

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY STATE ASSISTANCE PROGRAMS

#### PREAMBLE

1. **Sections Affected**

	<b><u>Rulemaking Action</u></b>
Article 8	Amend
R6-13-801	Amend
R6-13-802	Amend
R6-13-803	Repeal
R6-13-803	Renumber
R6-13-803	Amend
R6-13-804	Renumber
R6-13-804	Amend
R6-13-805	Renumber
R6-13-805	Amend
R6-13-806	Renumber
R6-13-806	Amend
R6-13-807	Renumber
R6-13-807	Amend
R6-13-808	New Section
R6-13-809	Amend
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. §§ 41-1954(A)(3) and 46-134(12)  
Implementing statutes: A.R.S. §§ 46-241 through 46-241.05  
Statute authorizing the exemption: Laws 1997, Ch. 300, § 74(A)
3. **The effective date of the rules:**

August 4, 1997
4. **A list of all previous notices appearing in the Register addressing the exempt rules:**

None
5. **The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Vista Thompson Brown  
Address: 1789 West Jefferson, Site Code 837A  
Phoenix, Arizona 85007  
or  
P.O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005  
Telephone: (602) 542-6555  
Fax Number: (602) 542-6000
6. **An explanation of the rule, including the agency's reason for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

Laws 1997, Ch. 300, § 74(A) (SB 1357) gives the Department an exemption from the Administrative Procedure Act for the purpose of developing or revising rules to implement the requirements of SB 1357.

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7. 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.
8. The summary of the economic, small business, and consumer impact:  
Because these rules are exempt from the Administrative Procedure Act under Laws 1997, Ch. 300, § 74(A), the Department did not prepare an economic impact statement.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
Not applicable.
10. A summary of the principal comments and the agency response to them:  
Not applicable.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
Not applicable.
13. Was this rule previously adopted as an emergency rule?  
No
14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY

STATE ASSISTANCE PROGRAMS

**ARTICLE 8. SHORT-TERM CRISIS SERVICES  
EMERGENCY ASSISTANCE**

Section

- R6-13-801. Definitions  
R6-13-802. Application Procedures  
~~R6-13-803. Exhaustion of Funds~~  
R6-13-803 R6-13-804. General Eligibility Requirements  
R6-13-804 R6-13-805. Financial Eligibility Requirements;  
Countable Income  
R6-13-805 R6-13-806. Emergent Need Eligibility Requirements  
R6-13-806 R6-13-807. Types of Assistance; Duration  
R6-13-807 R6-13-808. Payments  
R6-13-808. Notification  
R6-13-809. Complaints, Hearings, and Appeals

**ARTICLE 8. SHORT-TERM CRISIS SERVICES  
EMERGENCY ASSISTANCE**

**R6-3-801. Definitions**

The definitions in A.R.S. § 46-241 and following definitions apply in this Article.

In this Article the following definitions apply unless the context otherwise requires:

1. "Basic necessities" means the situations or possessions necessary to maintain a safe and healthy living environment, including shelter, food and clothing.
2. "Case plan" means a course of action that is agreed upon by a person receiving emergency assistance benefits and a caseworker and designed to resolve the person's lack of basic necessities.
- 2.3. "Child" means a person under the age of 18 years.
- 3.4. "Contract" means an executed agreement with specified terms and limits between the Department and a government agency or a private entity business for the purposes of delivering goods or services for the Department for monetary reimbursement.
- 4.5. "Contract provider" "Contract agency" means a public or private entity with which the Department has a contract to

provide goods or services for recipients of short-term crisis emergency services.

- 5.6. "Department" means the Department of Economic Security, Community Services Administration.
- 6.7. "Diagnosis" means an opinion rendered by a doctor of medicine, a doctor of osteopathy, or a psychologist certified by either the Arizona Board of Psychologist Examiners or by the Department of Education.
- 7.8. "Disabled person" means a person who has been diagnosed as having a physical or mental impairment which substantially limits 1 one or more of that person's major life activities.
- 8.9. "Elderly person" means a person 60 years of age or older.
10. "Emergency assistance" means a benefit which is distributed in the form of vendor payments or warrants and which is paid on behalf of an eligible household and utilized to purchase basic necessities designated in R6-13-807(A) and (B).
11. "Emergent need" means a lack of basic necessities which was caused by an unforeseen and unplanned circumstance and which requires immediate action to protect the health or safety of a household.
- 9.12. "Federal Poverty Guidelines" means the national guidelines which designate the amount of income that signifies poverty, and which are issued by the United States Department of Health and Human Services and published in the *Federal Register*, 58 Fed. Reg. 8287 through 8288, February 12, 1993, and which are incorporated herein by reference and are on file with the Secretary of State.
- 10.13. "Homeless person" means a person who lacks a fixed, regular, and adequate nighttime residence, or a person who has primary nighttime residence in a building used for temporary sleeping accommodations but does not include a person who is imprisoned or otherwise detained in a government facility under federal or state law.
- 11.14. "Household" means all adults and children who reside live together in the same dwelling.

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- 12.15. "Major life activities" means activities necessary to care for one's self through performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.
- 13.16. "Resident" means a person who dwells and intends to remain in Arizona.
14. "Self-sufficiency Diversion Option" means cash assistance option offered to certain TANF applicants pursuant to A.R.S. § 46-353.
15. "Short-term Crisis Services" means a benefit which is distributed in the form of vendor payments or warrants, issued on behalf of an eligible household, for the household's basic necessities.
16. "TANF" means Temporary Assistance for Needy Families, which is assistance granted under section 403 of Title IV of the Social Security Act as it exists after August 21, 1996 (A.R.S. § 46-101(20)).
17. "Temporary sleeping accommodations" means a building that which is publicly or privately operated for the purposes of providing overnight shelter to a homeless person or domestic violence victim and includes homeless shelters and domestic violence shelters, who lacks a permanent home including but not limited to homeless shelters, domestic violence shelters, transitional housing for the mentally ill and homeless institutions.
18. "Unforeseen Unplanned expenses" means living costs which were unexpected and cannot be avoided.
19. "Vendor agreement" means a written agreement between the Department and a provider proprietor of goods or services who has agreed in which the proprietor agrees to accept reimbursement from the Department on behalf of the short-term crisis services emergency assistance recipient.
20. "Work day" means Monday through Friday excluding Arizona state holidays.

**R6-13-802. Application Procedures**

- A. To apply for short-term crisis services, emergency assistance an applicant shall:
1. Participate in a face-to-face interview with an a-designated employee of 1 of the Department's contract agency agencies in the applicant's geographic area; and
  2. File with the Department a written application on a Department form with the contract agency prescribed by and available from the Department at no charge; and
  3. Provide the contract agency with the information listed in subsections (C) and (D).
- B. The completed application form shall contain the following information:
1. For With respect to the applicant and all household members:
    - a. Name, address, and telephone number; and,
    - b. Personal information, including citizenship, residency, but not limited to date of birth, social security number, gender, sex and ethnicity; and
    - c. Gross monthly countable income as defined in R6-13-805 R6-3-804;
  2. Relationship of all household members; and,
  3. The short-term crisis service emergency assistance benefits which the household is requesting and the reason services are needed; and
  4. For all household members age 16 and older an employment history for 30 days preceding the date of application; and
  5. The applicant shall provide information regarding the household members' application for short-term crisis ser-

vices and TANF cash assistance during the 12 months preceding the date of application; and

6. The applicant's signature and date of application.
- C. The applicant shall provide documentation of the employment history and countable income required by subsection (B)(1)(c) and (B)(4), where and when employed for the preceding 30 days for all household members 16 years of age and over and of all countable income as defined in R6-3-804.
- D. The applicant shall provide information to the Department regarding applications for emergency assistance or crisis services during the previous 12 months to the Department for services.
- D.E. The Department's contract provider agency shall close an incomplete application if the applicant does not provide all required information responded within 5 10 business days after the application postmark date of written notification of deficiencies.
- E.E. An applicant whose file has been closed and who later wants subsequently desires services shall submit a new application.
- E.G. Within 15 work days of the date of receiving a completed application, the Department's contract provider shall send the applicant written notification of eligibility for services within fifteen business days of the date of receiving a completed application.

**R6-3-803. Exhaustion of funds**

1. The Department shall give contract agencies a monthly allocation of emergency assistance funds.
2. A contract agency shall deny all requests for emergency assistance when its monthly allocations of funds is exhausted.

**R6-13-803 R6-3-804. General Eligibility Requirements**

- A. To be eligible for short-term crisis services, emergency assistance a person shall be:
1. Reside in A resident of the state of Arizona;
  2. A United States citizen an alien lawfully admitted to the United States for permanent residence, or an alien lawfully admitted to the United States and residing here under color of law;
  - 2.3. Have an Experiencing a current or anticipated emergent need that can be met by the provision of at least 1 of the types of assistance defined in R6-13-807 R6-3-806; and,
  - 3.4. Lack income and resources Unable to meet the emergent need with their own income or resources.
- B. To be eligible for emergency assistance a person shall participate in developing and executing a case plan to prevent the emergent need from reoccurring.
- B. The following persons are ineligible for short-term crisis services:
1. A Native American who resides on a reservation.
  2. A person being sanctioned by the TANF program, and
  3. A person receiving benefits under the self-sufficiency diversion option.

**R6-13-804 R6-3-805. Financial Eligibility Requirements; Countable Income**

- A. To be eligible for short-term crisis services, emergency assistance a person must be living in a household that meets the following requirements on the date of application:
1. The At the time of application a household's total gross countable monthly income for the previous 30 thirty days, including the day the application does not for assistance is made, shall not exceed 125% of the Federal Poverty Guidelines; or,

2. ~~For households with~~ ~~Notwithstanding subsection (A)(1), when the household includes an elderly or disabled person, the household's total gross countable income for actually received during the previous 30 thirty days, including the day of the application does for assistance is made, shall not exceed 150% of the Federal Poverty Guidelines.~~
- B.** ~~When~~ For the purpose of determining financial eligibility, the Department shall include countable income of all household members ~~except as provided in subsection (C).~~ Countable income includes:
- C.** For the purpose of determining financial eligibility, countable income shall include:
1. Earned income;
  2. Governmental cash benefits;
  3. Dividends over \$50 per month;
  4. Interest income over \$50 per month
  5. Child support;
  6. Alimony;
  7. Net rental income;
  8. Annuities;
  9. Royalties;
  10. Strike benefits;
  11. Workers' compensation;
  12. Unemployment insurance benefits;
  13. Monthly payment from real property sales;
  14. Proceeds from the sale of a house or car;
  15. Military allotments;
  16. Grants and scholarships that do not need to be repaid, excluding funds identified for tuition and books;
  17. Work-study money;
  18. Net gambling or lottery winnings;
  19. Lump sum payments;
  20. Mileage allowances; and,
  21. Cash gifts not specifically excluded in subsection (D).
- C.D.** ~~For the purpose of determining financial eligibility,~~ Countable income ~~does~~ shall not include:
1. The value of food stamps;
  2. Any portion of an education grant or scholarship used for tuition and books;
  3. Earned income of a child under 16 years of age;
  4. Cash gifts of \$50 or less per month per household member;
  5. Tax refunds;
  6. ~~Non-cash~~ benefits ~~provided made~~ on behalf of household member but not paid directly in the name of the household member, including ~~but not limited to~~ vouchers for food, clothing, or housing;
  7. Loans that need to be repaid;
  8. Money which a household member receives and uses for the care and maintenance of a person who is not a household member;
  9. Stipends from senior companion programs; and
  10. Other income not specifically listed as countable.

**R6-13-805 R6-3-806. Emergent Need Eligibility Requirements**

- A.** In order to be eligible for emergency assistance, a person shall be in a part of a household which is experiencing or which expects to experience:
1. Homelessness ~~that was caused by one or more of the following:~~ ~~or~~
    - a. Domestic violence
    - b. Loss of income
    - c. Unforeseen circumstances that increase the household's expenditures, making it impossible to meet

- d. ~~A condition that endangers the health or safety of a household member;~~
  - e. ~~Other similar emergency situations.~~
2. ~~Interruption of heating or cooling of the household's dwelling.~~
- B.** ~~The homelessness or anticipated homelessness described in subsection A shall have been the result of:~~
1. ~~A natural or man-made disaster;~~
  2. ~~A separation of the family which resulted from domestic violence and which prevents the applicant from returning home or obtaining resources;~~
  3. ~~Abandonment, divorce, or death;~~
  4. ~~A theft of money or possessions within the past 3 months, which was reported to the police;~~
  5. ~~Civil disorders, crimes or violence;~~
  6. ~~Inadequate income to pay living costs if the household has agreed to participate in case management to stabilize the household budget;~~
  7. ~~Being stranded away from home;~~
  8. ~~The lack of a home for a child returning from foster care or institutional placement;~~
  9. ~~Loss or reduction of income or public assistance benefits or delay in receiving public assistance benefits;~~
  10. ~~Unexpected and unplanned expenses that caused lack of resources for the emergent need;~~
  11. ~~A condition which endangers the health or safety of the household;~~
  12. ~~Loss of employment that was not due to voluntary termination unless there was good cause; or,~~
  13. ~~Other similar emergency situations as approved by the Department.~~
- C.** ~~The interruption or anticipated interruption of heating or cooling described in subsection A shall have been the result of:~~
2. ~~Interruption of heating or cooling of the household's dwelling that was caused by:~~
    - a. ~~Domestic Violence.~~
    - b.1. ~~Loss or reduction of income or public assistance benefits,~~
  2. ~~Unexpected and unplanned expenses that caused lack of resources for the emergent need,~~
    - c. ~~Unforeseen circumstances that increased the household's expenditures making it impossible to meet the following months' budgeted expenditures without short-term crisis services.~~
    - d.3. ~~A condition that which endangers the health or safety of a the household, or member;~~
  4. ~~Loss of employment for reasons other than voluntary termination without good cause.~~
    - e. ~~Other similar emergency situations.~~

**R6-13-806 R6-3-807. Types of Assistance; Duration**

- A.** ~~The Department, through its contract providers, shall provide short-term crisis services~~ Emergency assistance to alleviate or prevent homelessness shall be provided through payments for:
1. ~~Emergency shelter at homeless shelter facilities, hotels, or motels;~~
  2. ~~Emergency shelter at homeless shelter facilities;~~
  - 2.3. Rent or rental deposits to move homeless families into permanent housing;
  - 3.4. Rent or mortgage payments for household that anticipate homelessness; or
  - 4.5. ~~Special needs Auto repair, eyeglasses, or dental work necessary to continue or secure employment when no other resources are available. "Special needs" include auto repair, dental work, and eyeglasses.~~

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B. ~~The Department shall provide short-term crisis services. Emergency assistance to alleviate or prevent the loss of heating or cooling shall include through payments for:~~

1. Utility bill assistance;
2. Rent when utilities are included;
3. Utility deposits; or
4. Repair or replacement of appliances needed for a safe and healthy living environment, such as water heaters, cooking stoves, microwaves, furnaces, refrigerators, evaporative coolers, and water or sewer systems, of water heaters, cooking stoves, furnaces, refrigerators, telephones, evaporative coolers, and water or sewer systems.

C. ~~A household is eligible to receive short-term crisis services only 1 time in a 12-consecutive-month period. The contract provider agency shall determine what specific short-term crisis services to provide a household based on the information in the household's application. Emergency assistance shall not continue beyond 3 consecutive months in a 12 consecutive month period. The length of assistance provided to a household shall be determined by the household's need. The 3 consecutive month period begins on the day of application for emergency assistance.~~

**R6-13-807 R6-3-808. Payments**

A. ~~In a 12-month period, as described in R6-13-806(C), the Department payment on behalf of an eligible household shall not exceed the amounts listed in this Section. Case Payment Limit.~~

1. ~~For emergency shelter at homeless facilities, no more than \$5,000. Total payments for actual costs of emergency shelter at hotels, motels or homeless shelter facilities for a particular household shall not exceed \$2,250.~~
2. ~~For utility assistance, the amount of the bill or \$500, whichever is less.~~
2. ~~Utility bill assistance shall be based on minimum and maximum payments described in subparagraphs (A) and (B) below. If a household's bill amount falls below the minimum payment, the utility company shall be paid the minimum amount and the balance shall be applied to the next month's bill. Only one payment shall be made in a 12 consecutive month period.~~

a. ~~The payment schedule described in this subsection applies to households living in Cochise, Coconino, Gila, Graham, Navajo, Pima, Pinal, Santa Cruz and Yavapai counties. If the household's income falls between federal poverty guideline percentages of:~~

- 1) ~~0% and 50%, the minimum payment is \$80 and the maximum payment is \$300;~~
- 2) ~~51% and 80%, the minimum payment is \$60 and the maximum payment is \$200;~~
- 3) ~~81% and 110%, the minimum payment is \$40 and the maximum payment is \$150; or,~~
- 4) ~~111% and 150% there is no minimum payment and the maximum payment is \$150.~~

b. ~~The payment schedule described in this subparagraph applies to households living in Apache, Greenlee, La Paz, Maricopa, Mohave and Yuma counties. If the household's income falls between federal poverty guideline percentages of:~~

- 1) ~~0% and 50%, the minimum payment is \$90 and the maximum payment is \$350;~~
- 2) ~~51% and 80%, the minimum payment is \$70 and the maximum payment is \$250;~~
- 3) ~~81% and 110%, the minimum payment is \$200; or,~~
- 4) ~~111% and 150%, there is no minimum payment and the maximum payment is \$200.~~

3. ~~For federally funded Payments for a utility, appliance repair or replacement and deposit, replacement shall not exceed the actual cost or \$600 whichever is less, the actual cost or \$1200, whichever is less.~~

4. ~~For state-funded utility repair, replacement, and deposit, the actual cost or \$600, whichever is less.~~

5.4. ~~For Payments for rent, rental deposits, or mortgage assistance, shall not exceed the actual cost or \$1,500 per household whichever is less. Each monthly payment shall not exceed \$500.~~

6.5. ~~For special needs as described in R6-13-808(A)(4), the actual cost or \$500, whichever is less. Payments for auto repairs, dental work and eyeglasses shall not exceed the actual costs or \$500 for any combination of this assistance whichever is less.~~

B. ~~The Department shall pay for all short-term crisis services through warrants to contract agencies or companies with which the contract agency has a written or verbal vendor agreement. Types of Payments:~~

~~All payments shall be made through warrants to social service agencies with which the Department has a written contract or to companies with which the Department has a written vendor agreement.~~

**R6-13-808. Notification**

~~The contract agency which the Department has a written contract with shall be responsible for sending the applicant a decision letter upon determination of eligibility.~~

**R6-13-809 R6-3-810. Complaints, Hearings, and Appeals**

A. ~~The following decisions are appealable:~~

1. ~~Denial of eligibility; and~~
2. ~~The amount of assistance awarded; and~~
- 3.2. ~~Termination or reduction of assistance.~~

B. ~~To appeal, an applicant shall file a written request for appeal with the contract agency within 10 working days of the postmark date of the letter denying eligibility or affecting benefits.~~

C. ~~The Department shall conduct appeals. All appeals shall be conducted pursuant to the procedures set forth in A.A.C. R6-3-1208(G) through (N).~~

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY  
REMEDIAL ACTION

PREAMBLE

1. **Sections Affected**  
Article 4.  
R18-7-401
- Rulemaking Action**  
New Article  
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 and laws: A.R.S. §§ 49-104(A)(17), (B)(17), and (C), and Laws 1997, Chapter 296 (Senate Bill 1304)  
Implementing law: Laws 1997, Chapter 296, §§ 3(E) and(G), 10, and 11 (Senate Bill 1304)
3. **The effective date of the rules:**  
August 5, 1997
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**  
Notice of Proposed Rulemaking                      3 A.A.R. 1912, July 18, 1997  
Notice of Rulemaking Docket Opening              3 A.A.R. 1937, July 18, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name:                      George Tsiolis  
   or  
   Martha Seaman  
  
Address:                    Department of Environmental Quality  
   3033 North Central Avenue  
   Phoenix, Arizona 85012  
  
Telephone:                (602) 207-2222  
  
Fax Number:               (602) 207-2251

6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The purpose of this exempt rulemaking is to implement Laws 1997, Chapter 296, which requires the Department to establish on an expedited basis a fee to support the processing and reviewing of submittals pertaining to remedial actions performed under the Greenfields Pilot Program. Under Laws 1997, Chapter 296, § 11, this rulemaking is exempt from the requirements of A.R.S. Title 41, Chapter 6; however, § 11 requires this exempt rulemaking to include a preamble with a summary of economic, small business, and consumer impacts.

A. Background for This Expedited Fee Rule

In recent years, the Arizona legislature has made efforts to encourage the redevelopment of underutilized properties including properties located in urban or industrialized areas (so-called "brownfields" sites). These efforts include the authorization of risk-based soil remediation standards using nonresidential exposure assumptions (Laws 1995, Chapter 232), the qualified exemption of lenders and fiduciaries from liability for WQARF and LUST sites (Laws 1996, Chapter 177), and the authorization of the Department to enter into qualified agreements with prospective purchasers of brownfields sites which provide the purchaser with a written release, covenant not to sue, and immunity from contribution claims for any potential liability for existing contamination (Laws 1996, Chapter 177).

Laws 1997, Chapter 296 establishes the Greenfields Pilot Program, which is intended to encourage the voluntary remediation of up to 100 soil-contaminated brownfields sites. The pilot program provides this encouragement by removing direct departmental involvement in the voluntary remediation in favor of a delegated approach with limited departmental oversight. Under the program, a remediation specialist certified by the Arizona Board of Technical Registration performs the remediation, ensures that applicable remedial action criteria are met, and certifies that no further remediation work is necessary at the site through the submittal to the Department of a "no further action" letter. The Department, in turn, supervises the program by ensuring the specialist is eligible for participation in the program, by ascertaining that the site is eligible for remediation under the program, and by auditing a percentage of the Greenfield's sites to determine whether the remediations are consistent with applicable remedial action criteria.

Laws 1997, Chapter 296 requires the Department to finance its involvement in the program through the collection of a fee. Based on the effective date of Laws 1997, Chapter 296, the Department anticipates that it will begin receiving Greenfields "no further action" letters requiring processing and review as early as August 15, 1997. The Department

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intends, therefore, to file this final expedited fee rule by August 8, 1997. According to Laws 1997, Chapter 296, § 11, this final expedited fee rule will be effective from the date it is filed with the Secretary of State until a permanent fee rule is filed in accordance with A.R.S. Title 41, Chapter 6.

The Department intends to formally propose the permanent fee rule by mid-September, 1997. The Department does not intend at present to propose additional rules relating specifically to the Greenfields Pilot Program, as the Department believes that the Greenfields session law is largely self-executing. However, the Department currently is examining the possibility of a single voluntary remediation program to address Greenfields remediations as well as voluntary remediations conducted pursuant to A.R.S. §§ 49-282.05 and 49-285(B). The Department may propose rules governing all voluntary remediations, as well as addressing the balance of the WQARF program amendments enacted in Laws 1997, Chapter 287, by late 1997 or early 1998.

**B. Specific Explanation of This Exempt Rule**

Laws 1997, Chapter 296, § 10(A) establishes a Greenfields program fund that is to be financed through legislative appropriations and from the fee that is the subject of this exempt rulemaking. Section 10(B) identifies the legislative appropriations as being \$170,000 from the general fund into the Greenfields fund through Fiscal Year 1999. Section 10(E) requires the fee to be sufficient to finance the cost of implementing and administering the Greenfields Pilot Program.

Based on the language of these provisions, the Department has determined that the initial \$170,000 are for start-up development of the Greenfields program, whereas the fee must cover the cost of implementing the program site-by-site.

Development of the program will include formulating procedures for ensuring the specialists and sites are eligible for participation in the Greenfields program, and for selecting remedial actions for auditing by the Department based upon the type of site and the level of contamination. Development also includes devising standard certification forms, reporting forms, and notification forms to be used during a Greenfields remediation. Finally, development includes the rule-making necessary to implement the Greenfields program.

Implementing the program site-by-site consists largely of departmental reaction to actions taken by the property owner and certified remediation specialist. At least 15 days prior to the performance of the voluntary remediation, the property owner and remediation specialist must submit an application to the Department which shows that the specialist is properly certified by the Board of Technical Registration and has adequate financial assurance based on the proposed scope of work. The application must also certify that the site in question has soil contamination that has not impacted groundwater and is 1 of the 1st 100 Greenfields sites. The property owner or specialist also must notify the public of the proposed remediation and submit a copy of the notice to the Department. The Department must process and review these submittals. If the Department determines that the specialist is qualified to perform the remediation and that the site is eligible for remediation under the Greenfields program, then the Department must notify the property owner or specialist not less than fifteen days after receiving the copy of the public notice that the specialist may begin the remediation. The Department must also identify which state environmental permits or approvals the property owner is not required to obtain during the performance of the remediation.

Following the performance of the remediation, the specialist must submit a "no further action" letter to the Department, a copy of the remediation report, and corresponding laboratory data packages. The Department must process and review this submittal. The specialist also must submit the Greenfields fee at this time, which the Department must process into the Greenfields program fund. Based on its review of the submittals, the Department must determine whether to conduct an audit of the remediation and, if necessary, must perform the audit within 180 days. The audit may include field inspection and soil sampling. The purpose of the audit is to determine whether the remediation was consistent with applicable remedial action criteria, as well as gather information generally to determine the efficacy of the pilot program. Based on the results of the audit, the Department may have to record a notice of revocation of the specialist's "no further action" letter and, if so, notify the Board of Technical Registration of the deficiencies in the remediation.

The Department has determined the fee for participating in the Greenfields Pilot Program will be \$2,200 per site. This fee is near the lower end of the range of fees charged by other states for participation in programs similar to the Greenfields program. The Department's assumptions behind the calculation of this fee and the reason for selecting 1 flat fee are presented in the summary of economic, small business, and consumer impacts, below.

**7. 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.

**8. The summary of the economic, small business, and consumer impact:**

Summary:

Laws 1997, Chapter 296 requires the Department to finance its involvement in the Greenfields Pilot Program through the collection of a fee. The Department has determined that the tasks involved in reviewing and processing Greenfields submittals and in performing an audit on a portion of the Greenfields sites is \$2,200 per site. The Department shall recover this cost by charging an equivalent fee of \$2,200 per Greenfields site, because charging 1 flat fee that spreads the cost of the site audits among all the sites will provide predictability which is necessary to encourage voluntary remediations of soil-contaminated brownfields sites. The alternative, which involves recovering the costs of performing a site audit only from those sites being audited, up to 6 months after the specialist's submission of the "no further action" letter, would result in an unplanned-for additional, significant financial burden on those persons who are audited. The financial unpredictability in such an approach

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could discourage persons and small businesses in particular from performing a voluntary remediation under the Greenfields program.

The economic impact of this exempt rulemaking is positive. The benefits of the program's facilitation through the charging of the fee outweigh the cost of the fee, because the program provides an avenue to redevelopment and economic revitalization of a property that is expected to be faster and less costly than already-existing routes to remediation which involve more extensive departmental oversight and review.

A. Identification of persons who will be directly affected by, bear the costs of, or directly benefit from the exempt rulemaking:

1. Owners of the brownfields site -- These persons include individuals, private businesses, municipalities, and other political subdivisions of the state who desire to remediate a brownfields soil-contaminated site using a certified remediation specialist under the Greenfields Pilot Program. These persons will benefit from the exempt rulemaking, because it provides an avenue toward obtaining a "no further action" letter that is potentially faster, involves less departmental oversight, and therefore involves less departmental review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).
2. State agencies that are involved in the implementation of the program -- The Department will assign staff to react to actions taken and submittals received from the certified remediation specialist, as described in Section 4 above. The Office of Administrative Hearings and the Attorney General's Office may be involved in challenges to actions taken by the Department pursuant to the Greenfields program, such as a challenge to the Department's revocation of a "no further action" letter based on a site audit.
3. Responsible parties as defined under A.R.S. § 49-283 -- These parties are persons who are responsible for the existing soil contamination at the brownfields site that is being remediated under the Greenfields Pilot Program. The extent of these persons' liability will be determined in part based on the remediation costs incurred by the property owner.
4. Newspapers of general circulation in the county where the brownfields site being remediated under the Greenfields Pilot Program is located -- These entities will benefit from the requirement that the remediation specialist publish a notice of the planned remediation in their newspapers.
5. General public -- Members of the general public will receive a substantial benefit from this rulemaking's facilitation of the redevelopment of soil-contaminated brownfields sites that are currently vacant, abandoned, or otherwise not realizing their full economic potential. Members of the public residing or working in the area of such sites will particularly benefit from the economic revitalization of the sites, from economic and quality-of-life standpoints. Taxpayers will benefit because facilitating private remediations under the Greenfields program will diminish the taxpayers' burden associated with public-financed remediations.

B. Cost-benefit analysis:

This cost-benefit analysis necessarily examines the costs and benefits of the program being financed by the fee that is the subject of this rulemaking, in addition to the costs and benefits of the fee itself.

1. Implementing agency -- The costs to the Department, the implementing agency, will be the costs of reacting and responding to submittals from the property owner and certified remediation specialist, the performance of audits on a portion of the sites remediated under the Greenfields program, and interaction with the Bureau of Technical Registration. The costs for implementing the Greenfields program are estimated as follows:

TABLE 1 - ESTIMATED TOTAL COSTS TO IMPLEMENT THE PROGRAM

	<u>Cost per Site</u>	<u>Extension</u>
100 Sites - Review and Processing	\$509 (see Table 2)	\$50,900
15 Audits by ADEQ, no Samples	\$2,461 (see Table 3)	\$36,915
10 Audits w/Contractor CRS, no Samples	\$3,363 (see Table 3)	\$33,360
10 Audits by ADEQ, w/Samples	\$6,552 (see Table 4)	\$65,520
5 Audits w/Contractor CRS, w/Samples	\$8,356 (see Table 4)	<del>\$41,780</del>
ESTIMATED TOTAL		\$228,745
ESTIMATED TOTAL AVERAGED PER SITE		<b>\$2,200</b>

CRS = certified remediation specialist

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TABLE 2 - ESTIMATED COST TO REVIEW AND PROCESS SUBMITTALS PER SITE  
 (NOT INCLUDING A SITE AUDIT)

Staff	Rate	Hours	Extension
Section Manager	\$59	0.25	\$15
Unit Manager	\$54	1.0	\$54
Project Manager	\$45	8.0	\$360
Clerk Typist III	\$20	4.0	\$80
ESTIMATED TOTALS		13.25	<b>\$509</b>

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

TABLE 3 - ESTIMATED COST TO PERFORM A FIELD AUDIT  
 WITHOUT FIELD VERIFICATION (SAMPLES)

Staff	Rate	Hours	Extension
Section Manager	\$59	1.5	\$89
Unit Manager	\$54	6.0	\$324
Hydrologist IV (CRS)	\$56	8.0	\$448
Hydrologist III	\$50	8.0	\$400
Project Manager	\$45	24.0	\$1060
Clerk Typist III	\$20	6.0	\$120
ESTIMATED TOTALS		53.5	<b>\$2,461</b>
(Substituting Contractor CRS)		(57.5)	<b>(\$3,363)</b>

CRS = certified remediation specialist

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

TABLE 4 - ESTIMATED COST TO PERFORM A FIELD AUDIT  
 WITH FIELD VERIFICATION (SAMPLES)

Staff	Rate	Hours	Extension
Section Manager	\$59	2.0	\$118
Unit Manager	\$54	8.0	\$432
Hydrologist IV(CRS)	\$56	16.0	\$896
Hydrologist III	\$50	24.0	\$1,200
Project Manager	\$45	32.0	\$1,440
Clerk Typist III	\$20	8.0	\$160
ESTIMATED LABOR TOTALS		90.0	\$4,246
Analytical: 4 samples for metals, PCBs, VOCs			\$2,180
Travel & Per Diem			\$126
ESTIMATED TOTAL			<b>\$6,552</b>
(Substituting Contractor CRS)		(98.0)	<b>(\$8,356)</b>

CRS = certified remediation specialist

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

The Department has elected to recover the estimated per-site cost of \$2,200 through an equivalent flat review fee of \$2,200 for each Greenfields site remediation. The 1-flat-fee approach was selected over approaches that involve

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site-specific billing based on unit rates, because those approaches do not provide the predictability that is necessary to encourage voluntary remediations of soil-contaminated brownfields sites.

For instance, the Department examined the possibility of charging (1) a flat fee for the administrative work associated with reviewing an initial Greenfields submittal to determine the eligibility of the site and the specialist, reviewing the public notice of planned remediation, notifying the specialist that it may begin the remediation, identifying which other approvals or permits the property owner will not be required to obtain, and reviewing and processing the "no further action" letter and supportive documentation; and (2) charging only those sites audited for the actual costs of the audit using unit rates for staff time, sampling equipment, and laboratory analyses. Using this approach to financing the program would have meant charging a flat fee to all participating property owners, and then, up to 6 months later surprising some of the owners with a notice that the Department has decided to audit their site and will be requiring the owner to pay an additional \$3,000 or more for an audit without field verification, or an additional \$7,000 or more for an audit with field verification. Such an approach is not only unpredictable, in that it would result in an unplanned-for additional, significant financial burden on the property owner, but also may give rise to the appearance of unfairness to the owner of the site selected for the audit. The property owner likely would challenge the audit based on a feeling of unfair surprise and a desire to avoid the additional cost. In general, any approach that does not inform the property owner of its liability to the Department up-front may discourage smaller businesses from performing a voluntary remediation under the Greenfields program. For these reasons, the Department shall charge an up-front, predictable, flat review fee of \$2,200 which spreads the projected cost of audits over all of the property owners participating in the Greenfields program.

There are no incremental benefits to the Department as a result of this rule. Fees to be paid by the certified remediation specialist or its employer are merely to reimburse the Department for the above costs; no profit margins are contemplated.

2. Other agencies directly affected by the exempt rulemaking -- An administrative appeal by the participating property owner concerning an action taken by the Department pursuant to the Greenfields program, including a decision to perform an audit or revoke a "no further action" letter, would result in costs to the Office of Administrative Hearings for convening the formal adjudication on the procedural or substantive validity of the appeal, and costs to the Attorney General's Office for representing the Department in the matter. These costs would, as usual, be covered by the respective budgets of those offices. These costs do not result from the charging of the fee itself.

There are no incremental benefits to the Office of Administrative Hearings and the Attorney General's Office as a result of this rule.

3. Political subdivision of this state directly affected by the exempt rulemaking -- If a political subdivision of this state desires to perform a remediation under this program, then its costs and benefits deriving from this rulemaking will be those costs and benefits discussed for private persons who are directly affected by the exempt rulemaking below.
4. Businesses directly affected by the exempt rulemaking -- If a business desires to perform a remediation under this program, then its costs and benefits deriving from this rulemaking will be those costs and benefits discussed for private persons who are directly affected by the exempt rulemaking below.

Newspapers will not be impacted by this rule; rather, newspapers will be impacted by the requirement in Laws 1997, Chapter 296 to publish the notice of planned remediation in the county where the brownfields site in question is located. There are no costs to these newspapers resulting from this rulemaking. Newspapers will derive the benefit from charging a fee for publishing the notice.

5. Private persons and consumers who are directly affected by the exempt rulemaking -- The cost to persons who are directly affected by the fee will be the cost of the fee itself. This fee should be outweighed by the benefit of being able to elect to perform a voluntary remediation through the use of a certified remediation specialist with minimal departmental oversight and less departmental review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).

Consumers probably will not be directly affected by the charging of the fee. Such consumers may be indirectly affected, as businesses performing a Greenfields remediation likely will pass the cost of the remediation, including the cost of the fee, onto persons consuming the business' products and utilizing the business' services. The indirect benefit to consumers, which is a cleaner environment and improved quality of life, will outweigh the disbursed impact felt as a result of the fee.

C. Probable impact on private and public employment:

1. Businesses directly affected by the exempt rulemaking -- There is little impact on private employment at businesses directly affected by the exempt rulemaking. Presumably, a business would have to divert \$2,200 of its revenues to finance its involvement in the Greenfields program; however, such a business would already have made the decision to expend substantial amounts of money, which might otherwise be used to compensate its employees, in the remediation of a brownfields site, so that the additional cost of the Greenfields fee would be relatively minimal.
2. Agencies directly affected by the exempt rulemaking -- There is no impact on public employment in the agencies affected by this exempt rulemaking. As previously indicated, the Department is required to finance its involvement through the collection of the fee; therefore, there are no additional costs to the Department that would divert revenues used to compensate its employees. Any impact of the Greenfields program on the Office of Administrative Hearings or the Attorney General's Office, discussed above, is the result of Laws 1997, Chapter 296, and not the fee used to finance implementation of the program established by that law.

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3. Political subdivisions directly affected by the exempt rulemaking -- There is little impact on political subdivisions directly affected by the exempt rulemaking. Presumably, a political subdivision that desires to perform a remediation under the Greenfields program would have to divert \$2,200 of its revenues to finance its involvement in the Greenfields program; however, such an entity would already have made the decision to expend substantial amounts of money, which might otherwise be used to compensate its employees, in the remediation of a brownfields site, so that the additional cost of the Greenfields fee would be relatively minimal.

D. Probable impact on small businesses:

1. Identification of small businesses subject to the exempt rulemaking -- Small businesses subject to the fee would be those that elect to undertake a voluntary remediation under the Greenfields program. Having made the decision to engage in a possibly costly voluntary remediation, it is likely that such a small business will benefit from the exempt rulemaking, because the rulemaking enables the business to perform the remediation through the use of a certified specialist with minimal departmental oversight and with less review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).
2. Administrative and other costs required for compliance with the exempt rulemaking -- The only costs required for compliance with this fee rule is the paying of the fee which is necessary to finance the sought-after program.
3. Description of methods the agency may use to reduce the impact on small businesses -- Laws 1997, Chapter 296 requires the Department to recoup all of its costs of implementing the Greenfields Pilot Program through the collection of the fee. The Department, therefore, does not have the discretion to exempt small business who wish to participate in the program from having to pay a fee. In order to lessen the impact to small business, however, the Department has elected to charge 1 flat fee for every Greenfields site, which spreads the cost of performing audits on a portion of those sites over all of the sites. This approach, as indicated above, will eliminate the possibility of an unexpected additional, significant financial burden on small businesses whose sites have been selected for an audit.

E. Statement of the probable effect on state revenues:

There may be a positive effect on the general fund, as any money received through collection of the fee that is not utilized in the implementation of the Greenfields program must be returned to the general fund on an annual basis. The Department, however, does not forecast any surplus in the near future, based on the projected demand for participation in the program.

F. Description of any less intrusive or less costly alternative methods of achieving the purpose of the exempt rulemaking:

The purpose of the exempt rulemaking is to finance the implementation of the Greenfields Pilot Program through the collection of a reasonable fee, as required under Laws 1997, Chapter 296. For reasons discussed above, the Department believes that the least costly alternative of achieving this purpose is to average the cost of implementing the program, including performing the required audits on a percentage of the sites, over all of the sites that may be remediated under the program. This approach will eliminate the possibility of an unexpected additional, significant financial burden on persons whose sites are selected for an audit.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There are no changes between the proposed fee rule and the final exempt fee rule.

**10. A summary of the principal comments and the agency response to them:**

**Comments:**

The Department received 2 comments on the proposed rulemaking. The City of Phoenix agreed that the cost of performing the audits should be spread over all of the Greenfields participants through the collection of 1 flat fee. However, the City of Phoenix raised a concern that the proposed fee of \$2,200 might be insufficient to cover the cost of a field audit that would require deep soil borings or other expensive sampling procedures.

**Agency Response:**

The Department considers field sampling to be an integral part of the audits mandated under the Greenfields session law. The per-site cost of \$2,200 includes the cost of departmental sample collection, portal-to-portal travel, and analysis conducted at the same time as the remedial activities conducted by the certified remediation specialist (for example, split sampling).

Moreover, the per-site cost of \$2,200 includes the cost of conducting additional audits beyond the minimum number of audits (25%) required under the session law. Some of the resources set aside for the additional audits could be diverted to pay for more extensive sampling at sites if such sampling is warranted.

It should be noted, however, that the Department does not intend to characterize a site during an audit. Site characterization is the responsibility of the certified remediation specialist, not the Department. If the Department determines that additional site characterization is necessary at a site, then the Department may conclude that the "no further action" letter submitted for the site is not justified by the supportive documentation accompanying the "no further action" letter. Again, the function of the Greenfields Pilot Program is to encourage voluntary remediations by removing direct departmental oversight of the remediation in favor of a delegated approach with limited departmental involvement.

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

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY

REMEDIAL ACTION

ARTICLE 4. VOLUNTARY REMEDIATION PROGRAM

Section

R18-7-401. Greenfields Pilot Program Fee

ARTICLE 4. VOLUNTARY REMEDIATION PROGRAM

R18-7-401. Greenfields Pilot Program Fee

A. A certified remediation specialist who participates in the Greenfields Pilot Program pursuant to Laws 1997, Chapter

296, and who submits the documentation that states that no further action is required to remediate the known releases on the site shall remit the review fee required under subsection (B) together with the documentation.

B. The Department shall charge a flat fee of \$2,200 per accepted site participating in the Greenfields Pilot Program.