

NOTICES OF PROPOSED RULEMAKING
Initiated After January 1, 1995

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register*.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. **Sections Affected**

	<u>Rulemaking Action</u>
R4-23-110	Amend
R4-23-606	Amend
R4-23-612	Amend
R4-23-651	Amend
R4-23-671	New Section
R4-23-672	New Section
R4-23-673	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 32-1904(A)(1) and (2), and (B)(3), (4), and (6).
Implementing statutes: A.R.S. §§ 32-1929, 32-1930(A)(2), (B), and (C), and 32-1931.
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 North 19th Ave., Suite 101
Phoenix, Arizona 85015
Telephone: (602) 255-5125 Ext. 131
Fax: (602) 255-5740
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The practice of pharmacy is changing rapidly, and a big part of this change is specialization. Pharmacies can no longer be viewed as just community or hospital. To protect the citizens of Arizona, the Board proposes to change the rules to better define and control today's pharmacy practice. R4-23-110 is amended to define Limited Service Correctional and Mail-order Pharmacy, Limited Service Pharmacy Permittee, and Correctional facility. The heading of R4-23-606 is amended to include Limited Service Pharmacy. R4-23-612 is amended to update the requirement of a professional reference library. Instead of two current references from a limited list, each pharmacy would need a minimum of one current reference addressing four pharmacy topics. R4-23-651 is amended to more concisely define hospital pharmacy. R4-23-671 is a new Section providing general requirements for limited service pharmacies. R4-23-672 is a new Section governing pharmacies in correctional facilities. Previously, correctional pharmacies were classified as community pharmacies. The practice of pharmacy in a correctional facility more closely resembles a hospital than a community pharmacy. These rules use the limited service pharmacy permit to address the scope of pharmacy practice inside the closed and very tightly controlled system of a correctional facility. The new class of pharmacy will give the Board satisfactory guidelines to monitor the practice of correctional pharmacy and protect the health and welfare of the correctional facility population. The rule is specific for the type of practice and utilizes a Board-approved policy and procedure manual which personalizes the rules to better regulate a particular pharmacy. R4-23-673 is a new Section governing mail-order pharmacies. Mail-order pharmacies have always been classified as community pharmacies. These rules use the limited service pharmacy permit to address the scope of practice in this rapidly growing area of pharmacy. Mail-order pharmacies are ahead of most pharmacies in their innovative use of technology and personnel. The rule establishes a new class of pharmacy with rules specific for the type of practice and utilizes a Board-approved policy and procedure manual which personalizes the rules to better regulate a particular pharmacy.

The Board believes that adoption of these rules will benefit the public health and safety by establishing clear standards governing pharmacy practice in specialized settings. The Board further believes that specific regulation and enforcement are necessary to regulate and control the rapidly evolving role of pharmacists in a dynamic health care system.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

Notices of Proposed Rulemaking

6. The preliminary summary of the economic, small business, and consumer impact:

The principal impact of the rules will be on pharmacies and pharmacists. For pharmacists, the rules will place additional responsibility on them for writing and reviewing a policy and procedure manual. The upside for the pharmacist will be better control of all aspects of the pharmacy practice through established written policy and procedure.

For pharmacies, the rules will establish concise and specific regulation and control over individual areas of limited pharmacy service. These specialized pharmacies will be able to practice within a set of rules which provide protection of public health and safety and allow service by a unique method or to a particular population. Since the fees for a pharmacy are the same for community, hospital, and limited service, the rules will have minimal economic impact for most pharmacies. The rules require mail-order pharmacies to provide toll-free telephone service for a minimum of 40 hours per week. However, this will have little real impact, since all mail-order pharmacies in Arizona to date already provide toll-free telephone service. Because all pharmacies are presently required to have two current references, the proposed rule will have little or no economic effect.

There is no expected economic impact on consumers or small business by these rules.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015
Telephone: (602) 255-5125 Ext. 131
Fax: (602) 255-5740

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No proceedings scheduled.
Requests for an oral proceeding should be made to:
Name: L.A. Lloyd, Executive Director
Address: Board of Pharmacy
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015
Time: 8 a.m. to 5 p.m., Monday through Friday

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-606. Pharmacy Permit, Community, and Hospital, and Limited Service
R4-23-612. Equipment
R4-23-651. Definitions
R4-23-671. General Requirements for Limited-service Pharmacy
R4-23-672. Limited-service Correctional Pharmacy
R4-23-673. Limited-service Mail-order Pharmacy

- C. No change
D. No change
E. No change
F. No change
G. No change
H. No change
I. "Correctional facility" has the same meaning as set forth in A.R.S. §§ 13-2501 and 31-341.
I.L. "Cytotoxic" means a pharmaceutical that has the capability of killing living cells.
J.K. No change
K.L. No change
L.M. No change
M.N. No change
N.O. No change
P. "Limited-service correctional pharmacy" means a limited-service pharmacy as defined in A.R.S. § 32-1901, holding a current permit issued by the state Board of Pharmacy pursuant to A.R.S. § 32-1931 which is located in a correctional facility and engages in the compounding, production, dispensing, and distribution of drugs.

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions
A. No change
B. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

Q. "Limited-service mail-order pharmacy" means a limited-service pharmacy, as defined in A.R.S. § 32-1901, holding a current permit issued by the state Board of Pharmacy pursuant to A.R.S. § 32-1931 which dispenses a majority of its prescription medications or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

R. "Limited-service pharmacy permittee" means a person or persons who has applied for and obtained a limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

O.S. "Long term care consultant pharmacist" means a pharmacist providing consulting services to a long-term care facility.

- P.T.** No change
- Q.U.** No change
- R.V.** No change
- S.W.** No change
- T.X.** No change
- U.Y.** No change
- V.Z.** No change
- W.A.A.** No change
- X.BB.** No change
- Y.CC.** No change
- Z.DD.** No change
- AA.EE.** No change
- BB.FE.** No change
- CC.GG.** No change
- DD.HH.** No change
- EE.II.** No change
- FF.II.** No change
- GG.KK.** No change
- HH.LL.** No change
- I.MM.** No change

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-606. Pharmacy Permit, Community, and Hospital, and Limited Service

- A.** No change
- B.** No change
- C.** No change
- D.** No change
- E.** No change
- F.** No change
- G.** No change
- H.** No change
- I.** No change
- J.** No change
- K.** No change
- L.** No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change

- 6. No change

R4-23-612. Equipment

Each pharmacy shall contain the following:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. Any two of the following references, which shall be kept current:
 - a. United States Pharmacopeia and National Formulary.
 - b. United States Pharmacopeia Dispensing Information.
 - c. American Hospital Formulary Service.
 - d. Facts and Comparisons.
 - e. O.T.C. Handbook.
 - f. Remington's Pharmaceutical Sciences.
- 12. A professional reference library consisting of a minimum of one current reference or text addressing the following subject areas:
 - a. Pharmacology or toxicology.
 - b. Therapeutics.
 - c. Drug compatibility, and
 - d. Drug product equivalency.
- 13. No change
- 14. No change
- 15. No change
- 16. No change

R4-23-651. Definitions

For the purposes of these rules, the following definitions apply to R4-23-651 through R4-23-659:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. "Hospital pharmacy" means that portion of a hospital which is engaged in the manufacture, production, sale and distribution of drugs used in the diagnosis and treatment of injury, illness and disease and which is permitted by the state Board of Pharmacy pursuant to A.R.S. § 32-1931 and as defined in A.R.S. § 32-1901 a pharmacy, as defined in A.R.S. § 32-1901, holding a current permit issued by the state Board of Pharmacy pursuant to A.R.S. § 32-1931 which is in a hospital as defined in A.R.S. § 32-1901.
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
- 18. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

R4-23-671. General Requirements for Limited-service Pharmacy

- A.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
1. Permit no one to be in the limited-service pharmacy unless an authorized pharmacist is present;
 2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
 3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
 4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- B.** To obtain permission to deviate from the minimum area requirement, a limited-service pharmacy permittee shall submit a written request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.
- C.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- D.** Before dispensing from a limited-service pharmacy, the pharmacist-in-charge shall:
1. Prepare written policies and procedures for pharmacy operations and drug distribution.
 2. Submit a copy of the written policies and procedures to the Board office with the original permit application.
 3. Conduct a biennial review and revision of the policies and procedures and submit a copy of any revision to the Board office, and
 4. Make the policies and procedures available in the pharmacy for inspection by the Board or its designee.

R4-23-672. Limited-service Correctional Pharmacy

- A.** Before opening a limited-service correctional pharmacy, a person or persons shall obtain a permit in compliance with A.R.S. § 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.
- B.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy complies with the area, personnel, security, sanitation, equipment, drug distribution, control, administration, source, quality assurance, investigative, and inspection standards of R4-23-608, R4-23-609(A) through (D) and (F) through (H), R4-23-610(A), R4-23-611, R4-23-612, R4-23-653(D), except (D)(2)(e), R4-23-658(B) through (H), and R4-23-660 through R4-23-664.
- C.** The pharmacist-in-charge of a limited-service correctional pharmacy shall authorize only pharmacists, interns, drug inspectors, peace officers and correctional officers acting in their official capacities, supportive personnel, and other designated personnel to be in the limited-service correctional pharmacy.
- D.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have

access to drugs in remote drug storage areas or, if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient, in the limited-service correctional pharmacy.

1. The limited-service pharmacy permittee shall ensure that remote drug storage areas, if used, conform to the following requirements:
 - a. Located outside the pharmacy area.
 - b. Locked in a manner that denies access to unauthorized persons, and
 - c. Secured against the use of force.
2. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that remote drug storage areas:
 - a. Contain only properly labeled drugs that might reasonably be needed and can be administered safely during the absence of a pharmacist.
 - b. Contain drugs packaged only in amounts sufficient for immediate therapeutic requirements.
 - c. Are accessible only with a physician's written order.
 - d. Provide a written record of each drug withdrawn.
 - e. Are inventoried at least once each week, and
 - f. Are audited for compliance with the requirements of this rule at least once each month.
3. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that access to the limited-service correctional pharmacy during the absence of the pharmacist conforms to the following requirements:
 - a. Is delegated to only one nurse, who is in a supervisory position;
 - b. Is communicated in writing to medical staff of the correctional facility;
 - c. Is delegated only to nurses who have received training from the pharmacist-in-charge in proper methods of access, removal of drugs, and records and procedures required; and
 - d. Is delegated by the supervisory nurse to another nurse only in emergencies.
4. When a nurse to whom authority to access the limited-service correctional pharmacy is delegated removes a drug from the limited-service correctional pharmacy, the nurse shall:
 - a. Record the following information on a form:
 - i. Patient's name,
 - ii. Name of the drug and it's strength and dosage form,
 - iii. Dose prescribed,
 - iv. Amount of drug removed, and
 - v. Date and time of removal;
 - b. Sign the form recording the drug removal;
 - c. Attach the original or a direct copy of a physician's written order for the drug to the form recording the drug removal; and
 - d. Place the form recording the drug removal conspicuously in the limited-service correctional pharmacy.
5. Within four hours after a pharmacist in the limited-service correctional pharmacy returns to duty following an absence in which the limited-service correctional pharmacy was accessed by a nurse to whom authority

Notices of Proposed Rulemaking

- had been delegated, the pharmacist shall verify all records of drug removal in accordance with R4-23-402.
- E. When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have telephone access to a pharmacist.
- F. The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy is without a pharmacist for no more than 96 consecutive hours.
- G. In addition to the requirements of R4-23-671, the limited-service pharmacy permittee shall secure the limited-service correctional pharmacy by conforming with the following standards:
1. Permit no one to be in the limited-service correctional pharmacy unless the pharmacist is present except:
 - a. As provided in subsection (D)(3) when no pharmacist is on duty; or
 - b. Pharmacy technicians may remain to perform duties as outlined in R4-23-653(D)(2), except subsection (D)(2)(e), when a pharmacist is on duty and available in the correctional facility but temporarily absent from the pharmacy, provided all controlled substances are secured in a manner that prohibits access by persons other than the pharmacist;
 2. Provide keyed or programmable locks to all areas of the limited-service correctional pharmacy;
- H. The pharmacist-in-charge of a limited-service correctional pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution within the correctional facility include the following:
1. Physicians' orders and/or prescription orders;
 2. Authorized abbreviations;
 3. Formulary system;
 4. Clinical services and drug utilization management including:
 - a. Participation in drug selection,
 - b. Drug utilization reviews,
 - c. Inventory audits,
 - d. Patient outcome monitoring,
 - e. Committee participation,
 - f. Drug information, and
 - g. In-service training of pharmacy and other health professionals;
 5. Duties and qualifications of professional and support staff;
 6. Products of abuse and contraband medications;
 7. Controlled substances;
 8. Drug administration;
 9. Drug product procurement;
 10. Drug compounding, dispensing, and storage;
 11. Stop orders;
 12. Pass/Discharge medications;
 13. Investigative drugs and their protocols;
 14. Patient profiles;
 15. Quality management procedures for:
 - a. Adverse drug reactions,
 - b. Drug recalls,
 - c. Expired and beyond-use-date drugs,
 - d. Medication or dispensing errors,
 - e. Drug storage, and
 - f. Education of professional staff, support staff, and patients;
 16. Recordkeeping;

17. Sanitation;
18. Security; and
19. After-hours access:
 - a. To remote drug storage areas,
 - b. By authorized nursing staff, and
 - c. To record drug removal.

R4-23-673. Limited-service Mail-order Pharmacy

- A. Before opening a limited-service mail-order pharmacy, a person or persons shall obtain a permit pursuant to A.R.S. § 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.
- B. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A dispensing area devoted to the stocking, compounding, and dispensing of prescription medications, which is physically separate from a non-dispensing area devoted to non-dispensing pharmacy services;
 2. A dispensing area of at least 300 square feet if 3 or fewer persons will work in the dispensing area simultaneously;
 3. A dispensing area that provides 300 square feet plus 60 square feet for each person in excess of 3 persons if more than 3 persons will work in the dispensing area simultaneously;
 4. Space in the dispensing area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist;
 5. A non-dispensing area of at least 30 square feet for each person working simultaneously in the non-dispensing area; and
 6. Space in the non-dispensing area permits free movement of personnel and visual surveillance by the pharmacist; or
- C. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A contiguous area in which both dispensing and non-dispensing pharmacy services are provided;
 2. A contiguous area of at least 300 square feet if 3 or fewer persons will work in the area simultaneously;
 3. A contiguous area that provides 300 square feet plus 60 square feet for each person in excess of 3 persons if more than 3 persons will work in the area simultaneously; and
 4. Space in the contiguous area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist.
- D. The limited-service pharmacy permittee shall allow no more than 4 supportive personnel per pharmacist to be in the limited-service mail-order pharmacy.
- E. The limited-service pharmacy permittee shall ensure that the limited-service mail-order pharmacy complies with the area, personnel, security, sanitation, and equipment standards of R4-23-608, R4-23-609(B) through (H), R4-23-610 (A) and (C) through (F), R4-23-611(A) through (I), and R4-23-612.
- F. The pharmacist-in-charge of a limited-service mail-order pharmacy shall authorize only pharmacists, interns, drug inspectors, peace officers acting in their official capacities, supportive personnel, and other designated personnel to be in the limited-service mail-order pharmacy.
- G. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.

Notices of Proposed Rulemaking

- H. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation but not less than six days or a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container of drugs dispensed.
- I. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution include the following:
 - 1. Prescription orders;
 - 2. Clinical services and drug utilization management for:
 - a. Drug utilization reviews,
 - b. Inventory audits,
 - c. Patient outcome monitoring,
 - d. Drug information, and
 - e. In-service training of pharmacy and other health professionals;
 - 3. Duties and qualifications of professional and support staff;
 - 4. Controlled substances;
 - 5. Drug product procurement;
 - 6. Drug compounding, dispensing, and storage;
 - 7. Patient profiles;
 - 8. Quality management procedures for:
 - a. Adverse drug reactions,
 - b. Drug recalls,
 - c. Expired and beyond-use-date drugs,
 - d. Medication or dispensing errors, and
 - e. Education of professional and support staff;
 - 9. Recordkeeping;
 - 10. Sanitation;
 - 11. Security;
 - 12. Drug delivery requirements for:
 - a. Transportation,
 - b. Security,
 - c. Temperature and other environmental controls,
 - d. Emergency provisions, and
 - 13. Patient education.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

PREAMBLE

- 1. Sections Affected

R4-38-101	Amend
R4-38-102	Amend
R4-38-103	Repeal
R4-38-104	Amend
R4-38-106	Amend
R4-38-107	Amend
R4-38-108	Repeal
R4-38-201	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

General authorizing statute: A.R.S. § 32-2904(B)(1)
Implementing statute: A.R.S. § 32-2914(A)(4)
- 3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Cyndi Weaver, Executive Director
Address: Board of Homeopathic Medical Examiners
1400 West Washington, Room 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
- 4. An explanation of the rule, including the agency's reasons for initiating the rule:

In 1995, the Arizona Legislature enacted A.R.S. § 32-2914(A)(4) which authorizes the Board to set fees for annual renewal of homeopathic physician licenses. The proposed rules will permit the Board to set fees by statutory authority, A.R.S. § 32-2914(A)(4). The Board's fees are determined by the number of licensees. The number of licensees increased with the mandated registration of Medical Assistants which reduces the need to charge the current fees required by rule. The Board is a 90/10 agency, and operation revenues are received from the licensees. Permitting the Board discretionary ability in increasing and decreasing revenue on an annual basis would permit the Board to assess revenue requirements, possible loss of applicants or licensees, and set forth for renewal accordingly. The statutes set limitations for renewal increases.

Arizona Administrative Register

Notices of Proposed Rulemaking

- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
- 6. The preliminary summary of the economic, small business, and consumer impact:
No answer provided.
- 7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Cyndi Weaver, Executive Director
Address: Board of Homeopathic Medical Examiners
1400 West Washington, Room 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
- 8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
Date: December 12, 1995
Time: 10 a.m.
Address: 1400 West Washington, Room 230
Phoenix, Arizona 85007
Nature: Public proceeding

A person may submit written comments regarding the proposed rules by submitting the comments no later than 5 p.m., December 11, 1995, to the person listed above.
- 9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:
Not applicable.
- 10. Incorporation by reference and their location in the rules
Not applicable
- 11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 1. GENERAL

- Section
- R4-38-101. Standards for Applicants Not Holding Degrees from a College or University Approved by the Board
- R4-38-102. Standards for Approval of Post-graduate Courses and Homeopathic Educational Institutions
- R4-38-103. Standards for Approval in Internship and Preceptorships Repealed
- R4-38-104. Fees
- R4-38-106. Procedure for Conduct of Personal Interview
- R4-38-107. Waiver of Examination
- R4-38-108. Notification of Address Repealed

ARTICLE 2. LABELING, RECORDKEEPING, STORAGE, AND PACKAGING OF DRUGS DISPENSED BY HOMEOPATHIC PHYSICIANS

- Section
- R4-38-201. Definitions

ARTICLE 1. GENERAL

R4-38-101. Standards for Applicants Not Holding Degrees from a College or University Approved by the Board

~~A. "Approved school of medicine" means any school or college operating a course of study which upon successful completion results in a Degree of Doctor of Medicine or a Doctor of Osteopathy and whose course of study has been approved or accredited by the American Institute of Homeopathy, the Association of American Medical Colleges, the Association of Canadian Medical Colleges, the American Medical Association, or the American Osteopathic Association.~~

B. An applicant who has graduated from an unapproved school of medicine shall meet the following requirements:

- 1. Be a holder of a standard certificate issued by the Educational Council for Foreign Medical Graduates, or
- 2. Successfully complete an approved Fifth Pathway Program of 12 months' supervised clinical training under the direction of an approved school of medicine in the United States in addition to documentation granted by a foreign school of medicine signifying completion of all of the formal requirements for graduation from

Arizona Administrative Register
Notices of Proposed Rulemaking

such foreign medical school except internship or social service training or both.

R4-38-102. Standards for Approval of Post-graduate Courses and Homeopathic Educational Institutions

- A. No change
- B. No change
- C. No change
- D. No change
- E. An applicant, whose previous homeopathic practice as defined in A.R.S. § 32-2901(A)(4-11) has been devoted 50% or more to complementary modalities other than the classical homeopathy of micro-dose substances prescribed by the law of similars, shall submit evidence of a combined total of 300 hours of post-graduate training in one or more of these modalities including a minimum of 40 hours of formal training in an approved course in classical homeopathy. These modalities, as defined in A.R.S. § 32-2901, include acupuncture, neuromuscular integration, orthomolecular therapy, nutrition, or chelation therapy.

R4-38-103. Standards for Approval in Internships and Preceptorships

- ~~A. An "approved internship" means that the applicant has completed training in a hospital which was approved for internship, fellowship or residency training by the council on Medical Education in Hospitals of the American Medical Association, the Association of American Medical Colleges, the Royal College of Physicians and Surgeons of Canada, the American Osteopathic Association or any similar body in the United States or Canada whose function is that of approving hospitals for internship, fellowship, or residency training.~~
- ~~B. Completion of a preceptorship may not substitute for completion of an approved internship, residency, or fellow-ship program.~~

R4-38-104. Fees

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- ~~F. The fee for copying records, documents, letters, minutes, applications, and files, 25¢ per page.~~
- ~~G. The fee for copying audio tapes, \$35 per tape.~~
- ~~H. The fee for the sale of computerized tapes or diskettes not requiring programming, \$100.~~

R4-38-106. Procedure for Conduct of Personal Interview

- A. No change
- B. The Board shall ask any questions which will clarify to the satisfaction of the Board any issue regarding the applicant's practice record which may reflect on his or her competence to safely engage in the practice of medicine, clarify any questions of unprofessional conduct in the applicant's professional record, and clarify whether the scope of the applicant's homeopathic practice falls within the definition of A.R.S. § 32-2901(A)(4-11).

R4-38-107. Waiver of Examination

- A. No change
- B. For applicants requesting waiver under A.R.S. § 32-2912(C)(1)(a) 32-2913(A)(1) and (2), Verification of competency, the Board will consider the nature of the applicant's previous 3 years of homeopathic practice and the nature of the treatment methodology (homeopathic modalities) used in that practice. The Board will, based on information obtained in the personal interview, determine if

this constitutes a primarily homeopathic practice experience under the definitions of such practice in Arizona law.

- C. In cases where the applicant requests waiver under A.R.S. § 32-2912(C)(1)(b) 32-2913(A)(1) and (2), Recognition of homeopathic licensure, the Board will consider the nature of the examination and testing procedures used in the licensing jurisdiction as well as the information obtained in the personal interview determining whether the applicant qualified for a waiver.

R4-38-108. Notification of Address

~~Any licensee establishing a new office or changing his or her office address in the State of Arizona shall notify the Board in writing within 45 days of the opening of such new office and notify the Board within 45 days of any change in office or residence, and office or residence telephone number.~~

ARTICLE 2. LABELING, RECORDKEEPING, STORAGE, AND PACKAGING OF DRUGS DISPENSED BY HOMEOPATHIC PHYSICIANS

R4-38-201. Definitions

- A. No change
- ~~B. "Controlled Substance" means a drug, substance, or immediate precursor identified, defined, or listed in Title 36, Chapter 27, Article 2.~~
- ~~C. "Drug" means:
 1. Medications or substances recognized, or for which standards or specifications are prescribed, in the official compendium;
 2. Medications or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings; and
 3. Medications or substances other than food intended to affect the structure or any function of the body of human beings.~~
- ~~D. "Homeopathic medication" means any substance of animal, vegetable, or mineral origin which is prepared in homeopathic microdoses.~~
- ~~E.B. No change~~
- ~~F.C. No change~~
- ~~G.D. No change~~
- ~~H.E. No change~~
- ~~I.F. No change~~
- ~~J.G. No change~~
- ~~K.H. No change~~
- ~~L. "Prescription only drug" does not include a controlled substance but does include:
 1. Any drug which because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
 2. Any drug that is limited by an approved new drug application under the applicable federal law or A.R.S. § 32-1962, for use under the the supervision of a medical practitioner;
 3. Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; and
 4. Any drug, other than a controlled substance, required under applicable federal law to bear on its label the legend "Caution: federal law prohibits dispensing without prescription."~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18: ENVIRONMENTAL QUALITY

CHAPTER 10. WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA

PREAMBLE

1. Sections Affected

R18-10-101
R18-10-102
R18-10-103
R18-10-104
R18-10-105
R18-10-106
R18-10-107
R18-10-108
R18-10-109
R18-10-110
R18-10-111
R18-10-112
R18-10-113
R18-10-114

Rulemaking Action

Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-373
Implementing statute: A.R.S. § 49-373

3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Primary Contact:

Name: Lynn A. Keeling, Rules Specialist
Address: Department of Environmental Quality
3033 North Central, Room 844A
Phoenix, Arizona 85012
Telephone: (602) 207-2223
Fax: (602) 207-2251

Secondary Contact:

Name: Martha L. Seaman
Manager, Rule Development Section
Address: Department of Environmental Quality
3033 North Central, Room 831
Phoenix, Arizona 85012
Telephone: (602) 207-2222
Fax: (602) 207-2251

4. An explanation of the rule, including the agency's reasons for initiating the rule:

This procedural rule outlines the source of the requirements for financing wastewater treatment and nonpoint source facilities pursuant to the Clean Water Act (CWA) and A.R.S. Title 49. This rule includes information about how the priority list is created for awarding financial assistance and how the fund is administered.

This rule was originally written to describe the procedure for granting construction grants. In 1987, Congress concluded that grants were less efficient than loans. Congress has given grant money to the states which is to be used for loans to wastewater treatment and nonpoint source facilities which are types of pollution control facilities. Currently, the rule is not an accurate depiction of the financial arrangement with the Wastewater Management Authority (Authority) for financing pollution control facilities.

Pursuant to A.R.S. § 49-373, the powers of the Authority include:

1. Issuing negotiable wastewater treatment bonds,
2. Loaning money to provide financial assistance,
3. Guaranteeing debt obligations,
4. Applying for and accepting grants from the United States government,
5. Entering into capitalization grant agreements with the United States Environmental Protection Agency (EPA),
6. Adopting rules governing the application for and awarding of wastewater treatment facility and nonpoint source project financial assistance.

Arizona Administrative Register
Notices of Proposed Rulemaking

The rule has been amended to exclude construction grant language and include the procedure for how a wastewater treatment facility or a nonpoint source (for example, a dairy farm) can apply for and receive financial assistance from the Authority. Therefore, the goal of this rulemaking is to modify the rules found in 18 A.A.C. 10, Article 1 to conform with the current federal mandates for administering loans, to simplify the application process, to remove construction grant language, and to make the priority list more equitable.

The Authority was created to help finance construction of pollution control devices such as wastewater treatment facilities and nonpoint sources. However, the current rule contains many out-of-date requirements, requirements that are not always applicable, and requirements that favor large municipalities. As a result, the requirements impede the application and financial award process. Some Sections are duplicative of information found in the Clean Water Act. All wastewater treatment facilities and nonpoint sources must comply with the Clean Water Act and A.R.S. Title 49; therefore, it is not necessary to repeat the elements of the requirements in this rule.

The current rule requires the applicant to provide more information than may be needed by the Authority to evaluate financial capability (see R18-10-107). The Arizona Department of Environmental Quality (ADEQ) has a dedicated resource called the State Revolving Fund Coordinator, who works with applicants to simplify the information-gathering and provide financial options to the applicant. ADEQ has environmental engineers who evaluate the environmental impacts and grant the appropriate permits. Therefore, details about the environmental impacts and the permit process are not necessary in this rule.

Language within the rule that was inaccurate or inequitable has been amended. The financial capability was originally based upon population, which favored awarding financial assistance to large communities rather than small communities. This inequity has been corrected. The federal requirements found in R18-10-110 are duplicative of the Clean Water Act (CWA) in some areas and incorrect in others.

The current rule does not reflect the financial assistance service ADEQ provides. ADEQ is trying to financially assist facilities with loans. The loan is to be used for pollution control, to properly size and design pollution control facilities, and to prevent noncompliance with the pollution prevention laws and rules. Therefore, the proposed rule removes out-of-date requirements, simplifies the loan application process, and removes duplicative language found in the CWA.

To promote use of the fund, ADEQ needs to make the rule simple and consistent with federal and state law. This is the primary reason for this rulemaking.

The process for the funding from the Authority currently is as follows: The Authority receives grant monies from the EPA, monies appropriated from the Legislature (referred to as the state match), monies from issuing bonds, monies for repayment of bonds, and interest from investment of money that is collateral for the bonds. This money is referred to as the fund.

The Authority currently issues bonds using the grant money from the EPA as collateral to secure bonds. The Authority invests the EPA grant money and uses the interest to help retire the debt and pay for administering the fund. The benefit of the secured bond is a lower interest rate to the applicant. Most bonds are issued with a 20-year repayment and are managed by a guaranteed investment contract. Additionally, the secured bond means a lower rate for the bond which generally results in a savings on the monthly rate assessed to the users of the wastewater treatment facility or the nonpoint source.

This financial assistance program is one of a number of available financing options. There are other financial assistance programs, e.g., the U.S. Farmers Home Administration and block grants from the U.S. Housing and Urban Development. Therefore, to assure the fund is used, ADEQ needs to modify the rule to make the procedures comparable to the other financial assistance programs.

ADEQ is interested in promoting pollution control; therefore the financing is based on a facility's readiness to proceed. There are currently over 200 projects in Arizona that are funded and approximately 1,000 facilities identified with a need for financial assistance.

The specific changes to the definition Section are as follows:

1. The "clerk" was amended because it is now a member of the Board of the Wastewater Management Authority of Arizona.
2. The definition of "eligible" is included to differentiate between an applicant and a candidate who is ready to receive financial assistance.
3. "Intended use plan" was amended because it is no longer required to describe how the uses of the project support the goals of the fund.
4. "Regulatory authority" has the addition of the word "city" to ensure that city health departments are included.
5. "State match" was amended to expressly state its portion of the fund.
6. "Treatment works" was amended to remove the "most economical cost" because it is an artificial criteria no longer found in the CWA. This may not be a reasonable variable to consider for refinancing or rehabilitation projects.
7. "User charge" was amended because the ad valorem tax is construction grant language. Ad valorem tax is not found in the federal regulation; therefore it is not needed.
8. The following terms are no longer used in the rule: "force account work", "inflow", "minor", "useful life", "value engineering".
10. All other changes are believed to be self explanatory.

The changes to the Types of Financial Assistance Available are as follows:

- A. The types of financial assistance are modified for clarity and grammatical purposes.
- B. The two primary sources for water pollution controls are wastewater treatment facilities and nonpoint sources. The language in R18-10-103(A)(2) is modified to reflect this.
- C. The language deleted in R18-10-103(B)(1) is redundant.
- D. The changes in R18-10-103(B)(3) and (4) are to clarify the distribution of payments. Pre-construction payments are the only approved payments allowed until the environmental review is completed by ADEQ and all permits are obtained.
- E. R18-10-103(C)(1) is deleted to clarify that only one priority list is created. The list will include both wastewater treatment facilities and nonpoint sources. The remaining changes to subsection (C) were done for grammatical purposes.
- F. R18-10-103(D)(2) and (3) were deleted because subsection (2) is explained in the priority list; therefore this is redundant. Subsection (3) is a restriction that has no basis in law.

Arizona Administrative Register
Notices of Proposed Rulemaking

- G. R18-10-104 changes the fiscal year from federal to state to accommodate accounting for disbursement of funds. The citations to sections of the CWA were deleted because they are renumbered frequently.
- H. R18-10-104(H)(2) is added to expressly state that lack of financial need is a reason to remove a project from the priority list.
- I. R18-10-105 has been modified to conform cross-references and to clarify language.
- J. R18-10-106 has been modified to remove the variable called "population affected" and add the variable called "financial capability" to the priority list ranking algorithm. Inclusion of the variable "population affected" caused a higher ranking to be assigned to the largest facilities. This ranking was not equitable because a political subdivision like Fredonia could never qualify for financial assistance because of its ranking. ADEQ considered changing the variable "population affected" to favor the smaller communities who generally have the greater need for financial assistance but ultimately decided that this variable should have no bearing on financial assistance.

The legislative intent for the ranking criteria is to favor the facilities that need construction or refurbishing over the facilities that are constructed and merely want to refinance their debt. Therefore the financial capability is structured to reflect a ranking for construction projects higher than refinancing. The deletion found in R18-10-106(E)(3)(a) is because completion of the facility plan is no longer required by federal law.

The priority list is intended to give the highest ranking to a project with some or all of the following characteristics:

Correction of acute chronic toxicity, nitrates, and disease-carrying organisms which create a threat to an endangered species, Biochemical Oxygen Demand or suspended solids, and pH or turbidity.

Where the water is either a domestic water source or discharge into a sole source for a drinking water supply rather than a water source incidental to human contact.

Where the project reclaims, reuses, or recharges rather than a project that merely uses water without reclamation.

Where a project was denied funding due to a lack of funds rather than an interim solution to a problem or a future project.

Where the project is in compliance with operation and maintenance requirements of ADEQ rather than a project which has compliance violations.

Where the project is for construction or rehabilitation rather than refinancing a completed project.

In summary, R18-10-106 assigns the point values used for ranking a project to be funded by the Authority. This proposed rule amends the point values to assign more points for funding construction or rehabilitation of a project that will correct or prevent a threat to humans or has some form of water reclamation over refinancing a completed project.

- K. R18-10-107 has been modified to be consistent with A.R.S. §§ 49-373 and 49-374. The funding that is possible by this rule affects numerous types of projects which may be associated with numerous types of project owners. To make this rule useful, the Board of Directors of the Authority (Board) has found it substantially more beneficial for the applicant to have the Board interview the applicant about its past fiscal history. Some of the information deleted from this Section does not always have relevance due to the various types of community projects.

Some of the small communities in Arizona have operated on a cash basis and have never issued a bond. Therefore, the Board prefers to provide a financial worksheet applicable to the applicant that complies with the loan grant requirements.

- L. R18-10-108 has been modified to direct the applicant to comply with appropriate federal and state law. Due to the numerous types of water pollution control facilities, the requirements for an environmental assessment depend on the applicable environmental laws. Every facility to be constructed or rehabilitated needs an environmental assessment to demonstrate compliance with environmental regulations and laws.

Any project found out of compliance with the laws affects the project's priority. A project that has shown no effort to come into compliance will be bypassed, whereas a project that is trying to rehabilitate the facility will not be bypassed. Therefore, the proposed rule was amended to instruct the applicant to the appropriate federal regulations and to A.R.S. Title 49.

- M. R18-10-109 has been modified for consistency with other rule text.
- N. R18-10-110 and R18-10-111 have been modified to omit redundancies found in the CWA.
- O. R18-10-112 has been modified to include disbursement for incurred project expenses. The requirement in subsection (D) is deleted because the costs indicated are indirect costs, and the Authority will not pay for indirect costs.
- P. R18-10-113 has been modified to include the state match authorized by statute.
- Q. R18-10-114 has been modified for conformity.

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

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(D)(3), a rulemaking that decreases monitoring, recordkeeping, or reporting burdens on agencies, political subdivisions, businesses, or persons is not required to prepare an economic impact statement. If the increased costs of implementation of the rule do not equal or exceed the reduction burdens, there is no requirement for the rule to include an economic, small business, and consumer impact statement. ADEQ believes the amendments to the rule do not require an economic, small business, and consumer impact statement because each amendment either reduces reporting which is no longer required by the Clean Water Act or it removes a duplicative requirement that is found in the Clean Water Act.

Subsection R18-10-106(G) is the only new language in the rule. The additional variable called "financial capability" was added to the priority algorithm to make the priority list equitable for Arizona. The new variable does not impose an additional cost to the public or ADEQ. It is intended to delineate the facilities who need refinancing from the facilities that need construction or rehabilitation. The fund is for water pollution control; therefore the refinancing projects should be of a lower priority.

Arizona Administrative Register

Notices of Proposed Rulemaking

ADEQ does not expect the implementation and enforcement costs to be a quantity that would equal or exceed the reduction burdens because the SRF Coordinator and associated clerical staff are already provided by ADEQ pursuant to A.R.S. § 49-372. There is no anticipated need to increase staff at ADEQ for this rule. Therefore, no incremental cost is expected by ADEQ to implement this rule. For these reasons, ADEQ is not preparing an economic and small business and consumer impact statement for this rulemaking.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Lynn A. Keeling, Rules Specialist
Address: Department of Environmental Quality
3033 North Central, Room 844A
Phoenix, Arizona 85012
Telephone: 602-207-2223
Fax Number: 602-207-2251

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments must be received by 5 p.m., Friday, December 1, 1995. Comments may be written or presented orally. Oral proceedings to consider comments on the proposed rules are scheduled for the following dates and locations. ADEQ is committed to complying with the Americans with Disabilities Act. If an individual with a disability needs special accommodations, please contact the appropriate person listed by location at least 72 hours before the hearing.

Date: November 27, 1995
Time: 1 p.m.
Address: Community Center, Room 312
Willcox, Arizona
Contact Vicky at (520)384-4271 for special assistance.

Date: November 28, 1995
Time: 9 a.m.
Address: Department of Environmental Quality
Public Meeting Room
3033 North Central Avenue
Phoenix, Arizona
Contact Debbie Martinez at (602) 207-4795 for special assistance.

Date: November 29, 1995
Time: 1 p.m.
Address: City Council Chambers
211 West Aspen Avenue
Flagstaff, Arizona
Contact Vince at (520) 779-7690 for special assistance.

Date: December 1, 1995
Time: 11 a.m.
Address: Yuma City Council Chambers
180 West First Street
Yuma, Arizona
Contact the Clerk's office (520) 783-1274 for special assistance.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules

Not applicable

11. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA

ARTICLE 1. FINANCING WASTEWATER FACILITIES AND NONPOINT SOURCE DISCHARGE PROGRAMS

R18-10-101. Definitions

R18-10-102. Types of Financial Assistance Available

R18-10-103. Eligibility Criteria for Financial Assistance

R18-10-104. Priority List

R18-10-105. Priority Classes

R18-10-106. Priority List Ranking Criteria

R18-10-107. Financial Capability Criteria

R18-10-108. Environmental Review

R18-10-109. Application Process

R18-10-110. Federal Requirements

R18-10-111. Project Construction

R18-10-112. Fund Disbursements and Repayments

R18-10-113. Fund Administration

Arizona Administrative Register
Notices of Proposed Rulemaking

R18-10-114. Intended Use Plan and Interest Rate Determinations

ARTICLE 1. FINANCING WASTEWATER FACILITIES AND NONPOINT SOURCE DISCHARGE PROGRAMS

R18-10-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, shall have the following meanings:

1. "Applicant" means any eligible political subdivision or any eligible entity identified in the Nonpoint Source Program that is seeking financial assistance from the fund pursuant to the provisions of this Article.
2. "Application" means a request for financial assistance submitted to the Board, as defined in A.R.S. § 49-371, by an applicant.
3. "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.
4. "Authority" means the Wastewater Management Authority of Arizona pursuant to A.R.S. § 49-371.
- 4-5. "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, and certified by the Governor.
- 5-6. "Clerk" means the Manager of the Construction Grants Section at the Department Clerk of the Board of the Wastewater Management Authority of Arizona.
- 6-7. "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, or water pollution control activity.
- 7-8. "Design life" means the period during which a treatment works is planned and designed to be operated.
- 8-9. "Designated Water Quality Management Planning Agency" means a single representative organization designated by the Governor pursuant to § 208 of the Clean Water Act to develop a Certified Water Quality Management Plan for the area.
- 9-10. "Disbursement" means the transfer of cash from the fund to a recipient.
11. "Eligible" means an entity that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
- 10-12. "EPA" means the United States Environmental Protection Agency and its successor.
- 11-13. "Equivalency Project" means a wastewater treatment facility under § 212 of the Clean Water Act constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
- 12-14. "Federal capitalization grant" means the assistance agreement by which the EPA obligates funds allotted to the Authority for purposes of capitalizing the fund.
- 13-15. "Financial assistance" means the use of monies in the fund for any of the purposes identified in R18-10-102.
- 14-16. "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
- 15-17. "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
16. "~~Force account work~~" means ~~the use of the applicant's or recipient's own employees or equipment for construction, construction-related activities, or for repair or improvements to a wastewater treatment facility.~~
- 17-18. "Fund" means the wastewater treatment revolving fund established pursuant to A.R.S. § 49-374.
- 18-19. "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
19. "~~Inflow~~" means ~~water other than wastewater that enters a sewer system, including sewer service connections, sources such as roofleaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, and drainage.~~
20. "Intended Use Plan" means the plan prepared by the Board for submittal to EPA identifying the intended uses of the fund ~~pursuant to R18-10-114 and describing how those uses support the goals of the fund.~~
21. "Interceptor" means a sewer which is designed for one or more of the following purposes:
 - a. To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - b. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - c. To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; and
 - d. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
22. "~~Minor~~" means ~~in terms of upgrading or expansion, rehabilitation, replacement, construction, or other improvements which do not affect the degree of treatment or capacity of an existing wastewater treatment facility.~~
- 23-22. "Nonpoint Source Program" means Arizona's Nonpoint Source Water Quality Management Program, approved by EPA under § 319 of the Clean Water Act for controlling pollution from nonpoint sources.
- 24-23. "Priority List" means the ranking of wastewater treatment facility projects developed by the Board pursuant to R18-10-104 and the ranking of nonpoint source projects developed pursuant to the administration of the Nonpoint Source Program.
- 25-24. "Project" means any distinguishable segment or segments of a wastewater treatment facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
- 26-25. "Project completion" means the date, as determined by the Department after consultation with the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs first.
- 27-26. "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
- 28-27. "Replacement" means obtaining and installing equipment, accessories, or appurtenances which are

Arizona Administrative Register
Notices of Proposed Rulemaking

necessary during the design or useful life, whichever is longer, and operation of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

~~29-28.~~ "Regulatory authority" means the Department, EPA, the Arizona Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.

~~30-29.~~ "State match" means the monies deposited into the fund by the Authority as required by that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act.

~~31-30.~~ "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works.

~~32.~~ "Useful life" means the period during which a treatment works operates.

~~33-31.~~ "User charge" means a charge levied on users of a treatment works or that portion of the ad valorem taxes paid by a user for the user's proportionate share of the cost of operation and maintenance, including replacement of such works.

~~34.~~ "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

R18-10-102. Types of Financial Assistance Available

A. The Authority may use the fund only for the following types of financial assistance purposes:

1. Financial assistance, which includes any one of the following:

a. ~~To make loans~~ Loans consistent with § 603(d)(1) of the Clean Water Act;

~~2-b.~~ The purchase or refinancing of local debt obligations which were incurred after March 7, 1985, and building began after that date;

~~3-c.~~ The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;

~~4-d.~~ As security or Security as a source of revenue for the payment repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of such bonds are deposited in the fund;

~~5-e.~~ Guarantees of debt obligations of political subdivisions which are issued to finance eligible projects;

~~6-2.~~ Investments to earn interest to be deposited into the fund To earn interest; or

~~7-3.~~ To pay Pay costs to administer the fund and the activities described in this Article;

B. Projects and proposed financial assistance shall be described by the Board in the in the Board's Intended Use Plan, as developed under pursuant to R18-10-114.

R18-10-103. Eligibility Criteria for Financial Assistance

A. To be eligible for to receive financial assistance, a applicant shall propose a project shall be proposed for either of the following purposes:

1. The planning, design, and construction, or refinancing of treatment works which are all or part of a wastewater

treatment facility owned by a an eligible political subdivision; or

2. ~~The implementation of the Nonpoint Source Program Water pollution controls as identified by Arizona's Nonpoint Source Management Plan.~~

B. A project eligible under subsection (A)(1) shall also meet all of the following applicable requirements prior to receiving financial assistance:

1. The project shall appear on the Priority List developed pursuant to R18-10-104 and the priority list developed for the award of grants pursuant to Title II of the Clean Water Act. If the Priority List has not been developed under this Article, the Title II priority list may be used;

2. The applicant shall demonstrate the financial capability pursuant to R18-10-107 to satisfy any financial obligations to be made with the Authority;

3. The applicant shall complete or shall be in the process of completing the environmental review process described in R18-10-108 for all design and construction projects. Until the environmental review process is completed, payments of financial assistance shall be limited to pre-construction activity;

4. The applicant shall receive or shall be in the process to receive all applicable permits and approvals required by federal, state, and local authorities. Until all applicable permits and approvals required by federal, state, and local authorities are received, payments of financial assistance shall be limited to pre-construction activity;

5. The proposed design or construction of the project shall be consistent with the Certified Water Quality Management Plan; and

6. The project shall be consistent with applicable requirements of Title VI of the Clean Water Act as described in R18-10-110.

C. A An eligible political subdivision or eligible entity proposing a project eligible under subsection (A)(2) shall also meet all of the following requirements prior to receiving financial assistance:

~~1.~~ The project shall appear on the Priority List developed pursuant to the administration of the Nonpoint Source Program;

~~2-1.~~ The applicant shall demonstrate the financial capability under this Article, including all the following; to satisfy any financial obligation to be made with the Authority, shall identify

a. Identification of the dedicated revenue source for repayment of the financial assistance; and shall demonstrate

b. Demonstration of the legal authority to enter into financial agreements with the Authority; and to develop

c. Development of any needed construction, operation, and maintenance associated with the Nonpoint Source Program project;

~~3-2.~~ The applicant shall receive or be in the process to receive all applicable permits and approvals required by federal, state, and local authorities;

~~4-3.~~ The project shall be consistent with the Certified Water Quality Management Plan and the Nonpoint Source Program; and

~~5-4.~~ The project shall be consistent with § 319 and Title VI of the Clean Water Act.

D. The Board shall provide financial assistance to eligible political subdivisions or eligible entities for proposed projects in priority order, subject to the following provisions:

1. If the Board determines that a project will not be able to proceed consistent with the Intended Use Plan, then the Board shall bypass that project. Bypassed projects shall be replaced by the next project or projects on the Priority List in rank order that are able ready to accept financial assistance. The Board shall provide written notice to the applicant that the project has been bypassed.
2. ~~The Board shall consider only wastewater treatment facility projects on the Priority List developed pursuant to R18-10-104. However, if one of the following conditions are met, the Board may then consider nonpoint source projects on the Priority List developed pursuant to the administration of the Nonpoint Source Program:~~
 - a. ~~The amount of financial assistance sought by applicants in a fiscal year for wastewater treatment facilities is less than the total assistance available; or~~
 - b. ~~The assistance available is less than the amount sought by any remaining applicant proposing a wastewater treatment facility which has met the requirements of this Article to receive financial assistance.~~
3. ~~The Board shall not provide financial assistance to eligible projects until all first use projects are any one of the following:~~
 - a. ~~In compliance;~~
 - b. ~~On an enforceable schedule;~~
 - c. ~~Subject to an enforcement action; or~~
 - d. ~~Subject to a funding commitment during or prior to the first year covered by the Intended Use Plan.~~

R18-10-104. Priority List

- A. Each year the Board shall adopt the Priority List for the forthcoming fiscal year, except that a new list shall not be required for years where funds are not adequate to assist any projects. The fiscal year shall be the federal state fiscal year ~~when a federal capitalization grant or other federal assistance is provided.~~
- B. When the Priority List is required pursuant to subsection (A), the listing of wastewater treatment facility projects shall consist of two parts:
 1. Part 1 shall be a listing of those wastewater treatment facility projects where the start of construction is planned within five years and that are under development or have been scheduled as part of an applicant's capital improvement plan. This five-year listing shall be ranked by priority class, priority points, and year; and
 2. Part 2 shall be a listing of all other wastewater treatment facility projects ranked by priority class and priority points.
- C. Applicants desiring placement on the Priority List shall make their request for placement of one or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit all of the following information:
 1. A brief description of the project indicating category of need, such as secondary treatment, advanced treatment, or collection system;
 2. A brief description of the water quality or public health problem to be addressed by the project;
 3. Estimated costs associated with the project, including applicable planning, design, and construction; and
 4. A project schedule.

- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to ~~Sections 205(j), 208, 303(e), and 319~~ of the Clean Water Act, and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. A notice of the public meeting shall be published in newspapers statewide at least 45 days prior to the meeting date. Copies of the draft Priority List shall be available to the public at least 30 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall also consider the criteria identified in subsection (C) of this Section. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the fund during the following fiscal year.
- G. Additions or modifications to the Priority List shall be made by the Board whenever any one of the following conditions are met:
 1. The project meets the criteria for Priority Class A specified in R18-10-105(B),
 2. Funds are available to cover the cost of the project and to honor any funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match, and
 3. The additions or modifications are made by the Board at a public meeting.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any one of the following circumstances:
 1. The project has received all financial assistance from the fund requested by the applicant,
 2. The project has been financed from another source.
 - ~~2.3. The project is no longer an eligible project, or~~
 - ~~3.4. The removal is requested by the applicant.~~
- I. A project bypassed by the Board pursuant to R18-10-103(D)(1) shall remain on the Priority List in its assigned priority ranking.

R18-10-105. Priority Classes

- A. Each wastewater treatment facility project on the Priority List shall be evaluated by the Board and placed into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes consistent with R18-10-104(G) when supported by information such as facility plans ~~developed pursuant to R18-10-110(G)~~, feasibility studies, enforcement actions, and environmental reviews conducted under R18-10-108. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project shall be ineligible for financial assistance.

Notices of Proposed Rulemaking

B. The Board may designate a project as Priority Class A if both the following conditions described in subsections (B)(1) and (2) exist:

1. The goal of the project is to eliminate either:
 - a. An environmental nuisance as defined in A.R.S. § 49-141; or
 - b. A public health hazard declared by a regulatory authority; and
2. Corrective action or mitigation measures have been initiated as evidenced by one of the following:
 - a. An administrative order issued by a regulatory authority;
 - b. A court order or decision;
 - c. A voluntary compliance agreement with a regulatory authority;
 - d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or
 - e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.

C. The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by one of the following:

1. An administrative order issued by a regulatory authority;
2. A court order or decision;
3. A voluntary compliance agreement with a regulatory authority;
4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or
5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.

D. The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. Such violations shall be documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either three consecutive months or any four months during the past year.

E. The Board may designate a project as Priority Class D if any one of the following conditions exists:

1. The project will provide capacity required to serve existing needs;
2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater; or
3. The project is necessary to remedy interceptors which are overloaded.

F. The Board may designate any project which does not receive a designation pursuant to subsections (B) through (E) as Priority Class E, including if either the projects are for future growth only or the projects have been financed from another source of long-term indebtedness. All projects designated as Priority Class E shall be completing or have completed construction.

R18-10-106. Priority List Ranking Criteria

A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = VF + PA + CW + CI + PS + OM + FC \text{ where:}$$

PV = Priority Value
 VF = Violation Factor
 PA = Population Affected
 CW = Classification of Waters
 CI = Conservation Index
 PS = Project Schedule
 OM = Operation and Maintenance
 FC = Financial Capability

B. Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award Violation Factor points. The Board shall use documentation requirements specified under Priority Classes B and C as contained in R18-10-105(C) and R18-10-105(D) to assign Violation Factor points. VF points shall equal the sum of the points specified in each of the following categories up to a maximum of 50 points:

1. Toxic substances or conditions which create acute or chronic toxicity shall receive 20 points;
2. Nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species shall receive 15 points;
3. Biochemical Oxygen Demand (BOD), Suspended Solids, or Phosphates shall receive 10 points; and
4. pH, Turbidity, or Temperature shall receive 5 points.

~~C. The Board shall award points for the Population Affected only for the existing population that will be connected to or served by the project. Points for additions to treatment works shall be based on the existing population that actually will be connected to or served by the addition. In the case of overloaded treatment works or interceptors, points shall be given based on the population associated with the overload plus any existing population that will be connected to the new facility within one year after project completion. PA points shall be awarded as follows up to a maximum of 40 points:~~

Points	Population
5	0-500
10	501-1,000
15	1,001-4,000
20	4,001-10,000
25	10,001-50,000
30	50,001-100,000
35	100,001-500,000
40	greater than 500,000

~~D.C.~~ The Board shall award points for either surface or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the Classification of Waters. CW points shall be awarded as follows up to a maximum of 30 points:

1. For surface water, CW points shall be awarded for discharges into a water body assigned one of the following protected use classifications under ~~R18-11-208~~ **R18-11-101**:
 - a. 30 points for "full body contact" or "Domestic water source." For purposes of this subsection, a project not meeting either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" under ~~R18-11-303~~ **defined in R18-11-101**;
 - b. 20 points for "aquatic and wildlife--(cold water fishery)";
 - c. 15 points for "aquatic and wildlife" that is not for cold water fishery; or
 - d. 10 points for "incidental human contact".

Arizona Administrative Register
Notices of Proposed Rulemaking

2. For groundwater, CW points shall equal:
 - a. 30 points for discharges into an aquifer which serves as the sole source for a drinking water supply;
 - b. 20 points for discharges into an aquifer which provides part of a drinking water supply; or
 - c. 10 points for discharges into an aquifer which is not used as a drinking water supply.

E.D. The Board shall award Conservation Index points as follows:

1. 30 points if the project will replace an existing groundwater use by reclaiming, reusing, or recharging a major portion of wastewater consistent with state law;
2. 20 points if the project will reclaim, reuse, or recharge a major portion of wastewater consistent with state law;
3. 10 points if the project will productively recycle wastewater constituents or recover energy; and
4. Negative 20 points if the project will not reclaim, reuse, or recharge wastewater.

F.E. The Board shall award Project Schedule points as follows:

1. 25 points if the applicant has received prior approval of a project that meets all requirements of this Article, could have received funding if funds were adequate, and has initiated construction;
2. 15 points if the applicant has initiated a Department-approved interim solution adequate to remedy the problem until the construction of a permanent solution is complete and, in addition, has submitted a project schedule. Any project utilizing an interim solution shall not lose its priority class or ranking; or
3. 10 points for those projects where a project schedule acceptable to the Department Board has been provided prior to March 1 of each year. The Board shall apply the points to the Priority List prepared for the following year. Minimum targets to be addressed in the schedule include dates for all of the following:
 - a. ~~Completion of the facility plan required under R18-10-110(H);~~
 - b.a. Completion of plans and specifications;
 - e.b. Voter approval or participation in assistance program;
 - d.c. Award of construction contract; and
 - e.d. Project completion.

G.F. The Board shall award Operation and Maintenance points for operation, maintenance, or demonstrated capability as follows:

1. 20 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department, according to the Department's annual compliance report, during 4 of the preceding 5 years. If at least one of the facilities was in noncompliance for those 4 years, the OM points shall equal a negative 20 points; and
2. 10 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department at the last regular inspection made by the Department. If at least one of the facilities was in noncompliance at the last inspection, OM points shall be a negative 5 points.

G. The Board shall award 20 Financial Capability points if the applicant is seeking financial assistance in the form of long-term indebtedness to construct or rehabilitate a facility.

R18-10-107. Financial Capability Criteria

- A. The applicant shall obtain Board approval of its financial capability, using a format provided by the Authority, as part of the prior to submission of an application.
- B. When determining an applicant's financial capability, the Board shall consider the facility's past fiscal history in a format approved by the Board which is provided to the applicant, certified by the applicant and may consider the following criteria:
 1. ~~A financial report which provides the three most recent years of historical financial audits of the applicant's utility fund or the fund that will be used for payment of operation and maintenance costs of the project, including replacement;~~
 2. ~~An economic profile which accomplishes all of the following:~~
 - a. ~~Describes the five largest employers;~~
 - b. ~~States the most recent employment levels in the applicant's jurisdiction; and~~
 - e. ~~Describes the service area employers and employment when the data in subsection (B)(3)(a) or (b) of this paragraph do not apply to the project service area;~~
 3. ~~A system profile which accomplishes all of the following:~~
 - a. ~~Describes the wastewater treatment capacity;~~
 - b. ~~Certifies compliance with all federal and state regulations;~~
 - c. ~~States the average and peak daily system flows for the prior three years;~~
 - d. ~~Lists the users of the system with greater than 2% of the system's sales or revenues;~~
 - e. ~~Describes the system's current rate structure;~~
 - f. ~~Provides three years of user rate history in the form of monthly user charges;~~
 - g. ~~Describes any rate increases being considered to fund the proposed project;~~
 - h. ~~Provides a comparison with the monthly sewer bills for municipalities around the applicant's service area;~~
 - i. ~~States the current and future population to be served by the project;~~
 - j. ~~States the most recent credit rating for revenue and general obligation bond debt;~~
 - k. ~~Provides copies of documents relating to outstanding revenue bonds secured by system revenues, showing any coverage or other covenants applicable to the system and to future borrowing; and~~
 - l. ~~Describes the source of revenues to be used to repay the loan or debt obligation;~~
 4. ~~A capital improvement profile which accomplishes all of the following:~~
 - a. ~~Describes any future capital needs for the system other than the proposed project now being funded;~~
 - b. ~~Describes how the applicant intends to fund such capital needs; and~~
 - e. ~~Specifies any existing project-related interagency agreements; and~~
 5. ~~Other information identified in the application package which the Board has determined is relevant to a complete assessment of the applicant's financial capability, such as:~~
 - a. ~~Total cost of the proposed project;~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- b. Existing and proposed operation and maintenance costs of the project, including replacement;
- c. Annual costs per household of the households defined by the applicant to be affected by project costs;
- d. Per capita income of the households defined by the applicant to be affected by project costs;
- e. Existing annual outstanding debt of the applicant;
- f. The applicant's overall debt repayment schedule;
- g. The applicant's outstanding per capita debt; and
- h. Revenues collected annually by the applicant, including total billed, total collected, and delinquency rates.

R18-10-108. Environmental Review

A. ~~The If applicable, the Department shall conduct an environmental review pursuant to this Section for the design or construction of treatment works in accordance with applicable federal and state law. As part of the application process, the Authority shall provide information on conducting an environmental review consistent with the Clean Water Act and A.R.S. Title 49. The Department may accept an environmental review completed prior to the effective date of this Article if the Department determines that the environmental review complies generally with the requirements of this Section. An environmental review conducted under this Section shall be prepared in coordination with any applicable facility plan developed pursuant to R18-10-110(H) and applicable amendments to the Certified Water Quality Management Plan.~~

B. ~~An applicant may request, in writing, a categorical exclusion. If the Department determines that a categorical exclusion is warranted under this subsection, the project shall be exempted from the requirements of this Section.~~

- 1. ~~The Department shall grant an exclusion if existing information and documents demonstrate that the project qualifies under one of the following categories:~~
 - a. ~~Any project for which the planning is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility;~~
 - b. ~~Any project in sewerred communities which is for minor upgrading and minor expansion of existing treatment works; or~~
 - c. ~~Any project in unsewerred communities where on-site technologies are proposed.~~
- 2. ~~The Department shall deny a request for exclusion if the project falls under any of the following categories:~~
 - a. ~~The project will create a new, or relocate an existing, discharge to surface or ground waters;~~
 - b. ~~The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters;~~
 - c. ~~The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions;~~
 - d. ~~The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as flood-~~

plains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas;

e. ~~The project is known or expected to cause significant public controversy; or~~

f. ~~The project is known or expected not to be cost effective.~~

C. ~~If the Department determines that a categorical exclusion is not warranted under subsection (B), or if no request for an exclusion is made, the applicant shall prepare an Environmental Information Document (EID). The EID shall be of sufficient scope to assist in the development of an environmental assessment (EA) under subsection (D).~~

D. ~~The EA may be conducted by the Department or by the applicant under the supervision of the Department and shall include consideration of all of the following factors:~~

- 1. ~~For the delineated planning area, the existing environmental conditions relevant either to the analysis of alternatives or to determining the environmental impacts of the proposed project;~~
- 2. ~~The relevant future environmental conditions of the delineated planning area, including the alternative of no action;~~
- 3. ~~The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent;~~
- 4. ~~A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:~~
 - a. ~~Land use and other social parameters, including recreation and open space considerations;~~
 - b. ~~Consistency with population projects used to develop state implementation plans under the Clean Air Act, 42 U.S.C. 7401-7626;~~
 - c. ~~Cumulative impacts, including anticipated community growth within the project study area; and~~
 - d. ~~Other anticipated public works projects, including coordination with such projects;~~
- 5. ~~A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity; and~~
- 6. ~~Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and nonstructural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.~~

E. ~~Upon completion of the EA required by subsection (D), the Department shall determine whether an environmental impact statement (EIS) is necessary.~~

- 1. ~~The Department shall prepare an EIS pursuant to subsection (F) if any of the following conditions exist:~~
 - a. ~~The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumula-~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- tively over time, or in conjunction with other federal, state, local, or private actions;
- b. ~~The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas;~~
- c. ~~The project is likely to cause significant public controversy or is known or expected not to be cost effective; or~~
- d. ~~The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of sufficient quality or quantity to meet the requirements of these uses.~~
2. ~~If the Department determines pursuant to subsection (E)(1) that an EIS is not necessary, the Department shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by a finalized EA. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.~~
- F. ~~An EIS required by subsection (E)(1) of this Section shall be prepared as follows:~~
1. ~~The Department shall first prepare and distribute a Notice of Intent;~~
 2. ~~As soon as possible after the publication of the Notice of Intent required by subsection (F)(1), the Department shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:~~
 - a. ~~The significant issues to be analyzed in depth in the EIS;~~
 - b. ~~The preliminary range of alternatives to be considered;~~
 - c. ~~The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties;~~
 - d. ~~The method for EIS preparation and the public participation strategy; and~~
 - e. ~~The relationship between the EIS and the completion of the facility plan required under R18-10-110(H) and any necessary coordination between the preparers of both documents;~~
 3. ~~Upon completion of the scoping process described in paragraph (2) of this subsection, the Department shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS; and~~
 4. ~~After the analysis of issues is conducted pursuant to paragraph (3) of this subsection, the Department shall issue a draft EIS for public comment. Following public comment pursuant to subsection (I), the Department shall prepare a final EIS, consisting of all of the following:~~
 - a. ~~The draft EIS;~~
 - b. ~~Comments received on the draft EIS;~~
 - c. ~~A list of persons commenting on the draft EIS;~~
 - d. ~~The Department's responses to significant comments received;~~
 - e. ~~A determination of consistency with the Certified Water Quality Management Plan; and~~
 - f. ~~Any other information added by the Department.~~
- G. ~~After a final EIS has been issued under subsection (F) of this Section, the Department shall prepare and issue a record of decision (ROD) containing the Department's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.~~
- H. ~~Any project awaiting financial assistance which has a five or more year old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental re-evaluation. The Department shall re-evaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Department in making its determination shall be included.~~
- I. ~~Public notice and participation under this Section shall be conducted as follows:~~
1. ~~If a categorical exclusion is granted under subsection (B), the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned;~~
 2. ~~If a FNSI is issued under subsection (E)(2), the Department shall provide public notice pursuant to A.A.C. R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Department for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective;~~
 3. ~~If a Notice of Intent is prepared and distributed under subsection (F)(1), the Department shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned;~~
 4. ~~If a draft EIS is issued under subsection (F)(4), the Department shall provide public notice pursuant to R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Department for a period of 30 days from the date of publication of the notice. In addition, if the Department determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to R18-1-401(B);~~
 5. ~~If the Department reaffirms or revises a decision pursuant to subsection (H), the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned; and~~
 6. ~~When public notice is required under this subsection, the Department shall also provide written notice to the applicable Designated Water Quality Management Planning Agency.~~
- R18-10-109. Application Process**
- A. ~~Eligible applicants entities shall apply to the Board for each type of financial assistance on forms provided by the Board.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

Applications shall be made at times specified by the Board in special mailings or in the Intended Use Plan.

- B. The Board shall determine when an application is complete and correct. In making such determination, the Board shall consider the application form and supporting documents which demonstrate compliance with R18-10-103.
- C. After a determination has been made that an application is complete and correct under pursuant to subsection (B), the Authority may enter into a financial assistance agreement with the applicant. The Authority shall enter into financial assistance agreements consistent with the Priority List and the availability of money in the fund.

R18-10-110. Federal Requirements

- A. The Board shall identify federal requirements applicable to each project pursuant to the Clean Water Act.
- B. ~~Combined sewer overflow projects under § 201(n)(1) of the Clean Water Act shall not be eligible for financial assistance from the fund.~~
- C. ~~First Use and Equivalency Projects shall comply with §§ 201(b), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), and 201(o) of the Clean Water Act. Applicants shall include the evaluations and documents required by those sections in the facility plan in order to obtain Department approval pursuant to subsection (H) of this Section.~~
- D. ~~First Use and Equivalency Projects shall be subject to the limitations contained in §§ 201(g)(1), 204(a)(1), 204(a)(2), 211, and 513 of the Clean Water Act. Appropriations by the U.S. Congress that modify the limitations may be accepted by the Board.~~
- E. ~~First Use and Equivalency Projects shall demonstrate compliance with § 204(d)(2) of the Clean Water Act by fulfilling the requirements of this subsection. On the date one year after project completion, the owner of the project shall certify to the Department whether or not the project meets the design specifications, effluent limitations, and permit conditions contained in the financial assistance agreement and any permits issued by the Department for the project. If the owner cannot certify that the project meets design specifications, effluent limitations, and permit conditions, any failure to meet design standards, effluent limitations, and permit conditions shall be corrected to allow affirmative certification at other than fund expense.~~
- F. ~~First Use and Equivalency Projects shall comply with § 218 of the Clean Water Act. Compliance with § 218(a), (b), and (c) shall be demonstrated in the facility plan pursuant to subsection (H) of this Section. Consistent with 218(c), all projects costing more than \$10 million shall include a value engineering review as part of the plans and specifications submitted to the Department for approval. Value engineering recommendations shall be implemented to the maximum extent feasible.~~
- G. ~~First Use and Equivalency Projects shall demonstrate compliance with § 204(b)(1) of the Clean Water Act by fulfilling the requirements of this subsection. Prior to approval of an assistance agreement by the Board, the applicant shall submit its existing or proposed user charge system and sewer use ordinance to the Department for approval.~~
 - 1. ~~The sewer use ordinance or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not~~

~~contain toxics or other pollutants in amounts or concentrations that will allow any of the following to occur:~~

- a. ~~Endanger public safety and the physical integrity of the treatment works;~~
- b. ~~Cause violation of effluent or water quality limitations; or~~
- c. ~~Preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.~~

- 2-B. ~~The If applicable, a user charge system shall be designed to produce adequate revenues required for operation and maintenance, including replacement. It shall provide that each user which discharges discharging pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay proportionately for such increased cost. The user charge system shall be based on either actual use under subparagraph (a) of this paragraph, ad valorem taxes under subparagraph (b) of this paragraph, or a combination of the two.~~

- a. ~~An applicant's user charge system based on actual or estimated use of wastewater treatment services shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.~~
- b. ~~An applicant's user charge system which is based on ad valorem taxes may be approved if all of the following requirements are met:~~
 - i. ~~On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the applicant's service area and the applicant has continued to use that system;~~
 - ii. ~~The ad valorem user charge system distributes the operation and maintenance, including replacement, costs for all treatment works in the applicant's jurisdiction to the residential and small non-residential user class, including at the applicant's option nonresidential, commercial, and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works, in proportion to the use of the treatment works by this class;~~
 - iii. ~~Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance, including replacement, of the treatment works based upon charges for actual use; and~~
 - iv. ~~The applicant demonstrates both that it possesses the legal authority to impose such a tax and that the tax has been legally authorized by the applicant's governing body.~~
- c. ~~Each user charge system shall provide that each user be notified, at least annually and in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- d. ~~Each user charge system shall include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance, including replacement, of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy, and administration.~~
- e. ~~The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users, such as infiltration and inflow, be distributed among all users based upon either of the following:~~
- ~~i. In the same manner that it distributes the costs for their actual use; or~~
- ~~ii. Under a system which uses one or any combination of the following factors on a reasonable basis:~~
- ~~(1) Flow volume of the users;~~
- ~~(2) Land area of the users;~~
- ~~(3) Number of hookups or discharges of the users; and~~
- ~~(4) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.~~
- f.C. After completion of building a project, revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, shall be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.
- g.D. One or more municipal legislative enactments or other appropriate authority shall incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this Section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.
- h. ~~The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of 204(b)(1)(A) of the Clean Water Act and this Section.~~
- i. ~~A user charge system which imposes a lower charge for low income residential users shall be approved by the Department if the system was adopted after public notice and hearing.~~
3. ~~The applicant shall adopt its sewer use ordinance and implement its user charge system before the treatment works is placed into operation. Further, the applicant shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.~~
- H. ~~First Use and Equivalency Projects shall submit to the Department a facility plan prior to approval of financial assistance. The Department shall review the facility plan and approve it if the requirements of this subsection are met.~~
1. ~~Facilities planning consists of those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act. Facilities planning shall investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area, it shall demonstrate that the selected alternative is the most economical means of meeting the applicable effluent, water quality, and public health requirements over the design life of the treatment works while recognizing environmental and other non-monetary considerations. For sewer communities with a population of 10,000 or less, consideration shall be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, or overland flow land treatment. For unsewered portions of communities of 10,000 or less, consideration shall be given to onsite systems. The facility plan shall also demonstrate that the selected alternative is implementable from legal, institutional, financial, and management standpoints.~~
2. ~~A completed facility plan shall include all of the following:~~
- a. ~~A description of both the proposed treatment works and the complete waste treatment system of which it is a part;~~
- b. ~~A cost effectiveness analysis of the feasible conventional, innovative, and alternative wastewater treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements over the design life of the treatment works while recognizing environmental and other non-monetary considerations. The planning period for the cost effectiveness analysis shall be 20 years. The monetary costs to be considered shall include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The Board shall establish the discount rate to be used in the cost effectiveness analysis. The population forecasting in the analysis shall be consistent with the official state and county projections prepared by the Arizona Department of Economic Security and adopted by the Designated Water Quality Management Planning Agency. A cost effectiveness analysis shall include all of the following:~~
- i. ~~An evaluation of alternative flow reduction methods;~~
- ii. ~~A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;~~
- iii. ~~An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;~~
- iv. ~~An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;~~
- v. ~~A consideration of systems with revenue generating applications;~~
- vi. ~~An evaluation of opportunities to reduce use of, or recover, energy; and~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- vii. ~~Cost information on total capital costs and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;~~
 - c. ~~A demonstration of the non-existence or possible existence of excessive infiltration and inflow in the sewer system;~~
 - d. ~~An analysis of the potential open space and recreation opportunities associated with the project;~~
 - e. ~~An evaluation of the environmental impacts of alternatives conducted pursuant to R18-10-108;~~
 - f. ~~An evaluation of the water supply implications of the project; and~~
 - g. ~~For the selected alternative, a concise description at an appropriate level of detail, including all of the following:~~
 - i. ~~Relevant design parameters;~~
 - ii. ~~Estimated capital construction and operation and maintenance costs, and a description of the manner in which local costs will be financed;~~
 - iii. ~~Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;~~
 - iv. ~~Cost impacts on wastewater system users;~~
 - v. ~~Institutional and management arrangements necessary for successful implementation; and~~
 - vi. ~~If the selected alternative does not include the reuse or recharge of a major portion of wastewater, there shall be an explanation of why a reuse or recharge alternative was not selected.~~
- I. ~~First Use and Equivalency Projects shall undertake all necessary affirmative steps to assure that small, minority, and women's businesses are used when possible and shall report the level of participation for such businesses to the Board. The affirmative steps shall include:~~
- 1. ~~Placing qualified small, minority, and women's businesses on solicitation lists;~~
 - 2. ~~Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;~~
 - 3. ~~Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women's businesses;~~
 - 4. ~~Establishing delivery schedules, where the requirements of the work permit, which encourage participation by small, minority, and women's businesses;~~
 - 5. ~~Using appropriate services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and~~
 - 6. ~~Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (1)(1) through (5).~~
- J. ~~First Use and Equivalency Projects shall meet both of the following requirements:~~
- 1-E. ~~The applicant shall demonstrate the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction. This demonstration shall include an explanation of the roles and responsibilities of the local governments involved, how construction, operation, and maintenance of the facilities will~~

be financed, a current estimate of the cost of the facilities, and a calculation of the annual costs per household. It shall also include a written certification signed by the applicant that the applicant has both analyzed the costs and financial impacts of the proposed facilities and has the capability to finance and manage their construction, operation, and maintenance in accordance with this Article; and

- 2-E. ~~The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment facility project.~~

K.G. ~~First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, and all other applicable federal laws.~~

R18-10-111. Project Construction

- A. ~~Construction of a wastewater treatment facility project shall conform to all of the following requirements: of the Department.~~
- 1. ~~The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:~~
 - a. ~~An on-site inspection by the Department;~~
 - b. ~~The development by the applicant or recipient of a sludge management use and disposal plan; and~~
 - c. ~~A review of all set back requirements by the Department.~~
 - 2. ~~Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:~~
 - a. ~~All easements and rights of way have been obtained;~~
 - b. ~~All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.; and~~
 - c. ~~All required approvals and permits have been obtained from the following entities:~~
 - i. ~~The Department, including the requirements contained in A.A.C. Title 18, Chapter 9; and~~
 - ii. ~~Applicable federal, state, and local authorities as related to:~~
 - (1) ~~Leases;~~
 - (2) ~~Zoning permits;~~
 - (3) ~~Building permits;~~
 - (4) ~~Flood plain approvals;~~
 - (5) ~~Air quality permits; and~~
 - (6) ~~Solid waste approvals.~~
 - 3. ~~During construction of wastewater treatment facilities, both of the following requirements shall be met:~~
 - a. ~~All work shall be conducted in compliance with the requirements of A.A.C. Title 18, Chapter 9; and~~
 - b. ~~Construction management and inspection shall be under the direct supervision of a qualified registered professional engineer.~~
 - 4. ~~Upon project completion, all of the following requirements shall be satisfied:~~
 - a. ~~The project shall receive a final inspection and obtain all certifications and approvals required by A.A.C. Title 18, Chapter 9;~~
 - b. ~~The recipient shall accept the project in writing;~~
 - c. ~~Any required operation and maintenance manual shall be completed; and~~

~~d. As built plans and specifications shall be submitted to the Department and the recipient.~~

~~5. One year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.~~

B. Any construction associated with a Nonpoint Source Program project shall be consistent with the plan which is the basis of the project or as specified in the financial assistance agreement. In addition, the applicant or recipient shall obtain all necessary approvals and permits for any construction requiring approvals and permits as identified in subsection (A) (2)(c) of this Section.

R18-10-112. Fund Disbursements and Repayments

A. Disbursements from the fund shall be in accordance with the financial assistance agreement and incurred project expenses, ~~which at a minimum shall be based on payment intervals as related to work progress and incurred expense.~~

B. The Authority shall charge a late payment to any loan repayment 30 days past the due date and every 30 days thereafter. The Authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).

C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board or EPA, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and Title VI of the Clean Water Act.

~~D. If a recipient has received financial assistance under this Article for facility planning and preparation of plans, specifications, and estimates for the building of treatment works and subsequently receives both a grant under § 201(g) of the Clean Water Act for the construction of such treatment works and an allowance under § 201(l)(1) of the Clean Water Act, the recipient shall promptly repay the financial assistance to the extent of the allowance.~~

R18-10-113. Fund Administration

A. The Board ~~may take from the fund~~ may use up to 4% of all federal capitalization grant awards to pay the reasonable costs of both administering the fund and conducting activities under this Article.

B. The Board may also require a recipient to pay a proportionate share of the expenses of administering the fund. Such payments shall be deposited in an account separate from the fund and shall be used for the payment of the reasonable costs of administering the fund in excess of the 4% limitation described in subsection (A) or may be used as state match.

R18-10-114. Intended Use Plan and Interest Rate Determinations

A. The Board shall publish an Intended Use Plan for each year in which it is anticipated that financial assistance will be provided for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible political subdivision or eligible entity name, type of project, type of financial assistance, amount of financial assistance, and interest rates to be charged. The Intended Use Plan shall also identify first use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as one of the required documents to obtain a grant under Title VI of the Clean Water Act, the Intended Use Plan shall include such additional information as required.

B. In establishing interest rates for loans made under this Article, the Authority:

1. May use target interest rates in those years when the state match must be obtained by the sale of bonds provided that when target rates are used in an Intended Use Plan, both of the following requirements shall be met:
 - a. The target rates shall be identified as such; and
 - b. Actual rates shall be adopted by the Authority prior to the approval of any loan repayment agreements;
2. Shall consider the cost of any money used in the fund, prevailing market rates, the recommendations of financial advisors, and fund growth;
3. Shall not establish a rate which exceeds prevailing market rates for similar types of loans; and
4. Shall not establish a rate which is less than is needed to operate the fund at cost.

C. The Authority may offer a zero interest rate or an interest rate lower than that established pursuant to subsection (B) only when all of the following conditions are met:

1. The assistance is for a project with a priority class rating of A, B, or C, as determined pursuant to R18-10-105;
2. The applicant demonstrates that the project cannot proceed without a reduced interest rate; and
3. The reduced interest rate will not result in an operating loss to the fund.