department may immediately issue and serve a cease and desist order on a licensee, as prescribed under A.R.S. § 28-3417 or 32-2394, if the Department or private entity has reasonable cause to believe that the licensee has violated or is violating a federal or state law or rule relating to a duty prescribed under this Article.
- B. A cease and desist order issued by the Department to a licensee under this Article shall:
 - 1. Require the person on receipt of the order to cease and desist from further engaging in the prohibited conduct or in any activity authorized under this Article as specified in the cease and desist order, and
 - 2. Provide information regarding the person's right to request a hearing to show cause as to why the Department's order should not be upheld.
- C. On failure or refusal of a licensee to comply with a cease and desist order, or after a requested hearing, the Department may cancel, suspend, or revoke the license of the licensee under A.R.S. § 28-3416 or 32-2391 and R17-5-323.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-323. Non-compliance; Notice of Corrective Action; Cancellation, Suspension, or Revocation of a Professional Driver Training School License or Traffic Survival School License or Qualification of a Traffic Survival School Instructor; Hearing and Appeal

- A. The following definitions apply to this Section:
 - 1. "Cancellation" means a Department action that withdraws a license or qualification of a traffic survival school instructor issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
 - 2. "Revocation" means a Department action that terminates, for an indefinite period of time, a licensee's or traffic survival school qualified instructor's privilege to operate a school or conduct instruction under this Article.
 - 3. "Suspension" means a Department action that prohibits, for a stated period of time, a licensee or traffic survival

school qualified instructor from operating as a school or instructor under this Article.

- B. The Department or private entity may initiate corrective action on a licensee or a traffic survival school qualified instructor as provided under A.R.S. Title 28, Chapter 8, Article 7.1, Title 32, Chapter 23, Article 3, or Title 41, Chapter 6, Article 6, and this Article, if satisfactory evidence shows that a licensee or instructor, individually or collectively:
 - 1. Violated a federal or state law or rule reasonably relating in a business context to a duty prescribed under this Article;
 - 2. Failed to maintain a status of good standing or character and reputation as defined in R17-5-301; or
 - 3. Provided false, deceptive, or misleading information to the Department or private entity in either an application or in response to an audit or inspection conducted pursuant to R17-5-321.
- C. A corrective action initiated under subsection (B), depending on the severity or number of violations, may include the Department imposing a term of probation; issuing a cease and desist order under A.R.S. § 28-3417 or 32-2394; or requesting a hearing to cancel, suspend, or revoke an existing license under A.R.S. § 28-3416 or 32-2391.
- D. A notice of corrective action issued by the Department requesting a hearing to cancel, suspend, or revoke an existing school license shall include:
 - 1. The grounds for the Department's action; and
 - 2. A brief written statement explaining that it will request that a hearing be held before the Department's Executive Hearing Office on the proposed cancellation, suspension, or revocation of a professional driver training school license or a traffic survival school license, as provided under A.R.S. § 28-3416 or 32-2391.
- E. A notice of corrective action issued by the Department to cancel, suspend, or revoke an existing qualification of a traffic survival school instructor shall include:
 - 1. The grounds for the Department's action; and
 - 2. A brief written statement of the hearing and appeal rights, including that the instructor may request a hearing with the Department's Executive Hearing Office within 30 calendar days of the date on the notice for the cancellation, suspension, or revocation of the qualification of a traffic survival school instructor, as provided in A.R.S. §§ 41-1001(12) and 41-1064.
- F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2). Amended by final rulemaking at 23 A.A.R. 2045, effective September 5, 2017 (Supp. 17-3).

ARTICLE 4. DEALERS**R17-5-401. Definitions**

In addition to the definitions in A.R.S. §§ 28-4301 and 28-4410, the following definitions apply to this Article unless otherwise specified:

"Dealer" or "motor vehicle dealer" has the same meaning as "motor vehicle dealer" in A.R.S. § 28-4301.

"Director" has the same meaning as in A.R.S. § 28-101.

"Owner" means a person who holds the legal title of a motor vehicle.

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“Principal place of business” means a licensed place of business from which a wholesale motor vehicle dealer or a broker conducts business and keeps the records of the business.

“State” means the state of Arizona and all its agencies and political subdivisions, their officers and agents.

“Taxpayer identification number” means a number used for tax purposes that is assigned by the Social Security Administration or the Internal Revenue Service.

“VIN” or “Vehicle Identification Number” means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-402. Bond Amounts; Dealers, Brokers, and Automotive Recyclers' Business Licenses

- A. As prescribed under A.R.S. § 28-4362, the Department shall require a bond in the amount specified for the following motor vehicle business license applicants:
 - 1. \$100,000 for:
 - a. A new motor vehicle dealer,
 - b. A used motor vehicle dealer, or
 - c. A public consignment auction dealer.
 - 2. \$25,000 for:
 - a. A broker,
 - b. A wholesale motor vehicle dealer, or
 - c. A wholesale motor vehicle auction dealer.
 - 3. \$20,000 for an automotive recycler.
- B. An applicant shall submit a bond on the original vehicle dealer bond form prescribed by the Director that meets the requirements in A.R.S. § 28-4362 and these rules. An applicant shall submit a separate, original bond for each application and for each county in which an applicant or licensee has an established place of business or a principle place of business. A power of attorney for the attorney-in-fact shall be attached to the dealer bond, if applicable.
- C. An applicant shall sign the dealer bond, in addition to all partners for a partnership, or one officer for an incorporation.
- D. The completed bond form shall contain an embossed stamp, seal, or sticker from the bond company.
- E. The Department shall not accept a handwritten bond.

Historical Note

New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-403. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2). Section expired under A.R.S. 1056(J) at 22 A.A.R. 3195, effective October 5, 2016 (Supp. 16-3).§

R17-5-404. Dealer Title Requirement for Vehicle Sale

For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

Historical Note

New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section head-

ing corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

R17-5-405. Dealer Acquisition Contract

- A. For the purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a Department form with contents as prescribed under subsection (B).
- B. A dealer acquisition contract shall contain the following information:
 - 1. The heading “Dealer Acquisition Contract;”
 - 2. The dealer's name and dealer license number;
 - 3. The dealer's business address and telephone number;
 - 4. The owner's name, address, telephone number; driver license number or taxpayer identification number, as applicable; and type of ownership;
 - 5. The VIN; license plate number; licensing state; and model, make, and year of the motor vehicle that has a dealer acquisition contract;
 - 6. If there is a lien holder, for each lien holder:
 - a. The lien holder's name, address, and telephone number;
 - b. The lien balance;
 - c. The prepayment penalties, if any; and
 - d. Other information on the terms and conditions of the lien repayment.
 - 7. A statement by the owner that the motor vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (B)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (B)(6)(b);
 - 8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another motor vehicle;
 - 9. A statement indicating that the owner is selling and transferring the described motor vehicle to the dealer;
 - 10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;
 - 11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
 - 12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
 - 13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
 - 14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
 - 15. The date when the dealer acquisition contract is executed by each party;
 - 16. The dealer's signature; and
 - 17. The owner's signature.
- C. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
- D. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the motor vehicle is sold.

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- E. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. This Section does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-406. Dealer Consignment Contract

- A. For the purposes of A.R.S. § 28-4410, a motor vehicle dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection (B).
- B. A dealer consignment contract shall contain the following information:
1. The heading "Dealer Consignment Contract;"
 2. The dealer's name and dealer license number;
 3. The dealer's business address and telephone number;
 4. The owner's name, address, telephone number, driver license number or taxpayer identification number, and type of ownership;
 5. The VIN; license plate number; licensing state; and model, make, and year of the motor vehicle that has a dealer consignment contract;
 6. If there is a lien holder, for each lienholder:
 - a. The lien holder's name, address, and telephone number;
 - b. The lien balance;
 - c. The prepayment penalties, if any; and
 - d. Other information on the terms and conditions of the lien repayment;
 7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (B)(6)(a) and the lien balance is no greater than that disclosed under subsection (B)(6)(b);
 8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
 9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
 10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
 11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
 12. The expiration date of the consignment contract;
 13. An agreement by the dealer to deliver the motor vehicle to the owner at a specified location on the date that the contract expires or terminates;
 14. An agreement by the owner to pay any specified fees due to the motor vehicle dealer on the return of the vehicle, after the expiration or termination of the consignment contract;
 15. The date the contract is executed;
 16. The dealer's signature; and
 17. The owner's signature.
- C. A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that

the provision does not conflict with or alter the meaning of a provision of this Section.

- D. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the dealer consignment contract expires or terminates, or the vehicle is sold.
- E. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. This Section does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-407. Motor Vehicle Repossession

- A. The Department shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:
1. The motor vehicle is physically located in this state;
 2. A notice of lien is filed with the Department;
 3. A completed affidavit from the lienholder is submitted to the Department stating that the motor vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
 4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
 - a. The (VIN),
 - b. The vehicle model year,
 - c. The vehicle make,
 - d. The registered owner's name,
 - e. The date of repossession,
 - f. The state in which the vehicle is titled,
 - g. The lienholder company name,
 - h. The lienholder agent or representative name,
 - i. The lienholder signature, and
 - j. The notary or Department agent signature.
- B. The Department shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3), (A)(4), and subsection (C) if all of the following apply:
1. The affidavit is submitted by an Arizona licensed dealer, and
 2. The Arizona licensed dealer is transferring the title into the dealership's name.
- C. A lienholder may sell a repossessed motor vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Department. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:
1. The buyer's name;
 2. The sale date;
 3. The buyer's street address, including the city, state, and zip code;
 4. The name of the new lienholder, if applicable;
 5. The new lien date, if applicable;

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6. The odometer certification statement, if required by A.R.S. § 28-2058, including odometer reading, and an acknowledgment with the buyer's name and signature;
 7. A statement that the buyer is aware of the odometer certification made by the seller;
 8. The seller's name;
 9. The seller's notarized signature; and
 10. The seller's address, including city, state, and zip code.
- D.** A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.
- E.** The Department has no responsibility relating to foreclosure on real property under A.R.S. Title 33, Chapter 7.

Historical Note

New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-408. Resale of a New Motor Vehicle

- A.** A motor vehicle dealer that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).
- B.** A motor vehicle dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
 1. The name of the dealership;
 2. A vehicle description, including year, make, and VIN;
 3. A statement that the new motor vehicle was delivered to a previous purchaser;
 4. The printed name of the new purchaser; and
 5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.
- C.** The motor vehicle dealer shall:
 1. Provide a copy of the notice under subsection (B) to the new purchaser, and
 2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.
- D.** The motor vehicle dealer is not required to submit the notice to the Department under subsection (B) unless otherwise required by state or federal law.
- E.** A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter the intent of the provisions specified in subsection (B).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY

R17-5-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

“Binder” means a contract for temporary insurance as described in A.R.S. § 20-1120.

“Initial motor vehicle registration” means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.

“Insurance company” means an entity that is in the business of issuing motor carrier liability insurance policies.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-502. Repealed**Historical Note**

New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-503. Repealed**Historical Note**

New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception

- A.** If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and Article 8 of this Chapter, the person or motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A):
 1. On initial motor vehicle registration, or
 2. On written request by the Department.
- B.** An insurance company, its managing general agent, broker, or agent may submit proof of financial responsibility to the Department on behalf of a person or motor carrier.
- C.** As proof of financial responsibility, a person or motor carrier shall submit to the Department a photocopy of:
 1. A valid liability insurance policy;
 2. A binder dated within 90 days of filing with the Department;
 3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the agency;
 4. A completed and signed Certificate of Liability Insurance form, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the certificate holder; or
 5. A certificate of self-insurance issued by the Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.
- D.** Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
 1. A binder from an insurance company other than the insurance company named in the first binder; or
 2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (5).
- E.** A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

Arizona Department of Transportation
5-YEAR REVIEW REPORT
Title 17. Transportation
Chapter 5. Department of Transportation - Commercial Programs
Article 4. Dealers
January 31, 2021

Definitions

28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
 - (a) The number of grams of alcohol per one hundred milliliters of blood.
 - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
 - (a) A motor vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is fifty or fewer inches in width.
 - (iii) Has an unladen weight of one thousand two hundred pounds or less.
 - (iv) Travels on three or more nonhighway tires.
 - (v) Is operated on a public highway.
 - (b) A recreational off-highway vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is eighty or fewer inches in width.
 - (iii) Has an unladen weight of two thousand five hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
 - (v) Has a steering wheel for steering control.
 - (vi) Has a rollover protective structure.
 - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
7. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
8. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
 - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
 - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
9. "Board" means the transportation board.
10. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
11. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
12. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
13. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
14. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
15. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
16. "Conviction" means:
 - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
 - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 - (c) A plea of guilty or no contest accepted by the court.
 - (d) The payment of a fine or court costs.
17. "County highway" means a public road that is constructed and maintained by a county.
18. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

19. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
20. "Digital network or software application" has the same meaning prescribed in section 28-9551.
21. "Director" means the director of the department of transportation.
22. "Drive" means to operate or be in actual physical control of a motor vehicle.
23. "Driver" means a person who drives or is in actual physical control of a vehicle.
24. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
25. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
- (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
26. "Electric miniature scooter" means a device that:
- (a) Weighs less than thirty pounds.
 - (b) Has two or three wheels.
 - (c) Has handlebars.
 - (d) Has a floorboard on which a person may stand while riding.
 - (e) Is powered by an electric motor or human power, or both.
 - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
27. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
28. "Electric standup scooter":
- (a) Means a device that:
 - (i) Weighs less than seventy-five pounds.
 - (ii) Has two or three wheels.
 - (iii) Has handlebars.
 - (iv) Has a floorboard on which a person may stand while riding.
 - (v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

29. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

30. "Farm" means any lands primarily used for agriculture production.

31. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

32. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

33. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

34. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

35. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

36. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

37. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

38. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

39. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

40. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

41. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

42. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

43. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

44. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

45. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

46. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

47. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

48. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

49. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

50. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

51. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

52. "Personal delivery device":

(a) Means a device that is both of the following:

- (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
- (ii) Is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

(b) Does not include a personal mobile cargo carrying device.

53. "Personal mobile cargo carrying device" means an electronically powered device that:

- (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
- (b) Weighs less than eighty pounds, excluding cargo.
- (c) Operates at a maximum speed of twelve miles per hour.
- (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
- (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

54. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

55. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

56. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

57. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

58. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

59. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

- (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

- (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
60. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.
61. "Scrap vehicle" has the same meaning prescribed in section 44-1641.
62. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
63. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
64. "State" means a state of the United States and the District of Columbia.
65. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
66. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
67. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
68. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
- (a) Does not primarily operate on a regular route or between specified places.
 - (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.
69. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
70. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.
71. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
72. "Transportation network company" has the same meaning prescribed in section 28-9551.
73. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.
74. "Transportation network service" has the same meaning prescribed in section 28-9551.

75. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

76. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

77. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

78. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

28-4301. Definitions

In this chapter, unless the context otherwise requires:

1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary geographic territory for the purpose of marketing, promoting, selling and leasing new motor vehicles. In the absence of the factory designated area, the area of responsibility is that geographical area surrounding a dealer that lies closer to that dealer than to other dealers of the same line-make.

2. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.

3. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:

(a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.

(b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.

(c) A manufacturer or employee or agent of a manufacturer.

(d) An auctioneer or engaged in the auto auction business.

(e) A wholesale motor vehicle dealer.

4. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.

5. "Distributor" means a person who either:

- (a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.
- (b) Maintains distributor representatives in this state.

6. "Distributor branch" means a branch office maintained or availed of by a distributor for either:

- (a) The sale of new motor vehicles to new motor vehicle dealers in this state.
- (b) Directing or supervising its representatives in this state.

7. "Established place of business".

(a) Means a permanent enclosed building or structure that is owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type that the dealer is licensed to sell and that is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer.

(b) In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer:

- (i) Need not be a permanent building or structure or part of a permanent building or structure.
- (ii) May be a vacant lot or part of a vacant lot.
- (iii) Does not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement.

(c) In the case of an automotive recycler, means a permanent site or location at which the business of an automotive recycler is or will be conducted.

8. "Exhibitor" means a manufacturer of new motor homes that exhibits new motor homes at a special event.

9. "Factory branch" means a branch office maintained or availed of by a manufacturer for either:

(a) The sale of new motor vehicles to distributors or the sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

10. "Financial institution" means a bank, trust company, savings and loan association, credit union, consumer lender, international banking facility or holding company that is licensed, regulated or insured by the department of insurance and financial institutions, the federal deposit insurance corporation, the office of thrift supervision, the comptroller of the currency, the national credit union share insurance fund or the national credit union administration.

11. "Franchise" means a contract between two or more persons if all of the following conditions are included:

- (a) A commercial relationship of definite duration or continuing indefinite duration is involved.
- (b) The franchisee is granted the right to offer, sell and service in this state new motor vehicles manufactured or distributed by the franchisor.
- (c) The franchisee, as a separate business, constitutes a component of the franchisor's distribution system.
- (d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor.

(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts and accessories.

12. "Franchisee" means a person who both:

(a) Receives new motor vehicles from the franchisor under a franchise.

(b) Offers and sells to and services new motor vehicles for the general public.

13. "Franchisor" means a person who both:

(a) Manufactures or distributes new motor vehicles.

(b) May enter into a franchise.

14. "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

15. "Lead" means any retail consumer who satisfies all of the following:

(a) Responds to a factory-directed program that obtains consumer contact information and that provides such information to one or more dealers.

(b) Expresses an interest to the factory in purchasing, leasing or acquiring any vehicle or product, service or financing available from the dealers of that factory.

(c) Does not qualify for any reasonable factory sponsored employee, retiree or vendor new vehicle purchase program or any other reasonable similar factory new vehicle purchase program.

16. "Line-make" means those motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer of those same motor vehicles.

17. "Major component part" includes a motor vehicle or vehicle part that the manufacturer has assigned any factory, motor, serial or other identification number or mark.

18. "Manufacturer" means any person who either:

(a) Manufactures or assembles new motor vehicles.

(b) Manufactures or installs on previously assembled truck chassis special bodies or equipment that when installed forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, excluding the installation of a camper on a pickup truck.

19. "Motor home" means a motor vehicle that is primarily designed as temporary living quarters and that:

(a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.

(b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:

(i) A cooking facility with an onboard fuel source.

(ii) A gas or electric refrigerator.

(iii) A toilet with exterior evacuation.

(iv) A heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine.

(v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.

(vi) A 110-125 volt electric power supply.

20. "Motor vehicle" means an automobile, motor bus, motorcycle, truck or truck tractor or any other self-propelled vehicle, trailer or semitrailer.
21. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a public consignment auction dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells, auctions or exchanges the motor vehicle.
22. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new house trailers or used house trailers taken in trade on new house trailers. For the purposes of this paragraph, "house trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.
23. "New motor vehicle" means a motor vehicle, other than a used motor vehicle, that is held either for:
- (a) Sale by the franchisee who first acquired the vehicle from the manufacturer or distributor of the vehicle.
 - (b) Sale by another franchisee of the same line-make.
24. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.
25. "Off-premises display and sales" means a promotion or sale of motor vehicles for a period of time as specified by the director that both:
- (a) Is sponsored by a licensed motor vehicle dealer, the licensed motor vehicle dealer's agents or the manufacturer.
 - (b) Takes place at a location within the same county but not at the licensee's established place of business.
26. "Off-premises exhibition" means the exhibition of a motor vehicle for a period of time as specified by the director at a location within the same county but not at the established place of business of a licensed motor vehicle dealer and at which a solicitation or sale does not occur.
27. "Provisional automotive recycler's license" means a license that both:
- (a) Is issued by the department only in conjunction with an application for an automotive recycler's license.
 - (b) Permits the applicant or applicants to conduct the business of an automotive recycler regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.
28. "Provisional dealer's license" means a license that both:
- (a) Is issued by the department only in conjunction with an application for a dealer's license.
 - (b) Permits the applicant or applicants to conduct the business of a motor vehicle dealer regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.
29. "Public consignment auction dealer" means a person who at the public consignment auction dealer's established place of business or at an authorized off-premises location pursuant to the requirements of section 28-4401 is in the business of both of the following:
- (a) Conducting live auctions with a licensed auctioneer verbally calling for and accepting bids.
 - (b) Providing live auction services to the public on a consignment contract basis.

30. "Retail consumer" means any person purchasing, leasing or acquiring or possibly purchasing, leasing or acquiring a vehicle or product, service or financing not for resale.
31. "Service" means any service that is sold, leased or provided to retail consumers and that directly relates to the ownership or leasing of a new or used motor vehicle, including extended service contracts or motor vehicle warranty and nonwarranty repairs or maintenance, including both parts and labor.
32. "Special event" means an exhibition of new motor homes by a motor vehicle dealer licensed to sell new motor homes or an exhibitor for a period of time specified by the director at a location in this state other than the licensee's or exhibitor's established place of business.
33. "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged or given away or the title to the motor vehicle has been transferred from the person who first acquired the vehicle from the manufacturer, or importer, dealer or agent of the manufacturer or importer, and that has been placed in bona fide consumer use. For the purposes of this paragraph, "bona fide consumer use" means actual operation by an owner who acquired a new motor vehicle both:
- (a) For use in the owner's business or for pleasure or otherwise.
 - (b) For which a certificate of title has been issued or that has been registered as provided by law.
34. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, auctions, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, seven or more used motor vehicles in a continuous twelve month period. Used motor vehicle dealer does not include a wholesale motor vehicle auction dealer or a public consignment auction dealer.
35. "Wholesale motor vehicle auction dealer" means a person who both:
- (a) Is in the business of providing auction services solely in wholesale transactions to motor vehicle dealers licensed by this state or any other jurisdiction.
 - (b) Does not buy, sell or own the motor vehicles the auction dealer auctions in the ordinary course of business.
36. "Wholesale motor vehicle dealer" means a person who sells used motor vehicles only to licensed motor vehicle dealers.

28-2060. Transfer of ownership by operation of law

- A. Except as provided in subsection F of this section, when the title or interest of an owner of a registered vehicle passes to another other than by voluntary transfer, the transferee shall obtain a transfer of registration within thirty days after the passing of the title or interest.
- B. Within thirty days after passing of the title or interest of an owner of a registered or unregistered vehicle, the transferee of the vehicle shall obtain a new certificate of title on proper application and presentation of the last certificate of title, if available, and such instruments or documents of authority or certified copies of the instruments or documents that are sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels that pass to another other than by voluntary transfer.
- C. If a motor vehicle has been forfeited to the federal government and is sold at public auction pursuant to federal law, the purchaser at the sale takes title free of any liens or encumbrances if federal law so provides. If a motor

vehicle has been forfeited to any local or state government entity, agency or political subdivision or to any federal law enforcement agency after the disposition of all claims under the laws of this state, the order of the court forfeiting the vehicle shall transfer good and sufficient title to the transferee and to any subsequent purchaser or transferee. The purchaser or transferee shall register the motor vehicle within thirty days after the sale or transfer, and the department shall issue a certificate of title to the purchaser or transferee on presentation of the evidence of title without any reference to liens or encumbrances.

D. The transferee of a vehicle required to have a certificate of title and be registered under section 28-2153 or a mobile home required to have a certificate of title under section 28-2063 may obtain a transfer of registration to the transferee and a new certificate of title if both of the following occur:

1. The title or interest of the owner of the vehicle passes to another either:

(a) Through notice and sale under the conditions contained in any security agreement, chattel mortgage, conditional sale or other evidence of lien or under the authority given by statute in cases arising under sections 33-1021 and 33-1022 or under section 33-1704.

(b) For a mobile home the lien on which is also a lien on real property, through a contract for conveyance of real property, deed of trust or mortgage.

2. Satisfactory evidence is presented to the director that the sale of the vehicle was fairly and lawfully conducted in conformity with all requirements of law after due notice to the former owner. In cases arising under section 33-1704, a declaration that is signed by both the seller and the buyer and that sets forth compliance with section 33-1704 constitutes satisfactory evidence, and the director may rely on that declaration.

E. Any administrator, executor, trustee or other representative of the owner, a peace officer or a person repossessing a vehicle under the terms of any conditional sales contract, lease, chattel mortgage or other security agreement or a purchaser at a sale foreclosing a lien, or the assignee or legal representative of any such person, may operate a vehicle from the place of repossession or place where it was formerly kept to a garage or place of storage in the county or state where the contract was recorded or where the person repossessing the vehicle resides or to any other garage or place of storage that is not more than seventy-five miles from the place of repossession or place where the vehicle was formerly kept by the owner if either of the following conditions exists:

1. The license plates assigned to the vehicle are displayed on the vehicle.

2. If license plates are not displayed, a written permit has been obtained from the department or the local authorities having jurisdiction over the highways and a placard that bears the name and address of the person authorizing the movement and that is legible from a distance of one hundred feet during daylight is displayed in plain sight on the vehicle.

F. If ownership of a motor vehicle for which a certificate of title has been issued in this state or another state reverts through operation of state law to a lienholder of record through repossession pursuant to the terms of a security agreement or through another similar instrument that is valid in such state, an affidavit by the lienholder of record stating that the vehicle was repossessed on default of the terms stated in the security agreement or similar instrument is proof of ownership, right of possession and right of transfer. If the lienholder of record is a financial institution as defined in section 28-4301, the lienholder of record shall electronically submit the repossession affidavit to the

department. The director shall prescribe the form and content of the affidavit. This state and its agencies, employees and agents are not liable for relying in good faith on the content of the affidavit.

28-4410. Consignment contracts; definitions

A. A dealer in motor vehicles, trailers and semitrailers may possess and offer for sale a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title or title transfer form in the dealer's possession if the dealer possesses all of the following:

1. A consignment contract or dealer acquisition contract.
2. The most recent registration card for the vehicle.
3. A statement by the lienholder disclosing all unsatisfied liens, if applicable.

B. A dealer may complete the sale of a motor vehicle, trailer or semitrailer offered for sale under subsection A of this section when the dealer possesses verification that all liens on the motor vehicle, trailer or semitrailer have been satisfied by the dealer or assumed by the purchaser.

C. A dealer who offers a vehicle for sale on consignment shall inform a prospective customer that the vehicle is on consignment to the dealer.

D. The director shall adopt rules on the minimum form and content of consignment contracts and dealer acquisition contracts.

E. This chapter does not allow the consignment of motor vehicles from one licensee to another licensee.

F. A dealer in motor vehicles, trailers or semitrailers may offer for sale or sell a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses a complete photocopy of the duly or regularly assigned certificate of title, the original of which has been delivered to a financial institution or a subsidiary of the financial institution pursuant to an inventory financing arrangement.

G. For the purposes of this section:

1. "Consignment contract" means an agreement executed by both the owner of a vehicle and a licensed motor vehicle dealer pursuant to which the vehicle is delivered to the dealer to sell for the owner.

2. "Dealer acquisition contract" means an agreement that both:

(a) Is executed by both the owner of a vehicle, the certificate of title for which is in possession of a lienholder in accordance with the laws of this state or another state, and a licensed motor vehicle dealer.

(b) Transfers ownership of the vehicle described in subdivision (a) of this paragraph to a licensed dealer from a person other than a manufacturer, distributor, franchisor or dealer.

3. "Inventory financing arrangement" means an agreement under which a dealer grants a security interest to a financial institution under the provisions of title 47, chapter 9.

Rule Authority

28-363. Duties of the Director; administration

A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.
 2. Appoint assistant directors for each of the divisions.
 3. Provide for the assembly and distribution of information to the public concerning department activities.
 4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.
 5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.
 6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.
 7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.
 8. Assist regional transportation planning agencies, councils of government, tribal governments, counties, cities and towns in the development of their regional and local transportation plans to ensure that the streets, highways and other regionally significant modes of transportation within each county form an integrated and efficient regional system.
 9. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.
 10. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.
 11. 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.
 12. Develop a plan to increase use of bypass routes by vehicles on days of poor visibility in the Phoenix metropolitan area.
- B. The assistant directors appointed pursuant to subsection A of this section are subject to title 41, chapter 4, article 4.
- C. The director shall not spend any monies, adopt any rules or implement any policies or programs to convert signs to the metric system or to require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for any highway project before the conversion or use is required by federal law, except that the director may:
1. Spend monies and require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for a highway project that is awarded before October 1, 1997 and that is exclusively metric from its inception.

2. Prepare for conversion to and use of the metric system not more than six months before the conversion or use is required by federal law.

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-2058. Transfer of title; odometer mileage disclosure statement

A. When the owner of a registered or unregistered vehicle transfers or assigns the owner's title or interest to the vehicle:

1. If the vehicle is registered:
 - (a) The owner shall endorse on the certificate of title or title transfer form an assignment with the warranty of title.
 - (b) Except as provided in section 28-2094, the owner shall deliver the certificate of title or title transfer form to the purchaser or transferee at the time of delivery of the vehicle to the purchaser or transferee.
 - (c) The registration of the vehicle expires and the owner shall transfer the license plates, surrender the license plates to the department or an authorized third party or submit an affidavit of license plate destruction within thirty days after the owner transfers or assigns the owner's title or interest in the vehicle.
 - (d) Except as provided in section 28-2091, the acquiring owner shall apply for registration or a certificate of title, or both, within fifteen days after the relinquishing owner transfers or assigns the relinquishing owner's title or interest in the vehicle. The director may prorate the registration period as the director deems necessary to coincide with emissions inspection requirements.
 - (e) Except if the acquiring owner is an insurer who acquires the vehicle pursuant to a claim settlement, the acquiring owner shall display on the vehicle a temporary registration plate, another permit or a valid license plate as prescribed by the department until ownership of the vehicle is transferred in the department's records.

2. Regardless of whether or not the vehicle is registered:

- (a) Except as provided in subsection B of this section, the owner shall deliver to the purchaser or transferee an odometer mileage disclosure statement in a form prescribed by the director.
- (b) Except as provided in sections 28-2051, 28-2060 and 28-2091, the purchaser or transferee shall present the certificate of title or title transfer form to the department with the required fee within fifteen days after the transfer and:
 - (i) The department shall issue a new certificate of title.
 - (ii) If required, the purchaser or transferee shall apply for and obtain registration, and the department shall issue new license plates to the purchaser or transferee.

B. The odometer disclosure requirement of subsection A of this section does not apply to:

1. A motor vehicle that is ten model years of age or older.
2. A motor vehicle that has a gross vehicle weight rating of sixteen thousand pounds or more.
3. A vehicle that is not self-propelled.
4. A motor vehicle that is sold directly by the manufacturer to an agency of the United States in conformity with contractual specifications.
5. A new motor vehicle that is purchased for resale and not for use by the purchaser.

28-4303. Administration

The director shall supervise and regulate all persons required by this chapter to be licensed. In the supervision and regulation required by this section, the director may:

1. Investigate as the director deems necessary and for that purpose the director may require the aid and assistance of the highway patrol division.
2. Conduct hearings.
3. Compel the attendance of witnesses at the hearings.

28-4362. Application; fee; bond

Applications shall be accompanied by:

1. The filing fees prescribed in section 28-4302, and each licensee shall pay the annual license fee prescribed in section 28-4302.
2. A bond that:
 - (a) Is in a form to be approved by the director.
 - (b) Is in an amount prescribed by the director of at least twenty thousand dollars for an automotive recycler's license and not more than one hundred thousand dollars for all other licenses.
 - (c) Is executed by a surety company authorized to transact business in this state as surety on the bond with the applicant as principal obligor on the bond and the state as obligee.
 - (d) Is cancellable only on at least sixty days' prior notice to the director.
 - (e) Inures to the benefit of a person who suffers loss because of either:
 - (i) Nonpayment by the dealer of customer prepaid title, registration or other related fees or taxes.
 - (ii) The automotive recycler's or the dealer's failure to deliver in conjunction with the sale of a vehicle a valid vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle.
3. A copy of the dealer's current transaction privilege tax license.

28-4365. Action on application; denial; immunity from costs

A. Within twenty days after completion of the criminal records check, the director shall approve or deny the application for the issuance of a license. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for the denial.

B. The director may deny an application for a license if:

1. An individual included in the application made a misrepresentation, omission or misstatement in the application to conceal a matter that may cause the application to be denied.
 2. An individual included in the application has been convicted of fraud or an auto related felony in a state, territory or possession of the United States or a foreign country within the ten years immediately preceding the date the criminal records check is complete.
 3. An individual included in the application has been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date the criminal records check is complete.
 4. An individual in the application does not meet the requirements of law or the requirements of a rule adopted by the director pursuant to law.
 5. Within five years preceding the application, an individual included in the application has had a similar license suspended, revoked or cancelled in this or any other state.
- C. The individual whose information is found to be a misrepresentation, omission or misstatement is not eligible to reapply for a license for twelve months from the date of denial.
- D. The department or its employees are not liable for any costs incurred by an applicant seeking licensure under this chapter.

28-4409. Evidence of ownership requirement; exception

A. Except as provided in section 28-4410:

1. Each dealer in motor vehicles, trailers and semitrailers, including manufacturers who sell to other than dealers, having possession of or offering for sale a motor vehicle, trailer or semitrailer shall have at the same time either:
 - (a) Possession of a duly and regularly assigned certificate of title to the vehicle.
 - (b) Reasonable indicia of ownership or right of possession as approved by the director.
 2. A dealer or manufacturer shall not offer for sale or sell a motor vehicle, trailer or semitrailer until the dealer or manufacturer has obtained a certificate of title to the motor vehicle, trailer or semitrailer, except that a certificate of title is not required for a new motor vehicle sold by manufacturers to dealers.
- B. A wholesale motor vehicle auction dealer is exempt from the requirement of having to possess a duly and regularly assigned certificate of title and from other requirements relating to the reassignment of certificate of title documents and disclosures to buyers. A wholesale motor vehicle auction dealer may buy or sell a motor vehicle at wholesale in the wholesale motor vehicle auction dealer's own name if the wholesale motor vehicle auction dealer complies with the provisions of this title relating to certificates of title, reassessments of certificate of title documents and disclosures to buyers.
- C. A wholesale motor vehicle dealer must apply for a certificate of title in the name of the wholesale motor vehicle dealer any vehicle that the wholesale motor vehicle dealer acquires before the wholesale motor vehicle dealer transfers the vehicle to another licensed motor vehicle dealer.

28-4422. Resale of new motor vehicles

A motor vehicle dealer may resell a new motor vehicle if all of the following apply:

1. A certificate of title is not transferred from the person who first acquired the new motor vehicle from the manufacturer or importer or agent of the manufacturer or importer.
2. The new motor vehicle is returned to the selling motor vehicle dealer.
3. The motor vehicle dealer gives written notice to the retail consumer that the vehicle was delivered to a previous purchaser.
4. The retail consumer signs an acknowledgment of receipt of the written notice prescribed by paragraph 3 and the motor vehicle dealer maintains a copy of the acknowledgment in the dealer's records.

28-4493. Cancellation or suspension; grounds

- A. The director may suspend or cancel the license, off-premises exhibition permit, off-premises display and sales permit or special event permit of any licensee or exhibitor if the director determines that the licensee or exhibitor:
1. Has made a material misrepresentation or misstatement in the licensee's or exhibitor's application for a license, off-premises exhibition permit, off-premises display and sales permit or special event permit.
 2. Has used or is using any false advertising as prescribed by section 13-2203.
 3. Has violated or is violating a law of this state or a rule adopted by the director pursuant to law.
 4. Has failed or is failing to keep and maintain records required to be kept and maintained by the licensee or exhibitor.
 5. Has no established place of business or principal place of business as required by this chapter.
 6. Has knowingly dealt in stolen motor vehicles or parts or accessories of stolen motor vehicles.
 7. Has failed or is failing or the licensee's or exhibitor's manager, agents or representatives have failed or are failing to devote a substantial portion of time to the business for which the licensee or exhibitor is licensed or to be actively or principally engaged in the business for which the licensee or exhibitor is licensed.
 8. Has refused to service and fulfill the manufacturer's warranty.
 9. Is offering for private sale a motor vehicle in the licensee's or exhibitor's inventory.
 10. Has used or is using a private residence to illegally transact business regulated by this chapter.
 11. As a manufacturer, factory branch, distributor, field representative, officer or agent or any representative of a manufacturer, factory branch, distributor, field representative, officer or agent without good cause has cancelled or failed to renew the franchise of a new motor vehicle dealer. All existing dealers' franchises continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless otherwise mutually agreed by the newly appointed distributor and the dealer.
- B. The director may suspend or cancel a license if the director determines that an individual included in the application for the license:
1. Made a misrepresentation, omission or misstatement in the application to conceal a matter that may cause the application to be denied.

2. Has been convicted of fraud or an auto related felony in a state, territory or possession of the United States or a foreign country within the past ten years immediately preceding the date a criminal records check is complete.
3. Has been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the past five years immediately preceding the date a criminal records check is complete.

28-4497. Action to restrain violation by licensee

If the director has reasonable cause to believe that a licensee has violated or is violating any law of this state that the director enforces or administers or has violated or is violating a rule or order adopted or issued by the director pursuant to law, in addition to any remedies existing under this chapter or otherwise, the director may bring and maintain, in the name and on behalf of this state, an action in the superior court in Maricopa county against a licensee to restrain or enjoin the licensee from continuing the violation. In the action, the court shall proceed as in other actions for injunction.

28-4498. Licensed dealer and automotive recycler; cease and desist order; request for hearing

A. If the director has reasonable cause to believe from an investigation made by the director that a licensed motor vehicle dealer or automotive recycler has violated or is violating a law of this state or rule adopted by the department, the director may immediately issue and serve on the licensee by personal delivery or first class mail at the business address of record a cease and desist order requiring the licensee to immediately cease and desist from further engaging in the business or the prohibited activity, or both, on the receipt of the notice. A licensee who receives a cease and desist order may submit a written request for a hearing to the director. The licensee shall submit the request for a hearing within thirty days after the licensee receives the cease and desist order. On failure of a licensee to comply with the order or after a requested hearing, the director may suspend or cancel the licensee's license or permit pursuant to section 28-4493 and section 28-4494 or 28-4495 or may take action pursuant to section 28-4496.

B. If the director conducts an investigation and has reasonable cause to believe that a licensed motor vehicle dealer is in violation of section 28-4493, subsection A, paragraph 9, the director may immediately issue and serve on the licensee by personal delivery or first class mail at the business address of record a cease and desist order requiring the licensee to immediately cease and desist from further engaging in the business or the prohibited activity, or both, on the receipt of the notice. The director shall notify the licensee that a hearing will be conducted and that civil penalties may be imposed pursuant to section 28-4501. On failure of a licensee to comply with the order or after a hearing, the director may suspend or cancel the licensee's license or permit pursuant to section 28-4493 and section 28-4494 or 28-4495 or may take action pursuant to section 28-4496.

C. The director of the department of transportation shall provide a copy of any cease and desist order issued pursuant to this section to the director of the department of revenue.

41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

- A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.
- B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.
- C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions

A. Subject to subsections C and D of this section, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

- 1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
 - 2. A driver license issued by a state that verifies lawful presence in the United States.
 - 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
 - 4. A United States certificate of birth abroad.
 - 5. A United States passport.
 - 6. A foreign passport with a United States visa.
 - 7. An I-94 form with a photograph.
 - 8. A United States citizenship and immigration services employment authorization document or refugee travel document.
 - 9. A United States certificate of naturalization.
 - 10. A United States certificate of citizenship.
 - 11. A tribal certificate of Indian blood.
 - 12. A tribal or bureau of Indian affairs affidavit of birth.
 - 13. Any other license that is issued by the federal government, any other state government, an agency of this state or a political subdivision of this state that requires proof of citizenship or lawful alien status before issuing the license.
- B. This section does not apply to an individual if either:
- 1. Both of the following apply:
 - (a) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.

(b) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

2. All of the following apply:

(a) The individual is a resident of another state.

(b) The individual holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state.

(c) The individual seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state.

C. If, pursuant to subsection A of this section, an individual has affirmatively established citizenship of the United States or a form of nonexpiring work authorization issued by the federal government, the individual, on renewal or reinstatement of a license, is not required to provide subsequent documentation of that status.

D. If, on renewal or reinstatement of a license, an individual holds a limited form of work authorization issued by the federal government that has expired, the individual shall provide documentation of that status.

E. If a document listed in subsection A, paragraphs 1 through 12 of this section does not contain a photograph of the individual, the individual shall also present a government issued document that contains a photograph of the individual.

F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state or to an individual who provides a service to any person.

2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service.

Other Applicable Rules

R17-1-102. Licensing Time-frames

A. Time-frames. The time-frames listed in Tables A and B apply to licenses issued by the Department.

1. “Department” means the Arizona Department of Transportation.

2. “License” has the meaning prescribed in A.R.S. § 41-1001(10).

3. “Administrative completeness review time-frame” has the meaning prescribed in A.R.S. § 41-1072(1).

4. “Overall time-frame” has the meaning prescribed in A.R.S. § 41-1072(2).

5. “Substantive review time-frame” has the meaning prescribed in A.R.S. § 41-1072(3).

B. Administrative completeness review – notice of deficiency.

Within the time-frame for the administrative completeness review listed in Tables A and B, the Department shall notify the applicant in writing that the application is complete or incomplete. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying the information required to make the application administratively complete.

1. The notice of deficiency shall list all missing information.

2. A notice of deficiency issued by the Department within the administrative completeness review time-frame suspends the administrative completeness review time-frame and the overall time-frame, from the date the Department issues the notice of deficiency until the date that the Department receives all missing information from the applicant.

C. Denial during administrative completeness review.

1. If the applicant does not withdraw the application and does not respond, within 60 days after the date on a notice of deficiency issued under subsection (B), to each item listed in the notice of deficiency, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.

2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of the application, an applicant shall submit a new application.

3. The Department may issue a written notice of denial to an applicant before finding administrative completeness if the information provided by the applicant demonstrates that the applicant is not eligible for a license under the relevant statute or rules.

4. The notice of denial shall provide a justification for the denial and an explanation of the applicant’s right to a hearing or appeal.

D. Substantive review – additional information. Within the timeframe for the substantive review listed in Tables A and B, the Department may issue a comprehensive request for additional information, or by mutual agreement with the applicant, issue a supplemental request for additional information.

1. Any request for additional information shall list all items of information required.

2. Any request for additional information issued by the Department within the substantive review time-frame suspends the substantive review time-frame and overall time-frame, from the date the Department issues the request until the date that the Department receives all the required additional information from the applicant.

E. Denial during substantive review. The following provisions apply:

1. If the applicant does not withdraw the application and does not respond, within 60 days after the date on a request for additional information under subsection (D), to each item required by the request, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.
2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of an application, an applicant shall submit a new application.
3. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

F. Notification after substantive review. Upon completion of the substantive review, the Department shall notify the applicant in writing that the license is granted or denied within the overall time-frames listed in Tables A and B. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

G. Applicant response period. In computing the applicant's response periods prescribed in this Section, the last day of a response period is counted. If the last day is a Saturday, Sunday, or legal holiday, the applicant's response period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

H. Effective date. This Section applies to applications filed with the Department on or after the effective date of this Section.

Historical Note

New Section R17-1-102 recodified from R17-1-101 by final rulemaking at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 923, effective February 11, 2002 (Supp. 02-1).

Table A. Motor Vehicle Division

LICENSE	STATUTORY AUTHORITY	ADMINISTRATIVE COMPLETENESS REVIEW TIME-FRAME	SUBSTANTIVE REVIEW TIME-FRAME	OVERALL TIME-FRAME
Fleet registration	A.R.S. §§ 28-2201 to 28-2208	60 days	30 days	90 days
International proportional registration	A.R.S. §§ 28-2231 to 28-2239	20 days	10 days	30 days
Alternative proportional registration	A.R.S. § 28-2261 to 28-2269	60 days	30 days	90 days
Personalized special plates	A.R.S. § 28-2406	5 days	30 days	35 days
Traffic survival school or traffic survival school instructor license	A.R.S. §§ 28-3306 to 28-3307	5 days	35 days	40 days

Driver license issued after suspension, revocation or disqualification	A.R.S. § 28-3315	5 days	30 days	35 days
Automotive recycler, broker, motor vehicle dealer or wholesale motor vehicle dealer license	A.R.S. §§ 28-4301 to 28-4366	8 days	117 days	125 days
Manufacturer, distributor, factory branch, or distributor branch license	A.R.S. §§ 28-4301 to 28-4366	6 days	14 days	20 days
Permit to exhibit or display and sell vehicles off dealer's premises	A.R.S. § 28-4401	6 days	9 days	15 days
Permit to exhibit recreational vehicles at public event	A.R.S. § 28-4402	6 days	9 days	15 days
Authorization to use dealer license plates	A.R.S. § 28-4533	7 days	38 days	45 days
Authorization to dispose of junk vehicle	A.R.S. § 28-4882	5 days	45 days	50 days
License to operate as a title service company	A.R.S. § 28-5003	6 days	14 days	20 days
Third-party authorization to perform certain title and registration, motor carrier licensing and tax reporting, dealer licensing, and driver license functions*	A.R.S. §§ 28-5101 to 28-5110	5 days	90 days	95 days
Third-party authorization to issue over-weight and over-dimensional permits*	A.R.S. §§ 28-1145 and 28-5101 to 28-5110	5 days	90 days	95 days
Certification of an authorized third party, or the authorized third party's employee or agent, to perform the authorized functions	A.R.S. §§ 28-5101 to 28-5110	5 days	60 days	65 days
Professional driver training school or professional driver training school instructor license	A.R.S. §§ 32-2351 to 32-2393	5 days	35 days	40 days

* The Division shall have the right to determine when an authorized third party may begin to transact business after a license has been granted.

Historical Note

New Table A recodified from R17-1-101, Table A, by final rulemaking at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3).

Table B. Intermodal Transportation Division

LICENSE	STATUTORY AUTHORITY	ADMINISTRATIVE COMPLETENESS REVIEW TIME-FRAME	SUBSTANTIVE REVIEW TIME- FRAME	OVERALL TIME-FRAME

Outdoor advertising permit	A.R.S. §§ 28-7901 to 28-7909	30 days	30 days	60 days
Encroachment permit	A.R.S. §§ 28-7053(A), 7053(D), 7045(2)	30 days	120 days	150 days
Junkyard screening license	A.R.S. §§ 28-7941 to 28-7943	30 days	60 days	90 days

Historical Note

New Table B made by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 923, effective February 11, 2002 (Supp. 02-1).

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 2, Motor Carriers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 11, 2021

SUBJECT: DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 5, Article 2, Motor Carriers

Summary:

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation (ADOT) relates to all rules in Title 17, Chapter 5, Article 2 related to Motor Carriers. Specifically, these rules regulate motor carriers operating in Arizona.

In the last 5YRR for these rules, ADOT anticipated filing a final rulemaking with the Council to amend the rules on or before December 30, 2016. ADOT indicates it did not complete that course of action by December 30, 2016 and instead completed rulemaking in 2018 which was approved by the Council on May 1, 2018.

Proposed Action

ADOT indicates it intends to amend several rules that it states are inconsistent with other rules and statutes, not currently enforced as written, and are not clear, concise, and understandable as outlined in more detail in Sections 4-6 of the report. Notably, ADOT intends to incorporate by reference the October 1, 2020 edition of the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Materials Regulations (HMRs) and also remove provisions requiring Intrastate Medical Waivers for drivers with an insulin-dependent diabetic condition since 49 CFR 391 has been updated to indicate that drivers with diabetes mellitus

treated with insulin for control are physically qualified to operate a commercial motor vehicle, among other proposed amendments.

ADOT indicates it received an exemption from the rulemaking moratorium from the Governor's Office on July 15, 2020 and intends to submit final rules to the Council by August 2021.

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

Yes. ADOT cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

ADOT indicates the economic impact of the rules in Article 2 have essentially remained the same as estimated in the Economic, Small Business and Consumer Impact Statement prepared on the last amendment of the rules.

Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding has increased slightly. The Department of Public Safety (DPS) is the lead agency for administration of MCSAP. DPS may now apply for a MCSAP grant for an estimated \$10,000,000 to \$12,000,000 versus the previous total of \$10,000,000.

DPS continues to incur moderate to substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. DPS reported that 42,960 commercial motor vehicles were inspected in Arizona in 2020. Of these inspections, 6,299 of the drivers and 7,942 of the vehicles were placed out-of-service after the inspection, meaning that the violations were so severe that the driver was prohibited from driving or the vehicle was prohibited from being moved until the violations were corrected.

Administrative costs for ADOT continue to be minimal to moderate. As of January 20, 2021, there are 113,982 valid Arizona commercial driver licenses (CDLs), of those there is 1,548 with a hazardous materials endorsement, 39,072 with a tanker endorsement, 14,525 with a combination hazardous materials/tanker endorsement, 26,264 with a passenger endorsement, 12,959 with a school bus endorsement, and 36,864 with a double/triple trailer endorsement. There are also 2,341 Arizona commercial learner's permits (CLPs), of those there is 1 with a hazardous materials endorsement, 389 with a tanker endorsement, 1 with a combination hazardous materials/tanker endorsement, 369 with a passenger endorsement, 162 with a school bus endorsement, and 1 with a double/triple trailer endorsement.

Business entities bear minimal to moderate costs (under \$100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. Since the last adoption some of the required equipment costs for electronic logging have gone down. Motor carriers and drivers not in compliance will continue to bear costs from

possible federal penalties, state penalties, and any administrative and legal costs associated with due process.

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?

In rulemaking, ADOT indicates it routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. ADOT indicates the following rules are designed to minimally impact regulated persons and small businesses and ADOT believes that the probable benefits of the rules outweigh the probable costs of the rules. ADOT states most costs, however, arise from the requirements of federal law that the State needs to be in compliance with.

4. Has the agency received any written criticisms of the rules over the last five years?

ADOT indicates it received several written criticisms in relation to the rulemaking which was approved by the Council in May 2018. Those written criticisms were addressed and included with the rulemaking package at that time. Summaries of the comments and ADOT's responses are included in Section 7 of the report for the Council's reference. ADOT does not indicate it received any additional written comments related to these rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

ADOT indicates that the following rules are not clear, concise, and understandable:

- R17-5-201: In the definition of “vision examination report,” change the flow of the sentence by removing the commas after “driver’s” and “driver applicant’s.”
- R17-5-202: In subsection (A) incorporate by reference the October 1, 2020, edition of the applicable FMCSRs and remove the 2017 sections that were adopted early; and update the website address where the federal regulations may be viewed, the name of the U.S. Government Bookstore, and the International Standard Book Numbers for the new books. Remove subsection (C) and the reference to it in subsection (B) since intrastate tow trucks with a gross vehicle weight rating of 26,000 pounds or less no longer meets the definition of a commercial motor vehicle as defined in A.R.S. § 28-5201
- R17-5-203: In subsection (A), correct the reference to Paragraph (a)(1). In subsection (B), replace the term “prescribed under” with “defined in” to be consistent in use and to provide clearer verbiage. In subsection (C) update the title of the section by adding “hazardous material safety permit applicant/holder, and intermodal equipment provider” after “Motor Carrier” and removing “for certain Mexico-domiciled motor carriers” in order to match its current form under the October 1, 2020, edition of 49 CFR 390.19T; and remove the exception from obtaining a USDOT number by filing a Motor Carrier Identification Report, Form MCS-150, from intrastate farm vehicles.
- R17-5-205: In subsection (A), replace the term “prescribed under” with “defined in” to be consistent in use and to provide clearer verbiage.

- R17-5-206: In subsection (B)(1), remove the exception from obtaining a safety registration and USDOT number from the intrastate farm vehicles. In subsection (B)(2), add A.R.S. § 28-5240 as an applicable penalty statute.
- R17-5-208: Remove the provision for an Intrastate Medical Waiver for an insulin-dependent diabetic condition pursuant to process change in 49 CFR 391 which now allows for that condition to meet physical qualification as indicated in item 5. This removal includes: removing references to “an insulin dependent diabetic condition” and to 49 CFR 391.41(b)(3); removing subsections (D), (Q), and (S)(6)(b); and renumbering the subsections as applicable in the Section.
- R17-5-209: In subsection (A)(1), incorporate by reference the October 1, 2020, edition of the applicable HMRs. In subsection (A)(2), update the website address where the federal regulations may be viewed, the name of the U.S. Government Bookstore, and the International Standard Book Numbers for the new books. In subsections (B) and (C)(1), replace the word “under” with “in” so that the term is “defined in,” which allows the term to be consistent in use and to provide clearer verbiage. In addition, add the word “as” before “defined” in the definition of “highway” in subsection (C)(1). Change the first mentions of “carrier,” “hazmat,” “person,” and “highway” into lower case as the terms are being used in the general sense.
- R17-5-210: In subsection (A), update the emergency situation notification process by replacing the form and fax method with a written email method and remove the signature requirement. In subsection (B)(4), update the reference from 49 CFR 390.5, which is indefinitely suspended, to the current regulation under 49 CFR 390.5T.
- R17-5-211: In the Section’s heading, add the word “and” before the word “Sanction” for proper and consistent format
- R17-5-212: In subsection (B)(1)(a), change “infraction” to “violation” for better consistency in verbiage. In subsection (C)(1)(b), remove “Department” as an unnecessary distinction to “statute or rule.” In subsection (C)(2), change the word “the” to an “a” before “compliant” and add the verbiage, “in compliance with subsections (B) and (C)(1)” to ensure better clarity, consistency, and that the proper filing occurs.

6. Has the agency analyzed the rules’ consistency with other rules and statutes?

ADOT indicates that the following rules are not consistent with other rules and statutes:

- R17-5-202(A), R17-5-203(C), R17-5-208, and R17-5-209(A)(1): These rules are not consistent with current FMCSRs and HMRs. The Federal Motor Carrier Safety Administration (FMCSA) requires the State to adopt these federal regulations within three years for the State to remain in substantial compliance and ensure eligibility for the Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding that DPS expects to receive each year. The current rules incorporated by reference the October 1, 2016, edition of the FMCSRs and HMRs with an early adoption of certain sections of 49 CFR 385 and 390 as published in 82 FR 5292, January 17, 2017. The Department needs to incorporate by reference a more recent edition of the FMCSRs in Section 202 and HMRs in Section 209 and update and amend the Department’s applicable rules

accordingly in 17 A.A.C. Chapter 5, Article 2 to be consistent with the updated regulations.

- R17-5-202(C): Pursuant to Laws 2018, Chapter 307, which amended the definition of commercial motor vehicle to not include intrastate vehicles with 26,001 pounds or less, the tow trucks mentioned in subsection (C) are no longer classified as a commercial motor vehicle so no longer need the exemption or have to meet the physical qualifications and examination requirements as detailed. This subsection needs to be removed

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Despite the issues outlined above, ADOT indicates that the rules are nonetheless effective in achieving their objectives.

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

ADOT indicates the following rules are not enforced as written:

- R17-5-203(C) and R17-5-206(B)(1): Due to discussions between DPS and Department law enforcement and public safety officials, a determination has been made to remove the exemption from the federal safety registration and USDOT number requirement, which will allow for better consistency and clarity between the requirements of interstate and intrastate farm vehicles and better safety precautions for the farm vehicle owners.
- R17-5-208: The Department no longer issues an Intrastate Medical Waiver for drivers with an insulin dependent diabetic condition since 49 CFR 391 has been updated to indicate that drivers with diabetes mellitus treated with insulin for control are physically qualified to operate a commercial motor vehicle (83 FR 47486, September 19, 2018). The provisions for this condition need to be removed from Section 208.

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

ADOT indicates that R17-5-205(E) is more stringent than the federal regulation (49 CFR 383.153(e)) since the amendment to the introductory sentence removes the exception for providing the holder's social security number (SSN) on the application by a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction. A.R.S. § 28-3158 previously had an exception for the SSN of nonresident CDL applicants, but pursuant to Laws 2013, Chapter 128, the exemption was removed and this change authorized the Department to require all CLP and CDL holders to provide their SSNs. As such, while R17-5-203(E) is more stringent than federal law, there is statutory authority to exceed the requirements of federal law with regards to SSNs.

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?

ADOT indicates these rules incorporate by reference federal regulations that contain the requirements of obtaining a CLP, CDL, and endorsements, which is consistent with state

statutes. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statutes, requires applicable drivers to have a CLP, CDL, and endorsements. ADOT indicates these items constitute general permits as defined by A.R.S. § 41-1001(11) since the activities, practices, requirements, and restrictions authorized by them are substantially similar in nature for all holders. As such, ADOT is in compliance with A.R.S. § 41-1037.

11. Conclusion

As outlined above, ADOT has identified certain rules that are not clear, concise, understandable, consistent, and enforced as written. ADOT intends to conduct a rulemaking to address these issues. ADOT indicates that it received an exemption from the rulemaking moratorium from the Governor's Office on July 15, 2020 and intends to submit final rules to the Council by August 2021.

Council staff recommends approval of this report.



Director's Office

One ADOT in service to all

Douglas A. Ducey, Governor

John S. Halikowski, Director

Scott Omer, Deputy Director/Chief Operating Officer

Kevin Biesty, Deputy Director for Policy

Dallas Hammit, Deputy Director for Transportation

January 31, 2021

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

VIA EMAIL: grrc@azdoa.gov

Re: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 2, Five-Year Review Report

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 5, Article 2, which is due on January 31, 2021. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at 602.712.4534 or at COlson2@azdot.gov.

Sincerely,

John S. Halikowski
Director

Enclosure: ADOT Five-year Review Report



Rules and Policy Development

A.A.C. Title 17 – Transportation

Chapter 5

Department of Transportation

Commercial Programs

Article 2 – Motor Carriers

Five-Year Review Report

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Arizona Department of Transportation

Five-Year Review Report

17 A.A.C. Chapter 5, Article 2

January 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 28-366, 28-962, 28-2169, and 28-5204

Specific Statutory Authority: A.R.S. §§ 28-3223, 28-5201, 28-5234, 28-5235, 28-5237, and 28-5238

2. The objective of each rule:

Rule	Objective
R17-5-201	This rule provides industry representatives and members of the general public with a clearer understanding of the Department's intended meaning for the various terms specific to the rules contained in this Article.
R17-5-202	This rule incorporates by reference certain Federal Motor Carrier Safety Regulations (FMCSRs) that the Department deems reasonable and proper in governing safety operations and makes applicable to all manufacturers, shippers, motor carriers, and drivers operating in Arizona.
R17-5-203	This rule provides the amendments and exceptions to 49 CFR 390 - Federal Motor Carrier Safety Regulations; General that are needed to ensure that the language incorporated by reference under R17-5-202 is applicable to all motor carriers, shippers, and manufacturers operating in Arizona (including the requirement to obtain a U.S. Department of Transportation (USDOT) number); that the incorporated material does not conflict with Arizona statute; and that language has been inserted to ensure compliance with an applicable Arizona statute and the proper procedure of contacting the Arizona Department of Public Safety (DPS) as applicable.
R17-5-204	This rule provides the amendments and exceptions to 49 CFR 391 – Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors that are needed to ensure that the language incorporated by reference under R17-5-202 is applicable to all motor carriers, shippers, and manufacturers operating in Arizona and includes language allowing for the Department's Intrastate Medical Waiver as granted under R17-5-208.
R17-5-205	This rule provides the amendments and exceptions to 49 CFR 383 – Commercial Driver's License Standards; Requirements and Penalties that are needed to ensure that the language incorporated by reference under R17-5-202 is consistent and does not conflict with Arizona statute and includes language for State bonding requirements for third party testers.
R17-5-206	This rule provides the amendments and exceptions to 49 CFR 392 – Driving of Commercial Motor Vehicles that are needed to ensure that the language incorporated by reference under R17-5-202 is applicable to all motor carriers and shippers and that language has been inserted to ensure compliance with applicable Arizona statutes.
R17-5-207	This rule provides clarification on the amount of civil penalty due from a motor carrier for repeat findings of responsibility for the same class of motor carrier safety violations.

R17-5-208	This rule specifies the requirements to apply for a Department's Intrastate Medical Waiver; the agreement, terms, and conditions for a waiver, and the renewal process.
R17-5-209	This rule incorporates by reference certain Federal Hazardous Materials Regulations (HMRs) that the Department deems reasonable and proper in governing motor carrier safety operations and makes them applicable to all motor carriers, shippers, and manufacturers operating in Arizona that transport hazardous materials, hazardous substances, or hazardous wastes using a commercial motor vehicle as defined in A.R.S. § 28-5201. In addition, this rule provides the amendments and exceptions to ensure that the language incorporated by reference is consistent and does not conflict with Arizona statute and that language has been inserted to ensure compliance with applicable Arizona statutes.
R17-5-210	This rule specifies the notification process by which a public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad must use to notify DPS when an emergency situation exists under A.R.S. § 28-5234(B) and sets the requirements for the retention and availability of supporting documentation.
R17-5-211	This rule provides inspection, enforcement, and sanction provisions applicable to a transporter as defined in R17-5-201.
R17-5-212	This rule specifies the modifications to the Department's general administrative hearing procedures under 17 A.A.C. Chapter 1, Article 5, as needed for motor carrier enforcement actions under R17-5-202 through R17-5-209 and A.R.S. Title 28, Chapter 14.

3. Are the rules effective in achieving their objectives? Yes X No _____

4. Are the rules consistent with other rules and statutes? Yes _____ No X

Rule	Explanation
R17-5-202(A), R17-5-203(C), R17-5-208, and R17-5-209(A)(1)	These rules are not consistent with current FMCSRs and HMRs. The Federal Motor Carrier Safety Administration (FMCSA) requires the State to adopt these federal regulations within three years for the State to remain in substantial compliance and ensure eligibility for the Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding that DPS expects to receive each year. The current rules incorporated by reference the October 1, 2016, edition of the FMCSRs and HMRs with an early adoption of certain sections of 49 CFR 385 and 390 as published in 82 FR 5292, January 17, 2017. The Department needs to incorporate by reference a more recent edition of the FMCSRs in Section 202 and HMRs in Section 209 and update and amend the Department's applicable rules accordingly in 17 A.A.C. Chapter 5, Article 2 to be consistent with the updated regulations.
R17-5-202(C)	Pursuant to Laws 2018, Chapter 307, which amended the definition of commercial motor vehicle to not include intrastate vehicles with 26,001 pounds or less, the tow trucks mentioned in subsection (C) are no longer classified as a commercial motor vehicle so no longer need the exemption or have to meet the physical qualifications and examination requirements as detailed. This subsection needs to be removed.

5. Are the rules enforced as written? Yes No X

Rule	Explanation
R17-5-203(C) and R17-5-206(B)(1)	Due to discussions between DPS and Department law enforcement and public safety officials, a determination has been made to remove the exemption from the federal safety registration and USDOT number requirement, which will allow for better consistency and clarity between the requirements of interstate and intrastate farm vehicles and better safety precautions for the farm vehicle owners.
R17-5-208	The Department no longer issues an Intrastate Medical Waiver for drivers with an insulin-dependent diabetic condition since 49 CFR 391 has been updated to indicate that drivers with diabetes mellitus treated with insulin for control are physically qualified to operate a commercial motor vehicle (83 FR 47486, September 19, 2018). The provisions for this condition need to be removed from Section 208.

6. Are the rules clear, concise, and understandable? Yes No X

FMCSA requires FMCSRs and HMRs to be adopted within three years, so the Department needs to amend this Article accordingly. In addition, while the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following changes would improve clarity and are necessary for accuracy.

Rule	Explanation
R17-5-201	In the definition of “vision examination report,” change the flow of the sentence by removing the commas after “driver’s” and “driver applicant’s.”
R17-5-202	<p>a. In subsection (A):</p> <ol style="list-style-type: none"> 1. Incorporate by reference the October 1, 2020, edition of the applicable FMCSRs and remove the 2017 sections that were adopted early; and 2. Update the website address where the federal regulations may be viewed, the name of the U.S. Government Bookstore, and the International Standard Book Numbers for the new books. <p>b. Remove subsection (C) and the reference to it in subsection (B) since intrastate tow trucks with a gross vehicle weight rating of 26,000 pounds or less no longer meets the definition of a commercial motor vehicle as defined in A.R.S. § 28-5201.</p>
R17-5-203	<p>a. In subsection (A), correct the reference to Paragraph (a)(1).</p> <p>b. In subsection (B), replace the term “prescribed under” with “defined in” to be consistent in use and to provide clearer verbiage.</p> <p>c. In subsection (C):</p> <ol style="list-style-type: none"> 1. Update the title of the section by adding “hazardous material safety permit applicant/holder, and intermodal equipment provider” after “Motor Carrier” and removing “for certain Mexico-domiciled motor carriers” in order to match its current form under the October 1, 2020, edition of 49 CFR 390.19T; and 2. Remove the exception from obtaining a USDOT number by filing a Motor Carrier

	Identification Report, Form MCS-150, from intrastate farm vehicles as indicated in item 5.
R17-5-205	In subsection (A), replace the term “prescribed under” with “defined in” to be consistent in use and to provide clearer verbiage.
R17-5-206	a. In subsection (B)(1), remove the exception from obtaining a safety registration and USDOT number from the intrastate farm vehicles as indicated in item 5. b. In subsection (B)(2), add A.R.S. § 28-5240 as an applicable penalty statute.
R17-5-208	Remove the provision for an Intrastate Medical Waiver for an insulin-dependent diabetic condition pursuant to process change in 49 CFR 391 which now allows for that condition to meet physical qualification as indicated in item 5. This removal includes: removing references to “an insulin-dependent diabetic condition” and to 49 CFR 391.41(b)(3); removing subsections (D), (Q), and (S)(6)(b); and renumbering the subsections as applicable in the Section.
R17-5-209	a. In subsection (A)(1), incorporate by reference the October 1, 2020, edition of the applicable HMRs. b. In subsection (A)(2), update the website address where the federal regulations may be viewed, the name of the U.S. Government Bookstore, and the International Standard Book Numbers for the new books. c. In subsections (B) and (C)(1), replace the word “under” with “in” so that the term is “defined in,” which allows the term to be consistent in use and to provide clearer verbiage. In addition, add the word “as” before “defined” in the definition of “highway” in subsection (C)(1). d. Change the first mentions of “carrier,” “hazmat,” “person,” and “highway” into lower case as the terms are being used in the general sense.
R17-5-210	a. In subsection (A), update the emergency situation notification process by replacing the form and fax method with a written email method and remove the signature requirement. b. In subsection (B)(4), update the reference from 49 CFR 390.5, which is indefinitely suspended, to the current regulation under 49 CFR 390.5T.
R17-5-211	In the Section’s heading, add the word “and” before the word “Sanction” for proper and consistent format.
R17-5-212	a. In subsection (B)(1)(a), change “infraction” to “violation” for better consistency in verbiage. b. In subsection (C)(1)(b), remove “Department” as an unnecessary distinction to “statute or rule.” c. In subsection (C)(2), change the word “the” to an “a” before “compliant” and add the verbiage, “in compliance with subsections (B) and (C)(1)” to ensure better clarity, consistency, and that the proper filing occurs.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No _____

The Department received written criticisms during the last rulemaking for these rules, which was approved by the Council on May 1, 2018.

Commenter	Comment	Agency's Response
The Cullen Law Firm on behalf of Owner-Operator	“Arizona’s adoption of the Electronic Logging Device (ELD) Mandate would violate Tullett’s and OOIDA’s members’ constitutional rights.	In FMSCA’s final rule notice in the Federal Register, 80 FR 78292, they responded to similar comments, including from OOIDA. FMCSA

Independent Drivers Association, Inc. (OIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC	<p>First, the ELD Mandate authorizes the warrantless inspection of drivers and their personal effects. These warrantless searches violate the Fourth Amendment's and the Arizona Constitution's warrant requirement unless they fall within the exception for searches in pervasively regulated industries. Arizona's adoption of the ELD Mandate fails to come within this exception for four reasons: (1) this exception applies only to business premises, not persons as provided in the ELD Mandate; (2) this exception applies only to administrative searches, not searches to support the ordinary needs of law enforcement, and Arizona law imposes criminal sanctions for some FMCSR violations; (3) this exception applies only if the search is necessary to further the regulatory scheme, and neither Arizona Department of Transportation (ADOT) nor FMCSA has shown the ELD Mandate does so; and (4) this exception requires an administrative structure that provides a constitutionally adequate substitute for a warrant in the form of procedures to limit officer discretion and establish limits of the search's scope, which the ELD Mandate fails to do."</p>	<p>disagreed that the required use of ELDs violates the Fourth Amendment and believed that the commenters' Fourth Amendment objections are not supported by the relevant case law as applied to the final rule. They reiterated that this rule in essence is changing the methodology (going from the paper logbooks that have been required for more than 75 years to the ELD) and that the fundamental data and the purpose of data collection remains unchanged. FMSCA stipulates that an ELD records data only during operation of a commercial motor vehicle and drivers have no reasonable expectation of privacy in the data captured during that period. FMSCA also determined that ELDs are employed by motor carriers pursuant to a federal regulatory requirement and drivers are aware of their use, there is no trespass or infringement of a reasonable expectation of privacy. Thus, there is no search for purposes of the Fourth Amendment, and even if it were considered a search, it is justified under the exception for administrative searches in a closely regulated industry. FMSCA also stated that the Supreme Court has long recognized that an individual's expectation to privacy in a private vehicle is less than that in a home.</p> <p>The Department agrees with the response provided by FMSCA.</p>
The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC	<p>"Moreover, the statute authorizing promulgation of an ELD rule directed the United States Secretary of Transportation to ensure the copious data collected from ELDs would be maintained privately and used only for enforcement of hours-of-service compliance. Neither the Secretary nor FMCSA has adopted regulations to ensure such privacy and limited use, but has instead relied on the incorporating States, like</p>	<p>In FMSCA's final rule notice, 80 FR 78292, they responded to similar comments. FMCSA stated that other statutory provisions and protections are in place (The Moving Ahead for Progress in the 21st Century Act (MAP-21) had limitations on use of the data and USDOT governs the release of private information in 49 CFR parts 7 and 9.) In addition, FMSCA included industry standards for protecting electronic data; it also regulates access to such data and requires motor carriers to</p>

	<p>Arizona, to enact such protections. This Arizona has not done.”</p>	<p>protect drivers’ personal data in a manner consistent with sound business practices.</p> <p>Arizona enforcement in the course of their job, handles confidential and private information and the safeguarding of that information. The Department does not agree with the assessment made by the Cullen Law Firm.</p>
The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC	<p>“Finally, the Notice makes no mention of the serious changes to ADOT regulations and Arizona commercial motor vehicle law brought about through incorporation of a significantly updated version of the FMCSRs, not least of which is incorporation of the ELD Mandate. The Notice also gives short shrift to the financial and logistical impact on small business operators, providing instead a generic conclusion that the costs will be offset by unnamed safety gains.</p> <p>Indeed, the Notice demonstrates that ADOT has done little more than delegate its legislative rulemaking authority to the federal government and rubber stamp a significant change that will affect numerous persons in Arizona without considering the constitutional and other legal deficiencies therewith. For these reasons, the Notice is deficient.”</p>	<p>When the Department updates the incorporation by reference of the motor carrier regulations, it makes a careful examination of all the changes and looks for any issues with Arizona law, public safety, and enforcement. In addition, for 49 CFR 395, the Department reviewed the final rule and the comments and looked at information being provided on various trucking websites. The Department also took notice that there is a divide in the trucking community with mainly OOIDA in opposition but others like the American Trucking Associations in support, that legal actions brought by OOIDA have been unsuccessful (the U.S. Court of Appeals for the 7th Circuit ruled against OOIDA’s claims of unconstitutionality and that the U.S. Supreme Court did not review OOIDA’s appeal), and the bill in Congress, H.R. 3282, failed to extend the December 2018 compliance date.</p> <p>The Department believes it adequately provided the reason and justification of this rulemaking in the Preamble of the Notice of Proposed Rulemaking. The Department does not agree that this required a detailed listing of all the changes being enacted by incorporating the 2016 edition from the current 2012 edition. The reason certain provisions are mentioned are because they caused specific changes and additions to rule text and the Department does not believe there is a need to make any changes to 49 CFR 395.</p>

		In reference to your statements regarding the economic impact of these regulations, the Department provided a more specific statement in the full Economic, Small Business and Consumer Impact Statement.
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8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules in Article 2 has essentially remained the same as estimated in the Economic, Small Business and Consumer Impact Statement prepared on the last amendment of the rules.

The MCSAP grant funding has increased slightly. DPS is the lead agency for administration of MCSAP, a federal discretionary grant program that provides financial assistance to the states for programs and projects designed to reduce the number and severity of accidents, and hazardous materials incidents, involving commercial motor vehicles. The goal of MCSAP is to reduce commercial motor vehicle-involved accidents, fatalities, and injuries through consistent, uniform, and effective commercial motor vehicle safety programs. MCSAP also sets forth the conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and HMRs for both interstate and intrastate motor carriers and drivers. Continued compliance with the FMCSRs and HMRs now allows DPS to apply for a MCSAP grant for an estimated \$10,000,000 to \$12,000,000 versus the previous total of \$10,000,000.

DPS continues to incur moderate to substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. DPS reported that 42,960 commercial motor vehicles were inspected in Arizona in 2020. Of these inspections, 6,299 of the drivers and 7,942 of the vehicles were placed out-of-service after the inspection, meaning that the violations were so severe that the driver was prohibited from driving or the vehicle was prohibited from being moved until the violations were corrected.

Administrative costs for ADOT continue to be minimal to moderate. As of January 20, 2021, there is 113,982 valid Arizona commercial driver licenses (CDLs), of those there is 1,548 with a hazardous materials endorsement, 39,072 with a tanker endorsement, 14,525 with a combination hazardous materials/tanker endorsement, 26,264 with a passenger endorsement, 12,959 with a school bus endorsement, and 36,864 with a double/triple trailer endorsement. There are also 2,341 Arizona commercial learner's permits (CLPs), of those there is 1 with a hazardous materials endorsement, 389 with a tanker endorsement, 1 with a combination hazardous materials/tanker endorsement, 369 with a passenger endorsement, 162 with a school bus endorsement, and 1 with a double/triple trailer endorsement.

Business entities bear minimal to moderate costs (under \$100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. Since the last adoption some of the required equipment costs for electronic logging have gone down. Motor carriers and drivers not in compliance will continue to bear costs from possible federal penalties, state penalties, and any administrative and legal costs associated with due process.

9. Has the agency received any business competitiveness analyses of the rules? Yes No

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In the last five-year review report, the Department anticipated amending the rules and filing a final rulemaking with the Council on or before December 30, 2016. The Department did not complete the proposed course of action as indicated by December 30, 2016; instead, the Department completed rulemaking in 2018, which was approved by the Council on May 1, 2018. At the time of the last report, the Department was working towards incorporating the October 1, 2015, edition of the FMCSRs and HMRs, but as the Department worked on that rule package a decision was made to change to the 2016 edition, which required a slight restart to the process so additional time, re-evaluations, and work was necessary.

Rule	Explanation
R17-5-201, R17-5-210 – R17-5-212	No proposed course of action. (<i>In 2018, the Department made the determination that amendments were necessary to Section 212 in order to remove information that is already contained in state statutes and adding and reordering information to clarify the current process with the complaint and the order to show cause.</i>)
R17-5-202 – R17-5-207, and R17-5-209	To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will incorporate by reference the October 1, 2015, edition of the FMCSRs and HMRs. The Department must update these rules at least once every three years for the Department to remain in substantial compliance with the federal regulations and ensure eligibility for MCSAP grant funding that DPS expects to receive. Amendments will ensure conformity with the Administrative Procedure Act and the rulemaking format and style requirements of the Secretary of State's Office. (<i>In 2018, the Department incorporated by reference the October 1, 2016, edition of the FMCSRs and HMRs with an early adoption of certain sections of 49 CFR 385 and 390 as published in 82 FR 5292, January 17, 2017, and updated and amended language in Sections 202, 203, 205, and 209 as applicable to those editions with additional changes for better clarity and consistency in language and state statutes.</i>)
R17-5-208	To provide the motor carrier industry with rules more clear, concise, and understandable, the Department's Medical Review Program intends to update this Section for consistency with the 2015 edition of the FMCSRs and will ensure that the Department's Intrastate Medical Waiver processes are updated accordingly. (<i>In 2018, the Department decided that a few minor technical changes and consistency of verbiage were necessary to be amended.</i>)

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:

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The following rules are designed to minimally impact regulated persons and small businesses and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules. Most costs, however, arise from the requirements of federal law that the State needs to be in compliance with.

12. Are the rules more stringent than corresponding federal laws? Yes X No _____

Rule	Explanation
R17-5-205(E)	In subsection (E), the Department is more stringent than the federal regulation (49 CFR 383.153(e)) since the amendment to the introductory sentence removes the exception for providing the holder's social security number (SSN) on the application by a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158. A.R.S. § 28-3158 previously had an exception for the SSN of nonresident CDL applicants, but pursuant to Laws 2013, Chapter <u>128</u> , the exemption was removed and this change authorized the Department to require all CLP and CDL holders to provide their SSNs.

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 incorporate by reference federal regulations that contain the requirements of obtaining a CLP, CDL, and endorsements, which is consistent with state statutes. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statutes, requires applicable drivers to have a CLP, CDL, and endorsements. These items are general permits since the activities, practices, requirements, and restrictions authorized by them are substantially similar in nature for all holders.

14. Proposed course of action

The Department is currently in the process of working on a rule package to incorporate by reference the October 1, 2020, edition of the FMCSRs and HMRs and update and amend the rules in Article 2 as indicated in item 6. The Department received permission from the Governor's Office on July 15, 2020, to proceed with this rulemaking. The Department intends to submit final rules to the Council by August 2021. The Department does not plan to make any changes to R17-5-204 and R17-5-207 since no action is necessary at this time.

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

“Co-applicant” means an employer or potential employer.

“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.

“Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.

“Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

“Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.

“Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

“Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385 (except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713), 390 (except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2016, and no later amendments or editions, as amended under this Article. The Department incorporates by reference 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as pub-

lished in 82 FR 5292, January 17, 2017, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935459 for 49 CFR 40 and 9780160935497 for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

Historical Note

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3T, General applicability. Paragraph (a) is amended to read:

Regulations incorporated in this subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

- B. 49 CFR 390.5T, Definitions. The definitions listed under 49 CFR 390.5T are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Shipper” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

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“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

- C.** 49 CFR 390.19T, Motor carrier identification reports for certain Mexico-domiciled motor carriers. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

- D.** 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

- E.** 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

Historical Note

New Section recodified from R17-4-435.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2).

Amended by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 2636, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

- A.** 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read: Is at least 21 years of age for interstate operation or is at least 18 years of age for operations

restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

- B.** 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read: A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

Historical Note

New Section recodified from R17-4-435.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

- A.** 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

“Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.

“Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.

“Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.

“Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.

“Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.

“School bus” has the same meaning as prescribed under A.R.S. § 28-101.

“Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.

- B.** 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

- C.** 49 CFR 383.73, State procedures.

1. Paragraph (c)(4) is amended to read:

If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

2. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

3. Paragraph (f)(2)(ii) is amended to read:

The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c) or “limited-term” to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

- D.** 49 CFR 383.75, Third party testing. Paragraph (a)(8)(v) is amended to read:

Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter

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- 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.
- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications.** The introductory sentence in paragraph (e) is amended to read:

Before a CLP or CDL may be issued:

Historical Note

New Section recodified from R17-4-435.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). New Section made by final rulemaking at 20 A.A.R. 2382, effective August 5, 2016 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

- A. 49 CFR 392.5, Alcohol prohibition.** Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

- B. 49 CFR 392.9b, Prohibited transportation.**

1. Paragraph (a) is amended to read:

Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must not be operated without a safety registration and an active USDOT Number.

2. Paragraph (b), Penalties, is amended to read:

Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 for interstate commerce and A.R.S. § 28-5245 for intrastate commerce.

Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by

final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

- A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B.** A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, shall complete and submit the applicable intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, with the following information as applicable:
1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
 2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
 - a. Average period of time the driver will be driving or on duty, per day;
 - b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
 3. Describe the commercial motor vehicles the driver applicant intends to drive:
 - a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;

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4. Include a certification statement:
 - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 5. Contain signature of each applicant and date signed:
 - a. The driver applicant's signature; and
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
 - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
 - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
 - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
 - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
 - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
 - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
 - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
 - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
 - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;

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- ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
 - iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;
 - 3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
 - 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
 3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
 4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
 5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
 2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M.** The intrastate medical waiver granted by the Director under subsection (A) is:
1. Valid for a period of not more than two years from the date of issuance;
 2. Renewable 30 days prior to the expiration date; and
 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N.** An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and

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2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- Q.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - a. A digital glucose monitor with computerized memory,
 - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
 - c. Insulin to be used as necessary, and
 - d. An amount of rapidly absorbable glucose to be used as necessary;
 2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
 3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
 - b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
 - c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
 - d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
 4. Participate in a diabetes education program annually;
 5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, within 10 days of the date of the evaluation or exam:
 - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
- b.** An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
- c.** An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
- d.** An annual medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
- 6.** Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, within two days of occurrence:
 - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100:
1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
 2. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43 within the past year.
- S.** A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor

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- carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
1. Name and complete address of the motor carrier currently employing the applicant;
 2. Name and complete address of the subject driver;
 3. Total miles driven under the current intrastate medical waiver;
 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 5. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 6. A current medical examination or evaluation as applicable to the medical condition:
 - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
 - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
 - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
 8. Notification of any change in the type of tractor the driver will operate;
 9. Subject driver's signature and date signed; and
 10. Motor carrier co-applicant's signature and date signed (if applicable).
- T.** The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U.** The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application;
 2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
 3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V.** If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

Historical Note

New Section recodified from R17-4-435.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effec-

tive August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

- A. Incorporation of federal regulations.**
1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2016, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
 2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://book-store.gpo.gov>. The International Standard Book Numbers are 9780160935466 for 49 CFR 107, 171, 172, 173, and 177 and 9780160935473 for 49 CFR 178 and 180.
- B. Application and exceptions.**
1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments.** The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for

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“Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“Carrier” means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“Hazmat employer” means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“Highway” means a public highway defined under A.R.S. § 28-5201.”

“Person” has the same meaning as defined under A.R.S. § 28-5201.”

2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
3. Part 177, Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

Historical Note

New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-210. Motor Carrier Safety: Public Service Corpora-

tion, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

- A. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:
 1. Date of the emergency situation,
 2. Time that the emergency situation started,
 3. Description of the emergency situation,
 4. Location of the emergency situation,
 5. Projected duration of the emergency situation,
 6. Authorized party’s signature for determining that an emergency situation exists,
 7. Name and contact number of responsible party in the field, and
 8. The utility’s self-generated Emergency ID or tracking number.
- B. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:
 1. A list of drivers involved in the emergency situation;
 2. The duration of the emergency situation;
 3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
 4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.
- C. After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

- A. Scope. This Section applies to any transporter subject to:
 1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- B. Audits.
 1. The Department may conduct an audit for cause or without cause.
 2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
 3. The Department may inspect a motor vehicle:
 - a. Within Arizona at:

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- i. A transporter's place of business, or
 - ii. Any other in-state location, or
- b. Outside Arizona at a transporter's place of business.
- 4. A transporter shall make records available for audit:
 - a. During the transporter's normal business hours, and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business, or
 - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
- 5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
 - 1. R17-5-201 through R17-5-209; and
 - 2. A.R.S. Title 28, Chapter 14.
- E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

Historical Note

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-212. Motor Carrier Safety: Hearing Procedure

- A. Scope.
 - 1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-201 through R17-5-209; and
 - b. A.R.S. Title 28, Chapter 14.
 - 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) and (C).
- B. Initiation of proceedings; service.
 - 1. The Director shall initiate a hearing under this Section by:
 - a. Signing and serving a complaint in the form prescribed under subsection (C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
 - b. Submitting to the Department's Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
 - 2. The date of service is the date of mailing.
- C. Complaint; order to show cause.
 - 1. The complaint shall contain the following:
 - a. The Department as the designated petitioner;

- b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
- c. The relief sought by the Department; and
- d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
- 2. Upon receipt of a copy of the complaint, the Executive Hearing Office shall issue an order to show cause for a respondent to appear at an administrative hearing to explain why the requested relief should not be granted.
- 3. The Executive Hearing Office shall hold a hearing under this Section within the time-frame required by statute.
- 4. The parties may resolve a complaint before the hearing date.
- a. The parties shall file notice of settlement with the Executive Hearing Office.
- b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

ARTICLE 3. PROFESSIONAL DRIVER SERVICES
R17-5-301. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 32-2351, the following definitions apply to this Article, unless otherwise specified:

“Activity” means a function or service that is provided by a licensed professional driver training school pursuant to A.R.S. Title 32, Chapter 23 or licensed traffic survival school pursuant to A.R.S. Title 28, Chapter 8, Article 7.1 and that is performed by a professional driver training school instructor or traffic survival school qualified instructor as defined in this Article.

“Applicant” means an individual or school, including principals, requesting in the manner set forth in this Article the issuance or renewal of a license or to become a qualified instructor under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.

“Application date” means the date the Department or private entity receives a signed application from an applicant.

“Audit” means a review of the operations, facilities, equipment, and records of a licensee under this Article, which is performed by the Department or private entity under A.R.S. § 28-3411 or 32-2352 to assess and ensure compliance with all applicable federal and state laws and rules.

“Branch” means a licensed professional driver training school’s or licensed traffic survival school’s business location that is an additional established place of business, but not the school’s principal place of business.

“Business day” means a day other than a Saturday, Sunday, or legal state holiday.

“Business manager” means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-962. Vehicles transporting explosives; rules

A. A person operating a vehicle transporting an explosive on a highway shall comply at all times with the following provisions:

1. The vehicle shall be placarded in accordance with the placarding requirements specified in 49 Code of Federal Regulations part 172.

2. The vehicle shall be equipped with a fire extinguisher as required in 49 Code of Federal Regulations part 393.

B. The director shall adopt additional rules governing the transportation of explosives and other dangerous articles by vehicles on the highways as the director deems advisable for the protection of the public.

28-2169. Intrastate commercial vehicle registration; required numbers

The department may require by rule that an applicant for registration of a vehicle that is subject to the gross weight fees imposed pursuant to section 28-5432 have a United States department of transportation number and provide to the director a United States department of transportation number and a federal taxpayer identification number issued to the applicant for registration before the vehicle may be registered to travel in this state.

28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.
2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.
3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:
 - (a) Safety operation rules.
 - (b) Commercial motor vehicle safety control systems.
 - (c) Safe vehicle control.
 - (d) The relationship of cargo to vehicle control.
 - (e) Basic hazardous materials knowledge.
 - (f) The objectives and proper procedures for performing vehicle safety inspections.
 - (g) Air brake systems.
 - (h) Legal requirements for size, weight and vehicle configurations.
 - (i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

- (a) Vehicle coupling and uncoupling.
- (b) Unique combination vehicle inspections.

5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.
2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

28-5201. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes any of the following:
 - (a) A single vehicle or combination of vehicles that has a gross vehicle weight rating of twenty-six thousand one or more pounds and that is used for the purposes of intrastate commerce.
 - (b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce.
 - (c) A school bus.
 - (d) A bus.
 - (e) A vehicle that transports passengers for hire and that has a design capacity for eight or more persons.
 - (f) A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.
2. "Declared gross weight" has the same meaning prescribed in section 28-5431. If a declaration has not been made, declared gross weight means gross weight.
3. "Gross weight" has the same meaning prescribed in section 28-5431.
4. "Hazardous material" means a substance that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
5. "Hazardous substance" means a material and its mixtures or solutions that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
6. "Hazardous waste" means a material that is subject to the hazardous waste manifest requirements of the department of environmental quality or the United States environmental protection agency.
7. "Manufacturer" means a person who transports or causes to be transported or shipped by a motor vehicle a material that is represented, marked, certified or sold by a person for transportation in commerce.
8. "Motor carrier" means a person who operates or causes to be operated a commercial motor vehicle on a public highway.
9. "Motor vehicle" means any vehicle, machine, truck tractor, trailer or semitrailer that is propelled or drawn by mechanical power and that is used on a public highway in the transportation of passengers or property in the furtherance of a commercial enterprise.
10. "Person" means a public or private corporation, company, partnership, firm, association or society of persons, the federal government and its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations or a natural person.

11. "Public highway" means a public street, alley, road, highway or thoroughfare of any kind in this state that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicular travel.
12. "Shipper" means a person who offers a material for motor vehicle transportation in commerce.
13. "Transportation" means a movement of person or property by a motor vehicle and any loading, unloading or storage incidental to the movement.
14. "Vehicle combination" has the same meaning prescribed in section 28-5431.

28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

28-5234. Exemption from rules on drivers' qualification and hours of service; definitions

A. If the department adopts 49 Code of Federal Regulations parts 390 through 397 as a rule, a telecommunications corporation engaged in rendering public utility service or a railroad and its employees whose work necessarily involves the operation of a motor vehicle weighing more than eighteen thousand pounds gross vehicle weight rating but which operation is only incidental to the performance of their principal nondriving duties and purpose of employment are exempted from compliance with 49 Code of Federal Regulations parts 391 and 395, except that 49 Code of Federal Regulations part 391, subparts A and E apply unless it is the practice of the telecommunications corporation engaged in rendering public utility service or the railroad to assign regular drivers, qualified in accordance with 49 Code of Federal Regulations parts 390 through 397, to motor vehicles weighing more than eighteen thousand pounds gross vehicle weight rating, and if such driver becomes unavailable or unable to operate the motor vehicle on a given occasion due to an unavoidable or unforeseen circumstance against which provisions could not be reasonably made, compliance with 49 Code of Federal Regulations parts 391 and 395 is not required.

B. A person who is an employee of a public service corporation, a political subdivision of this state that is engaged in rendering public utility service or a railroad is exempt from any hours of service requirements at any time when relief assistance is needed to supplement state or local efforts and capabilities to save lives, protect against substantial loss of property, protect the public health and safety or lessen or avert the consequence of a catastrophe. If an emergency respondent independently identifies an occasion or instance that jeopardizes life or property or that endangers public health and safety, an emergency situation exists, and the respondent is exempt from any hours of service requirements if the respondent contacts with due diligence and coordinates with state or local officials.

C. The following intrastate drivers may begin to calculate hours of service requirements at any point at which the driver goes on duty after the driver has been off duty for twenty-four or more consecutive hours:

1. Drivers who are primarily involved in the transportation of groundwater drilling rigs.
2. Drivers used primarily in the transportation of construction materials and equipment en route to or from an active construction site that is within a seventy-five air mile radius of the driver's normal work reporting location and is at a stage between initial mobilization of equipment and materials to the site and final completion of the construction project. This paragraph does not apply to drivers transporting hazardous materials in a quantity that requires placarding.
3. Drivers of public utility service vehicles that are operated primarily within the service area of the public utility's subscribers, that are used in furtherance of repairing, maintaining or operating any physical facilities necessary for the delivery of public utility services and that are engaged in any activity necessarily related to the ultimate delivery of public utility services to the consumer, including travel to, from, on or between activity sites. The public utility is not required to be the owner of the vehicle.

D. For the purposes of this section:

1. "Public service corporation" means a public service corporation as defined in article XV, section 2, Constitution of Arizona.
2. "Railroad" means a railway or railroad that is regulated as a common carrier under article XV, section 10, Constitution of Arizona, and that is subject to title 40, chapter 4, article 3.
3. "Telecommunications corporation" means an entity as defined in section 40-201 that is subject to regulation by the corporation commission.

28-5235. Notification; denial of vehicle registration and operating privileges; audits

A. A person who owns or leases a vehicle transporting hazardous materials, hazardous substances or hazardous wastes shall notify the director of all vehicles transporting the materials, substances or wastes in a manner prescribed by the director. Each notification shall contain the name and current address of the person transporting the materials, substances or wastes and other information the department requires by rule.

B. The department may deny the vehicle registration, the operating privilege or the nonresident operating privilege for any of the following reasons:

1. Failure to pay any applicable fees.
2. Misrepresentation in the application or notification.
3. Failure to comply with the rules of the department.
4. Failure to make vehicles available for inspection or to make records available for audit.
5. Revocation of an operating privilege within the preceding twelve months.

C. The department shall provide for compliance audits pursuant to this chapter and rules adopted pursuant to this chapter. The department of transportation shall provide for reciprocity of audits with the department of public safety and the United States department of transportation.

28-5237. Noncompliance; hearing; suspension of registration or license; civil penalty

A. The director may conduct a hearing if a law enforcement agency authorized to enforce this chapter alleges that probable cause exists that a manufacturer, shipper, motor carrier or driver refuses to comply with section 28-5231 or has failed to comply with this chapter or a rule adopted pursuant to this chapter.

B. If after reviewing the allegations the director determines that probable cause exists to believe that the manufacturer, shipper, motor carrier or driver is responsible, the director shall issue an order to show cause why the director should not impose any of the following:

1. A suspension of the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier.
2. A suspension of the driver license or nonresident operating privilege of a driver.
3. A civil penalty on the manufacturer, shipper, motor carrier or driver.

C. The manufacturer, shipper, motor carrier or driver shall respond to the order at a hearing held not more than sixty days after service of written notice. The director shall send the notice by certified mail to the address provided to the department in the agency's report alleging the noncompliance.

D. A finding of responsibility requires that all of the following conditions exist, and the hearing is limited to the following:

1. The respondent refuses to comply with the requirements of section 28-5231 or failed to comply with any other provision of this chapter or a rule adopted pursuant to this chapter.
2. The respondent ordered to appear at the hearing is responsible for the noncompliance and is responsible under this chapter or a rule adopted pursuant to this chapter to effect compliance or to remedy the noncompliance.
3. The law enforcement agency submitting the report served written notice on the respondent that noncompliance exists.
4. A reasonable period of time of at least ten but not more than thirty days has been provided to attain compliance.
5. The department of public safety or the department of transportation performed a follow-up inspection or audit.
6. The inspection or audit shows that compliance was not subsequently attained.

E. After consideration of the evidence presented at the hearing and within five days after the hearing, the director shall serve notice of the director's finding and order. If the director enters a finding of responsibility, the director shall both:

1. Impose a civil penalty as prescribed in section 28-5238.
2. Suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or suspend the driver license or nonresident operating privilege of a driver.

F. If the manufacturer, motor carrier, shipper or driver fails to appear for a hearing, in addition to any other remedies provided by law, the director shall suspend the registrations of any motor vehicles owned and leased by the manufacturer, shipper or motor carrier or the driver license or the nonresident operating privilege of the driver. The director shall not remove the suspension until the manufacturer, motor carrier, shipper or driver appears for the hearing and all fees required to reinstate vehicle registration or driving privileges prescribed by statute are paid.

28-5238. Civil penalty schedule; suspension of registration or license; reinstatement; enforcement

A. If the director imposes a civil penalty on the manufacturer, motor carrier, shipper or driver, the civil penalty is determined pursuant to the following schedule:

1. A minimum civil penalty of one thousand dollars but not more than five thousand dollars, or if the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of five thousand dollars but not more than twenty-five thousand dollars.

2. For a second finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of five thousand dollars but not more than ten thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

3. For a third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of fifteen thousand dollars but not more than twenty-five thousand dollars.

B. On the third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, in addition to imposing the civil penalties prescribed in subsection A, paragraph 3 of this section, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver for thirty days, except that in the case of noncompliance the suspension may exceed thirty days until the department of public safety states in writing to the director of the department of transportation that the cause for the finding of responsibility has been remedied.

C. The manufacturer, motor carrier, shipper or driver shall pay the civil penalty imposed in the order to the department no later than ten days after the order is final.

D. If a civil penalty is imposed and if the civil penalty is not paid when due, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or shall suspend the driver license or nonresident operating privilege of the driver.

E. For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violation, the director may adopt rules categorizing violations of this chapter or violations of rules adopted under this chapter into the following classes:

1. Equipment.

2. Commodities transport, including hazardous materials, hazardous substances or hazardous wastes.

3. Driver, shipper or manufacturer records or requirements.

4. Other records.

F. In addition to any other requirements imposed in this section, the director shall not reinstate any suspended registrations of the motor vehicles of the manufacturer, shipper or motor carrier or any suspended driver license or nonresident operating privilege of the driver, manufacturer, shipper or motor carrier until both of the following conditions are met:

1. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.
2. Any civil penalty that has been imposed is paid.

G. The director shall immediately deposit, pursuant to sections 35-146 and 35-147, all monies from civil penalties imposed under this chapter in the motor carrier safety revolving fund established by section 28-5203.

H. A city, town or county shall not enact an ordinance or resolution imposing civil penalties against any shipper, manufacturer or motor carrier for a motor carrier safety violation.

I. The attorney general shall enforce this section.

STATE BOARD OF INVESTMENT
Title 12, Chapter 13, Article 1, General Provisions



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 11, 2021

SUBJECT: STATE BOARD OF INVESTMENT

Title 12, Chapter 13, Article 1, General Provisions

Summary:

This Five-Year Review Report (5YRR) from the Board of Investment (Board) relates to all rules in Title 12, Chapter 3, Article 1, General Provisions and establishes a logistical framework which the provisions of A.R.S. 35-315(B) may be carried out allowing the State Treasurer's Office to adopt procedures for the receipt and deposit of general fund interest earnings as well as for the invoice from and payment to the state's servicing bank. The rules authorize deposit of general fund interest earnings into a general fund account known as the "Servicing Bank Charges Account" to pay servicing charges to the State's servicing bank. After the claims have been paid from the Servicing Bank Charges Account, any remaining interest earnings are transferred back into the general fund. Also, the rules specify that the servicing bank provides the State Treasurer's office with a monthly account analysis statement for services rendered in the preceding month. The statement includes the number of transactions performed, amount and time duration of deposits and all other information required under the servicing bank contract.

The Board indicates the prior 5YRR for these rules did not have any proposed course of action to complete.

Proposed Action

The Board does not propose to take any action regarding these rules.

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

Yes. The Board cites statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board indicates the economic impact to the state has been positive since the earnings that the State Treasurer's office can make on investments is higher than the credit the servicing bank provides for compensating balances. Currently, operating balances are earning between 50 to 87 basis points compared to the 19 basis points earned through compensating balances. Under the previous 5-year review, compensating balances were receiving 45 basis points versus the 55-77 basis points earned by the Treasurer's investments. The increased earnings made by the Treasurer's office investments to pay for the servicing bank contract as opposed to leaving compensating balances at the bank has been the case throughout the 25 years this rule has been in place.

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 Board states the rules do not impose burdens or costs on the public.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Board indicates it has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates that the rules are clear, concise, and understandable.

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

The Board indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates that the rules are effective in achieving their objectives.

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

The Board 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?

The Board indicates the rules are not more stringent than any 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?

Not applicable. The Board indicates that no permit, license, or agency authorization is required under the rules.

11. Conclusion

As outlined above, the Board indicates that the rules are clear, concise, understandable, consistent, effective, and enforced as written. The Board does not propose to take any action regarding these rules.

Council staff recommends approval of this report.



OFFICE OF THE
ARIZONA STATE TREASURER
KIMBERLY YEE
TREASURER



January 29, 2021

VIA EMAIL : grrc@azdoa.gov

Nicole Sornsin
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Five-Year-Review Report for A.A.C. Title 2, Chapter 13

Dear Nicole Sornsin

Please find enclosed the Five-Year Review Report for the State Board of Investment for, which is due January 31, 2021.

The State Board of Investment reviewed and approved the report at its January 26, 2021 monthly meeting.

The State Board of Investment hereby certifies compliance with A.R.S. 41-1091.]

For questions about this report, please contact myself at 602-542-7877 or marks@aztreasury.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Swenson".

Mark Swenson
Deputy Treasurer
State of Arizona

**Arizona State Board of
Investment**

5 YEAR REVIEW REPORT
Title 2, Chapter 13, Article 1,
General Provisions

January 26, 2021

1. Authorization of the rule by existing statutes

A.R.S. § 35-315 (B)

2. The objective of each rule:

Rule	Objective
R2-13-101,102,103	<p>The rule establishes a logistical framework which the provisions of A.R.S. 35-315(B) may be carried out allowing the State Treasurer's Office to adopt procedures for the receipt and deposit of general fund interest earnings as well as for the invoice from and payment to the state's servicing bank. The rules authorize deposit of general fund interest earnings into a general fund account known as the "Servicing Bank Charges Account" to pay servicing charges to the State's servicing bank. After the claims have been paid from the Servicing Bank Charges Account, any remaining interest earnings are transferred back into the general fund.</p> <p>The servicing bank provides the State Treasurer's office with a monthly account analysis statement for services rendered in the preceding month. The statement includes the number of transactions performed, amount and time duration of deposits and all other information required under the servicing bank contract.</p>

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 _____ No x _____

8. Economic, small business, and consumer impact comparison:

The economic impact to the state has been positive since the earnings that the State Treasurer's office can make on investments is higher than the credit the servicing bank provides for compensating balances. Currently, operating balances are earning between 50 to 87 basis points compared to the 19 basis points earned through compensating balances. Under the previous 5-year review, compensating balances were receiving 45 basis points versus the 55-77 basis points earned by the Treasurer's investments. The increased earnings made by the Treasurer's office investments to pay for the servicing bank contract as opposed to leaving compensating balances at the bank has been the case throughout the 25 years this rule has been in place. The

Arizona economy also benefits from this arrangement as it frees up capital of the servicing bank to be used in the private sector. State law requires banks to pledge collateral of 102% for all public entity deposits that are not covered by federal insurance. The Treasurer's office would have to deposit substantial amounts of operating funds in the servicing bank account to achieve sufficient credit for offsetting the costs of the bank contract. This would require the bank to deploy more of its capital to the public sector as opposed to the private sector and charge the state more for the contract due to the increased cost of setting aside this collateral. Any risk of the Treasurer's office of investing operating balances in obligations of the United States Government or U.S. agencies as well as highly rated debt issued by U.S. firms is mitigated by the increased returns the office generates for taxpayers and the expansion of the private sector in the state.

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?
None was required.
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 rule does not impose a burden or cost on the public.
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:
No permit, license or authorization is required under the rule.
14. Proposed course of action
The Board plans to leave the rule as written.

TITLE 2. ADMINISTRATION**CHAPTER 13. STATE BOARD OF INVESTMENT**

(Authority: A.R.S. § 35-325)

Editor's Note: The name of the State Board of Deposit was changed to the State Board of Investment by Laws 1998, Ch. 69, § 6, effective May 7, 1998 (Supp. 06-1).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-13-101 through R2-13-103, adopted effective July 12, 1996 (Supp. 96-3).

Former Article 1, consisting of Sections R2-13-01 and R2-13-02, adopted as an emergency action effective April 25, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency expired.

Section

- R2-13-101. Definitions
R2-13-102. Servicing Bank Charges Account
R2-13-103. Information Required to be Submitted with Servicing Bank's Monthly Statement

ARTICLE 1. GENERAL PROVISIONS**R2-13-101. Definitions**

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

1. "General Accounting Office" means the General Accounting Office of the Department of Administration.
2. "General Fund" means the General Fund of the State as defined in A.R.S. § 35-141.
3. "Servicing Bank" means the bank awarded the servicing bank contract pursuant to A.R.S. § 35-315(C).
4. "Servicing Bank Contract" means the contract awarded pursuant to A.R.S. § 35-315.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-101(3) reflects corrected A.R.S. citation (Supp. 06-1).

R2-13-101(1) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-102. Servicing Bank Charges Account

- A. As authorized by A.R.S. § 35-315(B), General Fund interest earnings shall be deposited monthly into a General Fund account known as the "Servicing Bank Charges Account" to the extent necessary to pay for current servicing charges.
- B. Claims for servicing bank charges shall be paid from the Servicing Bank Charges Account. After each payment the General Accounting Office shall transfer any remaining interest earnings in the Servicing Bank Charges Account into the General Fund.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-102(A) reflects corrected A.R.S. citation (Supp. 06-1).

R2-13-102(B) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-103. Information Required To Be Submitted with Servicing Bank's Monthly Statement

This Servicing Bank shall deliver to the state treasurer its monthly account analysis statement for services rendered in the preceding month which shall include the number and type of transactions performed, amount and time duration of deposits, and any other information required under the servicing bank contract.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3).

35-315. [Servicing banks; qualifications; proposals; definitions](#)

- A. Any bank that is eligible to become an eligible depository having a total capital structure of \$10,000,000 or more and assets of \$100,000,000 or more and that is otherwise in a sound condition is eligible to be the servicing bank for the state.
- B. The state board of investment shall provide for public notice to the banks qualified to be a servicing bank of the time and place at which servicing proposals will be received. Requests for proposals shall clearly specify all services required to be performed by the servicing bank. The servicing proposal submitted shall be the compensation for which the qualified bank will agree to perform the required services as a servicing bank for the ensuing period of designation as established by the board of investment. The award shall be made for a period of not more than five years and may be paid from state general fund interest earnings according to rules adopted by the board of investment.
- C. The state treasurer shall receive the servicing proposals in writing. Only those proposals that conform to the specifications set forth in the request for proposals shall be considered. The qualified bank submitting the proposal with the highest value to this state, as determined by the state treasurer and the board of investment, shall be designated as the servicing bank. Designations shall be evidenced by the signing of the final proposal by the state treasurer, the board of investment and the designee bank. The state treasurer may maintain a bank account in conjunction with the servicing bank account, which must always have on deposit a sum of money approximating the average dollar value of daily warrants paid by the bank the previous month.
- D. The state treasurer may request and qualified banks may submit proposals for any or all of the services required. The state treasurer may specify differing contract periods for any of the services required.
- E. The state treasurer or servicing bank may terminate a servicing bank contract at any time after sixty days' prior written notice is given.
- F. In addition to the services required of the servicing bank, the state treasurer shall contract for all other financial services required by any state agency. A state agency shall not contract for financial services except with the written permission of the state treasurer.
- G. This section does not require the state treasurer to use a servicing bank.
- H. This section or the specifications set forth in the request for proposals do not require the servicing bank to purchase warrants.
- I. Deposits and withdrawals of monies shall be made by the state treasurer on the servicing bank.
- J. A merchant servicer or payment service provider may provide payment processing and gateway services.
- K. For the purposes of this section:
1. "Financial services" means banking and merchant services provided by a bank, credit union, financial institution, financial services company or financial technology company and includes:
 - (a) Establishing bank accounts.
 - (b) Depository services.
 - (c) Electronic payment services.
 - (d) Providing merchant card equipment.
 - (e) Payment processing and gateway services.

2. "Payment processing and gateway services" means a payment gateway that facilitates a payment transaction by transferring information between a payment portal, including a website, mobile phone or interactive voice response service, and the front-end processor or acquiring bank.

D-7

DEPARTMENT OF HEALTH SERVICES (F21-0405)

Title 9, Chapter 8, Article 7, Public Schools



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 8, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F21-0405)

Title 9, Chapter 8, Article 7, Public Schools

Summary:

_____ This Five Year Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 8, Article 7 regarding Food, Recreational, and Institutional Sanitation. Specifically, the rules address sanitation in public schools. In the previous 5YRR for these rules, which the Council approved in April 2016, the Department stated that it would not amend the rules until the after its next 5YRR due in 2021 unless substantive issues with the rules arose during that time. The Department did not amend the rules during that time.

Proposed Action

In this 5YRR, the Department proposes to conduct an expedited rulemaking to address the issues identified with the rules in this report and submit a Notice of Final Expedited Rulemaking to the Council by September 2021.

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 rules under review were last amended through a Notice of Final Rulemaking at 12 A.A.R. 282, effective March 11, 2006. The Department's assessment of the actual economic, small business, and consumer impact of the rules is mostly consistent with the 2006 EIS. Stakeholders include the Department, county health departments, the Board of Directors for the Arizona State Schools for the Deaf and the Blind, the Department of Juvenile Corrections, and public schools, including charter schools.

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 2006 rulemaking did not impose a greater burden or cost on regulated persons. The Department believes that regulated persons approve of rules that are effective, clear, concise, and understandable.

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 mostly clear, concise, understandable, and effective. However, for the reasons stated in the 5YRR, the Department states that the following rules could be improved:

- R9-8-701 (Definitions);
- R9-8-703 (Restroom, Bathroom, and Shower Room Requirements);
- R9-8-705 (Indoor Areas);
- R9-8-706 (Water Supply);
- R9-8-707 (Sewage Disposal);
- R9-8-708 (Refuse Management); and
- R9-8-711 (Inspections).

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

Yes. The Department states that the rules are mostly consistent with other rules and statutes, but identifies one rule, R9-8-702 (General Provisions) that contains an incorrect statutory citation that should be updated.

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, but could be improved by addressing the issues with clarity, conciseness, understandability, effectiveness, and consistency for certain rules identified in the report.

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?

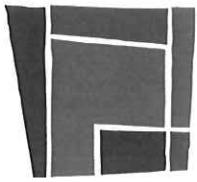
No. There are no corresponding federal laws to the rules under review.

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 rules were adopted by final rulemaking at 12 A.A.R. 282, effective March 11, 2006, and the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

Council staff finds that the Department did an adequate analysis of the rules under review pursuant to A.R.S. § 41-1056. In this 5YRR, the Department identifies issues with the rules regarding their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes and proposes to submit a Notice of Final Expedited Rulemaking to the Council by September 2021. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 27, 2021

VIA EMAIL: ggrc@azdoa.gov

Nicole Sornsin, Chair
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 8, Article 7 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 8, Article 1 which is due on January 31, 2021.

The Department of Health Services reviewed the following rules with the intention that they do not expire pursuant to A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1056(A).

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane'.

Robert Lane
Director's Designate

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, and Institutional Sanitation

Article 7. Public Schools

January 2021

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-136(A)(7), and 36-136(G)

Implementing statutes: A.R.S. § 36-136(I)(9)

2. The objective of each rule:

Rule	Objective
R9-8-701	The objective of the rule is to define terms used in Article 1 to enable readers to understand clearly the requirements in the Article and to allow for consistent interpretation.
R9-8-702	The objective of the rule is to clarify a responsible person's obligations and clarify the statutory authority related to a violation of Article 7 rules.
R9-8-703	The objective of the rule is to specify the requirements for restrooms, bathrooms, and shower rooms provided at a school.
R9-8-704	The objective of the rule is to specify the requirements for cafeterias and food service provided at a school.
R9-8-705	The objective of the rule is to specify the requirements for maintaining indoor areas at a school clean and sanitary.
R9-8-706	The objective of the rule is to specify the requirements for providing adequate water supply at a school and includes requirements for maintaining clean and sanitized portable water, water coolers, or bottled water coolers.
R9-8-707	The objective of the rule is to specify the requirements for the disposal of a school's sewage to a sanitary sewer.
R9-8-708	The objective of the rule is to specify requirements for the management of a school's refuse and disposal specified in 18 A.A.C. 13, Article 3.
R9-8-709	The objective of the rule is to specify the requirements related to keeping an animal at a school.
R9-8-710	The objective of the rule is to specify the requirements related to the control of pests at a school.
R9-8-711	The objective of the rule is to specify the requirements for inspections of a school by the Department.

3. **Are the rules effective in achieving their objectives?** Yes 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
	The rules are effective; however as identified in paragraphs 4 and 6, the rules could be improved to make clearer and increase understandability of the rules by simplifying or clarifying some requirements; updating antiquated language and outdated definitions and references; and making minor technical and grammatical changes.

4. **Are the rules consistent with other rules and statutes?** Yes 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
R9-8-702	A citation to A.R.S. § 36-136(H)(9) provided in subsection R9-8-702(A) is incorrect and should be updated to cite A.R.S. § 36-136(I)(9). After the citation is updated, the rule will be consistent with other rules and statutes.

5. **Are the rules enforced as written?** Yes 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

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
R9-8-701	The rule in R9-8-701 contains some definitions that are antiquated and others that could be simplified. For example, definition (50) "underground water source" references definitions (3) "aquifer," (14) "constructed underground storage facility," and (31) "managed underground storage facility." These definitions are only named in definition (50). Definition (50) could be clearer and simplified if definitions (3), (14), and (31) were combined with definition (50). Also, definition (15) "debris" could be combined with definition (10) "clean" and definition (1) "ample water supply" could be combined with requirement in R9-8-706(A). A definition for "regulatory authority" should be added to make rule consistent with other rules. Definitions

	(13) “complaint” and (28) “hydration” are dictionary definitions and be removed. Definitions (8) “calendar year,” (30) “local health department,” and (45) “sanitized” combined with existing requirements. These changes will make the Article clearer and more understandable.
R9-8-703	The rule in R9-8-703 would be clearer, if in subsection (A)(2)(f) the requirement for restrooms or bathrooms to have “air hand dryers at all lavatories” were changed to specify that an air hand dryer is not required for “each” lavatory in a bathroom. Lavatory is defined as “a sink or a basin with a faucet...” and a restroom is defined as “a structure or room that contains at least one lavatory...” Amending the rule to specify that one air hand dryer is provided for every two (three?) lavatories located in a restroom or bathroom will allow affected persons (schools) to be consistent with rules and reduces affected persons (schools) burden.
R9-8-705	The rule in R9-8-705 would be clearer and more understandable, if in subsection (2), the typograph error in the requirement were amended to require only one “air hand dryer” rather than “air hand dryers.” Amended requirement: “If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or air hand dryers <u>an air hand dryer</u> .”
R9-8-706	As mentioned in the R9-8-701 explanation above, the requirement in R9-8-706 would be clearer and more concise, if in subsection (A), “A responsible person shall ensure that a school has an ample water supply.” were clarified. The requirement in subsection (A) would be clearer if amended to: <ol style="list-style-type: none"> A. A responsible person shall ensure that a school has an ample water supply: <u>that:</u> <ol style="list-style-type: none"> 1. <u>Provides sufficient water quality and water pressure that maintains the school's drinking fountains, showers, lavatories, water closets, and urinals at all times, and</u> 2. <u>Is provided by an approved water supplier in accordance with 18 A.A.C. 4.</u> <p>The requirement in subsection (C)(1) is outdated and should be amended to reflect current practices. Current practice includes specifying that “portable water containers or the bottle from a school’s bottled water cooler” is maintained by a school’s cafeteria regulated by 9 A.A.C. 8, Article 1 Food Establishment and are filled with water from an approved water supplier specified in subsection (A). Also, the requirement in subsection (D) for providing “common drinking cup” is antiquated and could be deleted since today schools provide student’s with disposable cups.</p>
R9-8-707	In rule R9-8-707(3), the requirement is antiquated and the term “local health department” should be added to new definition “regulated authority.” These changes will cause the rule to be clearer and consistent with other Department rules.
R9-8-708	The requirement in R9-8-708 (4) requires a responsible person to ensure that a school disposes of refuse according to 18 A.A.C. 13, Article 3. However, 18 A.A.C. 13, Article 3 regulates collection agencies, disposal sites, and methods of storage and disposal by refuse. The rule would be clearer if a responsible person were to ensure that a school disposing refuse use an approved collection agency and approved disposal sites that are maintained and operated in accordance with 18 A.A.C. 13, Article 3.
R9-8-711	In rule R9-8-711, the requirement would be clearer and more concise if the term “Department” were changed to “regulatory authority,” and if in subsection (1), the term “each calendar year” included beginning-ending months, such as “January 1 through December 31.”

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No ✓

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The rules in Article 7, Public Schools, were last amended through a Notice of Final Rulemaking at 12 A.A.R. 282, effective March 11, 2006. The rulemaking renamed the Article from “Schools” to “Public Schools” to clarify that the Article 7 only apply to “public schools.” The rulemaking also renamed and renumbered seven Sections and added four new Sections. The Department, as required by state statutes, completed an economic, small business and consumer impact statement (EIS) for the 2006 rulemaking.

The Article 7 rulemaking amended the rules to make consistent with current statutes, correct outdated citations, and simplify requirements to ensure schools comply with governing regulations. Renumbered R9-8-711, now R9-8-702, General Provisions, consolidated requirements and clarified that a school’s responsible person shall ensure compliance with state statutes and rules and local ordinances, including public nuisance. Further, clarification is provided by new definitions in R9-8-701, specifically, in definitions for “school” and “food establishments.” Also, some requirements in old R9-8-711, R9-8-713, and R9-8-714 were removed since regulated by county and city building codes. The new R9-8-703, Restrooms, Bathrooms, and Shower Room Requirements, combined and simplified old R9-8-713, Sanitary facilities, and R9-8-714, Showers. New R9-8-704, Cafeterias and Food Service, previously old R9-8-717 (Food Handling), added a requirement for schools, who contract for food services, to ensure contactor complies with the food establishment requirements in 9 A.A.C. 8, Article 1. New requirements in R9-8-705 were added to clarify minimum standards for schools to maintain classrooms, non-classrooms, and lavatories clean and having adequate washing supplies, respectively.

Previous requirements in R9-8-712, Water Supply; R9-8-715, Sewage Disposal; and R9-8-716, Garbage and Refuse were amended and moved to R9-8-706, Water Supply; R9-8-707, Sewage Disposal; and R9-8-708, Refuse Management. New requirements in R9-8-706 requires schools to maintain an “ample supply of water,” and clarifies methods for the distribution of water to students. The new requirements in R9-8-707 and R9-8-708 replaced antiquated language, such as “liquid waste” and “fly-proofs,” updated citations to “R9-1-412(D)” and “Article 4 of this Chapter,” and simplified requirements to increase rules understandability. The requirements in new R9-8-709, Animal Standards, added standards for securing and caring for approved animals keep at a school; and in new R9-8-710, a requirement for indoor classroom and non-classroom areas be free from insects and rodents was added. Lastly, R9-8-711, was renamed and a new requirement added to provide annual inspections of compliance with Article 7 and inspections by complaint.

The Department in the 2006 EIS identified cost bearers as the Department, county health departments, the Arizona State Schools for the Deaf and the Blind, the Department of Juvenile Corrections, and school districts. Primary beneficiaries identified by the Department includes students, faculty, staff and visitors at Arizona public schools. Other beneficiaries mentioned included private schools, cleaning businesses, refuse collection and disposal businesses, and various maintenance businesses, such as plumbing and heating. The costs and benefits analysis¹ identified cost and revenue changes as “minimal” when less than \$1,000, “moderate” when between \$1,000 and \$10,000, and “substantial” when greater than \$10,000 in additional costs and revenues.

The Department in the 2006 EIS anticipated that it, as an affected person, would incur a moderated cost for promulgating the rules and conducting routine and complaint-based school inspections for Graham County, since Graham County did not accept public school inspections in the 2006 delegation agreement with the Department. Additionally, the Department anticipated that from the responses provided by 12 county health departments, eight county health departments would incur a “minimal effect” since already providing public school inspections while the four county health departments not conducting public school inspections could incur a substantial increase in costs. The Department noted that Pinal County was considering a new permit fee to cover the cost of the inspections. Estimated costs and benefits for owners and operators of public schools varied based on a school’s location and whether already maintained in a sanitary condition. The Department expected well-maintained public schools under the old rules would incur a minimal cost for a permit fee and a public school not well-maintained could incur up to a substantial cost. Overall, the Department expected public schools would benefit for having new and amended requirements that simplify minimum standards and clarify sanitary conditions that protects students’, faculty, staff, and visitors’ health and safety.

Also, since the new rules exempt owners of private schools, clarified in R9-8-701(46), the Department anticipated owners of private schools were expected to receive a benefit (minimal to substantial) for no longer being required to comply with the rules. Students, faculty, staff, and visitors were also expected to receive benefits for having improved sanitation in their public schools. The Department anticipated that owners of businesses who contract with public schools to provide maintenance services would receive a minimal to substantial benefit. Lastly, the general public was expected to receive substantial benefits-savings for improved sanitation at public schools that will reduce Arizona health care expenditures.

The Department’s assessment of the actual economic, small business, and consumer impact of the rules is mostly consistent with the 2006 EIS. The EIS reported that the Department would incur moderated costs for promulgating amended Article 7 rules and for conducting Graham County public school inspections. Using the

¹ For this report, the Department uses an analysis for associated cost and benefit that includes “significant.” The annual cost and revenue changes are designated as none-to-minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Food Safety and Environmental Services Annual Reports² (Annual Reports), the Department assessed the number of public schools inspected and agrees that the moderate cost incurred, as stated in the 2006 EIS, is mostly accurate. In 2019 and 2018, the Department, for each year, conducted 24 public school inspections and in 2017, conducted 26 public school inspections. However, between 2006 and 2016 the number of public school inspections conducted were at times lower and would have reduced the Department’s estimated cost to less than \$1,000 or minimal. Additionally, the Department in its 2019 Annual Report stated that 1,802 public and charter schools were permitted in Arizona and 1,791 routine inspections were completed by state and county inspection staff. County staff reported responding to six complaints and initiated 12 enforcement actions associated with public and charter schools.

The Department’s assessment in determining whether a county health department may incur a “minimal effect” or a “substantial increase in costs” is established by the rulemaking. The Department agrees with the 2006 EIS that most of the county health departments were conducting public school inspections in their own county and that the new requirements in R9-8-709, animal standards clarifying instructions for animal care, and in R9-8-710, pest control clarifying a requirement for public school “areas” be free of insects and rodents, as reported – may have had a “minimal effect.” The Department’s assessment of whether a county health department who did not conduct public school inspections may incur a “substantial increase in costs” expects – the county health departments who did comply with existing rules did not incur greater costs than the county health departments who did comply with existing rules and conducted public school inspections. The probable affect of a rule, whether cost or benefit, is not based on whether a regulated person complies or does not comply with the rule. The Department expects that for county health departments the rules impose the same “minimal affect.”

Owners and operators of public schools were expected to see varying costs based on public school location and whether well-maintained. The Department’s assessment is consistent in that public schools inspected by the same standards-rules and public schools would most likely incur similar affects as county health departments. A minimal cost could incur for an owner or operator if the owner or operator allowed for animals in a classroom, and if applicable, the cost of a public school’s pesticide service could incur a minimal increase if necessary to ensure that all non-classroom areas are as protected from insects and rodents as indoor classroom areas. Overall, the Department, as stated in the 2006 EIS, expected public schools would benefit for having new requirements that simplify minimum standards and clarify sanitary conditions needed to protect students, faculty, staff, and visitor’s health and safety. The Department, in this five-year-review report, agrees with the 2006 EIS that public schools, including students, faculty, staff, and visitors, as expected, received benefits for having improved sanitation rules promulgated in the 2006 rulemaking. Additionally, owners of private schools were expected to receive a minimal to substantial benefit for no longer having to comply with the new public school rules. The Department agrees. Lastly, the Department’s assessment for “owners of businesses” and the “community at

² Published by the Department of Health Services, Office of Environmental Health Bureau of Epidemiology & Disease Control

large” mostly agrees with the 2006 EIS. The 2006 EIS states that owners of businesses who contract with public schools to provide maintenance services may receive a minimal to substantial benefit and the community at large may receive substantial benefits “from better school sanitation” and improved sanitation may provide a “substantial savings to the general public” for reducing Arizona health care expenditures. The Department agrees that owners of businesses who contact with public schools to provide maintenance services may receive a minimal to moderate benefit; however, the Department limits owners of businesses to services related to R9-8-706, Water Supply; R9-8-709, Animal Standards; and R9-8-710, Pest Control. The Department also agrees that the 2016 rulemaking clarifying public school sanitation provided significant benefits the general public and may provide a saving to the general public by reducing Arizona health care expenditures related to reducing sickness and exposure to illnesses.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No ✓

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.

Yes, the Department completed the course of action as indicated in the 2016 five-year-review report. The Department in its previous five-year-review report stated that the Department does not plan to amend the rules to address format and clarity issues identified in R9-8-701 and R9-8-703 until after the next five-year-review report due in 2021 unless a substantive matter with the rules arises before the next 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 Article 7 rules promulgated in the 2006 rulemaking added new Sections for definitions, animal standards, and pest control. The 2006 rulemaking also renumbered existing Sections and amended some requirements to reduce regulated persons burden and clarified other requirements to increase effectiveness and understandability of the rules. The Department has determined that although the Department incurred a minimal cost for drafting and promulgating the new rules; the benefit for having the new rules is far greater and outweighs the cost to draft and promulgate the new rules. Additionally, the Department estimates that the cost to conduct Graham County public school inspections is approximately \$1,160 annually. The amount estimated includes: hourly pay for an environmental health sanitarian, travel time, hotel, and food. In 2019, the Department inspected 24 Graham County public schools having a student population of approximately 7,602.³ The Department believes that the cost to conduct public school inspections, a cost of .15 cent per student, to provide a better sanitary environment

³ TownCharts Safford, Arizona Education Data: <https://www.towncharts.com/Arizona/Education/Safford-city-AZ-Education-data.html>

for students, teachers, facility, and visitors provides a benefit greater than the cost to conduct the public school inspections.

For county health departments, the Department determines that the new and amended 2006 rules reduced county health departments' burdens and costs by providing new Sections for definitions, animal standards, and pest control and clarifying existing rules to eliminate confusion and increase rules effectiveness. The Department reasons that adding a definition section allows all regulated persons to better communicate with one another when implementing requirements promulgated in this Article and reduces the possibilities of misunderstanding that could have resulted in increased burdens and costs. In addition, and for example, adding general requirements in R9-8-702 that specifies public schools are to comply with existing state laws, rules, and ordinances reduces county health departments burden and cost for not having to contact the Department to clarify old requirements that attempted to establish the construction of a "toilet room floor" as specified in old R9-8-713. Additionally, the Department has determined that owners and operators of public schools share in the greater benefits for having rules that are clearer and increase benefits. To clarify benefits, the Department simplified the rules in the 2006 rulemaking and did not add or increase public school inspection fees. The 2006 rulemaking provides county health departments more effective rules intended to not increase their cost to conduct a public school inspections. Also, to clarify, the Department expects that owners and operators of public schools may incur an increase in cost for having an animal on the public school grounds; however, having an animal on public school grounds is not required by the 2006 rulemaking. As such, any cost associated with having an animal on public school grounds, if a burden, a burden imposed by the owner or operator of a public schools.

The Department has determined, since the 2006 rulemaking exempts owners of private schools and no longer required to comply with Article 7, owners of private schools have received a substantial benefit since amended Article 7 imposes no burden, no cost. Similarly, the Department has determined that the Article 7 for students, faculty, staff, and visitors incur no costs due to the new-amended rules; however, may receive increased benefits, especially, if an owner or operator of a public school allow animals to stay on the public school grounds. Additionally, because the rules are more effective and clearer, an increased benefit for having improved the sanitarian conditions of public schools will mostly likely increase the health and safety for students, faculty, staff, and visitors attending public schools. Lastly, the Department's determination related to benefits and costs for owners of businesses and the community at large are as assessed in Paragraph 8. The Department determined that the owners of businesses who provide maintenance services to a public school may receive a minimal to moderate benefit due to a possible increase in services provided, such as providing additional pest control service to non-classroom areas specified in R9-8-710. Further, since the rules do not decrease owners of businesses scope of services, the Department expects owners of businesses will not incur any additional costs or burdens. The Department has determined that the community at large could receive a significant benefit from having rules that provide better-improved school sanitation conditions that may potentially result in a savings to the general public by reducing Arizona health care expenditures form having reducing sickness and exposure to illnesses.

The Department has determined that the 2006 rulemaking did not impose a greater burden or cost to regulated persons. The Department believes that regulated persons approve having rules that are effective, clear, concise, and understandable.

12. **Are the rules more stringent than corresponding federal laws?** Yes No ✓

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 in Article 7 provide definitions and requirements for maintaining Arizona public schools and are not related to federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the 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 Article 7 rules were made new by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 and the rules do not require the issuance of a regulatory permit, license, or agency authorization by the Department.

14. **Proposed course of action**

The Department plans to amend the rules by expedited rulemaking to revise/delete antiquated definitions, update citations, and address other matters identified in this five-year-review report. The rulemaking will conform to current rulemaking format and style requirements required by the Secretary of State and the Governor's Regulatory Review Council. The Department plans to submit a Notice of Final Expedited Rulemaking to the Governors Regulatory Review Council by September 2021.

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 7. PUBLIC SCHOOLS

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ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

1. “Ample water supply” means sufficient water quantity and water pressure to operate all of a school’s drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:
 - a. A public water system that complies with 18 A.A.C. 4; or
 - b. An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.
2. “Animal” means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.
3. “Aquifer” means the same as in A.R.S. § 49-201.
4. “Bathroom” means a restroom that contains a shower head or bathtub.
5. “Bathtub” means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a sanitary sewer.
6. “Bottled water” means the same as in A.A.C. R9-8-201.
7. “Bottled water cooler” means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.
8. “Calendar year” means January 1 through December 31.
9. “Classroom” means an interior area of a school used primarily for instruction of students.
10. “Clean” means free of dirt or debris.
11. “Cold water” means water with a temperature from 33° F to 74° F.
12. “Common drinking cup” means a hand-held container not connected to a plumbing system that:
 - a. Holds liquid for human consumption,
 - b. Comes into contact with a user’s mouth, and
 - c. Is used by more than one individual.
13. “Complaint” means information indicating the need for inspection due to possible violations of this Article.
14. “Constructed underground storage facility” means the same as in A.R.S. § 45-802.01.

15. “Debris” means litter or the remains of something that has been broken or torn into pieces.
16. “Department” means the Arizona Department of Health Services.
17. “Device” means a piece of equipment that performs a specific function.
18. “Drinking fountain” means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a sanitary sewer.
19. “Drinking water” means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.
20. “Dumpster” means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container’s contents.
21. “Faucet” means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.
22. “Fixture” means a permanent attachment to a structure.
23. “Floor drain” means an opening in a floor surface that leads to a sanitary sewer.
24. “Food establishment” means an entity that stores, prepares, packages, serves, or otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.
25. “Habitat” means a place where an animal is kept while on school grounds.
26. “Hot water” means water with a temperature from 95° F to 120° F.
27. “Human consumption” means an individual’s use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.
28. “Hydration” means the process of replacing fluids lost by a human body.
29. “Lavatory” means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a sanitary sewer.
30. “Local health department” means:
 - a. The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or
 - b. A public health services district under A.R.S. Title 48, Chapter 33.
31. “Managed underground storage facility” means the same as in A.R.S. § 45-802.01.
32. “Non-absorbent” means not capable of absorbing or soaking up liquids.
33. “Non-classroom” means an indoor area in a school, such as the school office, nurse’s office, library, or cafeteria, that are not used primarily for instruction of students.
34. “Overflow rim” means the raised edge around a drinking fountain’s basin.

35. “Participant” means:
 - a. A member of the staff or a student of a school, or
 - b. A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity.
36. “Plumbing system” means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure.
37. “Portable water container” means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.
38. “Private school” means the same as in A.R.S. § 15-101.
39. “Public water system” means the same as in A.R.S. § 49-352.
40. “Refuse” means the same as in A.A.C. R18-13-302.
41. “Refuse container” means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.
42. “Responsible person” means:
 - a. For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;
 - b. For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;
 - c. For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;
 - d. For a school operated by a school district, the school district’s governing board defined in A.R.S. § 15-101.
43. “Restroom” means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal.
44. “Sanitary sewer” means the same as in A.R.S. § 45-101.
45. “Sanitize” means the same as in A.A.C. R9-5-101.
46. “School” means an institution offering instruction:
 - a. That is:
 - i. An accomodation school defined in A.R.S. § 15-101;

- ii. The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;
 - iii. A charter school defined in A.R.S. § 15-101; or
 - iv. A school operated by a school district defined in A.R.S. § 15-101; and
- b. That is not a private school.
- 47. “Sewage” means the same as in A.A.C. R18-13-1102.
 - 48. “Shower head” means a fixture connected to a plumbing system that allows drinking water to fall on a user’s body.
 - 49. “Shower room” means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal.
 - 50. “Underground water source” means:
 - a. An aquifer,
 - b. A constructed underground storage facility, or
 - c. A managed underground storage facility.
 - 51. “Urinal” means the same as in A.R.S. § 45-311.
 - 52. “Warm water” means water with a temperature from 75° F to 94° F.
 - 53. “Water closet” means the same as in A.R.S. § 45-311.
 - 54. “Water cooler” means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water.

R9-8-702. General Provisions

- A. A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in A.R.S. § 36-136(H)(9).
- B. A violation of this Article is a public nuisance under A.R.S. § 36-601.

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

- A. A responsible person shall ensure that a school provides restrooms or bathrooms that:
 - 1. Are clean; and
 - 2. Have:
 - a. Floors of a non-absorbent material;
 - b. Floors that slope to a drain connected to a sanitary sewer;
 - c. Water closets with seats of the split or U-shaped type made of non-absorbent material;
 - d. Interior surfaces that are clean, washable, and free from gaps;
 - e. Toilet paper at all water closets; and

- f. Soap and single-use paper towels or air hand dryers at all lavatories.
- B. If a school provides a shower room, the responsible person shall ensure that the shower room:
 - 1. Is clean;
 - 2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
 - 3. Has:
 - a. Hot and cold, or warm water from all shower heads;
 - b. Floors of a non-absorbent material;
 - c. Floors that slope to a drain connected to a sanitary sewer; and
 - d. Interior surfaces that are clean, washable, and free of gaps.
- C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

R9-8-704. Cafeterias and Food Service

- A. A responsible person for a school that stores, prepares, or serves food on the premises shall ensure that the school complies with 9 A.A.C. 8, Article 1, except when the food is brought to the school by staff or a student for personal consumption.
- B. If a school contracts with a food establishment to prepare and deliver food to the school, the responsible person shall:
 - 1. Ensure that the food establishment has a current license or permit issued under 9 A.A.C. 8, Article 1; and
 - 2. Retain a copy of the food establishment's current license or permit, required in subsection (B)(1), for inspection.

R9-8-705. Indoor Areas

A responsible person shall ensure that:

- 1. Indoor classroom and non-classroom areas are clean; and
- 2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or air hand dryers.

R9-8-706. Water Supply

- A. A responsible person shall ensure that a school has an ample water supply.
- B. A responsible person shall ensure that a school's drinking water is dispensed from:
 - 1. A clean drinking fountain that:
 - a. Provides, from an opening, a stream of water that does not touch anything before reaching a user's mouth;

- b. Has an opening that is higher than the overflow rim to prevent the opening's submersion; and
 - c. Has a device to prevent a user's mouth from touching the opening from which the water streams;
 - 2. A clean and sanitized water cooler;
 - 3. A clean and sanitized bottled water cooler;
 - 4. A clean and sanitized lavatory faucet; or
 - 5. A clean and sanitized portable water container.
- C. If a portable water container or the bottle from a school's bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:
- 1. Washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1;
 - 2. Stored in a clean area; and
 - 3. Refilled with drinking water from any of the sources of drinking water specified in subsection (B).
- D. A responsible person shall ensure that a school does not provide a common drinking cup unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1, after each use.
- E. A responsible person shall ensure that a school provides:
1. Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
 2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

Table 1. Kindergarten to Eighth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

* For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required.

Table 2. Ninth Grade to Twelfth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

* For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

- F. A responsible person shall ensure a school provides drinking water that is:
1. Accessible from the school grounds; and
 2. Sufficient to maintain the hydration of all participants at school-organized outdoor activities.

R9-8-707. Sewage Disposal

A responsible person shall ensure that a school's:

1. Water closets and urinals flush sewage to a sanitary sewer;
2. Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a sanitary sewer; and
3. Sanitary sewer lines are maintained in accordance with the recommendations of the local health department.

R9-8-708. Refuse Management

A responsible person shall ensure that a school:

1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
 - a. Indoor refuse containers in each classroom and in each non-classroom area; and
 - b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse according to 18 A.A.C. 13, Article 3.

R9-8-709. Animal Standards

- A. A responsible person shall ensure that an animal in a school:
1. Is kept in a habitat that:
 - a. Has water free of algae, insects, and particulate matter;

- b. Is maintained to avoid odors from rotting food or excess animal wastes; and
 - c. Is not in the same room as food preparation areas, as specified in 9 A.A.C. 8, Article 1;
 2. May be removed from the animal's habitat at the direction of a teacher;
 3. When out of the animal's habitat, is under the control of a teacher or a student of the school, if the animal is:
 - a. A bird, reptile, amphibian, or invertebrate;
 - b. A large mammal, such as a horse, sheep, pig, goat, or cow;
 - c. A rabbit or hare; or
 - d. A rodent, such as a mouse, rat, hamster, guinea pig, or gerbil;
 4. Has a current immunization against rabies, if the animal is a dog, cat or ferret, as documented by:
 - a. A dog license issued by a state or county agency;
 - b. A rabies immunization certificate from a veterinarian licensed under 3 A.A.C. 11;
 - c. A receipt for veterinary services, showing the administration of a rabies vaccine; or
 - d. A written statement attesting to the current immunization of the animal against rabies; and
 5. Is not:
 - a. A non-human primate;
 - b. A deer mouse, or other wild mouse of the genus *Peromyscus*; and
 - c. A bat, skunk, raccoon, fox, wolf-hybrid or coyote, except when brought into a classroom for an educational display, as defined in R12-4-401, by a person who has complied with provisions in 12 A.A.C. 4, Article 4, obtained a permit or license issued by the Arizona Game and Fish Department, and is experienced in handling the animal.
- B.** A responsible person shall ensure that a room, in which an animal in a school is kept:
1. Is free of animal waste, except in the habitat; and
 2. Has:
 - a. A lavatory with soap and single-use paper towels or air hand dryers; or
 - b. A product to sanitize the hands of an individual who touches an animal or its habitat.

R9-8-710. Pest Control

A responsible person shall ensure that indoor classroom and non-classroom areas are kept free of insects and rodents, except when the insects or rodents are being kept as specified in R9-8-709 or are food for animals being kept as specified in R9-8-709.

R9-8-711. Inspections

The Department shall inspect:

1. A school for compliance with this Article at least once each calendar year, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint.

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.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 8. FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION

ARTICLE 7. SCHOOLS

1. An identification of the proposed rulemaking.

Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 7 prescribes sanitation standards for schools. A.R.S. § 36-136(H)(9) requires the Arizona Department of Health Services to define and “prescribe minimum standards for sanitary conditions...in any public school.” The current rules cover food handling, the water supply, sewage disposal, refuse management, and restrooms, bathrooms and shower rooms in schools.

The rules are amended to clarify that these rules apply only to public schools. The new definitions section, R9-8-701, provides definitions to clarify the terms and phrases used in the Article. A new section, R9-8-702, General Provisions, is added to specify that a school shall comply with existing statutes, rules and local ordinances. R9-8-703 specifies the requirements for restrooms, bathrooms and shower rooms, while removing elements of the previous R9-8-713 and R9-8-714 that were covered in building codes. R9-8-704 gives specific guidance to schools that contract for food service, and R9-8-705 is a new section that specifies the requirements for indoor areas of the school. R9-8-706 specifies the requirements for an ample supply of water from specific sources, how the water can be dispensed, and the number of drinking fountains required. Unlike the previous R9-8-712, the present R9-8-706 does not require school authorities to submit water samples for bacteriological analysis to the Arizona Department of Health Services Laboratory. R9-8-707 specifies the requirements for sewage disposal, and R9-8-708 specifies the requirements of refuse management, while referring to other rules that set timeframes for refuse disposal. R9-8-709, R9-8-710 and R9-8-711 are new sections that specify sanitary requirements related to animals in schools, the requirements for pest control in schools, and requirements for annual and complaint inspections, respectively.

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

a. Cost bearers

Cost bearers include the Department, county health departments, the Board of Directors for the Arizona State Schools for the Deaf and the Blind, the Department of Juvenile Corrections, and public schools, including charter schools.

b. Beneficiaries

The primary beneficiaries will be students, faculty, staff and visitors at Arizona public schools, who will benefit from clean and sanitary facilities. Better school sanitation will improve Arizona's public health, resulting in substantial savings to the general public by reducing health care expenditures and the burden on the health care system. Private schools may also benefit from the clarification that the rules do not apply to private schools. Other beneficiaries may include building cleaning businesses, refuse collection and disposal businesses, heating, ventilating and air conditioning (HVAC) supply and repair businesses, septic tank cleaning and sewage disposal businesses, and plumbing supply and repair businesses, any of which may increase revenues by contracting with public schools.

3. Name and address of agency employees who can submit additional data on the information included in this statement.

Name: Don Herrington, Office Chief
Address: Arizona Department of Health Services
Office of Environmental Health
150 N. 18th Avenue, Suite 430
Phoenix, Arizona 85007
Telephone: (602) 364-3142
Fax: (602) 364-3146
E-mail: herrind@azdhs.gov
or
Name: Kathleen Phillips, Rules Administrator
Address: Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams, Suite 202
Phoenix, Arizona 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov

4. Cost/benefit analysis

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues.

Description of Affected Groups	Description of effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies and School Districts			
Department	Preparing and promulgating the rules Performing school sanitary inspections	Moderate ¹ Moderate ²	None None
County Health Departments	Performing school sanitary inspections	Minimal to substantial ³	Minimal to substantial ³
Arizona State Schools for the Deaf and the Blind	Maintaining school areas and facilities in a sanitary manner	Minimal to substantial ⁴	None to minimal ⁴
Department of Juvenile Corrections	Maintaining school areas and facilities in a sanitary manner	Minimal to substantial ⁴	None to minimal ⁴
School districts	Maintaining school areas and facilities in a sanitary manner	Minimal to substantial ⁴	None to minimal ⁴
B. Privately Owned Business			
Owners of charter schools	Maintaining school areas and facilities in a sanitary manner	Minimal to substantial ⁴	None to minimal ⁴
Owners of private schools	Clarify that they are not subject to the standards specified in these rules	None	Minimal to substantial ⁵
Owners of businesses providing services covered under these rules	Receiving contracts to maintain school areas and facilities in a sanitary manner	None	Minimal to substantial ⁶
C. Consumers			
Students, faculty and staff of a school and visitors to the school	Learning and working in a clean, sanitary environment	None	Minimal to substantial ⁷
Community at large	Reducing health care expenditures and the burden on the health care system	None	Substantial ⁸

FOOTNOTES:

¹ The Office of Administrative Rules prepared and mailed approximately 2,200 letters to schools throughout Arizona informing them of the proposed rule changes and soliciting input and comments. Only one comment was received and was addressed in a revision of a draft of the proposed rule. The draft rules were further modified by incorporating a new section on animals in schools. Another set of approximately 2,200 letters was sent to schools informing them of the new section and soliciting comments, many of which were incorporated into the proposed rules that were filed with the Office of the Secretary of State.

Other stakeholders that were informed of the proposed rule changes included: the Arizona Department of Education; the State Board of Education; the State Board for Charter Schools; the School Facilities Board; two individuals who have an interest in school sanitation; the Arizona County Environmental Health Directors; the Arizona Association of County School Superintendents; the Arizona Charter School Association; the Arizona Parent Teacher Association; Arizona School Administrators, Inc.; the Arizona School Boards Association; the Arizona Small and/or Rural Schools Association; Arizona Students' Association; and the County Supervisors Association of Arizona. The Department also solicited input from the Arizona County Environmental Health Directors on the economic impact the rule changes would have on county health departments.

² The Department's Office of Environmental Health will perform annual school sanitary inspections in schools located in Graham County, with which the Department does not have a delegation agreement. In fiscal year 2004, the Department conducted 78 routine and complaint-initiated public school sanitation inspections.

³ The county health departments with which the Department does have delegation agreements will perform the bulk of the annual school sanitary inspections. The majority of counties (eight) already perform at least annual school facility inspections, so the proposed rule changes would have minimal effect on them. Four other counties do not now perform routine school inspections, inspecting only when receiving a valid complaint, and two did not respond to a request for information. The counties not conducting routine inspections may incur a substantial increase in costs due to the rule change. County health departments conducted a total of 1,690 routine and complaint-initiated public school sanitation inspections in fiscal year 2004.

The Environmental Health Director of Pinal County Health Department, which does not perform routine school facility inspections because inspections are not mandated by the current rule, provided an economic impact analysis on the effect the proposed rule would have on the Pinal County Health Department. Based on the assumption that the county sanitarians would have to inspect 95 school facilities, the Environmental Health Director estimated that it would require 150 hours to complete the inspections, which would equate to 0.1 FTE above the manpower currently dedicated to schools. Based on an hourly rate of \$65.00 per hour times 150 hours, the added cost to the county health department would be approximately \$9,750 annually.

The county health departments will benefit from the increased clarity of the proposed rules in specifying the conditions constituting the minimal standards, and may charge the schools permit fees. Permit fees charged by the counties to the schools they are inspecting may offset the bulk of the expenses associated with conducting these inspections. For example, Maricopa County charges an annual facility permit fee of \$85, and Pima County charges \$97. To offset the cost of initiating school inspections, the Environmental Health Director of Pinal County stated that the county might impose a new permit fee of approximately \$100 per year per school to cover the cost of the inspections. The additional manpower to conduct the inspections might also be reallocated from other programs.

⁴ The costs incurred by the owners or operators of public schools as a result of the rule changes will depend on where the schools are located and whether they are well-maintained. The costs may be as low as the cost of permit fees or may be substantial in a school with poor sanitation. A school may also incur costs associated with complying with animal standards. Public schools are expected to benefit from the increased clarity of the proposed rules in specifying the conditions constituting the minimal standards, and may benefit from a decrease in sick leave taken by faculty or staff due to improved sanitation in the working environment.

⁵ The owners of private schools may receive minimal to substantial benefit from the clarification that private schools are not subject to these rules.

⁶ Owners of businesses providing building cleaning, plumbing supply and repair, HVAC supply and repair, septic tank cleaning and sewage disposal, or refuse collection and disposal services may receive minimal to substantial benefit from contracting with schools to provide these services.

⁷ Students, faculty and staff of a school and visitors to the school may receive minimal to substantial benefit from improved sanitation in the school environment.

⁸ The community at large will receive substantial benefit from better school sanitation. Improved sanitation will improve Arizona's public health and result in substantial savings to the general public by reducing health care expenditures and the burden on the health care system.

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

Public and private employment in the State of Arizona will not be affected due to any of the proposed changes in the rules.

6. A statement of the probable impact of the proposed rulemaking on small businesses.

a. An identification of the small businesses subject to the proposed rulemaking.

Small businesses affected by the rule changes include the owners or operators of small public schools, and the owners of building cleaning businesses, plumbing supply and repair businesses, heating, ventilating and air conditioning (HVAC) supply and repair businesses, septic tank cleaning and sewage disposal businesses, and refuse collection and disposal businesses.

b. The administrative and other costs required for compliance with the proposed rulemaking.

A small school that is currently poorly maintained may need to hire additional staff or contract for additional services to meet the requirements of this rule. A small school that has animals in the school may also incur some costs associated with assuring that rabies immunization standards and other animal standards are met.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

The standards specified in rule are the minimum necessary to protect the health of the students, faculty and staff of a school and visitors to the school.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The probable costs and benefits to private persons and consumers are contained in the cost/benefit analysis in paragraph (4).

7. A statement of the probable effect on state revenues.

Inspections performed by the Department will not generate additional revenue for the state. Additional income received by businesses performing services covered under the rule may generate additional tax revenue.

8. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F21-0408)

Title 19, Chapter 1, Articles 1-7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 8, 2021

SUBJECT: DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F21-0408)
Title 19, Chapter 1, Articles 1-7, Department of Liquor Licenses and Control

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

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. Council staff notes that due to pending legislation that affects the Department, the Department states that it plans to postpone any rulemaking until the current legislative session ends in May 2021. However, the Department notes that there are several rules that need to be amended. Accordingly, Council staff recommends approval of this report, but also recommends that the Council and the Department discuss a specific timeframe to amend the rules it cites in the 5YRR.



STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey
GOVERNOR

John Cocca
DIRECTOR

January 29, 2021

VIA Email: grrc@azdoa.gov

Chairperson Nicole Sornsin
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Arizona Department of Liquor – Title 19, Chapter 1, Articles 1 through 7 Five Year Review Report

Dear Chairperson Sornsin,

Please find enclosed the Five Year Review Report of the Arizona Department of Liquor Licenses and Control for Title 19, Chapter 1, Articles 1 through 7 which is due on January 31, 2021.

The Department of Liquor Licenses and Control hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report please contact Assistant Director Jeffery Trillo at (602) 364-1952 or Jeffery.Trillo@azliquor.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C".

John Cocca,
Director

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 many 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 retailer's 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 inability 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 or 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:

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

R19-1-101.	Definitions
R19-1-102.	Fees and Surcharges; Service Charges
R19-1-103.	A.R.S. Title 4 Training Course: Minimum Standards
R19-1-104.	Shipping Container Labeling; Shipping Requirements
R19-1-105.	Standards for a Non-contiguous Area of a Licensed Premises
R19-1-106.	Severability
R19-1-107.	Electronic Signatures
R19-1-108.	Repealed
R19-1-109.	Repealed
R19-1-110.	Sign Limitations
R19-1-111.	Repealed
R19-1-112.	Repealed
R19-1-113.	Repealed

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

R19-1-201.	Who May Apply for a License
R19-1-202.	Application Required
R19-1-203.	Registration of a Retail Agent
R19-1-204.	Repealed Obtaining a Quota License
R19-1-205.	Requirements for a Special Event License
R19-1-206.	Criteria for Issuing a Restaurant License

R19-1-207.	Extension of Premises
R19-1-208.	Notice of Application for a Conveyance License
R19-1-209.	Licensing Time-frames
R19-1-210.	Renumbered
R19-1-211.	Repealed
R19-1-212.	Repealed
R19-1-213.	Repealed
R19-1-214.	Repealed
R19-1-215.	Repealed
R19-1-216.	Repealed
R19-1-217.	Repealed
R19-1-218.	Repealed
R19-1-219.	Repealed
R19-1-220.	Repealed
R19-1-221.	Repealed
R19-1-222.	Repealed
R19-1-223.	Repealed
R19-1-224.	Repealed
R19-1-225.	Repealed
R19-1-226.	Repealed
R19-1-227.	Repealed
R19-1-228.	Renumbered
R19-1-229.	Repealed
R19-1-230.	Repealed
R19-1-231.	Repealed
R19-1-232.	Repealed
R19-1-233.	Repealed
R19-1-234.	Repealed
R19-1-235.	Repealed
R19-1-236.	Recodified
R19-1-237.	Recodified
R19-1-238.	Repealed
R19-1-239.	Recodified
R19-1-240.	Recodified
R19-1-241.	Recodified
R19-1-242.	Recodified
R19-1-243.	Recodified
R19-1-244.	Recodified
R19-1-245.	Recodified

R19-1-246. Recodified
 R19-1-247. Recodified
 R19-1-248. Recodified
 R19-1-249. Repealed
 R19-1-250. Recodified
 R19-1-251. Repealed
 R19-1-252. Recodified
 R19-1-253. Recodified
 R19-1-254. Recodified
 R19-1-255. Recodified
 R19-1-256. Repealed
 R19-1-257. Recodified

ARTICLE 3. LICENSEE RESPONSIBILITIES

Article 3, consisting of R19-1-301 through R19-1-304, adopted effective September 14, 1990 (Supp. 96-4).

Section
 R19-1-301. Recodified
 R19-1-302. Knowledge of Liquor Law; Responsibility
 R19-1-303. Authorized Spirituous Liquor
 R19-1-304. Storing Spirituous Liquor on Unlicensed Premises
 R19-1-305. Paying Taxes Required
 R19-1-306. Bottle Labeling Requirements
 R19-1-307. Bottle Reuse or Refilling Prohibited
 R19-1-308. Age Requirement for Erotic Entertainers
 R19-1-309. Prohibited Acts
 R19-1-310. Prohibited Films and Pictures
 R19-1-312. Accurate Labeling of Dispensing Equipment Required
 R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor
 R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service
 R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee
 R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee
 R19-1-318. Responsibilities of a Special Event Licensee
 R19-1-319. Commercial Coercion or Bribery Prohibited
 R19-1-320. Practices Permitted by a Producer or Wholesaler
 R19-1-321. Practices Permitted by a Wholesaler
 R19-1-322. Responsibilities of a Registered Retail Agent
 R19-1-323. Underage Individuals on Licensed Premises
 R19-1-324. Standards for Exemption of an Unlicensed Business
 R19-1-325. Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms
 R19-1-326. Tapping Equipment
 R19-1-327. Domestic Farm Winery Sampling
 Table A. Repealed

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).

Section
 R19-1-401. Notice of License Surrender or Application Withdrawal
 R19-1-402. Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members
 R19-1-403. Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility
 R19-1-404. Notice of Sampling on a Licensed Off-sale Retail Premises
 R19-1-405. Notice of Change in Status: Active or Nonuse
 R19-1-406. Notice of Change in Manager

R19-1-407. Notice of Legal or Equitable Interest
 R19-1-408. Notice of Change in Business Name, Address, or Telephone Number

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).

Section
 R19-1-501. General Recordkeeping
 R19-1-502. On-sale Retail Personnel Records
 R19-1-503. Records Regarding Cooperative Purchases
 R19-1-504. Record of Delivery of Spirituous Liquor
 R19-1-505. Report of Act of Violence

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).

Section
 R19-1-601. Appeals and Hearings
 R19-1-602. Actions During License Suspension
 R19-1-603. Seizure of Spirituous Liquor
 R19-1-604. Closure Due to Violence

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).

Section
 R19-1-701. Election of Officers
 R19-1-702. Determining Whether to Grant a License for a Certain Location
 R19-1-703. Rehearing or Review of Decision
 R19-1-704. Submitting Documents to the Board
 R19-1-705. Judicial Review

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 purposes 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 purposes 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);

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- 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) through (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 notwithstanding 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.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). R19-1-229 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 Administra-

tive 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 con-
- tractor 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 spirituous liquor.

- 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 12-901 et seq.

Historical Note

New Section made by final rulemaking at 19 A.A.R.
1338, effective July 6, 2013 (Supp. 13-2).

ARIZONA LOTTERY (F21-0404)

Title 19, Chapter 3, Article 10, Promotions



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 8, 2021

SUBJECT: ARIZONA LOTTERY (F21-0404)

Title 19, Chapter 3, Article 10, Promotions

Summary:

This Five Year Review Report (5YRR) from the Arizona Lottery (Lottery) relates to rules in Title 19, Chapter 3, Article 10 regarding lottery promotions. The Lottery provides an overview of the history of lottery games and the scope of its activities in the overview section of the 5YRR. As the Lottery indicates, “[t]he promotions rules set forth provisions unique to the conduct of Arizona Lottery promotions with the objective of stimulating sales, as well as public and retailer awareness of Lottery games and benefits.”

In the previous 5YRR for these rules, which the Council approved in April 2016, the Lottery stated that it would revise the rules in June 2018 provided that the rulemaking moratorium was lifted or that the Lottery met the requirements for an exemption. The Lottery states that staff turnover caused a change in priorities, and did not complete the prior proposed course of action.

Proposed Action

For each individual rule under review, the Lottery identifies how it plans to amend the rule to address issues specified in the report. However, the Lottery states in Item 10 of its report (Completion of course of action in previous five-year review report) that it proposes to revise the

rules Article 10 and potential Article 7 revisions in June 2022, approximately 16 months from the time the Council will consider this report.

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

Yes. The Lottery 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:

In the 2016 5YRR for these rules, the Lottery provided a 2007 economic, small business, and consumer impact statement (EIS) that the Attorney General's office prepared. The rules are requirements on the Lottery and predominantly affect the Lottery's operations. Therefore, the Lottery believes the economic impact of the rules remains consistent with the determinations in the 2007 EIS.

The rules primarily affect the Lottery, Lottery retailers, Lottery players, and to some degree, state revenues.

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?

While the 5YRR notes that individual rules can be improved, the Lottery has confidence that the rules as a whole impose the least burden and costs to regulated persons. These rules provide for fair and consistent procedures with respect to the conduct of Lottery promotions, while also serving to protect the interests of the Lottery and the state. Promotion costs are included in the agency's budget and player participation is voluntary.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Lottery 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 all of the rules under review, the Department identifies issues with their clarity, conciseness, and understandability, and indicates how those rules can be improved.

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

Yes. The Lottery states that all of the rules under review are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Lottery states that many of the rules are “mostly effective” but identifies issues that interfere with the effectiveness of certain rules, and identifies how their effectiveness could be improved.

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

Yes. The Lottery states that most of the rules are enforced as written. However, it identifies two rules, R19-3-1002 (Promotion Profile) and R19-3-1007 (Procedure for Claiming Prizes and Claim Period), that are not enforced as written for the reasons specified in the 5YRR.

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. There is no corresponding federal law 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?

Not applicable. The rules under review do not require a permit, license, or agency authorization.

11. Conclusion

The Lottery submitted an adequate report that meets the requirements of A.R.S. § 41-1056. The Lottery states that it plans to propose revisions to the rules in June 2022. In response to a follow up inquiry from Council staff, the Lottery further confirmed the June 2022 date and stated that revisions prior to that time are not possible.

Council staff has concerns about the proposed course of action for the rules under review. Council staff notes that many of the issues identified with the rules in this 5YRR potentially qualify for expedited rulemaking pursuant to A.R.S. § 41-1027. For the revisions that do not, Council staff notes that addressing those issues would result in a reduced regulatory burden. Further, the Lottery stated that it would revise these rules in its 2016 5YRR, which it was unable to do. Therefore, Council staff recommends that the Council discuss with the Lottery whether it can revise the rules under review sooner than June 2022, which would make the rules more clear, concise, understandable, effective, and consistent with other rules and statutes.



Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

January 27, 2021

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

**Re: Five Year Review Report
19 A.A.C. 3
Article 10: Promotions**

Dear Ms Sornsin,

Pursuant to A.R.S. § 41-1056, the Lottery has reviewed 19 A.A.C. 3, Article 10 and is submitting its five year review of the rules. Attached to the report are copies of the existing rules, the previous economic impact statement, and authorizing statutes.

The Lottery is also in compliance with the requirements of A.R.S. § 41-1091 that governs the directory of rules and substantive policy statements.

Should you have any questions, please contact Sherri Zendri at (480) 921-4401, or email szendri@azlottery.gov

Sincerely,

A handwritten signature in black ink, appearing to read "GREGG EDGAR".

Gregg Edgar
Executive Director

Enclosures

PHOENIX 4740 E University Dr. Phoenix, Arizona 85034 | **TUCSON** 2900 E Broadway Blvd., Suite 190 Tucson, Arizona 85716

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ArizonaLottery.com

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 10: Promotions

January 2021

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was approved by a statewide public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim – 51 to 49 percent – subsequent

referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, 73 percent of Arizonans voted to extend the Lottery for an additional 10 years. As a result of legislative action in the 2010 Legislative 6th Special Session, the original voter-established Lottery was replaced by a legislatively-established Lottery. This “new” Lottery began operations July 2012 and will be subject to sunset in 2035.

Lottery sales began July 1, 1981, with a single \$1 “Scratch it Rich” instant game that sold out 21.4 million tickets in 10 days! Scratchers remained the only product until 1984 when the Lottery introduced its first on-line (draw) game, The Pick. Over the years, additional draw games were periodically introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately \$1 million in commissions to help support charitable activities in FY20, with \$900 thousand allocated to the Internet Crimes Against Children Fund and \$100 allocated to the Victim’s Rights Enforcement Fund.

Since its inception, the Lottery’s mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor, in addition to a 5-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no General Fund monies. The Lottery sells products and redeems prizes through a statewide network of approximately 3100 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the General Fund:

University Bond Fund

Healthy Arizona
Mass Transit (LTA)
Heritage Fund
Court Appointed Special Advocates (CASA)
Economic Security Homeless Services
Internet Crimes Against Children/
Victims' Rights Enforcement Fund
Department of Gaming
Tribal College Dual Enrollment Fund

In FY10, the State issued bonds against future Lottery revenues for \$450 million. In FY19, the State issued approximately \$250 million in new bonds, which refinanced the remaining principal from the 2010 bonds. The Lottery is responsible for meeting the bond debt service payments through 2029, in addition to other more traditional statutory beneficiary obligations.

The Lottery has achieved record sales levels in recent years, despite challenging economic conditions. For FY20, total sales were a record \$ 1.097 billion and transfers to state beneficiaries were \$ 226, million. Innovations over the last five years have included three new products: Fast Play, Triple Twist, and Quickcard, as well as a new “Players Club” loyalty program.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554(B) requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554(B)(7). The Lottery may adopt rules relating to the payment of prizes as provided by A.R.S. § 5-554(B)(3) and A.R.S. § 5-554(C)(3) specifically authorizes the Lottery Commission to approve orders pertaining to the sale of tickets for promotional purposes.

The last amendments to 19 A.A.C. 3, Article 10 were effective in September 2007. The Lottery submits rule amendments for this Article to the Attorney General's Office in accordance with A.R.S. § 41-1057(4). The rules were primarily amended to improve efficiency by grouping a lengthy list of existing promotions into more general categories. The promotions rules set forth provisions unique to the conduct of Arizona Lottery promotions with the objective of stimulating sales, as well as public and retailer awareness of Lottery games and benefits.

The review of this rule was conducted by Arizona Lottery staff, Lottery Administrative Counsel, and the Lottery's Assistant Attorney General. The rules were reviewed for consistency with actual practice, for future promotional needs, and for overall clarity. The rules continue to provide an adequate framework for large number of promotions the agency runs. While there are areas where the promotion approval process could be more efficient, any proposed changes must meet the Governor's Rule Moratorium Exception criteria. The Lottery will request an exemption in order to complete the amendments, but recognizes the proposed changes may not sufficiently meet the exemption requirements set forth in Executive Order 2020-02.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Statutory authority:

General: A.R.S. § 5-554(B).

Specific: A.R.S. § 5-554(C).

4. Consistency with state and federal statutes and other rules made by the agency:

All rules are consistent with the Lottery's enabling legislation, A.R.S. §§ 5-551 *et seq.*, as well as other Lottery rules in 19 A.A.C. 3. There are no federal statutes applicable to these rules.

7. Written criticisms:

No written criticisms of the rules have been received within the last five years.

8. Economic, small business and consumer impact comparison:

This Council last reviewed the promotions rules in April 2016. At that time, the Lottery provided a 2007 economic impact statement (EIS) that was prepared by the Attorney General's Office. The rules are requirements on the Lottery and predominantly effect the Lottery's behavior; therefore, the Lottery believes the economic impact of the rules has remained consistent with the 2007 EIS.

The rules continue to primarily affect the agency, Lottery retailers, Lottery players, and to some degree, state revenues. Costs to the Lottery include expenditures associated with cash or merchandise prizes, point-of-sale items, and any dedicated advertising related to promotions. These expenses continue to be included in the agency's annual appropriation. Consistent with the previous economic impact statement, the Lottery has not experienced any additional, unanticipated costs as a result of the rulemaking.

Promotions are a tool to expand knowledge and visibility of various Lottery game products. In FY20 the Lottery conducted 103 total promotions, which included a combination of game, retailer, and marketing promotions spanning the range of acceptable playstyles for the promotions.

Lottery retailers are the only businesses impacted by these rules. Lottery promotions benefit retailers through the potential to earn incremental commissions and the Lottery believes the actual impact has been as projected. There are currently about 3100 licensed Lottery retailers that receive on average a commission of 6.5% for each Lottery transaction. Although there is no practical way to separate commissions due to promotional activities, traditional retailers earned \$74.5 million in commissions in FY20 as compared to \$49.8 million five years ago in FY15.

As estimated in the previous economic impact statement, Lottery game promotions provide financial benefit to the state. Although not directly measurable, incremental revenues generated by promotions are revenues that would not be otherwise realized. A

percentage of Lottery game revenue is returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-572. In FY20, the overall percentage returned to the state was about 20% of revenues, for a total of \$226 million.

As expected, these rules have not had any negative impact on consumers or the public. Player participation in Lottery promotions is voluntary, offering the potential to win promotional prizes. The rules have not had an identifiable economic impact on political subdivisions of the state or private and public employment.

9. Analysis submitted by another person regarding business competitiveness:

No person has submitted an analysis to the agency that compares the rules' competitive impact on businesses in this state to the competitive impact on businesses in other states.

10. Completion of course of action in previous five-year review:

The previous five-year review was prepared for this Article in January 2016. At that time, rule revisions were proposed for June 2018 provided the rulemaking moratorium was lifted or that the Lottery met the requirements for an exemption. Extensive staff turnover, including an entirely new executive team since early 2016, has shuffled agency priorities. The current agency focus on revenue generation prioritizes rule revisions that will substantially increase sales and decrease impact to retailers. However, as there are areas this rule can be improved the agency proposes to revise Article 10 along with potential Article 7 revisions in June 2022.

11. Probable benefit compared to burden and costs to persons regulated by the rule:

While the review report notes that individual rules can be improved, the agency has confidence that the rules as a whole impose the least burden and costs to persons regulated by the rules. These rules provide for fair and consistent procedures with respect to the conduct of Lottery promotions, while also serving to protect the interests of the Lottery and the state. Promotion costs are included in the agency's budget and player participation is voluntary.

12. Stringency of the rule compared to corresponding federal law:

There are no federal laws applicable to these rules.

13. Compliance with § 41-1037 regarding the issuance of a permit, license, or agency authorization:

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

ANALYSIS OF INDIVIDUAL RULES

R19-3-1001. Definitions

2. Objective/Purpose:

The objective of the rule is to define terms used in 19 A.A.C. 3, Article 10. The purpose is to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but requires minor rewording for an existing definition.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable to the general public, but clarity could be improved by including “social media” in the definition for “media.”

14. Proposed course of action:

The Lottery plans to amend this rule by revising the definition of “media.”

R19-3-1002. Promotion Profile

2. Objective/Purpose:

The objective of the rule is to explain that each promotion must have a promotion profile and to describe promotion profile requirements. The purpose is to provide a consistent format for all profiles.

3. Effectiveness in achieving the objective:

The rule effectively achieves its objective; however it is not the most efficient process. In practice, the rule is burdensome to follow for every promotion and would be more effective by allowing for some flexibility in promotional activities, such as separate criteria for marketing and game promotions, and establishing certain generic profiles that would not require Lottery Commission approval for every individual promotion.

5. Agency enforcement of the rule:

The Lottery enforces the rule for promotion development generally; however it does not enforce the rule as written for every individual promotion. To streamline processes, the Lottery develops generic profiles approved by the Commission that allow additional promotions as long as they are within the criteria of the approved generic profile. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website.

6. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable to the general public, but requires additional provisions as described in item #3.

14. Proposed course of action:

The Lottery plans to amend this rule by restructuring promotion criteria in order to provide greater flexibility in developing and implementing promotions.

R19-3-1003. Promotion Playstyle – Promotion Type

2. Objective/Purpose:

The objective of the rule is to describe the various methods of play for Lottery promotions. The purpose is to disclose the types of promotions that may be utilized.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but could be more effective by adding playstyles for “coupon” and “buy one, get one” promotions, in addition to redefining “public contest” to include contests that are related to specific Lottery games. The current definitions create artificial

limitations that do not serve a useful purpose and unreasonably restrict the Lottery’s flexibility to design effective promotions.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is somewhat clear, concise, and understandable to the general public, but subsections (C) and (D) can be deleted. These provisions are redundant because they are delineated in Promotion Profile requirements under R19-3-1002.

14. Proposed course of action:

The Lottery plans to amend this rule to add new playstyles and clarify existing language.

R19-3-1004. Determination of a Winning Promotion

2. Objective/Purpose:

The objective of the rule is to explain the mechanics of each promotion playstyle. The purpose is to clarify how to win the associated promotional prize.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but could be more effective by adding descriptions for a new “coupon” promotion and a “buy one, get one” promotion, as well as redefining “public contest” to include contests that are related to specific Lottery games.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is partially clear, concise, and understandable to the general public, but clarity could be improved by generally ensuring term usage is consistent throughout the rule and rewriting the description for “customer service” to clarify this promotion playstyle pertains to generic customer service issues.

14. Proposed course of action:

The Lottery plans to amend this rule to add new playstyle language and clarify existing language.

R19-3-1005. Repealed

R19-3-1006. Repealed

**R19-3-1007. Procedure for Claiming Prizes and
Claim Period**

2. Objective/Purpose:

The objective of the rule is to explain prize redemption procedures. The purpose is to clarify how to claim a prize for a particular promotion.

3. Effectiveness in achieving the objective:

The rule effectively achieves its objective; however, it is not the most efficient process. Claim procedures for a specific promotion are no longer included in the Promotion Profile, but instead are part of the promotion's official rules that are posted on the

Lottery's website. Language in this section should be revised to allow for official promotion rules that will govern the procedure for claiming a prize. This will provide consistency with proposed changes for R19-3-1002.

5. Agency enforcement of the rule:

The Lottery does not enforce the rule as written for every individual promotion. As mentioned for R19-3-1002, the Lottery develops generic profiles approved by the Commission. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website. Detailed claim procedures included in the individual promotion's official rules.

6. Clarity, conciseness and understandability:

The rule itself is generally clear, concise, and understandable to the general public, but is inconsistent with current practice. Clarity could be improved by amending the rule to address the issues identified in item #3. The inaccurate procedure detracts from clarity.

14. Proposed course of action:

The Lottery plans to amend this rule so provisions are consistent with actual practice.

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

2. Objective/Purpose:

The objective of the rule is to describe the remedy the Director may authorize in the event of a dispute involving a promotion ticket, and explain that the Lottery is discharged from all liability upon payment and acceptance of a prize. The purpose is to protect the Lottery from liability.

3. Effectiveness in achieving the objective:

This rule is mostly effective, but language should be added that indicates a replacement ticket is the “sole and exclusive remedy” with respect to disputes. This mirrors current language in the Lottery’s instant game rules (A.A.C. R19-3-709) and serves to further limit liability.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

This rule is somewhat clear, concise and understandable to the general public, but clarity could be improved by addressing the issue in item #3.

14. Proposed course of action:

The Lottery plans to amend the rule by adding language that clarifies that a replacement ticket is the “sole and exclusive remedy” for disputes.

ATTACHMENT A:

Current Rules

ARIZONA ADMINISTRATIVE CODE
TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION
ARTICLE 10. PROMOTIONS

R19-3-1001. Definitions

In this Article, unless the context otherwise requires:

1. “Category” means player, consumer, retailer, vendor, or other person who participates in the promotion.
2. “Charitable organization” means a non-profit organization organized and operated exclusively for charitable purposes and is qualified under § 502(c)(3) of the United States Internal Revenue Code.
3. “Media” means the method of communication, as in television, radio, print, outdoor, or Internet, with wide reach and influence.
4. “Prize type” means cash, free ticket or tickets, coupon or coupons, merchandise, retailer or vendor product or service, or discount on retailer or vendor product or service.
5. “Promotion” means a program designed to increase awareness of the Lottery, Lottery beneficiaries, and Lottery games that is intended to increase the sale of Lottery tickets to produce the maximum amount of net revenue for the state.
6. “Promotion playstyle” means the type of process or procedure used to control the promotion.
7. “Promotion Profile” means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential promotion fundamentals required by these rules for a promotion.
8. “Promotional merchandise” means Lottery related goods, consumer products, or services provided by the Lottery for use in a promotion.
9. “Promotional ticket” means a Lottery ticket from a current, active game or a specially designed game provided by the Lottery for use in a promotion.
10. “Targeted game or targeted games” means the specific game or games a promotion is intended to increase sales or awareness of.
11. “Tickets” means one or more Lottery game plays from the targeted game or games.

R19-3-1002. Promotion Profile

- A. Each promotion shall have a Promotion Profile and at a minimum, the Profile shall contain the following information:
 1. Promotion name;
 2. Promotion playstyle;
 3. Category;
 4. Targeted game, games or Lottery beneficiaries involved in the promotion;
 5. Promotion description;
 6. Promotion selection criteria, if applicable;
 7. Prize type and structure, including the estimated number and size of monetary prizes, free tickets, coupons, certificates, discounts, and merchandise prizes available, if applicable;
 8. Retail sales price, if applicable;
 9. Promotion date range (beginning and ending promotion dates);
 10. Time range, if applicable;

11. Day or days of the week, if applicable;
 12. Special feature, if any; and
 13. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B. The Commission shall approve the Promotion Profile prior to the promotion being introduced to the public for participation.

R19-3-1003. Promotion Playstyle - Promotion Type

- A. The playstyle for a specific promotion shall be fully described in the Promotion Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Second Chance Drawing – Player.
 2. Second Chance Drawing – Retailer.
 3. Retailer's Second Chance Drawing – Retailer/Player.
 4. Increased Prize Payment.
 5. Buy X and Get Y Free – Player.
 6. Sell X and Get Y Free – Retailer.
 7. Validate X and Get Y Free – Retailer.
 8. Buy X and Get Y Free, Every Nth Transaction – Player.
 9. Sell X and Get Y Free, Every Nth Transaction – Retailer.
 10. Complete Survey.
 11. Special Events – Player.
 12. Retailer Incentive.
 13. Cross Promotion.
 14. Media Promotion.
 15. Customer Service.
 16. Mystery Shopper – Retailer.
 17. Ask For the Sale – Retailer.
 18. Charitable Organization.
 19. Public Contest – not related to specific Lottery game.
 20. Multi-State Lottery (MUSL) Promotions.
- B. More than one promotion may run concurrently.
- C. Promotion may be held only on specific days of the week.
- D. Promotion may be held only during specific hours of the day.
- E. Promotion may be available for selected regions, zones, retailer groups or player groups. Groups may be made by business codes, regions, county, zip code, chain designator, field representative or sales quota.

R19-3-1004. Determination of a Winning Promotion

Eligibility to win a prize is based on compliance with the designated promotion playstyle as follows:

1. Second Chance Drawing – Player. The player shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile. The player or players selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.

2. Second Chance Drawing – Retailer. The retailer shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile, or the Lottery may use information collected on its database as defined in the Promotion Profile to qualify the retailer. The retailer or retailers selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
3. Retailer's Second Chance Drawing – Retailer/Player. Retailers participating in the promotion shall ask players to deposit the required coupon, tickets or entry form into a Drawing Container at the retailer's location. The retailer shall perform random drawings according to the Promotion Profile. The players selected in the drawings shall win the prize type designated in the Promotion Profile. The Lottery shall provide the participating retailer with a predetermined number of prizes for the promotion.
4. Increased Prize Payout. Players who win a particular prize denomination in the target game or games shall win an additional amount specified in the Promotion Profile. The Promotion Profile shall define any required level of participation to be eligible.
5. Buy X and Get Y Free – Player. Each time a player buys a predetermined number of tickets from the targeted game or games, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement and the Get Y Free shall be specified in the Promotion Profile.
6. Sell X and Get Y Free – Retailer. Each time a retailer sells a predetermined number of tickets from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement and the Get Y Free shall be specified in the Promotion Profile.
7. Validate X and Get Y Free – Retailer. Each time a retailer validates a predetermined number or prize amount from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Validate X requirement and the Get Y Free shall be specified in the Promotion Profile.
8. Buy X and Get Y Free, Every Nth Transaction – Player. Each time a player buys a predetermined number or type of ticket or tickets from the target game or games and that purchase is the Nth transaction produced by the on-line system, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer. Each time a retailer sells a predetermined number of tickets from the target game or games and that sale is the Nth transaction produced by the on-line system, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
10. Complete Survey. The player or retailer who completes a designated survey shall receive the prize type designated in the Promotions Profile.
11. Special Events – Players. Players who attend a Lottery sponsored special event may participate in activities designed to promote Lottery products. Player participation may include spinning the Lottery prize wheel, various carnival type games of little or no skill, or purchase of tickets for targeted game or games. The prize type shall be designated and awarded according to the Promotion Profile.
12. Retailer Incentive. The retailer shall become eligible to earn the designated prize type through participation as defined in the Promotion Profile.

13. Cross Promotion. Players who present a predetermined number of non-winning tickets of the targeted game or games to a participating retailer or vendor shall win the prize type designated in the Promotion Profile.
14. Media Promotion. Players who participate in media-related promotions shall be eligible to receive the prize type designated in the Promotion Profile. The Lottery shall provide the participating media outlet with coupons or tickets from the targeted game or games or promotional merchandise items.
15. Customer Service. If a player is inconvenienced or dissatisfied as a result of Lottery actions below the usual level of service the Lottery provides, the Lottery may provide the player with the prize type designated in the Promotions Profile.
16. Mystery Shopper – Retailer. The Lottery shall send mystery shoppers or spotters to visit randomly selected retailers in the promotional area. Each retailer who meets the requirements specified in the Promotion Profile shall win the designated prize type.
17. Ask For The Sale – Retailer. Each retailer participating in the promotion shall ask all customers who are determined to be of legal gaming age if they want to purchase a Lottery ticket for the targeted game or games. If the retailer does not ask an eligible customer, the customer shall receive a free coupon or ticket from the designated game. The Lottery shall provide the participating retailer with a predetermined number of coupons or tickets from the targeted game or games according to the Promotion Profile.
18. Charitable Organization. The Lottery shall provide a qualifying charitable organization with a predetermined number of tickets, coupons, or promotional merchandise from a targeted game or games to distribute during their charitable event.
19. Public Contest – not related to specific Lottery game. The Lottery may conduct a contest not related to any specific Lottery game as defined in the Promotion Profile.
20. Multi-State Lottery (MUSL) Promotions. The Lottery may participate in a Multi-State Lottery game-related promotion adopted by the MUSL board.

R19-3-1005. Repealed

R19-3-1006. Repealed

R19-3-1007. Procedure for Claiming Prizes and Claim Period

- A. To claim a promotion prize, a claimant must follow the procedure provided in the Promotion Profile.
- B. Promotion details are subject to the terms of the Promotion Profile which may modify or specify the ownership, authentication, validation procedures, or the time period for claiming a prize.

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

- A. If a dispute between the Lottery and a claimant occurs concerning a promotion ticket or the winning of a promotion prize, the Director is authorized to replace the disputed ticket or promotion prize with a ticket or promotion prize of equivalent value from any current promotion. The decision of the Director is a final, appealable agency action.
- B. Upon claim verification and payment of a prize, the Lottery shall be discharged of all liability to the claimant.

C. By accepting a prize, the winner, his or her heirs, or legal representative agrees to indemnify and hold harmless, release, and discharge the Lottery, its employees, directors, and Commissioners from and against loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.

ATTACHMENT B:

General & Specific Statutes

[note: got page # to appear in center by – “insert footer/page#/current position” w/cursor in front of right footer and then “tab”]

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

5-554. Commission; director; powers and duties; definitions

- A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.
- B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include provisions relating to the following:
1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.
 2. The method of selecting the winning tickets or shares for noncomputerized online games, except that no method may be used that, in whole or in part, depends on the results of a dog race, a horse race or any sporting event.
 3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.
 4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on such tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.
 5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.
 6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.
 7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.
- C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include provisions relating to the following:
1. The prices of tickets or shares in lottery games.

2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.
 3. The sale of tickets or shares at a discount for promotional purposes.
 4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.
 5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:
 - (a) All drawings shall be open to the public.
 - (b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.
 - (c) Noncomputerized online game drawings shall be witnessed by an independent observer.
 6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.
 7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.
 8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.
- D.** Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.
- E.** The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:
1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.
 2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.
 3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.
- F.** Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

- G.** The commission, in addition to other games authorized by this article, may establish multistate lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multistate lottery games.
- H.** The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund, except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:
1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.
 2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.
 3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.
- I.** The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet.
- J.** The commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.
- K.** The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director. The requirements of this subsection apply to tickets and shares printed after July 18, 2000.
- L.** For the purposes of this section:
1. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.
 2. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.
 3. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.

ATTACHMENT C:

2007 Economic Impact Statement

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

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

CHAPTER 3: ARIZONA STATE LOTTERY COMMISSION

ARTICLE 10. PROMOTIONS

The rules for Article 10, Promotions, describe various types of Lottery promotions and procedures relating to these promotions. The Lottery anticipates amendments to Article 10 will impact the agency, Lottery retailers, Lottery players, and potentially State revenues.

- A. *The Arizona State Lottery.* Costs to the agency related to this rulemaking are included in the agency's appropriated budget. They include the cost of cash or merchandise prizes, as well as administrative operating expenses associated with personnel, point-of-sale items, and related advertising. The Lottery does not anticipate any additional costs to the agency as a result of this rulemaking.
- B. *Businesses Directly Affected by this Rulemaking.* Businesses affected by these rules are Lottery retailers who sell Lottery game products to the public. The only impact the rules have upon Lottery retailers is to specify how to determine a winning promotion, and if applicable, the premium amount. Currently, retailers receive a base commission of \$.065 for each \$1 Lottery game transaction. An increase in sales as a result of Lottery promotions will also increase the amount of commissions earned by retailers.
- C. *Consumers and the Public.* There are no costs to the public associated with this rulemaking. The description of promotion procedures will assist players in understanding how to participate in Lottery promotions and claim winning promotional prizes.
- D. *State Revenues.* These rules allow the Lottery to introduce various product promotions, thus providing the State with a potential to increase revenue.

This rulemaking clarifies Lottery promotion procedures and will not have any identifiable economic impact on political subdivisions of the state, private and public employment, or the general public.

DEPARTMENT OF AGRICULTURE

Title 3, Chapter 2, Article 11, Voluntary Egg Grading Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021

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

FROM: Council Staff

DATE: March 15, 2021

SUBJECT: **Arizona Department of Agriculture**
Title 3, Chapter 2, Article 11

This One-Year-Review Report from the Department of Agriculture relates to rules in Title 3, Chapter 2, Article 11, regarding the Voluntary Egg Grading Program. These rules were adopted through an exempt rulemaking pursuant to Laws 2019, Ch. 147, § 3, which gave the Department a one year exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6.

The Department submitted this 1YRR pursuant to A.R.S. § 41-1095.

Proposed Action

_____ The Department is not proposing any changes to the rules.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The agency has not completed an economic impact statement at this time.

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 has determined that the benefits of the rules in Title 3, Chapter 2 Article 11 outweigh the costs imposed to the regulated community, and are the least burdensome and cost effective.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Department indicates they have not received any formal written criticism 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.

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?

_____ Not Applicable. There are no corresponding federal laws to these rules.

10. Has the agency completed any additional process required by law?

Not applicable. No additional process is required.

11. 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.

12. Conclusion

As mentioned above, the Department is not proposing any changes to the rules. Council staff finds that the Department submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.

DOUGLAS A. DUCEY
Governor



MARK W. KILLIAN
Director

Arizona Department of Agriculture

Plant Services Division
1688 W. Adams Street, Phoenix, Arizona 85007
P: (602) 542-0994 F: (602) 542-1004

January 26, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: One-Year Review Report for A.A.C. Title 3, Chapter 2, Article 11

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's (Department) one-year review report for A.A.C. Title 3, Chapter 2, Article 11. All rules in the Article have been reviewed, and there is no intention for a rule to expire under A.R.S. § 41-1056(J). Also enclosed are copies of the rules and the authorizing statutes.

The Department certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Roland Mader at (602) 542-0884 or rmader@azda.gov with any questions about this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark W. Killian".

Mark W. Killian
Director

cc: Deanie Reh, Assistant Attorney General

Enclosures:
One-Year Review Report
Current Rules
Authorizing statutes

ARIZONA DEPARTMENT OF AGRICULTURE

**1 YEAR REVIEW REPORT
Title 3, Chapter 2, Article 11**

January 26, 2021

1. Authorization of the rule by existing statutes

Authorizing Statute: A.R.S § 3-107

Implementing Statute: A.R.S. § 3-710 L.

2. The objective of each rule:

Rule	Objective
R3-2-1101	Define terms used in the Article
R3-2-1102	Indicates the general provisions and the standard used for grading service.
R3-2-1103	Describes the equipment and facilities required to be provided for grading service.
R3-2-1104	Provides outline for service schedule.
R3-2-1105	Provides information for the requirements to be eligible to apply for grading service.
R3-2-1106	Establishes that applicant is representing the company requesting service.
R3-2-1107	Establishes the order of service.
R3-2-1108	Describes the types of available grading service.
R3-2-1109	Describes the suspension of grading service.
R3-2-1110	Describes the authorization to use the official insignia; AZDA trademarks.
R3-2-1111	Form of AZDA trademark and information required.
R3-2-1112	Describes lot marking of officially identified eggs.
R3-2-1113	Describes the use of retention tags for eggs and equipment that is not in compliance with the rule.
R3-2-1114	Prerequisites for packaging eggs with trademarks.
R3-2-1115	Grading requirements of eggs identified with AZDA trademarks.
R3-2-1116	Payment of fees and charges.
R3-2-1117	Lists the charges for grading service.
R3-2-1118	Termination by recipient.
R3-2-1119	Mutual termination.
R3-2-1120	Appeals of the determination by a grader of the class, quality, quantity, or condition of any product
R3-2-1121	AZDA grading certificates.
R3-2-1122	Minimum facility and operating requirements for egg grading and packing plants.
R3-2-1123	Health and hygiene of personnel.
R3-2-1124	Use of the "Produced From" labeling.

R3-2-1125	Describes procedures for additional Specification grading.
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3. **Are the rules effective in achieving their objectives?** Yes No
The rules in Title 3, Chapter 2 Article 11 are effective in acheiving their objective.
4. **Are the rules consistent with other rules and statutes?** Yes No
The rules in Title 3, Chapter 2 Article 11 are consistent with other rules and statutes.
5. **Are the rules enforced as written?** Yes No
The rules in Title 3, Chapter 2 Article 11 are enforced as written.
6. **Are the rules clear, concise, and understandable?** Yes No
The rules in Title 3, Chapter 2 Article 11 are clear, concise and understandable.
7. **Has the agency received written criticisms of the rules within the last five years?** Yes No
The Department has not recieived formal written criticisims of the rules.
7. **Economic, small business, and consumer impact comparison:**
No Economic impact statement has been done at this time.
8. **Has the agency received any business competitiveness analyses of the rules?** Yes No
No business competitive analysis has been received.
9. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
Article effective April 9, 2020, no previous five-year-review report for this Article.
10. **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 Department has determined that the benefits of the rules in Title 3, Chapter 2 Article 11 outweigh the costs imposed to the regulated community, and are the least burdensome and cost effective.
11. **Are the rules more stringent than corresponding federal laws?** Yes No
Not applicable. This Article is for voluntary local marketing program. There is no corresponding Federal law.
12. **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 licenses issued under Title 3, Chapter 2 Article 11 are only issued to qualifying applicants that must go through a review process to ensure completeness and accuracy and does not qualify as a general permit.

13. **Proposed course of action**

The Department filed with the Secretary of State's Office a notice of docket opening that was published to the Arizona Administrative Register on May 8, 2020 under Volume 26, Issue 19, page 916. The Department intends to continue review of the rules to verify that they are enforced as written; that the rules are clear, concise, and understandable; that any criticism received is addressed; and that the costs associated to the program are the least burdensome.

Title 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

ARTICLE 11. VOLUNTARY EGG GRADING PROGRAM

R3-2-1101. Definitions.

For the purpose of this Article, unless the context otherwise requires, the terms in this section shall have the following meaning:

"Acceptable" means suitable for the purpose intended.

"Administrator" means the supervisor as defined in A.R.S. § 3-701.

"Ambient temperature" means the air temperature maintained in an egg storage facility or transport vehicle.

"AMS" means Agricultural Marketing Service, United States Department of Agriculture.

"Applicant" means any person or entity who requests any grading service.

"Appeal grading" means a re-grading requested by a recipient who is dissatisfied with an initial grading decision.

"Associate Director" means the associate director of the animal service division.

"Auditing services" means the act of providing independent verification of written quality assurance and value added standards for production, processing and distribution of eggs. Auditing services are performed by graders authorized by the Administrator to perform such audits and the service provided will be in accordance with the provisions of this Article for grading services, as appropriate.

"Cage mark" means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

"Case" means, when referring to containers, an egg case, as used in commercial practice in the United States, holding 30 dozens of eggs.

"Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same size, kind, species, or method of processing.

"Chick papers" means the papers in which chicks are delivered.

"Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

"Consumer grades" means U.S. Grade AA, A, and B.

"Controlling person" means a person at least 21 years of age legally accountable for operations and

management of the egg production plant.

"Department" or "AZDA" means the Arizona Department of Agriculture.

"Director" means the Director of the Arizona Department of Agriculture.

"Egg grading service" means the personnel who are actively engaged in the administration, application, and direction of egg grading programs and services pursuant to this Article.

"Eggs" means eggs of domesticated chickens.

"Eggs of current production" means eggs that are no more than 21 days old.

"Trademark" means the official identification symbol used to identify eggs officially graded by AZDA in accordance with this article.

"Grader" means any employee assigned by AZDA to investigate and certify in accordance with this Article, the class, quality, quantity, or condition of products.

"Grading or grading service" means the determination by a grader that a product meets the standards of this Article regarding the class, quality, quantity, or condition of the product for the purpose of issuing a grade or grading certificate. Such determination may be performed by examining all product units or representative samples drawn by the grader; may be performed as a temporary, resident or non-resident grading service; and includes regrading performed in response to an appeal of a previous grading decision.

"Grading certificate" means a statement, either written or printed, issued by a grader pursuant to this Article, relative to the class, quantity, quality, or condition of products.

"Holiday or legal holiday" means the legal public holidays specified by State of Arizona Accounting Manual (SAAM).

"Identify" means to apply a trademark to products or the containers thereof.

"Interested party" means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

"Office of grading" means the office of any resident grader at the plant.

"Official AZDA certificate" means any form of certification, either written or printed, used under this Article to certify with respect to the sampling, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

"Official AZDA memorandum" means any initial record of findings made by an authorized person in the process of grading or sampling pursuant to this Article, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this Article, and any report made by an authorized person of services performed pursuant to this Article.

"Official AZDA mark" means the trademark and any other mark, or any variations in such marks

approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded, or indicating the appropriate U.S. grade or condition of the product, or for the purpose of maintaining the identity of products graded under this Article, including but not limited to, those set forth in R3-2-1111.

"Official identification" means any AZDA standard designation of class, grade, quality, size, quantity, or condition specified in this Article or any symbol, stamp, label, logo, or seal indicating that the product has been officially AZDA graded and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Supervisor and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

"Official plant" means the facilities used for a shell egg operation that has been approved by AZDA for grading purposes.

"Origin grading" means a grading made on a lot of eggs at a plant where the eggs are graded and packed.

"Packaging" means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

"Packing" means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

"Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

"Plant" means the facilities used for a shell egg operation.

"Potable water" means water that has been approved by the State health authority or agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

"Product or products" means eggs of the domesticated chicken.

"Quality" means the inherent properties of any product which determine its relative degree of excellence.

"Quality assurance inspector" means any designated company employee other than the plant owner, manager, foreman, or supervisor, authorized by the State supervisor to examine product and to supervise the labeling, dating, and lotting of officially graded eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

"Recipient" means the individual or entity whose application for grading services has been approved by the Department.

"Resident grading service" means continuous supervision, in an official plant, of the handling or packaging of any product.

"Sampling" means the act of taking samples of any product for grading or certification.

"SE" means *Salmonella* Enteritidis.

"Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface. The product used shall be acceptable to the Food and Drug Administration.

"Shipped for retail sale" means eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

"State supervisor" means the immediate supervisor of a Grader.

"Washed ungraded eggs" means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

R3-2-1102. General Provisions.

- A. Administration. The Administrator shall perform such duties as the Associate Director may require in the enforcement or administration of the provisions of this Article. The Administrator is authorized to waive for limited periods any particular provisions of this Article to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of this Article. The AZDA and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this Article.
- B. Basis of grading service.
 - 1. Grading service with respect to the determination of the quality of products shall be on the basis of the United States Standards, Grades, and Weight Classes for shell eggs. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the recipient; and such service, when approved by the Administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the Administrator.
 - 2. Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in:
 - a. R3-2-903 for stationary lots; or
 - b. QAD 700 Shell Egg Graders Handbook Section 8 on-line sampling of Shell Eggs (8-30-2016).
 - 3. Accessibility of product. Each product for which grading service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product.
- C. Prerequisites to grading. Grading of products shall be rendered pursuant to this Article and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.
- D. Supervision. All plant grading service shall be subject to supervision at all times by an AZDA grader. Such service shall be rendered in accordance with instructions issued by the Administrator where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available.
- E. Other applicable regulations. Compliance with this Article shall not excuse failure to comply with any other applicable Federal, State, or local laws or regulations.

R3-2-1103. Equipment and facilities for graders.

Equipment and facilities to be furnished by the recipient for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

- A. An accurate metal stem thermometer.
- B. An accurate means to determine pH level of wash water.
- C. Test kits for checking the concentration level of the solution used for sanitizing eggs and monitoring the concentration level of potable water treatment compounds in plants having chlorinators. The kit must be designed for testing the compound being used.
- D. Protective equipment including, general purpose gloves and safety glasses to all egg graders who are monitoring the strength of potable water treatment compounds and egg sanitizing solutions, unless plant employees are trained to perform the testing under the direct supervision of the grader.
- E. Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of one gram or less.
- F. Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales.
- G. Scales graduated in increments of 1/4-pound or less for weighing shipping containers and test weights for calibrating such scales.
- H. Test weights sufficient in size to verify the accuracy of the lightest and heaviest unit of measurement weighed on any given scale located in the plant.
- I. Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations.
- J. A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.
- K. If deemed necessary by the supervisor, a cart or method of conveyance for the transportation of samples to and from the candling booth.
- L. Furnished office space, suitable wireless internet connection, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the Administrator.

R3-2-1104. Schedule of operation of official plants.

Grading operating schedules for services performed pursuant to this article shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous eight-hour period per day (excluding not to exceed one hour for lunch), five consecutive days per week, within the administrative workweek, Saturday through Friday, for each shift required. Less than eight-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management one day in advance of any change in the hours grading service is requested.

R3-2-1105. Application for grading service.

An application for AZDA grading service may be made by egg producer or a producer dealer with operations located in Arizona.

- A. Form of application. Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product

and the premises where such product is to be graded or sampled. The applicant shall designate the employees of the applicant who will be authorized to provide information to the AZDA grader(s) as may be necessary for the performance of the grading service.

- B. Application for grading service in official plants; approval. Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to this Article. An application for grading service shall be approved when the application has been filed for grading service; a successful plant survey is completed; and all required facility or equipment modifications are completed.
- C. Denial of service. An application for grading service may be denied by the Administrator when:
1. The applicant fails to meet the requirements of this Article prescribing the conditions under which the service is made available.
 2. The product is owned by or located on the premises of a person currently denied the benefits of this Article.
 3. Any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of this Article to any person or entity.
 4. The Administrator determines that the application is an attempt on the part of a person currently denied the benefits of this Article to obtain grading services.
 5. The applicant, after an initial survey has been made in accordance with this Article, fails to bring the grading facilities and equipment into compliance with this Article within a reasonable period of time.
 6. Notwithstanding any prior approval whenever, before initiation of service, the applicant fails to fulfill commitments concerning the initiation of the service.
 7. It appears that performing the services specified in this Article would not be in the best interests of the public welfare or of the Government.
 8. It appears to the Administrator, in his sole discretion, that prior commitments of the Department or lack of resources necessitate denial of service.
- D. Debarment. An applicant may be permanently debarred for the following reasons:
1. The giving or offering, directly or indirectly, of a bribe, or any money, loan, gift, or anything of value to an employee of the Department to obtain any benefit or special treatment;
 2. Taking any action that falsely brings the Department in disrepute or that creates the appearance of impropriety;
 3. Knowingly making a false or misleading statement of a material fact to the Department;
 4. Using any official identification, trademark, stamp, symbol, label, seal, or identification without authority from the Department;
 5. Forging, counterfeiting, or falsely simulating any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to this Article;
 6. Use of an official trademark, certificate, symbol, stamp, label, seal, or identification without authority;
 7. Failure to make an official plant or product accessible for grading service;
 8. Interference with the performance of duty of an AZDA grader, licensee, contractor, or employee.
 9. Failure to pay a Department invoice within 30 days after issuance of the invoice; or
 10. Any other violation of any provision of the statutes, rules and regulations of the Department that threatens the health, safety, or welfare of the public.

- E. Notification. An applicant shall be promptly notified of the reasons for a denial of service. A written petition for reconsideration of such denial may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant of the reasons for the denial thereof. Service of notice may be accomplished by regular mail and/or email.
- F. Withdrawal of application. An application for grading service may be withdrawn by the applicant at any time before the service is performed, provided that the applicant pays all expenses incurred by the AZDA in connection with such application.

R3-2-1106. Authority of applicant.

- A. Proof that an authorized controlling person is applying for any grading service may be required at the discretion of the Administrator. Such proof may include, but is not limited to:
 1. Documentation, as specified under A.R.S. § 41-1080(A), of the applicant's lawful presence in the U.S.
 2. Proof of business entity structure of the plant.
 3. Proof of ownership interest or position held in the plant.
 4. Documentation of designated authority from the business entity under which the plant operates.
- B. The approved recipient of grading services must notify the Department of a change of control or ownership of the official plant within 15 days after such change is effective.

R3-2-1107. Order of service.

AZDA grading service shall be performed, insofar as practicable and subject to the availability of qualified graders, on a first-come, first-served basis, except that precedence may be given to an application for an appeal grading.

R3-2-1108. Types of grading service.

- A. Scheduled continuous grading service on a resident basis and continuous grading service on a nonresident basis. Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty, but is of a reoccurring nature. Both of these services are performed when an applicant requests that an AZDA/inspector grader be stationed in the applicant's processing plant and grade eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty. Eggs graded under AZDA resident grading service are only eligible to be identified with the official trademarks shown in R3-2-1111 when processed and graded under the supervision of a grader/inspector, or quality assurance inspector as provided in R3-2-1114.
- B. Unscheduled temporary grading service. Temporary grading service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Eggs graded under temporary grading service are only eligible to be identified with the official AZDA trademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in R3-2-1114.
- C. Auditing service. Auditing service is performed when an applicant requests independent verification of written quality assurance and value added standards for production, processing,

and distribution of eggs. Charges or fees are based on time, travel, and expenses needed to perform the work.

- D. The Department shall determine the number of graders needed to perform grading services. Recipients shall not ask AZDA graders to assume plant managerial responsibilities.

R3-2-1109. Suspension of grading service or plant approval for correctable cause.

- A. Provision of grading services is a privilege and not a right. Any plant approval of grading services given pursuant to this Article may be suspended by the Administrator for:
1. Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness.
 2. The use of operating procedures which are not in accordance with this Article;
 3. Alterations of grading facilities or equipment which have not been approved in accordance with this Article; or
 4. Any reasons listed in the "Denial of Service" section of R3-2-1105, or required by any other need to protect public health, safety, or welfare.
- B. Suspension may occur prior to the right to have a hearing in cases in which immediate suspension is required to protect public health, safety, or welfare. Whenever it is feasible to do so, written notice in advance of such suspension of plant approval shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the action shall be promptly confirmed in writing after the suspension and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. During such period of suspension, grading service shall not be rendered. After appropriate corrective action is taken, grading service will be restored immediately, or as soon thereafter as a grader can be made available.
- C. If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall send formal notice of the suspension pursuant to A.R.S. Title 41, Chapter 6, Article 10. Any suspension shall continue in effect pending the outcome of a hearing unless otherwise ordered by the Administrator.
- D. Upon suspension of grading service, all trademarks (labels, seals, tags, or packaging material bearing other official identification), shall, under the supervision of a person designated by the AZDA, be destroyed, obliterated, or sequestered in a manner acceptable to the AZDA.
- E. In any case where grading service is suspended under this section, the person concerned may thereafter apply for grading service once the conditions giving rise to the suspension or withdrawal have been remediated.

R3-2-1110. Authority to use official insignia.

- A. Authority to use official AZDA trademarks. Authority to use an AZDA trademark on products is granted only to recipients who utilize the services of a grader or quality assurance inspector in accordance with this Article. Packaging materials bearing official identification marks shall be approved pursuant to R3-2-1110 to R3-2-1111, inclusive, and shall be used only for the purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official AZDA identification may result in cancellation of grading service, denial of the permission to use of labels or packaging materials bearing official identification, or denial of other benefits of the Act pursuant to the provisions of R3-2-1105 D.
- B. Approval of official identification. No label, container, or packaging material which bears official identification may contain any statement that is false or misleading. No label, container, or packaging material bearing official identification may be printed or prepared for use until the

printers' or other final proof has been approved by the Administrator in accordance with this Article. It is the recipient's responsibility to ensure label compliance with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the regulations promulgated under this Article. The use of finished labels must be approved as prescribed by the Administrator. A grader may apply official identification stamps to shipping containers if they do not bear any statement that is false or misleading. If the label is printed or otherwise applied directly to the container, the principal display panels of such container shall for this purpose be considered as the label. The label shall contain the name, address, and ZIP Code of the packer or distributor of the product, the name of the product, a statement of the net contents of the container, and the AZDA trademark.

- C. Nutritional labeling. Nutrition information must be included on the labeling of each unit container of consumer packaged eggs in accordance with the General Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, located at 21 CFR §§ 101.1 to 101.108. The nutrition information included on labels is subject to review by the Food and Drug Administration prior to approval by the Department.
- D. Refrigeration labeling. All containers bearing official AZDA "Grade AA" or "Grade A" identification shall be labeled to indicate that refrigeration is required, e.g., "Keep refrigerated," or words of similar meaning.

R3-2-1111. Form of AZDA trademark and information required.

- A. Form of official identification symbol and trademark. The logo set forth in Figure 1 of this section shall be the official identification symbol for purposes of this Article and when used, imitated, or simulated in any manner in connection with eggs, shall be *prima facia* evidence that the product has been officially graded in compliance with this Article.
- B. Eggs with consumer grades. Except as otherwise authorized, the AZDA trademark used to officially identify AZDA consumer-graded eggs shall be of the form and design indicated in Figures 2 through 4 of this section. The logo shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures. No variation may be used for the color scheme of Figure 4.
- C. The "Produced From" AZDA trademark. The Figure 5 trademark may be used to identify products for which there are no official U.S. grade standards (e.g., pasteurized shell eggs, and/or hard boiled eggs), provided that these products are approved by the Department and are prepared from AZDA compliant Consumer Grade AA or A eggs. The Figure 5 trademark may utilize any one of the designs shown in Figures 2 through 4 of this section. The "Produced From" text outside the symbol shall be conspicuous, legible, and in approximately the same proportion and close proximity to the symbol as shown in Figure 5 of this section.
- D. Information required on AZDA trademark. Except as otherwise authorized by the Administrator, each AZDA trademark shall include the letters "AZDA" and the U.S. grade of the product it identifies, such as "Grade AA," as shown in Figure 2 of this section. Such information shall be printed with the symbol and the wording within the symbol in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.
- E. Product class. The size or weight class of the product, such as "Large," may appear within the trademark as shown in Figure 3 of this section. If the size or weight class is omitted from the trademark, it must appear prominently on the main panel of the carton.
- F. Plant number. The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.



Figure 1



Figure 2



Figure 3



Figure 4



Figure 5

R3-4-1112. Lot marking of officially identified eggs.

Each carton identified with the AZDA trademarks shown in R3-2-1111 shall be legibly lot-numbered on the consumer package and the carton, and may also be shown on the individual egg. The lot number shall be the consecutive day of the year (Julian date) on which the eggs were packed (e.g., 132), except other lot-numbering systems may be used when submitted in writing and approved by the Administrator.

R3-2-1113. Retention directives.

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of eggs which are not in compliance with this Article or are held for further examination, and for any equipment, utensils, rooms or compartments which are found unclean or otherwise in violation of this Article. Any such item shall not be released until in compliance with this Article and retention identification shall not be removed by anyone other than a grader.

R3-2-1114. Prerequisites to packaging eggs identified with trademarks.

Quality assurance inspector required. The official trademark identification of any product as provided in this Article shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official trademark identification.

R3-2-1115. Grading requirements of eggs identified with AZDA trademarks.

- A. Eggs to be identified with the AZDA trademarks illustrated in R3-2-1111 must be individually graded by a grader.
- B. In order to be officially identified with an AZDA consumer trademark, eggs shall:
 1. Be of current production;

2. Be produced and processed within the borders of Arizona;
 3. Not possess any undesirable odors or flavors;
 4. Not have previously been shipped for retail sale;
 5. Meet consumer Grade A or Grade AA, as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007, and can be found online at https://www.ams.usda.gov/sites/default/files/media/Shell_Egg_Standard%5B1%5D.pdf;
 6. Be produced and packaged in a facility in accordance with the Food and Drug Administration, Department of Health and Human Services' requirements for the Production, Storage, and transportation of Shell Eggs as specified in 21 CFR §§ 118.1 to 118.12, revised as of April 1, 2011, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
 7. Be produced and packaged in a facility that meets the Regulations Governing the Inspection of Eggs under the Egg Products Inspection Act (EPIA), as specified in 7 CFR §§ 57.1 to 57.970, revised as of April 12, 2006, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
 8. Be produced in a facility that has implemented a SE environmental monitoring program which includes testing for SE in chick papers and in the house environment when the pullets are 14-16 weeks of age, 40-45 weeks of age, four to six weeks post-molt, and pre-depopulation.
 9. Be produced in a facility that has implemented and maintained a vaccination program to protect against SE infection, which includes a minimum of two attenuated live vaccinations and one killed or inactivated vaccination, or an alternative vaccination program that has been approved by the Department after having been demonstrated in the Department's estimation to be equally effective.
- C. Management at an official plant is responsible for notifying the AZDA grader whenever contaminated or adulterated eggs are present in the official plant. Any eggs identified as contaminated or adulterated must be properly labeled and controlled by plant management. This includes eggs originating from a layer house with an SE-positive environment or eggs testing positive for the presence of SE. Failure to control, detain and/or notify the grader of the presence of contaminated or adulterated eggs in the official plant will constitute a violation of this Article. Department employees are authorized to inspect lay houses and review plant documents to determine compliance with this Article.

R3-2-1116. Payment of fees and charges.

- A. Fees and charges for any grading service shall be paid by the recipient by check, draft, or money order payable to the "Arizona Department of Agriculture Egg Program." AZDA may require that fees and charges shall be paid in advance, and shall include travel, per diem, or other expenses incurred by the Department in connection with providing grading services.
- B. The cost of an appeal grading or review of a grader's decision shall be borne by the appellant on a unscheduled temporary basis at rates set forth in R3-2-1117, plus travel, per diem, or other expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged for the regrading.
- C. Invoices for services previously rendered will be issued no later than the 10th day following the end of the period in which the service was rendered and are payable in full upon receipt.

R3-2-1117. Charges for grading service.

- A. Scheduled continuous grading service. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:
 - 1. Regular rate: \$38.00/hour
 - 2. Overtime rate: \$57.00/hour
 - 3. Holiday rate: \$58.00/hour
- B. Plant survey, unscheduled temporary, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader;
 - 1. Regular rate: \$57.00/hour
 - 2. Overtime rate: \$85.00/hour
 - 3. Holiday rate: \$87.00/hour
- C. Reapplication after termination of service by recipient. If a recipient causes termination under R3-21105 (D), and reapply within 12 months from the date of termination, there will be an additional re-application fee of \$300 in addition to the above fees.
- D. Extra charges. The following extra charges shall be assessed:
 - 1. All hours worked by an assigned grader or another grader in excess of the approved tour of duty, worked on a nonscheduled workday, or worked on a State holiday outside of the approved tour of duty, will be considered as overtime, at the rate of time and one-half.
 - 2. For all hours of work performed in a plant without an approved tour of duty, the charge will be the temporary grading service.
- E. No charges. No charges will be assessed:
 - 1. Solely because of a change in name or ownership of the official plant, unless the recipient of services fails to notify the Department within the time limit specified in R3-21105, in which case the above charges will apply.
 - 2. When the assigned grader is temporarily reassigned by AZDA to perform grading service for another service recipient.

R3-2-1118. Termination by recipient.

Grading services under this Article shall be unilaterally terminated by the recipient of such service when:

- A. Service is not installed within six months from the date the application is filed due to inaction by the applicant or recipient on Department requirements.
- B. Service remains inactive for a period of more than six months due to a recipient's request for removal of a grader and the recipient does not accept reassignment of another grader by the Department.
- C. The recipient is terminated for cause based on violations listed in R3-2-1105(D).

R3-2-1119. Mutual termination.

The Department and the recipient of service may mutually agree to termination of the service, under the following terms:

- A. Previously paid fees will not be returned to the service recipient.
- B. Pending charges will be paid in full for completed work of the Department.
- C. A pending application will be considered terminated, but a new application may be filed at any time, without penalty.
- D. Termination shall not take effect until the end of a 30-days' notice period, unless the parties agree otherwise.
- E. The mutual decision to terminate and any related agreements are documented in writing.

R3-2-1120. Appeals.

A. Appeal grading. An appeal grading may be requested by any recipient or authorized designee or other interested party ("appellant") who is dissatisfied with the determination by a grader of the class, quality, quantity, or condition of any product as evidenced by the AZDA trademark and accompanying label, or as stated on a grading certificate.

1. The appeal shall be filed with the original grader's immediate supervisor.
 2. Initial review of the appeal shall be made by the original grader's immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor to review the appeal.
 2. An appeal may be made orally or in writing. If made orally, written confirmation is required. The appellant shall clearly state the reasons for requesting the appeal grading and a description of the product, or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be provided to the grader assigned to perform the appeal grading.
 3. The appellant's request for the appeal grading may be refused when it appears to the reviewer that the reasons given in the request are frivolous or not substantial, the quality or condition of the product has undergone a material change since the original grading, the original lot has changed in some manner, or the appellant has not materially complied with the requirements of this Article. In such case, the appellant shall be promptly notified of the reason(s) for such refusal.
 4. If an appeal grading is granted, it shall be performed by a grader other than the original grader. Whenever practical, an appeal grading shall be conducted jointly by two independent graders.
 5. The following procedures shall be used for appeal grading:
 - a. The appeal sample shall consist of product taken from the original sample container plus an equal number of samples selected at random.
 - b. When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in R3-2-1102.
 - c. Eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration.
 6. Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was upheld, modified, or rejected. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Department. When the appeal grader assigns a different grade to the lot, the existing AZDA trademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.
- B.** Appeal for suspension, termination or denial of service or debarment. Any person whose grading service is suspended, terminated, denied service, or debarred, may request a hearing before an administrative law judge pursuant to A.R.S. Title 41, Chapter 6, Article 10. The decision of the administrative law judge is subject to review by the Director as provided by A.R.S. Title 41, Chapter 6, Article 10.

R3-2-1121. AZDA grading certificates.

- A. Forms. AZDA grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.
- B. Issuance.
 - 1. Resident grading basis. Certificates will be issued only upon request therefor by the applicant or AZDA. When requested, a grader shall issue a certificate covering product graded by such grader. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.
 - 2. Other than resident grading. Each grader shall, in person or by the grader's authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader, if such person has been designated as the authorized agent of such grader by the Administrator, provided that:
 - a. The certificate is prepared from an official memorandum of grading signed by the grader; and
 - b. A notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both the agent's name and the grader's name, e.g., "John Doe by Mary Roe."
- C. Disposition. The original and required or requested copies of the grading certificate, immediately upon issuance, shall be delivered, mailed, or electronically submitted to the recipient or the recipient's designee. One copy is required to be sent and the recipient may request additional copies. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

R3-2-1122. Minimum facility and operating requirements for egg grading and packing plants.

For grading services that are provided on a resident or temporary basis, QAD 700 Shell Egg Graders Handbook Section 02 through Section 08, revised as of August 30, 2016. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007. shall apply; and the following minimum facility and operating conditions will be required:

- A. Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.
- B. Processing facilities are required to have a documented and implemented Quality Management System that meets Title 21, Part 117 of the U.S. Code of Federal Regulations "Current Good Manufacturing Practice, Hazard Analysis, and Risk-based Preventive Controls for Human Foods", revised as of April 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
- C. General requirements for premises, buildings and plant facilities.
 - 1. The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.

2. The outside premises adjacent to grading, packing, cooler, and storage rooms must be constructed to provide proper drainage to prevent conditions that may constitute a source of odors or propagate insects or rodents.
3. Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.
4. Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.
5. The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.
6. Adequate toilet accommodations that are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be located in areas that do not open directly into processing rooms.
7. A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.
8. Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.

D. Grading and packing room requirements.

1. The egg grading or candling area shall be capable of adequate darkening to make possible the accurate quality determination of the candled appearance of eggs. There shall be no light source or reflection of light that interferes with, or prohibits the accurate quality determination of eggs in the grading or candling areas.
2. The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.
3. The grading and candling equipment must be sanitarily designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.
4. Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.
5. Adequate ventilation, heating, and cooling shall be provided where needed.

E. Cooler room requirements.

1. Cooler rooms holding eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C).
2. Accurate thermometers shall be provided for monitoring cooler room temperatures.
3. Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

F. Egg protecting operations.

1. Egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.
2. Component equipment within the egg protecting system, including holding tanks and containers, must be sanitarily designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.
3. Eggs with excess moisture on the shell shall not be shell protected.
4. Oil having any off odor, or that is obviously contaminated, shall not be used in egg protection operations. Oil is to be filtered prior to application.
5. The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.
6. Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

G. Egg cleaning operations.

1. Egg washing equipment must be sanitarily designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.
2. Egg drying equipment must be sanitarily designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.
3. The temperature of the wash water shall be maintained at 90 °F (32.2 °C) or higher, and shall be at least 20 °F (6.7 °C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.
4. Approved cleaning compounds shall be used in the wash water.
5. Wash water shall be maintained at a measurable pH level of 11 or higher. Accurate testing equipment shall be provided and accessible to the grader. If continuous monitoring of pH is not possible, the applicant should devise a monitoring system for documenting pH with a frequency that has been validated.
6. Wash water shall be changed approximately every four hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.
7. Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.
8. Only potable water may be used to wash eggs. Each official plant shall submit certification to the office of grading stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds two parts per million, equipment shall be provided to reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content shall be determined by the Administrator. When the water source is changed, new tests are required.
9. Waste water from the egg washing operation shall be piped directly to drains.
10. The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.
11. Prewetting eggs prior to washing may be accomplished by spraying a continuous flow of

water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this section.

12. Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the supervisor and of not less than 100 PPM nor more than 200 PPM of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the Administrator.
13. Test kits shall be provided and used to determine the strength of the sanitizing solution.
14. During non-processing periods, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat that may diminish the quality of the egg.
15. Washed eggs shall be reasonably dry before packaging and packing.
16. Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.

H. Requirements for eggs officially identified with a trademark.

1. Eggs that are officially identified with an AZDA trademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.
2. Eggs that are to be officially identified with the AZDA trademark shall be packed only in new packaging materials that are clean, free of mold, mustiness and off odors, or clean and sanitized packaging material designed to be reused, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.

I. Use of approved chemicals and compounds.

1. All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.
2. All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.

J. Marking individual eggs. The marking of individual eggs may be requested by processors as part of a specification requirement or for other marketing purposes.

1. Stamping eggs. Recognizing the difficulty in clearly stamping the rounded surface of an egg, a lot average tolerance of 10-percent for individual eggs with partial, illegible, or no marks in any combination is permitted with no individual case exceeding 20-percent. These tolerances may be applied as a moving average when performing online sampling or as a lot average while performing stationary lot gradings. If more than 50% of the image or letter(s) is missing, the symbol is illegible. Stamped eggs are not classified as stains or dirty. They are to be graded without regard to marking. An official grade cannot be assigned to a mixed lot of eggs that contains individually marked and unmarked eggs. If requested, the lot may be graded for all factors except ink stains. Lot averages may be shown on the certificate. The section "Official Grade and Size" shall state "No AZDA Grade." The following statement shall also be placed in the "Remarks" section: "Lot contains marked and unmarked eggs. Eggs graded for all factors except ink stains." Individual eggs with ink blotches or smears from dating devices are to be classified as stains or dirty, depending on the intensity and/or area of the stain [guidance not clear]. Inks used in marking individual eggs which will be officially graded are to be

- approved by the Administrator prior to their use. The request for approval should be accompanied with a copy of the ink formula, the name of the product, and the name and address of the manufacturer.
2. Laser etching (marking eggs). The use of a laser etching system to mark information is subject to joint review by the Food and Drug Administration (food safety impact evaluation) and AZDA (quality impact evaluation). Only approved laser etching systems may be used to identify eggs to be officially graded and identified with an AZDA trademark. The amount of the shell surface available for laser etching and the information etched on the shell is subject to review by the resident grader and the supervisor. The information etched on the shell must not interfere with the grader's ability to evaluate the quality attributes of the egg.
 3. When an individual egg is marked, whether an applied ink or laser etched, the information must be consistent with the information on the label, for example, any marketing claims, production code, or packer identity. If this information is not consistent throughout the lot, the eggs are not eligible to be identified with an AZDA trademark.

R3-2-1123. Health and hygiene of personnel.

- A. No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.
- B. Plant personnel coming into contact with the product shall wear clean clothing.

R3-2-1124. Use of the "Produced From" labeling.

- A. Use of the wording "Produced From" in conjunction with the AZDA trademark, is limited to products derived from AZDA Grade AA or Grade A eggs for which there are no U.S. grade standards (e.g., pasteurized eggs or hard-cooked eggs). The following guidelines are to be used when monitoring the official grade identification of these types of products.
 1. Approval. Applicants interested in utilizing the "Produced From" labeling must submit a written proposal to the Administrator. The proposal is to include the type(s) of product to be labeled and the applicant's plan for controlling the use and labeling of officially identified product. After review by the supervisor, the supervisor is to forward the request to the Administrator for final review and approval. Upon approval, the supervisor is to reconfirm all of the requirements with the applicant prior to any actual grade identification.
 2. Verification visits. To assure that only officially graded eggs are being used, the processing, packing, and packaging must be closely monitored. Each verification visit shall include a review of records, product inventory, processing procedures, packing, packaging, storage, and shipping practices to confirm that the applicant is following the protocol outlined in their approved plan. In plants with resident service, the supervisor or Administrator is to be present during the initial production period to monitor the process and verify compliance. The grader will conduct all subsequent monitoring and verification activities with oversight from the supervisor. In temporary or fee locations, plant management must notify the supervisor each time the "produced from" labeling will be used or, alternatively, provide the supervisor with a projected production schedule. At these locations, compliance will be based on the applicant's established history of compliance as outlined in the following schedule:
 - a. Level 1 - The supervisor or administrator is to monitor and verify the process on the initial day of production. The supervisor or a grader will conduct subsequent visits. At least one additional verification visit is to be conducted during the next

- 10 production days. If no discrepancies are noted, one visit is to be conducted for each 30 days of production until three consecutive satisfactory visits have been completed. Once this verification period has ended without any noted program non-conformance, monitoring may proceed to Level 2.
- b. Level 2 - supervisor or a grader is to conduct quarterly verification visits provided the applicant continues to meet all program requirements. If any nonconformance is noted during these visits, monitoring reverts back to Level 1. Misuse of the labeling will result in cancellation of the approval.
- B.** Recordkeeping. Recipients shall maintain, and make available for review, all invoices or applicable Grading Certificates covering product received, produced, and shipped. At a minimum, these records must include the name and address of original packer, amount received, quantity produced, brand names, lot numbers, quantity shipped and name and address of receivers. Records must be maintained for two years.
- C.** Cost. There will be no additional charge to resident plants when graders monitor product labeling during their normal grading activities. When graded product is shipped from official plants to other processing locations for re-packaging that are not under continuous AZDA supervision, time and expenses associated in conducting the verification visits will be charged to the recipient at the current Temporary grading and auditing service rate.

R3-2-1125. Specification grading.

- A.** Applicants may request for additional specifications to be certified that exceed the standards of this chapter. The requested specifications must be submitted in writing to the administrator for approval. The approving official will review the information for approval or advise the applicant of the reason(s) for disapproval. If the specification is approved, a letter enclosing a copy of the approved application and specification will be returned to the applicant with a request to provide copies of the specification to each supplier and applicable AZDA grader. Each page of the approved specification will have an approval stamp bearing the date of approval and the signature of the approving official. Additionally, each page will be sequentially numbered such as page 1 of 5, page 2 of 5, etc.
- B.** Plant management is responsible for advising graders when they are preparing to pack eggs in accordance with an approved specification. However, each grader must be familiar with the approved specification list and, to the extent practically possible, be aware when products with approved specifications are being packed at the duty location. When a plant packs product requiring compliance with an approved specification, the grader shall obtain a copy of the specification from plant management and assure that all provisions of the specification are met. As applicable, product that meets specification requirements will be identified in accordance with procedures outlined in the approved specification. When the specification requires the issuance of a grading certificate, the following statement is to be placed in the remarks section of the certificate: "Product covered by this certificate meets specification requirements for _____."

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. 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 director may:

1. 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.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-710. Powers and duties; state preemption; egg promotion program

- A. The department may acquire and distribute to interested persons useful information relative to preparing for market, handling, purchasing, transporting, storing and marketing eggs and egg products, including demonstrating how to classify eggs and egg products in accordance with the uniform standards and grades prescribed pursuant to this chapter.
- B. The department may issue in booklet form copies of this article containing complete descriptive terms as to shell, aircell, white, yolk and germ, and may change definitions of terms and grades as they are made and promulgated by the United States department of agriculture.
- C. On request of the United States government, and others, the director may negotiate and sign cooperative agreements to provide inspection and grading services and charge and receive payment for the reasonable cost of such services. The monies received for such services shall be deposited in the state egg inspection trust fund established by section 3-717.
- D. When the production of papers, books and records relating to any matter under investigation is deemed advisable, the director may apply to the superior court in any county for an order requiring the production of the papers, books and records. If the court is satisfied that the papers, books and records are pertinent to the matter under investigation, their production shall be ordered.
- E. A complaint filed with the department charging a noncompliance with or violation of any provision of this article shall be in writing and signed by the complainant.
- F. The supervisor and inspectors shall enforce this article in conformity with rules adopted by the director. The refusal of an officer authorized under this article to carry out the orders and directions of the director in the enforcement of this article or prosecutions under this article is neglect of duty. The director shall make and enforce such rules as the director deems necessary to carry out this article.
- G. An inspector may enter and inspect any place or conveyance within this state over which the inspector has supervision where eggs are produced, candled, incubated, stored, packed, delivered for shipment, loaded, shipped, transported or sold, and may inspect all invoices and eggs and the cases and containers of the eggs and equipment found in the places or conveyances, and may take for inspection representative samples of the invoices, eggs and cases or containers for the purpose of determining whether or not any provision of this article has been violated.
- H. An inspector, while enforcing this article, may seize and hold as evidence an advertisement, sign, placard, invoice, case or container of eggs or egg products or all or any part of any pack, load, lot consignment or shipment of eggs or egg products packed, stored, delivered for shipment, loaded, shipped, transported or sold in violation of any provisions of this article.
- I. The department may prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs. The department shall establish these standards by rule. Chemicals used in egg processing plants, sanitizers used in egg processing, egg soaps, egg oil and other substances used in processing shell eggs are subject to the approval of the director.
- J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state. This subsection does not apply to egg producers operating or controlling the operation of an egg ranch that has fewer than twenty thousand egg-laying hens producing eggs.
- K. Consistency of poultry husbandry practices for the production of eggs is a statewide matter. The regulation of poultry husbandry practices related to the production of eggs is not subject to further regulation by a county, city, town or other political subdivision of this state.
- L. The director may:

1. Establish an egg promotion program to provide certification, inspection and grading services and may prescribe, by rule, fees for those services. Except as provided in paragraph 3 of this subsection, monies collected from the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.
2. Adopt rules to administer the egg promotion program, including participation guidelines, use requirements for department trademarks and certification marks and other rules the director deems necessary.
3. Conduct inspections to ensure compliance with the trademark and certification mark rules adopted pursuant to this subsection. The monies collected from fees for an inspection conducted pursuant to this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.

F

CONSIDERATION AND DISCUSSION OF A REQUEST TO RESCHEDULE A FIVE-YEAR REVIEW REPORT FROM THE DEPARTMENT OF HEALTH SERVICES ON 9 A.A.C. CHAPTER 8, ARTICLE 1



February 09, 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: Request to Reschedule the Five-Year-Review Report for A.A.C. Title 9, Chapter 8, Article 1

Dear Ms. Sornsin:

Pursuant to A.R.S. § 41-1056(H) and A.A.C. R1-6-302, the Arizona Department of Health Services (Department) respectfully requests that the Governor's Regulatory Review Council (Council) reschedule the five-year review report for A.A.C. Title 9, Chapter 8, Article 1 (Food Establishments), which is currently due on or before April 30, 2021. The rules in A.A.C. Title 9, Chapter 8, Article 1 were substantially revised within the past two years.

The 9 A.A.C. 8, Article 1 rules prescribe reasonably necessary measures to ensure that all food and drink sold at the retail level are fit for human consumption. The Department, in response to public and county comments, substantially revised the rules in Article 1 through a 2020 regular rulemaking. The purpose of this rulemaking was to: make the rules consistent with the FDA 2017 Food Code and 2017 Annexes; address matters described in the 2016 five-year review report; and establish statewide licensing standards for mobile food vendors and mobile food units (Laws 2018, Ch. 286), including statewide inspection requirements and standards for mobile food units. The 2020 rulemaking amended existing rules in R9-8-101 through R9-8-108, repealed R9-8-109, and added rules in R9-8-110 through R9-8-119. The Council approved the Notice of Final Rulemaking for 9 A.A.C. 8, Article 1 on July 7, 2020. Following the receipt of the certificate of approval, the Department filed the Notice of Final Rulemaking with the Secretary of State on July 8, 2020. The rules became effective on the same date as the filing and published on July 31, 2020 in the Register at 26 A.A.R. 1516.

If you have any questions about the request, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in blue ink.

Robert Lane
Director's Designee

RL:tk

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director