NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES, HEALTH CARE INSTITUTIONS: LICENSURE

PREAMBLE

1. Section Affected — Rulemaking Action

R9-10-1011	Repeal
R9-10-1012	Repeal
R9-10-1013	Repeal
R9-10-1014	Repeal
R9-10-1015	Repeal
R9-10-1016	Repeal
R9-10-1017	Repeal
R9-10-1018	Repeal
R9-10-1019	Repeal
R9-10-1020	Repeal
R9-10-1021	Repeal
R9-10-1022	Repeal
R9-10-1023	Repeal
R9-10-1024	Repeal
R9-10-1025	Repeal
R9-10-1026	Repeal
R9-10-1027	Repeal
R9-10-1028	Repeal
R9-10-1029	Repeal
R9-10-1030	Repeal

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

   Authorizing Statute: A.R.S. § 36-136(F)

   Implementing Statute: A.R.S. §§ 36-405, 36-502, and 36-2023

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

   Name: Johnie Golden, Program Manager

   Address: Department of Health Services
   Health and Child Care Review Services
   1647 East Morten, Suite 240
   Phoenix, Arizona 85020

   Telephone: (602) 255-1127

   Fax: (602) 255-1225

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

   These rules had set forth the minimum requirements for the licensure of behavioral health service agencies but are now redundant and obsolete. Pursuant to Laws 1992, Chapter 301, § 61, and under an exemption from the provisions of A.R.S. Title 41,

Chapter 6, the Department adopted new rules in Title 9, Chapter 20, Behavioral Health Service Agencies: Licensure, which govern the licensure of behavioral health service agencies and replace Chapter 10, Article 10, in its entirety. The Department is repealing these rules because they are no longer used.

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:**
   There will be no economic impact on small businesses or consumers as the rule is no longer used to regulate behavioral health service agencies.

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: Johnie Golden, Program Manager

   Address: Department of Health Services
   Health and Child Care Review Services
   1647 East Morten, Suite 240
   Phoenix, Arizona 85020

   Telephone: (602) 255-1127

   Fax: (602) 255-1225

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:**
   The Department has not scheduled oral proceedings on this rule repeal action. The Department will schedule oral proceedings if 5 or more individuals request oral proceedings by submitting a written request to the individual named in paragraph 3 above, before 5 p.m., Monday, June 1, 1998, the date scheduled for the close of record. The Department will accept written comments from the present date until the close of record date. Written comments should be submitted to the individual identified in paragraph 3 before the close of record date. To request accommodation to participate in the public comment process, or to obtain this notice in alternative format, contact the individual identified in paragraph 3 above.

   Close of Record: June 1, 1998

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
   None.

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

11. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES, HEALTH CARE INSTITUTIONS: LICENSURE

ARTICLE 10. BEHAVIORAL HEALTH SERVICE AGENCIES

Section
R9-10-1011. ~~General~~ Repealed
R9-10-1012. ~~Definitions~~ Repealed
R9-10-1013. ~~Applicability and scope of regulations~~ Repealed
R9-10-1014. ~~Licensure process and requirements~~ Repealed
R9-10-1015. ~~General organization and administration~~ Repealed
R9-10-1016. ~~Client records~~ Repealed
R9-10-1017. ~~Confidentiality of client records~~ Repealed
R9-10-1018. ~~Clients rights~~ Repealed
R9-10-1019. ~~Research~~ Repealed
R9-10-1020. ~~Medication control~~ Repealed
R9-10-1021. ~~Environmental and general building requirements~~ Repealed
R9-10-1022. ~~Food service~~ Repealed
R9-10-1023. ~~Required elements of agency's program of services~~ Repealed
R9-10-1024. ~~Behavioral health emergency services~~ Repealed
R9-10-1025. ~~Mental health screening services~~ Repealed
R9-10-1026. ~~Mental health evaluation services~~ Repealed
R9-10-1027. ~~Mental health treatment services~~ Repealed
R9-10-1028. ~~Partial care services~~ Repealed
R9-10-1029. ~~Behavioral health residential services~~ Repealed
R9-10-1030. ~~Detoxification services~~ Repealed

ARTICLE 10. BEHAVIORAL HEALTH SERVICE AGENCIES

R9-10-1011. ~~General~~ Repealed
~~All behavioral health service agencies are subject to inspection by the Department as provided in A.R.S. §§ 36-406, 36-424, 36-502(A) and 36-2023(A). The agencies shall afford Department personnel and other authorized officials every opportunity to examine records, inspect the entire premises, and obtain all information required in the administration of A.R.S. Title 36, Chapter 4, Articles 1 and 2, Chapter 5 and Chapter 18. Department personnel will maintain verbal and written confidentiality concerning these records, as required by A.R.S. § 36-404.~~

R9-10-1012. ~~Definitions~~ Repealed
~~A. "Behavioral health services" means screening, evaluation, care or treatment services to prevent, reduce, or eliminate substance abuse, disorders related to 1 or more mental disor-~~

ders, personality disorders or emotional conditions. Behavioral health services includes the following:

1. "Behavioral health emergency services" means intensive, immediate, short-term services that inform, evaluate and treat persons in a crisis situation related to mental disorders, personality disorders, emotional conditions or the abuse or misuse of alcohol or other drugs.
2. "Behavioral health residential services" means a non-hospital, live-in program consisting of a therapeutic regimen of screening, evaluation, treatment or rehabilitation provided on a 24-hour basis in a supervised environment to persons suffering from mental disorders, personality disorders, emotional conditions or the effects of substance abuse.
3. "Court ordered alcoholism treatment services" means involuntary residential services in an alcoholism treatment facility for clients designated as chronic alcoholics pursuant to A.R.S. Title 37, Chapter 18.
4. "Detoxification services" means a treatment program designed to provide for the systematic reduction of physical dependence upon alcohol, drugs or other substances by use of therapeutic procedures, for example, medication, rest, diet, counseling, or medical supervision.
5. "Mental health evaluation service" means assessment of a person's medical, psychiatric, psychological or social condition provided pursuant to A.R.S. Title 36, Chapter 5.
6. "Mental health screening services" means the preliminary interviewing and assessment of a person to determine if the person has a mental disorder and if the person is a danger to himself or others or is gravely disabled as defined by A.R.S. Title 36, Chapter 5.
7. "Mental health treatment services" means treatment services provided pursuant to A.R.S. Title 36, Chapter 5.
8. "Partial care services" means a planned program consisting of part-day, evening, night, or weekend treatment provided through sessions of at least 3 hours per day for persons with mental disorders, personality disorders, emotional conditions or substance abuse problems who require less than intensive 24-hour services but more than outpatient visits.
9. "Substance abuse treatment services" means screening, evaluation, treatment, or rehabilitation services provided to persons with substance abuse problems.

B. "Behavioral health service agency" as defined in R9-10-113(B)(4) means a class of health care institution other than a hospital which provides screening, evaluation, care or treatment to persons having mental disorders, personality disorders, emotional conditions or substance abuse problems.

C. "Client" means an individual who is receiving services from a behavioral health service agency. Clients may be termed patients, residents or wards.

D. "Intake, screening and referral process" means the preliminary assessment of the needs of prospective clients and the referral of such clients to the appropriate resource for treatment or care.

E. "License" means a certificate issued by the Department to indicate that an agency is authorized by the Department to provide behavioral health services and which has been found to be in compliance with these regulations and laws at the time of issuance thereof.

F. "Medication" means any drug or medicine which may be dispensed or administered by prescription in accordance with state or federal law.

G. "Referral" means assistance to a person and/or his family to locate and make use of medical, legal, psychological, social, educational, vocational, and other services needed for the reduction or management of mental disorders, personality disorders, emotional conditions or substance abuse problems.

H. "Substance abuse" includes chronic, habitual, or compulsive use of any chemical matter, which, when introduced into the body in any way is capable of causing altered human behavior or altered mental functioning, and which, if used over an extended period of time, may cause psychological or physiological dependence or impaired mental, social, or economic functioning.

I. "Treatment" means the range of care received by a client which is consistent with the agency's program statement, evaluation of the client's medical, psychiatric, psychological or substance abuse problem(s), and determination by the therapist, of the client's treatment needs based on that evaluation.

R9-10-1013. ~~Applicability and scope of regulations~~ Repealed

A. The rules in this Article apply to the licensure of any public or private behavioral health service agency, corporation, or other organization, proprietary or nonproprietary, which provides 1 or more behavioral health service.

B. Hospitals licensed pursuant to Chapter 10, which provide 1 or more behavioral health service, are, in addition to other applicable articles of this Chapter, subject to the following regulations: R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, R9-10-1023 through R9-10-1030. Unless otherwise expressly provided, the requirements of this Article, when applied to a hospital, apply only to the behavioral health services of the hospital.

C. These rules do not apply to:
1. Behavioral health service agencies which provide only administrative services and do not provide direct patient treatment.
2. Educational services or activities offered under the auspices of an educational institution accredited by a nationally recognized organization.
3. Crisis intervention programs which do not provide face-to-face, on-site services.
4. Self-help or self-growth groups.
5. Private practitioners defined pursuant to A.R.S. § 36-402 and other private practitioners who do not keep clients overnight, are not responsible to a lay board, and who do not employ or contract with others to deliver behavioral health services.
6. Agencies licensed by the Department of Economic Security, pursuant to A.R.S. §§ 8-503 and 36-558.01.

R9-10-1014. ~~Licensure process and requirements~~ Repealed

A. An application for a behavioral health service agency license shall indicate which of the following types of behavioral health services the applicant plans to provide:
1. Behavioral health emergency services.
2. Mental health screening services.
3. Mental health evaluation services.
4. Mental health treatment services.
5. Substance abuse treatment services.
6. Detoxification services.
7. Behavioral health residential services.
8. Partial care services.
9. Court ordered alcoholism treatment services.

~~B.~~ ~~Upon being satisfied that the agency complies with all appropriate provisions of this Chapter, the Department shall issue to the agency a license to operate as a behavioral health service agency. The license shall specify the services the agency is authorized to provide and the location at which the services are based.~~

~~C.~~ ~~A hospital which provides 1 or more behavioral health services shall, upon application for a license pursuant to Chapter 10, identify those behavioral health services that it provides as set forth in subsection (A) of this rule. The Department shall, as part of its licensure survey pursuant to Chapter 10, determine whether the hospital complies with the applicable provisions of this Chapter. The license issued to the hospital shall specify the behavioral health services the hospital is authorized to provide.~~

R9-10-1015. ~~General organization and administration~~ Repealed

~~A. Governing authority~~
~~1. The agency shall adopt a written program statement of activities.~~
~~2. Each behavioral health agency shall be organized and administered under 1 authority which may be a proprietorship, partnership, association, corporation or governmental unit.~~
~~3. The agency shall appoint a qualified administrator who will be responsible for carrying out the policies determined by the governmental unit or governing board.~~

~~B. Administration~~
~~1. The administrator shall be in charge of the management and business affairs of the institution and shall be fully authorized and empowered to carry out the provisions of this Chapter 10, Article 10 and shall be charged with the responsibility of doing so.~~
~~2. The administrator shall not leave the premises without delegating necessary authority to a competent person who will be on the premises during his absence.~~
~~3. The administrator shall be responsible for the completion, keeping or submission of such reports and records as may be required by the Department.~~

~~C. Clinical or program director~~
~~1. There shall be a clinical or program director who must be appropriately qualified for the management of client services of the agency.~~
~~2. The clinical or program director shall be responsible for the overall clinical operation of the agency.~~
~~3. The clinical or program director shall designate in writing a qualified individual to act for him in his absence to provide the agency with clinical direction at all times.~~

~~D. Personnel~~
~~1. The agency shall establish written policies describing the duties, responsibilities, and required minimum qualifications of its personnel. Such qualifications shall be consistent with statutory, professional, or occupational licensure, certification or registration requirements.~~
~~2. There shall be a sufficient number of appropriately qualified staff and supporting personnel to provide the quantity and types of services set forth in the agency's written program statement. The agency shall maintain personnel records which include job descriptions and personnel qualifications and shall be available to authorized representatives of the Department.~~

~~E. Client fees and charges~~
~~1. The agency shall, at the time of admission, provide each client or his parent or guardian with a schedule of client fees which the applicant may incur during that admission. If the schedule of fees and charges contains a provision for reduced charges based on ability to pay, criteria for determining the applicant's ability to pay must be clearly stated.~~
~~2. If a new schedule of fees or new payment criteria will become effective during the course of a client's treatment, the new fee schedule and related payment criteria shall be made known to the client 30 days before the change becomes effective.~~

R9-10-1016. ~~Client records~~ Repealed

~~A. There shall be written policies and procedures governing the compilation, storage, confidentiality, and dissemination of individual client records and client identifying information.~~

~~B. Individual records for each client shall be maintained. These records shall be kept up to date and complete on each client in the program. After the death or discharge of the client, the record shall be placed in an inactive file and kept in the facility at all times and available to the staff. For licensing purposes, medical records shall be readily retrievable for a period of not less than 3 years, except that A.R.S. 36-343 requires retention of vital records and statistics for 10 years. When services are provided to a family as a group a single record may be maintained for the family, providing that each individual is readily identifiable and all other client record requirements are met.~~

~~C. All client records shall be considered confidential, except that they shall be made available to the authorized Department personnel.~~

~~D. Each client record kept from the time of admission to the time of discharge or death shall include the following information:~~
~~1. Identifying information.~~
~~2. Dates of admission and discharge.~~
~~3. Description of current symptoms.~~
~~4. Records of medical care and medications provided by the agency.~~
~~5. An individualized treatment plan which is updated periodically.~~
~~6. Written progress reports for clients.~~
~~7. Treatment consent forms, if applicable.~~
~~8. Information release forms, if applicable.~~
~~9. Discharge summary.~~

R9-10-1017. ~~Confidentiality of client records~~ Repealed

~~All information and records obtained in the course of screening, evaluation, and treatment of mental health clients shall be kept confidential and not as public records, except for disclosures authorized by A.R.S. § 36-509. All client records shall be maintained in a secure and confidential manner, protecting the client against loss, tampering, or unauthorized disclosure of information, consistent with applicable federal and state law. An agency providing substance abuse services shall comply with the alcohol and drug abuse patient record requirements of 42 C.F.R. 2.1 et seq., as amended.~~

R9-10-1018. ~~Client rights~~ Repealed

~~A. An agency providing services to persons with mental or emotional problems shall comply with the client rights provisions of A.R.S. §§ 36-504(A) and R9-15-101.~~

~~B. An agency providing substance abuse services shall have a written plan or statement that describes the rights of clients and the means by which those rights are protected and exercised. The following rights shall be included:~~
~~1. Each client shall have impartial access to treatment, regardless of race, religion, sex, age, or handicap.~~

2. Each client shall receive individualized treatment, which shall include at least the following:
   a. The provision of services within the least restrictive environment possible.
   b. The client shall be made aware of the content of the client's treatment plan. The plan shall be reviewed and updated as often as is clinically indicated.
   c. The active participation of parents, relatives, or guardians in planning of treatment for unemancipated children, unless such participation is clinically contraindicated.
3. Unless clinically contraindicated, each client who receives 24 hour care:
   a. May have visitors.
   b. Shall be allowed to visit in private.
   c. Shall be allowed to send and receive mail without hindrance.
   d. Shall be allowed to conduct private telephone conversations. If it is necessary, for clinical reasons, to restrict visits, visitors, telephone calls, mail, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by the clinically responsible staff at least every 7 days, be determined with the participation of the patient and the patient's family, unless such participation is clinically contraindicated, and be fully explained to the patient and the patient's family.
4. Each client shall receive a copy of the written statement of client's rights in English or Spanish, as appropriate. A copy of the statement shall also be posted at 1 or more locations commonly used by clients in the agency. Additionally, these rights shall be explained to the client in a language the client understands.

R9-10-1019. Research Repealed

A. The written informed consent of each client participating in any research project shall be obtained prior to participation.
B. When an agency engages in research activities or allows its personnel, clients, records or facilities to be used for research purposes, there shall be written policies and procedures for carrying out such research activities, which include, but need not be limited to:
   1. Guidelines for ensuring the rights of all human subjects and provisions for protection of client anonymity both during the research and following publication of the results.
   2. Specification that where bodily integrity may be violated (for example, use of electroconvulsive therapy, chemotherapy), there be supervision by a physician.

R9-10-1020. Medication control Repealed

A. Medication administered under the direction of a person authorized to prescribe medications, and whose visits are documented.
B. The agency shall assist clients to obtain needed pharmaceutical services.
C. There shall be written policies and procedures to ensure that all medications are dispensed and administered in accordance with applicable federal, state, and local laws and regulations.
D. Medication orders shall be written only by persons authorized by law to do so. Verbal or telephone orders shall be limited to urgent circumstances and shall be signed by the authorizing person on the next regular working day (not to exceed 72 hours).
E. Medication shall be administered only by a person authorized by law to do so.
F. Medication records shall allow for the monitoring of all medications administered and the detection of adverse drug reactions and shall identify at least the name of the medication, dose, route of administration, frequency of administration, and name of the person who prescribed the medication.
G. There shall be documented inspections of all drug storage areas and medication centers conducted on at least a quarterly basis to assure that these areas are maintained in compliance with federal, state, and local regulations. There shall be verification that a a minimum:
   1. Drugs requiring special conditions for storage to ensure stability are properly stored.
   2. No outdated drugs are stored.
   3. All drugs are kept in locked storage.
   4. Poisons, external drugs, and internal drugs are stored on separate shelves, or in separate cabinets.
   5. Medications that are stored in a refrigerator containing items other than drugs are kept in a separate compartment or container with proper security.
   6. Drugs are disposed of in accordance with state and federal requirements.
H. The administration of all psychotropic medication for clients receiving mental health services pursuant to A.R.S. Title 36, Chapter 5 shall be in accordance with A.R.S. §§ 36-513 and R9-15-101 et seq.

R9-10-1021. Environmental and general building requirements Repealed

A. The physical plant of a behavioral health service agency shall:
   1. Be clean, sanitary, and in good repair. Effective insect, vermin and rodent control must be exercised at all times.
   2. Have all equipment and furnishings, clean and in good repair, to adequately provide the services set forth in the agency's program statement.
   3. Be free of undesirable odors.
   4. Be equipped with basic emergency first aid equipment and supplies which may reasonably be expected to be needed to deal with medical emergencies which may arise.
   5. Have a written plan of evacuation, in case of fire or other disaster, which shall be conspicuously posted throughout the facility.
   6. Have adequate lighting and ventilation.
   7. Have heating and cooling which meets state and local building codes. Cooling systems shall be of adequate capacity and in good working condition. The use of unvented or open flame space heaters is prohibited.
   8. Maintain current written inspection records or approvals from all local jurisdictions in readily accessible files for inspection by the Department. Written reports of improvements made as a result of such inspections shall also be maintained in accessible files.
   9. Have space for client interviews, medical examinations (if medical examinations are given), individual counseling, and other therapeutic activities. Such rooms shall be constructed and arranged so as to provide clients auditory and visual privacy.
   10. Have space for use as waiting rooms for clients and their visitors.
   11. Have an adequate number of toilets and lavatories to serve the agency's clients, staff and visitors during peak service hours. All bathrooms shall be of easily cleanable construction and provide privacy unless contraindicated by treatment policies and procedures included in the agency's program statement.

~~B. Each behavioral health services agency providing 24-hour care shall meet these additional requirements:~~

~~1. There shall be space for private interviewing, evaluating or examining clients, and for discussion between staff and families of clients or between clients and visitors.~~

~~2. Space shall be available to all residents for relaxation and leisure time activities.~~

~~3. A separate dining area shall be available that shall not be used as a sleeping room by residents or staff.~~

~~4. Sleeping rooms shall be of sufficient size to permit:~~

~~a. Unimpeded access to exit doors and passageways from all client occupied parts of the room;~~

~~b. Unobstructed opening of storage drawers, closets and exit doors.~~

~~5. Multibed sleeping rooms shall have a minimum of 3 feet between beds unless the agency obtains the written permission of either the state or local fire marshal's office to provide less distance between beds.~~

~~6. No sleeping room shall be used as a passageway to another room, bath, or toilet, unless that room, bath or toilet is for the exclusive use of those occupying the sleeping room.~~

~~7. Furnishings in each sleeping room shall include as a minimum:~~

~~a. A bed equipped with a clean mattress and at least 1 pillow for each client. Beds acquired after the date of the adoption of these rules shall be at least 32 inches wide. Cribs are acceptable for persons under the age of 3.~~

~~b. Firmly attached side rails on all upper bunk beds. No more than 1 bed may be located over another in a bunk bed arrangement.~~

~~c. A supply of clean sheets, blankets and pillow cases sufficient to allow changing of bed linen as often as necessary to keep beds clean, dry and free of odors. At least 2 clean sheets, 1 blanket and a pillow case shall be furnished to each client each week. Clean mattress pads or covers will also be provided.~~

~~8. Ample closet and drawer space shall be available for storage of clothing and personal belongings of the client.~~

~~9. Bathroom facilities which shall include at least 1 tub or shower, 1 toilet and 1 lavatory for each 10 residents. Hot and cold running water shall be provided for all tubs, showers and lavatories.~~

~~10. Laundry facilities shall be available for the washing, ironing and mending of clients' personal clothing.~~

R9-10-1022. ~~Food service~~ Repealed

~~Agencies which provide 24-hour care must provide or enable clients to make a minimum of 3 meals daily at reasonable times. The agency shall make available to clients who work or who are away from the agency regularly a minimum of 2 meals daily, as individual client needs dictate.~~

~~1. Meals shall include the recommended amounts of the basic food groups (grains, protein, fruit, vegetables and dairy products).~~

~~2. The facility must be capable of providing and monitoring modified diets to those residents who require them.~~

~~3. Food preparation, storage and handling shall be performed in compliance with Chapter 8, Article 1.~~

R9-10-1023. ~~Required elements of agency's program of services~~ Repealed

~~Each agency shall include, at a minimum, the following elements in its program of services:~~

~~1. There shall be written admission criteria with sufficient detail to allow prospective clients and referring agencies to understand admission policies.~~

~~a. It shall be the responsibility of the administrator to accept for admission only those applicants whose needs do not exceed the specialty of range of services for which the agency is licensed.~~

~~b. Any unique admission provisions relating to the admission of clients who are involuntarily referred for treatment or evaluation under court order must be stated in detail, accompanied by a description of all special care, treatment, and discharge restrictions which may attend the client's involuntary status.~~

~~2. There shall be an identifiable and uniform intake, screening and referral process, designed to evaluate client problems and provide the basis for initial treatment plans. This process shall be conducted by qualified behavioral health personnel. Admission evaluations must include, at minimum, the following elements:~~

~~a. An interview of the applicant and a review of available information regarding the applicant to obtain a personal history of the applicant's presenting problems, medical, social, economic, and family background, his education and vocational achievements, history of previous behavioral, mental health, or substance abuse treatment.~~

~~b. All physical and laboratory examinations found to be necessary.~~

~~i. Those found to be necessary shall be recommended to the client and if such examinations are not conducted on-site, the client shall be referred to a specific and appropriate facility for examination.~~

~~ii. Case records shall show that these recommendations or referrals have been made.~~

~~c. In an agency providing 24-hour care, an assessment of each client's medical status and needs conducted within 72 hours of the client's admission.~~

~~3. There shall be written treatment discharge criteria, with sufficient detail to allow a client reaching the stage of possible discharge to understand expected performance in relation to the individual treatment goals, and to assure clients who are involuntarily terminated that the termination decision was neither arbitrary nor capricious. Discharge criteria shall include provisions that the client be advised of the reason for termination, and the opportunities, if any, available to him to gain readmission, and that no client shall be involuntarily terminated while physically dependent upon any addicting medication prescribed as part of the client's treatment by the agency unless the client is offered an opportunity to detoxify from the substance prior to discharge. This provision does not apply when a client is a danger to program staff or voluntarily leaves a program without giving prior notice.~~

~~4. There shall be a grievance procedure to provide for review and adjustment of client complaints, refusal of admission, and termination of services against a client's wishes.~~

~~5. There shall be counseling services that utilize the individual, family, or group counseling techniques which best meet the needs of the client.~~

~~6. There shall be a system for periodic client record, utilization, and client management review to encourage dis-~~

~~charge of clients at the earliest time that is clinically advisable.~~

R9-10-1024. ~~Behavioral health emergency services~~ Repealed

~~A behavioral health service agency which provides emergency behavioral health services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides emergency behavioral health services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of behavioral health emergency services shall:~~

1. ~~Be capable of providing medical first aid and dealing with acute emotional and behavioral distress.~~
2. ~~Make telephone information and referral directly available during all hours of operation.~~
3. ~~Have procedures that assure the prompt evaluation of both the physical and psychological status of individuals so that a rapid determination can be made of the nature and urgency of the problem and of the type of treatment required.~~
4. ~~Keep a record of each person receiving emergency service which identifies the presenting problem, treatment given, and disposition of the case. The emergency record shall be reviewed for accuracy and signed by the staff person in charge.~~
5. ~~Assure that all staff members providing emergency services have had training or demonstrated experience in the basic methods of dealing with the physical and psychological complications of acute emotional, alcohol or other drug abuse conditions.~~

R9-10-1025. ~~Mental health screening services~~ Repealed

~~A behavioral health agency which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health screening services shall:~~

1. ~~Have written policies and procedures governing the screening of prospective clients to ensure that the screening process is accomplished within 2 business days of admission, except when the admission occurs immediately prior to a weekend or holiday, in which case it shall be accomplished within 2 normal business days.~~
2. ~~Provide the necessary forms and technical assistance to assist any responsible person to initiate an application for court ordered evaluation of a mentally disordered person.~~
3. ~~Have a medical director who shall be responsible for determining whether an application for court ordered evaluation is supported by reasonable cause and whether a petition for evaluation should be filed with the court pursuant to A.R.S. Title 36, Chapter 5.~~
4. ~~Be staffed by qualified personnel who are capable of knowledgeably screening persons who are gravely disabled, or who are alleged to be mentally disordered and a danger to themselves or others.~~

R9-10-1026. ~~Mental health evaluation services~~ Repealed

~~A behavioral health service agency which provides mental health evaluation services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides mental health screening services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health evaluation services shall:~~

1. ~~Have written policies and procedures governing the conduct of evaluation which are designed to ensure that each client, or prospective client, receives a complete evaluation of his physical, psychological or psychiatric treatment needs.~~
2. ~~Have a medical director who shall be responsible for determining whether there is a need pursuant to A.R.S. Title 36, Chapter 5 for court ordered treatment. The medical director shall be responsible for filing a petition for treatment with the court in the event it is determined that there is a need for treatment.~~
3. ~~Designate an area for the safe treatment of dangerous patients, if it evaluates dangerous patients.~~
4. ~~Provide for the privacy of patients undergoing evaluation procedures and subsequent interviews or consultations as defined in A.R.S. § 36-507.~~
5. ~~Have a record keeping system that will enable the Department to determine whether the agency is complying with the requirements of this Article and that each patient's case is processed in a complete and timely fashion.~~

R9-10-1027. ~~Mental health treatment services~~ Repealed

~~A behavioral health service agency which provides mental health treatment services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides mental health treatment services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of mental health treatment services shall:~~

1. ~~If it provides court ordered treatment pursuant to A.R.S. Title 36, Chapter 5, accepts clients for hospitalization on either a voluntary or involuntary basis, or admits minors under the age of 14 pursuant to A.R.S. § 36-518, have a medical director who shall be responsible for supervising and administering treatment plans.~~
2. ~~Be staffed by a sufficient number of professional and other personnel to carry out their respective functions as prescribed in A.R.S. Title 36, Chapter 5.~~
3. ~~Designate an area for the safe treatment of dangerous patients, if an agency provides treatment for dangerous patients.~~
4. ~~Provide for the privacy of patients undergoing admission procedures and subsequent interviews or consultations as defined in A.R.S. § 36-507.~~
5. ~~Have a record keeping system that will enable the Department to determine whether the agency is complying with the requirements of this Article and that each patient's case is processed in a complete and timely fashion.~~

R9-10-1028. ~~Partial care services~~ Repealed

~~A behavioral health service agency which provides partial care services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides partial care services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of partial care services shall:~~

1. ~~Include a therapeutic regimen of regularly scheduled counseling sessions and other supervised activities such~~

~~as recreational activities, life skills training, resocialization and rehabilitation.~~

~~2. Include drug-free or alcohol-free alternatives to provide the client creative activities in a substance-free setting.~~

R9-10-1029. ~~Behavioral health residential services~~ Repealed

~~A. A behavioral health service agency which provides behavioral health residential services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides behavioral health residential services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of partial care services shall:~~

~~1. Have a treatment program which includes at a minimum the following on-site services:~~

~~a. Preparation for independent living in the community.~~

~~b. Counseling.~~

~~c. Dietary supervision and consultation.~~

~~d. Improvement and/or maintenance of physical and emotional health and personal and social development.~~

~~2. Have written procedures for responding to any client medical problems or emergencies.~~

~~3. Have at least 1 staff member on-site at all times.~~

~~4. Have policies and procedures for handling medical emergencies and death.~~

~~B. A hospital or behavioral health service agency providing court-ordered alcoholism treatment pursuant to A.R.S. § 36-2026.01 shall:~~

~~1. Have a method to retain clients in the facility.~~

~~2. Have written policies and procedures to handle hostile or violent clients.~~

~~3. Have staff members who are skilled in counseling resistive clients and those who have not benefited from prior treatment episodes.~~

~~4. Have a program for involuntary committed clients.~~

R9-10-1030. ~~Detoxification services~~ Repealed

~~A behavioral health service agency which provides detoxification services shall comply with this rule in addition to the requirements of R9-10-1012 through R9-10-1023. A hospital licensed pursuant to Chapter 10 which provides detoxification services shall comply with this rule in addition to the requirements of R9-10-1011 through R9-10-1014, R9-10-1016 through R9-10-1018, and R9-10-1023. A provider of detoxification services shall:~~

~~1. Be capable of effectively managing the physiological manifestations and distress associated with withdrawal. Where a program is limited in the types of withdrawal it is able to facilitate, the agency shall make known in its publicity which types of withdrawal are available through the program.~~

~~2. Have written policies and procedures governing detoxification, withdrawal and overdose management which shall be in accordance with the applicable provisions of A.R.S. Title 36, Chapter 18, Article 1.~~

~~3. Be staffed with sufficient numbers of behavioral health personnel to provide close observation of all clients with regular monitoring of vital signs. All staff members providing detoxification services shall have had training or demonstrated experience in the basic methods of dealing with the physical and psychological complications of acute emotional, alcohol or other drug abuse states, as appropriate. A physician shall be available on site or on call at all times, and the availability of the physician shall be documented. Current toxicology references and antidotal information shall be readily available, along with the telephone numbers of ambulance services and other resources to provide transportation and emergency treatment, assistance, and advice.~~

~~4. Not begin medical detoxification without a written order from a physician defining the medical regimen to be followed.~~

~~5. Have written policies and procedures for handling medical emergencies and death.~~

~~6. Assess each client's medical status and needs upon the client's admission.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R14-4-146	New Section
R14-4-147	New Section

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

Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

Authorizing statute: A.R.S. § 44-1821

Implementing statute: A.R.S. §§ 41-1072 through 41-1078

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

Name: Brian J. Schulman, General Counsel

Address: Arizona Corporation Commission, Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007

Phone: (602) 542-4242

Fax: (602) 594-7406

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

The proposed rules establish time-frames within which the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") shall process the initial and renewal applications for the registration and exemption of securities offerings, and the registration of securities dealers and salesmen. The rules are mandated by A.R.S. § 41-1072, et seq. (the "time-frame statutes"), which require any state agency that issues licenses to promulgate final rules establishing the time-frames during which the agency will either grant or deny each type of license that the agency issues.

Each of the proposed rules incorporates certain categories of time-frames created by the time-frame statutes. Under the time-frame statutes, each agency shall establish an "overall time-frame," which consists of 2 components: (i) an "administrative completeness review time-frame"; and (ii) a "substantive review time-frame." The time-frame statutes define the administrative completeness review time-frame to mean the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by law. The time-frame statutes define the substantive review time-frame as the number of days after the completion of the administrative completeness review time-frame during which an agency determines whether an application meets all substantive criteria required by law. The proposed rules establish separate time-frames for each of these components.

R14-4-146. Proposed rule R14-4-146 ("Rule 146") establishes time-frames within which the Division shall process the initial and renewal applications for the registration or exemption of securities offerings. Rule 146 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 60 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process, it must file a notice of an opportunity for hearing. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, it must do so within 10 days. The Commission then shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission.

In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 120 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 190 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 340 days.

There are certain existing rules and statutes under the Securities Act of Arizona that already provide time-frames for the processing of securities applications. In accordance with the time-frame statutes, for those time-frames already in use, Rule 146 divides those existing time-frames into the administrative and substantive time-frames. The breakdown for those existing time-frames is included in Table A of Rule 146.

R14-4-147. Proposed rule R14-4-147 ("Rule 147") establishes time-frames in which the Division shall process applications for dealer and salesman registration. Rule 147 addresses separately dealer and salesman registration. With respect to dealer registration, Rule 147 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 42 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process, it must file a notice of an opportunity for hearing. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, it must do so within 10 days. The Commission then shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission.

In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 102 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 172 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 322 days.

Rule 147's time-frames for salesman registration are similar to the dealer registration time-frames, with 1 exception. With respect to salesman registration, the administrative completeness review time-frame is 60 days, instead of 42. As such, where the Commission approves a salesman's registration, the overall time-frame is 120 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 190 days. Where a hearing is requested, the overall time-frame is 340.

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), the Commission is exempt from providing an economic, small business, and consumer impact statement.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact summary:**
   Not applicable.

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:**
   Date: June 2, 1998
   Time: 9:30 a.m.
   Location: Arizona Corporation Commission
   1200 West Washington Avenue
   Phoenix, Arizona 85007
   Nature: Oral Proceeding

   Any person may submit written comments prior to the oral proceeding to the person listed in question 3. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action with respect to the adoption of the proposed rules at an open meeting.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
   None.

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

11. **The full text of the rules follows:**

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-146. Processing of Initial and Renewal Applications for the Registration or Exemption of Securities Offerings.

R14-4-147. Processing of Applications for Dealer and Salesman Registration.

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-146. Processing of Initial and Renewal Applications for the Registration or Exemption of Securities Offerings

A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission for the registration or exemption of securities under A.R.S., Title 44, Chapter 12, and any rules promulgated under those statutes.

B. Within 30 days after receipt of an initial or renewal application for the registration or exemption of securities, the Commission shall notify the applicant, in writing, that the application is complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.

C. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.

D. Within 60 days after receipt of a complete application, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
   1. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
   2. If the applicant requests a hearing, the applicant must do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.

E. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
   1. When the Commission approves an application under subsection (D):
      a. Administrative completeness review time-frame: 60 days;
      b. Substantive review time-frame: 60 days; and
      c. Overall time-frame: 120 days
   2. When the Commission initiates the denial process and no hearing is requested under subsection (D)(1):
      a. Administrative completeness review time-frame: 60 days;
      b. Substantive review time-frame: 130 days; and
      c. Overall time-frame: 190 days.
   3. When the Commission initiates the denial process and a hearing is requested under subsection (D)(2):
      a. Administrative completeness review time-frame: 60 days;
      b. Substantive review time-frame: 280 days; and
      c. Overall time-frame: 340 days.

F. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.

G. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

H. In lieu of the time-frames established by this Section, the Commission shall process applications for the registration or exemption of certain securities offerings within the time-frames set forth in Table A.

TABLE A
ARIZONA CORPORATION COMMISSION SECURITIES DIVISION
Time-frames

Security Offering	Statutory or Administrative Code Reference	Administrative Completeness Review (in days)	Substantive Review (in days)	Overall Time-frame (in days)
Nonexempt government securities	A.R.S. § 1843.01	10	10	20
Exempt transactions – existing stockholders and/or employees	A.A.C. R14-4-101	5	5	10
Exempt transactions – restricted public offerings	A.A.C. R14-4-102	5	5	10

R14-4-147. Processing of Applications for Dealer and Salesman Registration.

A. For purposes of this Section, the term "application" includes all documents, information, and fees prescribed by the Commission under A.R.S., Title 44, Chapter 12, Articles 5 and 9, and any rules promulgated under those statutes.

B. The Commission shall provide notices of deficiency, completeness or approval, as required under this Section, either in writing or through the CRD system.

C. The following provisions apply to applications for dealer registration:

1. Within 21 days after receipt of an application for dealer registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after receipt by the Commission of information in satisfaction of all deficiencies.
2. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
3. Within 60 days after receipt by the Commission of a complete application and the approval of the application by both the National Association of Securities Dealers and the state of the dealer's principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
   a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
   b. If the applicant requests a hearing, the applicant must do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
4. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
   a. When the Commission approves an application under subsection (C)(3):
      i. Administrative completeness review time-frame: 42 days;
      ii. Substantive review time-frame: 60 days; and
      iii. Overall time-frame: 102 days.
   b. When the Commission initiates the denial process and no hearing is requested under subsection (C)(3)(a):
      i. Administrative completeness review time-frame: 42 days;
      ii. Substantive review time-frame: 130 days; and
      iii. Overall time-frame: 172 days.
   c. When the Commission initiates the denial process and a hearing is requested under subsection (C)(3)(b):
      i. Administrative completeness review time-frame: 42 days;
      ii. Substantive review time-frame: 280 days; and
      iii. Overall time-frame: 322 days.

D. The following provisions apply to applications for salesman registration:

1. Within 30 days after receipt of an application for salesman registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.

2. An application will not be deemed complete until the Commission receives notice through the CRD system, or otherwise, that the applicant:
   a. Has passed all of the required examinations;
   b. Is not seeking dual registration; and
   c. Is not under special review status by the National Association of Securities Dealers.
3. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
4. Within 60 days after receipt of a complete application, and the approval of the application by both the National Association of Securities Dealers and the state of the salesman's principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
   a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
   b. If the applicant requests a hearing, the applicant must do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
5. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
   a. When the Commission approves an application under subsection (D)(4):
      i. Administrative completeness review time-frame: 60 days;
      ii. Substantive review time-frame: 60 days; and
      iii. Overall time-frame: 120 days.
   b. When the Commission initiates the denial process and no hearing is requested under subsection (D)(4)(a):
      i. Administrative completeness review time-frame: 60 days;
      ii. Substantive review time-frame: 130 days; and
      iii Overall time-frame: 190 days.
   c. When the Commission initiates the denial process and a hearing is requested under subsection (D)(4)(b):
      i. Administrative completeness review time-frame: 60 days;
      ii. Substantive review time-frame: 280 days; and
      iii. Overall time-frame: 340 days.

E. If an applicant under this Section requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.

F. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

G. The Commission shall renew registrations under this Section upon receipt by the Commission of the registration fee, as required by A.R.S. § 44-1861.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION - INVESTMENT MANAGEMENT

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**
   R14-6-105 — New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13
   Authorizing statute: A.R.S. § 44-3131
   Implementing statute: A.R.S. §§ 41-1072 through 41-1078

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
   Name: Brian J. Schulman, General Counsel
   Address: Arizona Corporation Commission, Securities Division
   1300 West Washington, Third Floor
   Phoenix, Arizona 85007
   Telephone: (602) 542-4242
   Fax: (602) 542-7470

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
   Proposed rule R14-6-105 ("Rule 105") establishes time-frames within which the Securities Division (the "Division") of the Ari-

zona Corporation Commission (the "Commission") shall process the applications for investment adviser and investment adviser representative licensure. Rule 105 is mandated by A.R.S. § 41-1072, et seq. (the "time-frame statutes"), which require any state agency that issues licenses to promulgate final rules establishing the time-frames during which the agency will either grant or deny each type of license that the agency issues.

Rule 105's time-frames incorporate certain categories of time-frames created by the time-frame statutes. Under the time-frame statutes, each agency shall establish an "overall time-frame," which consists of 2 components: (i) an "administrative completeness review time-frame"; and (ii) a "substantive review time-frame." The time-frame statutes define the administrative completeness review time-frame to mean the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by law. The time-frame statutes define the substantive review time-frame as the number of days after the completion of the administrative completeness review time-frame during which an agency determines whether an application meets all substantive criteria required by law. Rule 105 establishes separate time-frames for each of these components.

Rule 105 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 42 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process by filing a notice of an opportunity for hearing, the applicant has 10 days to file a hearing request. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, then the Commission shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission.

In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 102 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 172 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 322 days.

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), the Commission is exempt from providing an economic, small business, and consumer impact statement.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact summary:**
   Not applicable.

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:**

   Date: June 2, 1998

   Time: 9:30 a.m.

   Location: Arizona Corporation Commission
   1200 West Washington Avenue
   Phoenix, Arizona 85007

   Nature: Oral Proceeding

   Any person may submit written comments prior to the oral proceeding to the person listed in question #3. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action with respect to the adoption of the proposed rules at an open meeting.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
   None.

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

11. **The full text of the rule follows:**

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION – INVESTMENT MANAGEMENT

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

Section
R14-6-105. Processing of Applications for Investment Adviser

and Investment Adviser Representative Licensure.

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

R14-6-105. Processing of Applications for Investment Adviser and Investment Adviser Representative Licensure.

A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission under A.R.S., Title 44, Chapter 13, Articles 4 and 5, and the rules promulgated under those statutes.

B. Within 21 days after receipt of an application for investment adviser or investment adviser representative licensure, the Commission shall notify the applicant, in writing, that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after receipt by the Commission of information in satisfaction of all deficiencies.

C. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-3181. If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-3181. An applicant whose application has been abandoned may reapply by submitting a new application.

D. Within 60 days after receipt of a complete application, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
1. If the applicant does not request a hearing, the Commission shall approve, deny, or take other appropriate action regarding the application within 70 days after service of the notice.
2. If the applicant requests a hearing, the applicant must do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.

E. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
1. When the Commission approves an application under subsection (D):
   a. Administrative completeness review time-frame: 42 days;
   b. Substantive review time-frame: 60 days; and
   c. Overall time-frame: 102 days.
2. When the Commission initiates the denial process and no hearing is requested under subsection (D)(1):
   a. Administrative completeness review time-frame: 42 days;
   b. Substantive review time-frame: 130 days; and
   c. Overall time-frame: 172 days.
3. When the Commission initiates the denial process and a hearing is requested under subsection (D)(2):
   a. Administrative completeness review time-frame: 42 days;
   b. Substantive review time-frame: 280 days; and
   c. Overall time-frame: 322 days.

F. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.

G. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

H. The Commission shall renew a license under this Section upon receipt by the Commission of the license fee, as required by A.R.S. § 44-3181.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY - UNDERGROUND STORAGE TANKS

PREAMBLE

1. **Section numbers:** / **Action:**

R18-12-705	Amend
R18-12-706	Amend
R18-12-707	Amend
R18-12-710	Amend
R18-12-712	Amend
R18-12-714	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. § 49-104(B)(4)

   Implementing statute: A.R.S. §§ 49-1015, 49-1071, 49-1072

3. **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: (602) 207-2251

TDD: (602) 207-4829

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

A. Agency's Reasons for Initiating the Rule

Pursuant to A.R.S. § 49-1072 and R18-12-702, the Department may grant money from the Underground Storage Tank (UST) grant account to UST owners or operators to cover costs of (1) UST retrofitting or replacement to meet UST upgrade requirements, (2) permanent UST closure, (3) replacement of a non-complying UST with a sound UST of equal or smaller volume, (4) necessary and reasonable UST corrective action work not covered under the UST State Assurance Fund (SAF), (5) demolition work absolutely necessary to perform the eligible UST project, and (6) expedited departmental review of work plans, reports, and other documents designated under A.R.S. § 49-1072(A)(4).

The purpose of this proposed rulemaking is to clarify that (i) UST owners or operators may submit a grant application to the Department before or after commencement or completion of the work that is the subject of the application; (ii) proof of a contract performance bond, contractor's insurance policy, mechanic's lien, and contract, if required under the rules, may be submitted before or after commencement or completion of the work; (iii) failure to provide proof of a contract performance bond, contractor's insurance policy, mechanic's lien, and contract, if required under the rules, will result in forfeiture of the grant issue; (iv) if a contract performance bond is required under the rules, then it must follow American Institute of Architects surety bond form A311 covering 2 years from the date on which final payment under the contract falls due; (v) proof of a contract performance bond is not required for a SAF-related grant application; (vi) proof of contractor's insurance policy need not include coverage for pollution liability if the application is for a SAF-related grant; (vii) proof of 3 bids is not required for a SAF-related grant application; (viii) a work timetable is not necessary for work that is already completed; and (ix) 25 priority ranking points shall be allocated to a local government whose fund balance is negative.

B. Section-by-Section Explanation of The Proposed Rules

1. R18-12-705. Grant Application Process - Subsection (A)

R18-12-705 provides an overview of the UST grant application process but does not make clear the consequences of failing to contract with a properly insured and bonded service provider to perform the work. It is not until R18-12-714(D), at the very end of the rules, that the consequences of such failure are made clear. The proposed rules would repeat the warning at R18-12-714(D) up-front at R18-12-705(A). If R18-12-707 requires the applicant to contract with a properly insured service provider under a contract performance bond, and to provide proof of the contractor's insurance, performance bond, mechanic's lien, and contract, then the applicant must do so not later than 60 days after receiving the Department's notice of grant issue, otherwise the grant issue shall be forfeited.

2. R18-12-705. Grant Application Process - Subsection (B)

The proposed rulemaking would renumber rule R18-12-712(1)(a) as R18-12-712(B)(1). Accordingly, proposed R18-12-705(B) which refers to that rule would reflect the renumbering.

3. R18-12-705. Grant Application Process - Subsection (F)

A.R.S. §§ 49-1071 and 49-1072 and R18-12-705 do not make clear whether the Department may consider a grant application submitted after commencement or completion of the work that is the subject of the application. However, at the time the legislature enacted A.R.S. § 49-1072(A)(2) which allows grants to cover the cost of corrective actions not covered by the SAF, the Department made most of its SAF payment determinations under reimbursement *after* completion of the work. Therefore, the legislature must have anticipated that calculations of the grant amount necessary to cover the cost *not* reimbursed by the SAF also would be made after completion of the work. It follows that applications for SAF-related grants may be submitted before *or* after commencement or completion of the corrective action work.

Arguably, the legislature did not intend to treat grant applications for the other types of eligible work differently, otherwise it would have clarified the difference in the law. Accordingly, grant applications and application resubmissions regarding UST retrofitting/replacement to meet UST upgrade standards, permanent UST closure, replacement of a non-complying UST with a sound UST of equal or smaller volume, demolition work absolutely necessary to perform the eligible project, or expedited departmental review of documents designated under A.R.S. § 49-1072(A)(4) also may be submitted before or after commencement or completion of the work.

Proposed R18-12-705(F) would make these clarifications.

4. R18-12-706. Grant Application Contents - Subsections (B) and (C)

R18-12-706(B) describes background information required in a grant application. The current version of R18-12-706(B)(5) states the application shall contain "[t]he UST owner identification number assigned by the Department to the person who owns the facility where the eligible project *will be* conducted." This rule language may convey the impression that a grant application may not be submitted once the work has commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Proposed R18-12-706(B)(5) would resolve the inconsistency.

R18-12-706(C) describes additional background information required in a grant application. The current version of subsection (C) states the "application shall contain all of the following information regarding the facility at and UST on which the eligible project *will be* conducted" (emphasis added). This rule language also may convey the impression that a grant application may not be submitted once the work has commenced. Again, such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Proposed R18-12-706(C) would resolve the inconsistency.

5. R18-12-706. Grant Application Contents - Subsection (D)

R18-12-706(D) describes the substantive components of a grant application. The current version of R18-12-706(D) indicates that grant applications must include proof of 3 contractor bids for the work that is the subject of the application unless the application is for an expedited review of documents designated under A.R.S. § 49-1072(A)(4). The purpose of this bid requirement is to enable the Department to verify that the cost of the work which will determine the grant amount is in line with industry standards and is not unreasonable. However, where the grant application is to cover the costs of necessary and reasonable corrective action work not covered under the SAF program, the SAF program will determine whether the costs are necessary and reasonable. Accordingly, an application for a SAF-related grant does not need to include the proof of 3 bids. Proposed R18-12-706(D)(2), (3), (4) and (6) would effect this clarification.

The current version of R18-12-706(D)(7) describes the substantive components of a grant application for expedited review of documents designated under A.R.S. § 49-1072(A)(4). Proposed R18-12-706(D)(7) would remove a misimpression that subsections (E) through (I) apply only to applications for expedited review. Additionally, proposed R18-12-706(D)(7) would clarify that the application must identify the documents that are the subject of the request for expedited review. Finally, proposed R18-12-706(D)(7) would make more clear that the Department shall measure such requests against a schedule of review costs for each type of document.

6. R18-12-707. Work Plan - Subsection (A)(2), (4), (5)

R18-12-707(A) describes the required contents of a work plan that accompanies a grant application for installation of leak detection, spill or overfill prevention, or both, or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume. The language at subsections (A)(2), (A)(4), and (A)(5) currently states that the work plan must contain a plan "that includes specific actions *to be taken*," specifications "for all equipment *to be installed*," and, where corrosion protection is involved, supporting documents demonstrating the effectiveness of the system "where it *will be operating*" (emphasis added). This rule language may convey the impression that a grant application must be submitted before the work has commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Proposed R18-12-707(A)(2), (A)(4), and (A)(5) would resolve the inconsistency.

Additionally, proposed R18-12-707(A)(5) would revise the current version to clarify that an engineering plan is necessary only for the installation of a cathodic protection system.

7. R18-12-707. Work Plan - Subsection (A)(3)

R18-12-707(A)(3) currently states that the work plan that accompanies a grant application for installation of leak detection, spill or overfill prevention, or both, or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume must contain a "timetable for the incremental steps and completion of the project." The unqualified requirement of a timetable may convey the impression that a grant application must be submitted before the work has commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Proposed R18-12-707(A)(3) would resolve the inconsistency.

8. R18-12-707. Work Plan - Subsection (A)(6)

R18-12-707(A)(6) currently states that the work plan that accompanies a grant application for installation of leak detection, spill or overfill prevention, or both, or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume must include proof of a performance bond for completion of the contract. Proposed R18-12-707(A)(6) would qualify that the proof of contract performance bond must be an original or duplicate of an American Institute of Architects bond form number A311. Form A311 specifies that any suit under the bond may be filed up to 2 years following the date on which final payment under the contract falls due. Form A311 is readily available through most surety companies, and its 2-year requirement is an industry standard which should be codified in the rules to promote consistency and avoid confusion.

9. R18-12-707. Work Plan - Subsection (B)

R18-12-707(B) describes the required contents of a work plan that accompanies a grant application for necessary and reasonable corrective action costs not covered by the SAF. Under the current language, the work plan must include the information required at R18-12-607.01 for obtaining pre-approval under the SAF program, as well as proof of contract performance bond, mechanic's lien, contract, and contractor's general liability insurance including coverage for pollution liability.

Proposed R18-12-707(B) would eliminate the requirement of information required specifically under R18-12-607.01, in reliance on proposed R18-12-706(D)(6). Proposed R18-12-706(D)(6) would require the SAF-related grant applicant to submit copies of applicable SAF direct payment or reimbursement determinations already issued by the Department. In situations where the SAF program has not yet made a direct payment or reimbursement determination, the SAF-related grant applicant would have to submit a written statement that the applicant has applied for a SAF pre-approval, direct payment, or reimbursement

determination. The grant program would then commit monies to cover the copayment or deductible amount stated in the SAF application on file with the Department, which would remain committed (subject to the requirements at R18-12-714(D)) pending receipt of the direct payment or reimbursement determination required under proposed R18-12-714(B)(2). Under proposed R18-12-714(B)(2), the Department shall not pay the committed SAF-related grant monies until it receives the actual copy of the SAF direct payment or reimbursement determination in addition to the invoices for that work.

Additionally, proposed R18-12-707(B) would eliminate the requirement that an SAF-related grant applicant submit proof of a contract performance bond. Such proof is not essential because 1 purpose of a bond, which is assurance that the corrective action will be performed, will already have been largely satisfied by the applicant's satisfaction of the eligibility requirements for participation in the SAF program. Those eligibility requirements include providing proof of financial responsibility as specified in 40 CFR 280 subpart H which provides the assurance that the corrective action will be performed. Moreover, requiring a contract performance bond on a corrective action for which the SAF program is paying 90% of costs is counterintuitive as a contract performance bond is not a condition of SAF coverage.

Finally, proposed R18-12-707(B) would eliminate for SAF-related applicants the requirement that the contractor's general liability insurance policy must include coverage for pollution liability, because most if not all insurers will not provide coverage for pollution liability at a known LUST site. (This type of insurance is not the same as insurance obtained in satisfaction of the financial responsibility requirements. The insurance obtained by the UST owner or operator, or both, in satisfaction of the financial responsibility requirements merely insures against damages resulting from UST leaks and assures that the necessary corrective action will be done. The contractor's insurance required under the grant program goes 1 step further, by insuring also against damages that may result from the actual work performed by the contractor.)

10. R18-12-710. Feasibility Determination - Subsection (A)

R18-12-710(A) specifies that the Department's review of a grant request to upgrade or replace a UST for corrosion protection shall determine the feasibility of an upgrade before it commits the grant funds to the project. The current version of the rule requires the Department to base its feasibility determination on a report of an internal UST inspection of the existing UST conducted in accordance with American Petroleum Institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", (December 1987, Supplement March 6, 1989). The reference is incorrect, as publication 1632 is not applicable to the conduct of such an inspection. The proposed version of the rule would replace this reference with the correct reference, 1631, "Interior Lining of Underground Storage Tanks," 2nd edition (December 1987), which does apply to such an inspection. Additionally, the proposed version of the rule would delete the requirement that the contractor certify the feasibility determination was made in accordance with publication 1631, as it is the Department and not the contractor that must make the feasibility determination.

11. R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

R18-12-712 specifies how the Department shall rank approved grant applications for priority of payment. However, the current rule language fails to indicate how many points the Department shall allocate to a local government applicant whose fund balance is negative. Proposed R18-12-712 would specify that 25 points shall be allocated in such instances (compare with current R18-12-711(B)(3)(a)). Additionally, proposed R18-12-712 would renumber the subsections to make their designations consistent with the alphanumeric designations in the rest of the grant rules.

12. R18-12-714. Grant Issuance; Notification; Payment - Subsection (A)

R18-12-714(A) currently specifies the Department shall notify a grant applicant of its determination whether to approve or deny a grant issuance within 90 days of the end of a grant application submission period. Proposed R18-12-714(A) would clarify that the 90 days may be measured also from the end of a grant application resubmission period, consistent with R18-12-705(E) and R18-12-709(B) which allow an applicant to correct deficiencies in the grant application by resubmitting the application within 30 days of receiving a written statement of deficiencies from the Department.

13. R18-12-714. Grant Issuance; Notification; Payment - Subsection (B)(1), (2), (3)

R18-12-714(B)(1) currently specifies the Department shall not make a grant payment until it receives proof of the documents required under R18-12-707(A)(6) through (9). Proposed R18-12-714(B)(1) would remove the pointer and clarify that the Department shall not make a grant payment until it receives the proof of contract performance bond, contractor's insurance, mechanic's lien, and contract *if required* under R18-12-707 relating to any of the grant-eligible projects. Additionally, proposed R18-12-714(B)(1) would clarify that the grant applicant may submit such information before or after commencement or completion of the work, as long as the applicant submits the information not later than 60 days after receiving the Department's notice of grant issue, consistent with R18-12-705(A) and R18-12-714(D).

R18-12-714(B)(2) currently specifies that the Department shall not make a grant payment until it receives the *original* invoices for work performed or equipment installed in conjunction with the eligible project, and that each cost item in the invoice shall refer to a specific task in the work plan. Proposed R18-12-714(B)(2) would allow originals *or* copies of the invoices to be submitted, and would clarify that the cost items in each invoice shall refer to a task in the work plan only if the work involves installation of a leak detection system, addition of spill or overfill, or both, or corrosion protection, replacement of the UST with a complying UST of equal or smaller volume, or removal of the UST from the ground for the purposes of closure. However, cross-referencing invoice items to tasks in a work plan would not be required if the work involves only corrective action; instead, the applicant would have to submit a copy of the SAF program's final direct payment or reimbursement determinations for the work that is the subject of the grant application in addition to the invoices, as the Department makes SAF-related grant

payments only to applicants who have a SAF direct payment or reimbursement determination in hand. (An application for expedited review of documents designated under A.R.S. § 49-1072(A)(4) does not require a work plan, and therefore would not involve cross-referencing invoice items to a work plan.)

R18-12-714(B)(3) currently specifies the Department shall not make a grant payment until it receives a written statement from the applicant that certifies that the work has been performed in accordance with a work plan approved by the Department. Proposed R18-12-714(B)(3) would qualify that SAF-related grant applicants do not need to submit such a statement, because the assurance provided by certification is already provided by the SAF direct payment or reimbursement determination. Proposed R18-12-714(B)(3) also would remove the requirement that the statement from other types of grant applicants reference a Department-approved work plan, because grant applications for expedited review of documents designated under A.R.S. § 49-1072(A)(4) do not require a work plan.

14. R18-12-714. Grant Issuance; Notification; Payment - Subsection (C)

R18-12-714(C) currently states the Department "shall not make total payments in excess of the amount in *the* written detailed, firm, fixed cost estimates approved by the Department" (emphasis added). This statement implies that cost bids are required for program approval for all types of grant applications. This requirement would be inconsistent with proposed R18-12-706(D), which would specify that cost bids are not necessary if the application is for a corrective action or an expedited review of documents designated under A.R.S. § 49-1072(A)(4). Proposed R18-12-714(C) would remove this inconsistency.

Additionally, proposed R18-12-714(C) would clarify that the Department shall make total payments up to the approved amount unless the amount actually spent on the eligible project is less than the approved amount, in which case the Department shall make total payments up to the amount actually spent. Finally, proposed R18-12-714(C) would reiterate the requirement that the Department shall not make any payments for work that is not a grant-eligible project unless it is directly related to the preparation of the grant application.

15. R18-12-714. Grant Issuance; Notification; Payment - Subsection (D)

R18-12-714(D) currently states that an applicant who fails "to meet the requirements of subsection (B)(1) within 60 days of the notice of grant issue" shall forfeit the grant issue. Proposed R18-12-714(D) would state more precisely that the 60-day clock starts upon the applicant's receipt of the Department's notice of grant issue.

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:**

The economic impact of this proposed rulemaking would be positive. The proposed rules would eliminate unnecessary burdens on grant applicants and clarify the procedures grant applicants must follow. The proposed rules would not assign additional responsibilities to grant applicants.

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: George Tsiolis

Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-2222

Fax: (602) 207-2251

TDD: (602) 207-4829

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:**

The public comment period for the proposed rules begins with the date this notice is published in the *Arizona Administrative Register* and ends on Friday, June 5, 1998. Persons interested in submitting written comments on these proposed rules should mail them or fax them to George Tsiolis, identified in questions #3 and #7 above, not later than 5 p.m., Friday, June 5, 1998.

The Department will hold oral proceedings on the proposed rulemaking as follows:

Date: Monday, June 1, 1998

Time: 1 p.m.

Location: State Office Building
400 West Congress
Room # 158, South Building
Tucson, Arizona

Date: Tuesday, June 2, 1998

Time: 1 p.m.

Location: Phoenix Corporate Center
3003 North Central Avenue, Room #280
Phoenix, Arizona

Date: Friday, June 5, 1998

Time: 1 p.m.

Location: Flagstaff City Council Conference Room
211 West Aspen Avenue
Flagstaff, Arizona

Persons interested in presenting verbal comments, submitting written comments, or obtaining more information on the proposed rule may do so at the proceedings. The Department will respond to formal comments in the Notice of Final Rulemaking.

The Department is committed to complying with the Americans with Disabilities Act. Persons with a disability who are interested in presenting comments may arrange for special accommodation by calling (602) 207-4795 or (TDD) (602) 207-4829.

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:
(1) Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended on June 30, 1995. Located at R18-12-707(A)(6).

(2) American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended December 1987, Supplement March 1989. Located at R18-12-707(C).

(3) American Petroleum Institute publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks", January 1991. Located at R18-12-710(A).

(4) American Petroleum Institute publication 1631, "Interior Lining of Underground Storage Tanks," 2nd edition, December 1987. Located at R18-12-710(A).

11. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY - UNDERGROUND STORAGE TANKS

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

Section
R18-12-705. Grant Application Process
R18-12-706. Grant Application Contents
R18-12-707. Work Plan
R18-12-710. Feasibility Determination
R18-12-712. Criteria for Determining Priority Ranking Points for Applicants Other than Local Governments
R18-12-714. Grant Issuance; Notification; Payment

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY - UNDERGROUND STORAGE TANKS

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

R18-12-705. Grant Application Process

A. In accordance with the provisions of R18-12-706(A), an owner or operator shall submit to the Department during a grant application submission period described in R18-12-704 all of the information described ~~under~~ in R18-12-706, except that the ~~work plan required by R18-12-706(D)(2) does not need to include the information required by R18-12-707(A)(6) through (9) until the Department has notified the applicant, in accordance with R18-12-714(A), whether a grant has been approved or denied~~ surety bond, general liability insurance, mechanic's lien, and contract, if required under R18-12-706(D)(2), may be submitted separately from the work plan. If the owner or operator elects to submit separately the proof of surety bond, general liability insurance, mechanic's lien, or contract, then the owner or operator shall submit that information to the Department not later than 60 days after receiving the Department's notice of grant issue approval under R18-12-714(A), otherwise the grant issue shall be forfeited in accordance with R18-12-714(D). The Department shall not issue a warrant for the payment of the grant if the Department has not received all information required under this Article.

B. After the close of the submission period, the Department shall review grant applications in the order received and allocate priority ranking points to each application in accordance

with R18-12-711 or R18-12-712. If no priority points are allocated under R18-12-711(B)(3)(a) or R18-12-712~~(1)(a)~~(B)(1), the Department shall inform the applicant in writing that the application has been rejected.

C. If an application is not rejected, the Department shall review the application and determine whether there are deficiencies in the information submitted. The Department shall inform the applicant in writing of any deficiencies and of the resubmission provisions under R18-12-709(B).

D. If a grant application involves either upgrading a UST system with corrosion protection under R18-12-702(A)(2) or replacing a UST system under R18-12-702(A)(3), the Department shall determine the feasibility of upgrading the system in accordance with the requirements of R18-12-710.

E. Following the end of the resubmission period, the Department shall determine which applicants are to receive grant funds in accordance with R18-12-713 and make payments in accordance with R18-12-714.

F. The Department shall accept for consideration grant applications and grant application resubmissions that are submitted before or after commencement or completion of the work that is the subject of the grant application or application resubmission.

R18-12-706. Grant Application Contents

A. An owner or operator seeking a grant to fund an eligible project as described in R18-12-702 shall submit to the Department an application on a form provided by the Department. The application may contain information on more than 1 project at the facility if all requirements under this Article are met for each project. If the same information is required for more than 1 project on the same application, the information shall be included only once and a reference made on the application to that information.

B. The application shall contain all of the following information:
1. The name, daytime telephone number, and mailing address of the applicant.
2. The federal employer identification (tax) number or social security number of the applicant.
3. A description of the applicant's status as either an owner or operator and classification as either a local government or other than local government.
4. The total number of UST facilities owned or operated by the applicant.
5. The UST owner identification number assigned by the Department to the person who owns the facility where the eligible project was or will be conducted.
6. The name and daytime telephone number of a person the Department may contact if there are questions regarding the application or its attachments.

C. The application shall contain all of the following information regarding the facility ~~at~~ and UST on which the eligible project was or will be conducted:
1. The facility name, site address, and the associated County Assessor book, map, and parcel number;
2. The UST facility identification number assigned by the Department;
3. The date of installation of the UST;
4. The regulated substance stored in the UST over the past 12 months;
5. The Leaking Underground Storage Tank number assigned by the Department to any releases at the facility;
6. A statement as to whether the facility is involved in marketing regulated substances from UST systems;
7. The distance, in miles, from the facility to the nearest alternative source of the same regulated substance as stored in the UST system; and
8. If the eligible project is described under R18-12-702(A)(1) through (3), a business plan prepared in accordance with R18-12-708.

D. An application, except an application for a corrective action grant as described in R18-12-702(A)(4) or an application for expedited review as described in R18-12-702(A)(6), shall contain the information required by subsections (D)(1) ~~through (5)~~, (2), (3), (4), (5) and ~~(7)~~ (8) for the eligible project. An application for a corrective action grant as described in R18-12-702(A)(4) shall contain the information required by subsections (D)(1), (2), (3), (5), (6) and (8). An application for an expedited review as described in R18-12-702(A)(6) shall contain the information required by ~~subsection (D)(6)~~ subsections (D)(1), (3), (5) and (7).
1. A statement of the kind of eligible project as listed in R18-12-702(A).
2. A work plan which meets the requirements of R18-12-707. The work plan shall be the basis for ~~all~~ cost bids submitted with the application.
3. The total amount of grant funds requested. ~~The amount requested shall be the lowest of 3 written, detailed, firm, fixed cost bids for completing the eligible project. All 3 cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project.~~ If the amount requested is based on 3 cost bids that are required under (4), then the amount requested shall be the lowest of the cost bids.
4. ~~The 3 bids, which shall include, for each itemized cost, a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item contained in the work plan that will be completed for that itemized cost.~~
4. Three written, detailed, firm, fixed cost bids for completing the eligible project. All 3 cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project and shall include for each itemized cost a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item or portion of the work plan that describes that cost.
5. The total amount of costs incurred for professional services directly related to the preparation of the grant application.
6. If the eligible project is a corrective action as described in R18-12-702(A)(4), then the grant applicant shall also include a copy of the direct payment or reimbursement determinations for that corrective action issued by the Department in accordance with R18-12-609, otherwise the applicant shall include a statement that the information identified at R18-12-601 through R18-12-607.01 was submitted to the Department as required for the Department to make the SAF pre-approval, direct payment, or reimbursement determinations.
7. If the eligible project is an expedited review as described in R18-12-702(A)(6), the application shall ~~contain the information required by subsections (B), (C), and (E) through (I) and subsections (D)(1), (D)(3), and (D)(5)~~ identify the documents the applicant is requesting be reviewed on an expedited basis. ~~The~~ A

schedule of costs for an expedited review of documents shall be used to determine the grant amount ~~of the grant request~~. The schedule of costs shall include each type of document and the corresponding cost for the expedited review of that document ~~shall be shown for each document included in the project~~.

~~7~~8. The name and address of each service provider, including subcontractors, that performed, or will perform, services required to conduct the eligible project, and all of the following information for each service provider:
   a. Identification as a consultant, contractor, engineer, subcontractor, tester, or other professional classification and whether a license from the Board of Technical Registrations is required for the profession;
   b. Contractor license number issued by the Registrar of Contractors;
   c. License number issued by the Board of Technical Registrations; and
   d. The name and daytime telephone number of the project contact person.

E. An applicant applying on behalf of an individual, or a firm classified as other than local government, shall submit to the Department the information described in subsections (E)(1) through (3) and, if applicable, (E)(4).
1. For all applicants, the balance sheet from the most recent completed fiscal year for the firm, and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
   a. Total assets and total liabilities,
   b. Total intangible assets,
   c. Total current assets and total current liabilities, and
   d. Current year-end net worth.
2. For individuals and sole proprietorships, the applicant's personal financial statement that meets all of the requirements of subsection (E)(1).
3. For partnerships, limited liability companies and S corporations, the personal financial statement that meets the requirements of subsection (E)(1) for each owner of 20% or more of the firm.
4. For applicants who wish to be eligible for priority ranking points under R18-12-711(G), a copy of the most current federal and state annual income tax returns that show all of the following:
   a. Total revenues and total expenses, and
   b. Total revenues from operation of UST facilities.

F. If the applicant firm is a wholly-owned subsidiary, the applicant shall provide to the Department a copy of all documents required under subsection (E) for the parent firm. The Department shall determine financial need based upon the financial statements of the parent firm.

G. If an application is made on behalf of a nonprofit or not-for-profit entity organized under the provisions of A.R.S. Title 10, the applicant shall submit to the Department a copy of the letter from the Corporation Commission granting nonprofit or not-for-profit status and the most recent year-end balance sheet and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
1. The information described under subsections (E)(1)(a) through (d);
2. Current year-end and the prior year-end reserved and designated fund balances;
3. Current year-end and the prior year-end unreserved and undesignated fund balance; and
4. If the applicant wishes to be eligible for priority ranking points under R18-12-711(G), a copy of the most recent year-end statement of revenues and expenses prepared simultaneously with the balance sheet that shows all of the information required under subsections (E)(4)(a) and (b).

H. If application is made on behalf of a local government, the applicant shall submit to the Department a copy of the balance sheet for the most recent completed fiscal year and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
1. Current year-end and the prior year-end reserved and designated fund balances,
2. Current year-end and the prior year-end unreserved and undesignated fund balance, and
3. Total current assets and total current liabilities.

I. The applicant shall sign, have notarized, and attach to the application a certification statement that, to the applicant's best information and belief, all information provided on the application and attachments to the application is true and complete.

R18-12-707. Work Plan

A. A work plan for a grant for an eligible project under R18-12-702(A)(1) through (3) shall contain all of the following:
1. A site plan, drawn to scale, that includes a diagram of the facility showing the location of each UST involved in the project, the access routes to each UST involved, ~~any~~ obstructions to access to each UST including natural or artificial barriers, canopies, buildings, and other structures;
2. A plan ~~that includes specific actions to be taken during the installation or removal of any equipment or material~~ or report of the specific material or equipment installation or removal activities;
3. A timetable for the incremental steps and completion of the project tasks not yet commenced or completed;
4. The specifications and certifications~~, as supplied~~ provided by the manufacturer or a third party~~,~~ for all equipment ~~to be installed~~ the installation of which is the subject of the grant application, including~~, if it exists, the 3rd party~~ third-party certification of performance standards for probability of detection and probability of false alarm for leak detection equipment in accordance with A.R.S. § 49-1003;
5. If the eligible project includes the ~~addition of corrosion protection to an UST~~ installation of a cathodic protection system under R18-12-702(A)(2) or ~~replacement of an UST under~~ R18-12-702(A)(3), the engineering plan~~, if necessary,~~ for the installation of the ~~UST~~ system prepared by a corrosion expert and supporting documents that demonstrate the effectiveness of the ~~corrosion protection~~ system under the site-specific conditions ~~where it will be operating~~;
6. The original or duplicate of ~~a~~ an American Institute of Architects surety bond form A311 with a penal sum in the amount of the contract, which names the Department and the applicant as dual obligees and the contractor as principal for each service provider on the eligible

project, and which provides that a lawsuit under the bond may be filed within 2 years from the date on which final payment under the contract falls due. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended on June 30, 1995, and no future editions, incorporated by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State;

7. A copy of the comprehensive general liability insurance policy or a certificate of insurance for the general liability insurance policy providing coverage for each contractor who will provide services during the eligible project. The comprehensive general liability insurance policy shall have a minimum limit of liability of $1,000,000, include coverage for pollution liability, and name the Department as a named insured for any liabilities incurred in relation to the eligible project;
8. A copy of any mechanics' lien placed on the facility or the equipment at or to be installed at the facility in conjunction with the eligible project; and
9. A copy of each contract signed by the owner or operator concerning the eligible project.

B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under ~~R18-12-607.01 and the requirements of~~ subsections (A)~~(6)~~(7) through (9), except that the contractor comprehensive general liability insurance policy is not required to include coverage for pollution liability.

C. A work plan for a grant for an eligible project under R18-12-702(A)(5) shall comply with the requirements of subsections (A)(1) through (4), and (A)(6) through (9) and contain provisions for compliance with the standards of the American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended December 1987, Supplement March 1989, Washington, D.C., and no future editions, incorporated by reference and on file with the Department and the Secretary of State.

R18-12-710. Feasibility Determination

A. For eligible projects listed in R18-12-702(A)(2) and (3) that involve corrosion protection, the Department shall determine the feasibility of upgrading or replacing the UST. The Department shall base its feasibility determination on ~~an internal UST inspection report~~ a report of internal inspection of the existing UST, conducted by an Arizona licensed contractor. The inspection report shall include a certification by the contractor that the inspection was conducted ~~and the feasibility determination made~~ in accordance with the American Petroleum Institute publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks", (January, 1991) and the American Petroleum Institute publication ~~1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", (December 1987, Supplement March 6, 1989)~~ 1631, "Interior Lining of Underground Storage Tanks," second edition (December, 1987), and no later amendments or editions, both of which are incorporated by reference and on file with the Department and the Office of the Secretary of State.

B. The Department shall ensure that the amount of grant monies approved for an eligible project ~~correlates~~ is consistent with the results of the feasibility determination. If the feasibility determination concludes that a UST can be upgraded with corrosion protection, but the application requests grant funds for replacing the UST, the Department shall not approve an amount in excess of the estimated cost of upgrading the UST. If a UST cannot be upgraded with corrosion protection, and the application requests grant funds to upgrade the UST, the Department may approve the amount of the estimated cost of replacing the UST.

R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

A. The Department shall allocate priority ranking points to a grant application of an owner or operator that is a local government in accordance with this Section. The maximum number of priority ranking points is 100, consisting of the points allocated in accordance with subsections (B) and (C).

~~1.~~**B.** The Department shall allocate a maximum of 50 priority points for financial need. as follows:

~~a~~1. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by total unreserved and undesignated fund balance. If the total unreserved or undesignated fund balance is negative, 25 priority ranking points shall be allocated. If the total unreserved or undesignated fund balance is positive, priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to but not including 20%	20 Points
12% up to but not including 16%	15 Points
8% up to but not including 12%	10 Points
4% up to but not including 8%	5 Points
Less than 4%	0 Points

~~b~~ 2. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the balance sheet submitted in accordance with R18-12-706(H). Priority ranking points shall be allocated in accordance with R18-12-711(B)(3)(b).

~~2~~ **C.** Additional priority ranking points shall be allocated in accordance with R18-12-711(C) through (F).

R18-12-714. Grant Issuance; Notification; Payment

A. ~~Within~~ Not later than 90 days ~~following~~ after the end of the submission period or, if applicable, the resubmission period, the Department shall notify each applicant in writing of the denial or approval of a grant issuance. The determination of denial or approval shall be made in accordance with R18-12-713. A notice of grant approval shall contain all of the following:

1. A statement of the original amount of the applicant's grant request~~;~~.
2. An explanation of all reductions or adjustments that reduce or change the original grant request amount and the reason for each change~~;~~.
3. A statement of the amount of the grant issue~~, and~~.
4. The provisions of subsections (B) through (D).

B. The Department shall not make any grant payment to the applicant or a person providing services or equipment to the applicant ~~for the purpose of completing the approved eligible project~~ until the Department receives all of the following:

1. ~~The documents required under R18-12-707(A)(6) through (9).~~ Proof of surety bond, general liability insurance, mechanic's lien and contract if required under R18-12-707. The grant applicant may submit these documents to the Department before or after commencement or completion of the work that is the subject of the

grant application but shall submit these documents not later than 60 days after receiving the notice of grant issue approval.

2. ~~Original invoices~~ Invoices for work performed or equipment installed in conjunction with the eligible project. If the work performed is an eligible project under R18-12-702(A)(1), (2), (3), or (5), then ~~Each~~ each invoice shall reference the work performed or the equipment installed to the specific item or task in the work plan~~;~~. If the work performed is an eligible project under R18-12-702(A)(4), then the applicant shall submit a copy of the direct payment or reimbursement determinations received pursuant to R18-12-609(A) in addition to the invoices for that work.
3. For work performed that is not an eligible project under R18-12-702(A)(4), ~~A~~ a written statement, signed by the applicant and the person acting as general contractor on the eligible project, which certifies that all work, equipment, or materials itemized on each invoice have been performed, used, or installed in accordance with ~~the work plan approved by the Department~~ this Chapter. The statement shall contain, for each invoice itemized, the invoice number and the total amount of the invoice. The signatures appearing on the certification shall be notarized~~; and~~.
4. An agreement signed by the applicant and the person serving as general contractor on the approved eligible project, which designates the name to be shown as payee on all warrants issued in payment for work and equipment on the approved project.

C. The Department shall not make total payments ~~in excess of the amount in the written, detailed, firm, fixed cost estimates~~ that exceed the grant amount approved by the Department in accordance with this Article, or that exceed the amount actually incurred to complete the eligible project, whichever is less. The Department shall not make payments to cover the cost of work that is not an eligible project under R18-12-702 unless the cost is for professional services directly related to the preparation of the grant application that are approved by the Department.

D. If all of the requirements of subsection (B) are met, and subject to the provisions of subsection (C), the Department shall issue a warrant for the amount of the submitted invoice(s). If an applicant is notified of a grant issuance but fails to meet the requirements of subsection (B)(1) ~~within 60 days of~~ not later than 60 days after receiving the notice of grant issue, then the Department shall inform the applicant in writing that the grant issue has been forfeited by the applicant. The Department shall return a forfeited grant issue to the grant fund.