

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected
R3-4-244
R3-4-245
- Rulemaking Action
Amend
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 3-107
Implementing statutes: A.R.S. §§ 3-202, 3-203, 3-204, 3-205, 3-205.01, 3-206, 3-207, 3-209, 3-210
3. The effective date of the rules:
June 4, 1998
4. A list of all previous notices appearing in the Register addressing the adopted rule.
Notice of Rulemaking Docket Opening:
3 A.A.R. 3118, November 7, 1997
Notice of Proposed Rulemaking:
4 A.A.R. 70, January 9, 1998
Notice of Public Hearing on Proposed Rulemaking:
4 A.A.R. 72, January 9, 1998
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
6. The explanation of the rule, including the agency's reasons for initiating the rules:
This rulemaking corrects a duplication of the species name in R3-4-244(A)(2)(d), moves a restricted pest to the regulated pest category, clarifies the definitions of specific pests, and, in R3-4-245, removes and adds a plant to the prohibited noxious weed list. Several of the noxious weeds that have been added to the prohibited list also appear on the regulated and restricted noxious weed list. Although these weeds already exist in Arizona, the inclusion on the prohibited list will ban further entry of these weeds in the state.

The floating water hyacinth listed in R3-4-244, has not been a problem in Arizona for 60 years. This plant is sold by nurseries for fish ponds and decorative water areas. Because the plant is not likely to survive Arizona's colder winters and doesn't grow well enough for propagation to occur that would close a waterway, there is no reason to keep the plant on the restricted list. The floating water hyacinth will still remain on the ornamental plant list, but the Department won't be responsible for controlling or eradicating the plant. In fact, there may be a demand for the floating water hyacinth as a component in a sewage system. a

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Kikuyu grass, R3-4-245(A)(2)(x) is being removed from the prohibited list. This plant is grown commercially in California and Hawaii as a forage crop and, under controlled conditions, is not a serious weed. The Department has already given a Yuma farmer permission to grow 125 acres of Kikuyu grass as a scientific experiment. The Department believes this plant can be a source of revenue.

The Tropical Soda Apple (TSA), a common weed in Paraguay, Argentina, Uruguay and southern Brazil, now exists in North America, Africa, India, the West Indies, Honduras, and Mexico. Since 1990, TSA has become a serious weed problem in many perennial grass pastures and natural areas of Florida, and has spread to Texas, Alabama, South Carolina, Mississippi, Georgia, Tennessee and Pennsylvania. Infestations of TSA in Florida were estimated at 25,000 acres in 1990 and 150,000 acres in 1992. According to the TSA census by beef producers, the TSA infestation was 388,000 acres in 1993 and is currently estimated at 500,000 acres. If all land systems (natural and developed) were included in estimating the TSA infestation in Florida, the acres of infestation are approximately a million acres. This rapid spread over 3 years is cause for concern for people in agriculture and those who manage natural systems.

How has this species, which is native to Brazil and Argentina, become a problem in Florida so rapidly? There are approximately 413 seeds per fruit and 125 fruit per plant with 70% germination rate (40,000 to 50,000 seeds per plant). In 1 year, a single plant could supply enough viable seed to produce 28,000 to 35,000 TSA plants. Although cattle and wildlife avoid eating the prickly vegetation, their long tongues can reach into the foliage to pluck off the fruits. The animals are good carriers for spreading the seeds through their digestive tracts.

TSA spreads rapidly and is highly competitive with other plants. It invades fields, roadsides, citrus groves, watermelon fields, rangeland and woodlands. The weed is a menace to natural areas. Its competitive nature will displace native plant species and forage plants essential to wildlife and livestock. Once introduced, there is a real possibility of TSA becoming a serious problem in the fragile riparian (streamside) communities in the Southwest. TSA's ability to form large, dense, and spiny stands within woodlands and water edges makes it a potential pest of recreational areas.

Researchers discovered that TSA is a threat to vegetable crops and interferes with melon harvests. The weed competes for space, nutrients and moisture, and it serves as a host for cucumber mosaic virus, potato leafroll virus, potato virus, tomato mosaic virus, tomato mottle virus and tobacco etch virus.

The foliage of TSA is spiny and not palatable for domestic livestock and wild grazers/browsers. The berry contains the glycoalkaloid solasodine and is toxic to humans. Symptoms of poisoning occur following the consumption of about 10 fruit. TSA is disseminated by humans primarily by grass seed, sod and contaminated hay.

Control of this perennial weed is difficult because of its prickly nature, ability to form large, dense stands; and it's rapidly expanding range. This suggests that TSA will have a major economic impact in agricultural fields, orange groves and pastures. The spread of TSA is associated with major soil disturbance, including the plowing of fields, disking, cleaning ditch banks, or herds of cattle around waterholes or feeding stations. Cleaning of roadsides and ditchbanks encourages invasion and spread of this pest. In the South, rooting by wildlife, such as racoons, deer and feral pigs, creates a favorable environment for TSA development. Mechanical control has limited effectiveness. Mowing alone leads to poor control due to the emergence of many seedlings, spreading of seed and regrowth of mowed plants. Control of this pest by mowing is most effective during the summer when few fruits are produced. University of Florida researchers discovered that the herbicides Remedy (triclopyr), Tordon (picloram) and Roundup (glyphosate) can be used to combat this weed. A control program combining mowing and herbicide treatment appears to be the most effective.

TSA is presently regulated under the Federal Noxious Weed Act (FNWA) and is listed as a noxious weed by Florida and other southeastern states. Although the FNWA is enforced by the Department, TSA represents enough of a threat to Arizona that it is imperative to include this weed on the prohibited noxious weed list.

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

Not Applicable.

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

TSA negatively impacts pasture grass production for cattle. TSA infests wooded areas (hammocks) and interferes with the ability of cattle to use these areas for shade. Without use of these areas for shade, the cattle will suffer additional production losses due to increased heat stress. The total value of annual cattle production loss in Florida from TSA is estimated at \$11,000,000.

TSA also negatively impacts vegetable production. It has been identified as a host for several viruses that cause economic damage to vegetables, such as cucumber mosaic virus, potato leafroll virus, potato virus, tobacco etch virus, tomato mosaic virus, and tomato mottle virus. TSA was the 1st weed in Florida identified to be a host of the geminivirus, a virus that causes millions of dollars each year in damage to tomato growers. In addition, TSA has also interfered with watermelon harvest efficiency.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

It is unknown what the costs would be if this noxious weed were to infest the state. The Department would set up a quarantine program and mount an aggressive campaign to monitor the borders and eradicate the pest.

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B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. *Businesses Directly Affected By the Rulemaking. (Agricultural industry in Arizona)*

Arizona's farmers and land owners, whether private, federal, or state would have to take whatever remedy necessary to eradicate the pest. Based on Florida's infestation, control measures include a combination of mowing and using specific herbicide treatments and spot treatments. The combination of different methods appears to control the development of seedlings. It is expected, that, unless the pest is prevented from entering the state, Arizona would experience the same economic damage and financial loss experienced in Florida.

D. *Estimated Costs and Benefits to Private and Public Employment.*

This rulemaking will have no impact on private and public employment.

E. *Estimated Costs and Benefits to Consumers and the Public.*

This rulemaking will regulate the Tropical Soda Apple in Arizona and discourage it from becoming a garden weed.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

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

The Department inadvertently added the floating waterhyacinth, *Eichhornia crassipes* (Mart.) Solms, to the prohibited list. One of the reasons for opening this rulemaking was to remove the plant from the regulated and restricted list because it has not been a problem in Arizona for over 60 years. It doesn't make sense to have this weed on the prohibited list.

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

A letter was received from the Navajo Nation inquiring about R3-4-245(B) and why Arizona was excluded from the 'Area Under Quarantine.' Because most of the Navajo Nation, located in Arizona, is concerned that this exclusion would cause weed problems to be unmonitored. The Navajos perceive this lack of monitoring as a threat to their land and ask that every effort be made to control and eradicate exotic (noxious) weeds.

R3-4-245, Prohibited Noxious Weeds deals with noxious weeds not found in Arizona, therefore including Arizona as an area quarantined in the "Area Under Quarantine" is not correct. This rule, however, does work hand-in-hand with R3-4-244, Regulated and Restricted Noxious Weeds which deals with infested noxious weed areas in Arizona.

The Navajo Nation is a sovereign nation and is not subject to all of Arizona's laws and rules. Consequently the Department does not monitor Navajo lands for noxious weeds or any other agricultural product without an explicit agreement to enforce state laws on the land. The Department is uncertain what is expected of it. The Department spoke with the Navajo Nation representative in a telephone conversation and the Department agreed to send information regarding noxious weeds to the requested address.

A question was raised at the oral proceeding if enough information had been gathered about Kikuya grass to remove it from the prohibited list and whether the floating waterhyacinth should be removed from the regulated weed list.

In response to the above concern, the Department held a March 23, 1998, telephone conference with technical and scientific people mentioned in the oral proceeding to discuss this rulemaking. During this teleconference different uses for the Kikuya grass were discussed and it was agreed that Kikuya grass grown as forage is easy to control and, if needed, could be killed using Roundup with 100% effect. Forage Kikuya grass does not produce seed and does not survive outside the confines of a field. As a forage crop, it is highly unlikely that the Kikuya grass seed or plant will be competitive with other plants in its environment using the current Kikuya variety now grown. Currently there is no interest in growing Kikuya grass as a turf and if Kikuya grass does become a problem, the Department could consider adding it to the restricted weed list.

The waterhyacinth and TSA were discussed and no one objected to the changes made in the rulemaking.

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

None.

12. **Incorporations by reference and their location in the rule:**

None.

13. **Was this rule previously adopted as an emergency rule:**

No.

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

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TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

- R3-4-244. Regulated and Restricted Noxious Weeds
- R3-4-245. Prohibited Noxious Weeds

ARTICLE 2. QUARANTINE

R3-4-244. Regulated and Restricted Noxious Weeds

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following shall apply to this rule Section:

1. "Infested area" means each individual container in which the pest is found or the specific area which that harbors the a pest.
2. "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), ~~which are regulated noxious weeds found within the state may be controlled to prevent further infestation or contamination:~~
 - a. *Cenchrus echinatus* L. -- Southern sandbur,
 - b. *Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - c. *Convolvulus arvensis* L. -- Field bindweed,
 - d. *Eichhornia crassipes* (Mart.) Solms -- Floating waterhyacinth,
 - ~~d-e. *Medicago Medicago* polymorpha L. -- Burclover,~~
 - ~~e-f. *Portulaca oleracea* L. -- Common purslane,~~
 - ~~f-g. *Tribulus terrestris* L. -- Puncturevine,~~
3. "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), ~~which are restricted noxious weeds found within the state shall be quarantined to prevent further infestation or contamination:~~
 - a. *Acrotilon repens* (L.) DC. -- Russian knapweed,
 - b. *Aegilops cylindrica* Host. -- Jointed goatgrass,
 - c. *Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - d. *Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - e. *Centaurea diffusa* L. -- Diffuse knapweed,
 - f. *Centaurea maculosa* L. -- Spotted knapweed,
 - g. *Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - h. *Cuscuta* spp. -- Dodder,
 - i. *Eichhornia crassipes* (Mart.) Solms -- Floating waterhyacinth
 - j-i. *Elytrigia repens* (L.) Nevski -- Quackgrass,
 - k-j. *Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,
 - l-k. *Helianthus ciliaris* DC. -- Texas blueweed,
 - m-l. *Ipomoea triloba* L. -- Three-lobed morning glory,
 - n-m. *Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,
 - o-n. *Onopordum acanthium* L. -- Scotch thistle.

- B. No Change.
- C. No Change.
- D. No Change.
- E. No Change.

- F. No Change.
- G. No Change.

R3-4-245. Prohibited Noxious Weeds

A. Definition. In addition to the definitions provided in A.R.S. § 3-201, the following shall apply to this rule Section:

1. "Infested area" means each individual container in which the a pest is found, the specific area which that harbors the pest, or any shipment which that has not been released to the receiver and is ~~found to be~~ infested with a pest.
2. "Pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), ~~which that are prohibited noxious weeds from entering the state:~~
 - a. *Acrotilon repens* (L.) DC. -- Russian knapweed,
 - b. *Aegilops cylindrica* Host. -- Jointed goatgrass,
 - c. *Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - ~~a-d. *Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,~~
 - ~~e-e. *Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,~~
 - ~~b-f. *Cardaria chalepensis* (L.) Hand-Muzz -- Lens podded hoary cress,~~
 - g. *Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - ~~d-h. *Carduus acanthoides* L. -- Plumeless thistle,~~
 - i. *Cenchrus echinatus* L. -- Southern sandbur,
 - j. *Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - ~~e-k. *Centaurea calcitrapa* L. -- Purple starthistle,~~
 - ~~f-l. *Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,~~
 - ~~h-m. *Centaurea squarrosa* Willd. -- Squarrose knapweed,~~
 - ~~g-n. *Centaurea sulphurea* L. -- Sicilian starthistle,~~
 - o. *Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - p. *Centaurea diffusa* L. -- Diffuse knapweed,
 - q. *Centaurea maculosa* L. -- Spotted knapweed,
 - ~~i-r. *Chondrilla juncea* L. -- Rush skeletonweed,~~
 - ~~j-s. *Cirsium arvense* L. Scop. -- Canada thistle,~~
 - t. *Convolvulus arvensis* L. -- Field bindweed,
 - ~~k-u. *Coronopus squamaus* (Forsk.) Ascherson -- Creeping wartcress (Coronopus),~~
 - ~~l-v. *Cucumis melo* L. var. *Dudaim* Naudin -- Dudaim melon (Queen Anne's melon),~~
 - w. *Cuscuta* spp. -- Dodder,
 - ~~m-x. *Drymaria arenarioides* H.B.K. -- Alfombrilla (Lightningweed),~~
 - ~~n-y. *Eichhornia azurea* (SW) Kunth. -- Anchored waterhyacinth,~~
 - az. *Elytrigia repens* (L.) Nevski -- Quackgrass,
 - ~~o-aa. *Euphorbia esula* L. -- Leafy spurge,~~
 - bb. *Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,
 - cc. *Helianthus ciliaris* DC. -- Texas blueweed,
 - ~~p-dd. *Hydrilla verticillata* Royale -- Hydrilla (Florida-clo-dea),~~

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g-ee. Ipomoea spp. -- Morning glory. All species except Ipomoea carnea, Mexican bush morning glory; Ipomoea triloba, 3-lobed morning glory (which is considered a restricted pest); and Ipomoea aborescens, morning glory tree.

ff. Ipomoea triloba L. -- Three-lobed morning glory.

f-gg. Isatis tinctoria L. -- Dyers woad.

hh. Linaria genistifolia var. dalmatica -- Dalmation toadflax.

s-ii. Lythrum salicaria L. -- Purple loosestrife.

jj. Medicago polymorpha L. -- Burclover.

t-kk. Nassella trichotoma (Nees.) Hack. -- Serrated tussock.

ll. Onopordum acanthium L. -- Scotch thistle.

w-mm. Orobanche ramosa L. -- Branched broomrape.

v-nn. Panicum repens L. -- Torpedo grass.

w-oo. Pegalum harmala L. -- African rue (Syrian rue).

*. Pennisetum clandestinum Hochst. ex. Chiov. -- Kikuyu grass

pp. Portulaca oleracea L. -- Common purslane.

y-qq. Rorippa austriaca (Crantz.) Bess. -- Austrian field-cress.

z-rr. Senecio jacobaea L. -- Tansy ragwort.

aa-ss. Solanum carolinense L. -- Carolina horsenettle.

bb-tt. Sonchus arvensis L. -- Perennial sowthistle.

uu. Solanum viarum Dunal -- Tropical Soda Apple.

ee-yv. Stipa brachychaeta Godr. -- Puna grass.

dd-ww. Striga spp. -- Witchweed.

ee-xx. Trapa natans L. -- Water-chestnut.

yy. Tribulus terrestris L. -- Puncturevine.

B. No Change.

C. No Change.

D. No Change.

E. No Change.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

PREAMBLE

- 1. Sections Affected: R4-43-102. Rulemaking Action: Amend.
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific): Authorizing statute: ARS § 32-3404(A)(4); Implementing statute: ARS § 32-3427(A) and (B).
3. The effective date of the rule: June 4, 1998.
4. A list of all previous notices appearing in the Register addressing the final rule: Notice of Rulemaking Docket Opening: 3 A.A.R. 3745, December 26, 1997; Notice of Proposed Rulemaking: 4 A.A.R. 616, March 6, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking: Name: Kenneth D. Fink; Address: Arizona Board of Occupational Therapy Examiners, 1400 West Washington, Suite 240, Phoenix, Arizona 85007; Telephone: (602) 542-6784; Fax: (602) 542-5469.
6. An explanation of the rule, including the agency's reason for initiating the rule: The Arizona State 43rd Legislature during 1997 enacted House Bill 2154 changing the Board's licensing period from 1 year to 2 years. Board fees were originally established based upon a 1-year licensing period. However, rather than simply doubling the 1-year rates to arrive at new 2-year fee rates, the Board opted to decrease some of the 1-year rates and then double those amounts to arrive at a new 2-year fee schedule. In essence, this action reduces the annual cost for both the initial and renewal application fees.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this date: Not applicable.

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8. The summary of the economic, small business, and consumer impact:
This rulemaking reduces the initial and annual renewal fees.
9. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):
Corrected a typographical error in subsection (A)(1).
Replaced "reduced" with "subtracted" in subsection (A)(5).
10. A summary of the principal comments and the agency response to them:
None received.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
Not applicable.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

R4-43-102. Fees

ARTICLE 1. GENERAL PROVISIONS

R4-43-102. Fees

- A. The Board shall charge the following fees:
1. One hundred dollars for an application for license. This fee is in ~~additional~~ addition to the appropriate initial license fee.
 2. Seventy-five dollars for an application for reinstatement filed within ~~one year from~~ 180 calendar days of the normal expiration of the license for failure to renew. This reinstatement fee is in addition to the appropriate annual renewal of license fee.
 3. ~~\$125 for the initial license for an occupational therapist.~~
Occupational Therapist.
 - a. Initial license fee for a license issued on or before July 30, 1998: \$125.
 - b. Initial license fee for a license issued on or after July 31, 1998: \$135.
 - c. Renewal license fee for a license expiring on or before July 30, 1998: \$100.
 - d. Renewal license fee for a license expiring on or after July 31, 1998: \$135.
 - e. Inactive status renewal fee: \$25.
 4. ~~\$75 for the initial license for a certified occupational therapy assistant.~~
Occupational Therapy Assistant.
 - a. Initial license fee for a license issued on or before July 30, 1998: \$75.
 - b. Initial license fee for a license issued on or after July 31, 1998: \$70.
 - c. Renewal license fee for a license expiring on or before July 30, 1998: \$50.
 - d. Renewal license fee for a license expiring on or after July 31, 1998: \$70.
 - e. Inactive status renewal fee: \$15.
 5. ~~\$100 for the annual renewal of a license for an occupational therapist.~~
Thirty-five dollars for a limited permit. The last amount paid for a single limited permit shall be subtracted from the initial licensure fee.
 6. ~~\$50 for the annual renewal of a license for a certified occupational therapy assistant. \$10 for a duplicate license.~~
 7. ~~\$35 for a limited permit.~~
 8. ~~\$35 for the renewal of a limited permit.~~
 9. ~~\$10 for a duplicate license.~~
 10. ~~\$25 for the annual renewal of a license on inactive status for an occupational therapist.~~
 11. ~~\$15 for the annual renewal of a license on inactive status for an occupational therapy assistant.~~
- B. All fees set forth in subsection (A) are non-refundable ~~except as provided in ARS § 41-1077. All fees, except license renewal fees, shall be remitted to the Board in cash, cashier's check or money order.~~
1. Initial application, initial licensure, limited permit, and returned or insufficient fund replacement checks shall be remitted in cash, cashier's check, or money order.
 2. Renewal, duplicate license, and reinstatement fees shall be remitted in cash, cashier's check, money order or personal check.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY SOCIAL SERVICES

PREAMBLE

- | <u>1. Sections Affected:</u> | <u>Rulemaking Action:</u> |
|------------------------------|---------------------------|
| R6-5-5010 | Amend |
| R6-5-5227 | Amend |
| R6-5-5821 | Amend |
| R6-5-5907 | Amend |
| R6-5-7039 | Amend |
| Article 75 | New Article |
| R6-5-7501 | New Section |
| R6-5-7502 | New Section |
| R6-5-7503 | New Section |
| R6-5-7504 | New Section |
| R6-5-7505 | New Section |
| R6-5-7506 | New Section |
| R6-5-7507 | New Section |
| R6-5-7508 | New Section |
| R6-5-7509 | New Section |
| R6-5-7510 | New Section |
| R6-5-7511 | New Section |
| R6-5-7512 | New Section |
| R6-5-7513 | New Section |
| R6-5-7514 | New Section |
| R6-5-7515 | New Section |
| R6-5-7516 | New Section |
| R6-5-7517 | New Section |
| R6-5-7518 | New Section |
| R6-5-7519 | New Section |
| R6-5-7520 | New Section |
2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing Statutes: A.R.S. §§ 8-126(4)(a), 8-503(A)(4)(b), 41-1003, 41-1061(F), 41-1954(A)(3), 41-1967(I), and 46-134(A)(12).
Implementing Statutes: A.R.S. §§ 8-126, 8-506, 8-509, 41-1967(D) and (E), 41-1991 through 41-1993, and 46-134(A)(2)(b).
3. The effective date of the rules:
June 4, 1998.
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening
1 A.A.R. 1558, September 8, 1995
Notice of Rulemaking Docket Opening
3 A.A.R. 3261, November 14, 1997
Notice of Proposed Rulemaking
3 A.A.R. 3526, December 19, 1997
5. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:
Name: Vista Thompson Brown
Address: P.O. Box 6123, Site Code 837A
Phoenix, Arizona 85005
Telephone: (602) 542-6555

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Fax: (602) 542-6000

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

This rulemaking package arises out of rulemaking docket openings at 1 A.A.R. 1558 (September 8, 1995) and 3 A.A.R. 3261 (November 14, 1997).

The Department lacks an appropriate set of rules to govern appeals and hearings arising out of disputes over licensing and certification matters for foster homes, child care providers, and adoption agencies. These appeals and hearings are currently governed by 6 A.A.C. 5, Article 24. Article 24 was promulgated in 1978 and is outdated. Moreover, it is written to govern disputes over the provision of social services benefits, rather than disputes over regulatory matters.

In this rulemaking, the Department plans to adopt a comprehensive set of rules governing appeals and hearings in the following areas: denial, revocation, or suspension of an adoption agency license, a foster home license, or a certificate for a family child care home provider, and removal of a child care provider from the child care resource and referral system. The rulemaking package also includes the licensing and certification appeals rules that currently contain cross-references to Article 24, so that the cross-references can be amended.

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

Not applicable.

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

This rulemaking effort will not impose any significant costs on any person or group, other than the minor costs associated with promulgation and publication of the rulemaking package. Any minor costs are outweighed by the benefits of having a clear, concise, and understandable set of rules to govern appeals and hearings of social services regulatory matters. The public, the regulated social service entities, and the Department will all benefit from this rulemaking effort.

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

The Department did not receive any written comments concerning the proposed rules, but did make non-substantive, grammatical, technical, and punctuation changes, in response to suggestions from staff for the Governor's Regulatory Review Council (GRR). The language changes are summarized below:

R6-5-5010:

Changed "Appeals" to "Appeal" in the heading of the rule.

R6-5-5907:

- Deleted unnecessary word "or" at the end of subsections (A)(1) and (A)(2).
- Changed "and/or" to "or" in subsections (A)(2) and (A)(3).

R6-5-7039:

- Changed "appeals" to "an appeal" in subsections (C) and (D).

R6-5-7501:

- Deleted "same" in subsection (3).
- Changed "pursuant to" to "under" in subsections (4) and (14).
- Added the phrase "which is sometimes referred to as 'CCR & R'" in subsection (7).
- Deleted "same" and "as" in subsections (10) and (11).
- Changed "8-501(5)" to "8-501(A)(5)" in subsection (11).
- Changed "pursuant to" to "under"; changed "where" to "if"; and changed "is challenging" to "challenges" in subsection (12).

R6-5-7504:

- Changed "date of" to "date on"; changed "advising" to "advising the person"; and changed "make a written request form available" to "provide a form" in subsection (A).
- Changed "person who is the subject of" to "person subject to" in subsection (B)(1).
- Changed "When a request for hearing is not timely filed" to "When the Office of Appeals receives a request for hearing that was not timely filed" in subsection (F).

R6-5-7506:

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- Changed "which" to "that" in subsections (A)(2)(a) and (b) and (B)(2)(a) and (b).
- Changed "action" to "an action" and changed "as described in" to "according to" in subsection (B)(3).
- Added a comma after "CCR&R" to clarify that summary suspension under A.R.S. § 41-1064(C) applies to all licenses, certificates, and registrations governed by this Article.

R6-5-7508:

- Made the following change in subsection (B): "...the appellant shall ensure that the Office of Appeals must receives receive the request for postponement at least 5 work days before the scheduled hearing date, ~~and The Office of Appeals~~ may deny an untimely request."
- Deleted the phrase "or expected to arise" in subsection (B)(3).
- Changed "pursuant to" to "under" in subsection (C).

R6-5-7509:

- Changed "which" to "that" in subsection (B)(2).
- Changed "to" to "for" in subsection (B)(10).
- Deleted unnecessary "and" in subsection (B)(10)(d).
- Changed "deciding" to "resolving" in subsection (B)(11).

R6-5-7511:

- Changed "possession" to "possession of" in subsection (C)(4).

R6-5-7512:

- Changed "at a reasonable time prior to" to "before" in subsection (2).
- Changed citation form in subsection (5).
- Corrected a cross-reference from "R6-5-7522" to "R6-5-7520" in subsection (7).

R6-5-7514:

- Made the following change in subsection (B): "...still desires a ~~wishes the~~ hearing or wishes to..."
- Made the following change in subsection (F): "...has the same meaning applied to "excusable neglect as that term is used as prescribed in 16 A.R.S. Arizona Rules of Civil Procedure, Rule 60(C)."

R6-5-7515:

- Changed citation from "23-674(C)" to "23-674(D)" in subsection (C).
- Made the following change in subsection (E): "A party may obtain apply to the Office of Appeals for a waiver of the fee by submitting an affidavit stating upon a showing that the party cannot afford..."

R6-5-7518:

- Added the following text in subsection (D): "...proceedings of the hearing below transcribed for the Appeals Board."

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

The Department did not receive any public comments on the proposed rules. GRRC staff did make comments and suggest some changes that the Department chose not to adopt. The Department's reasons and responses are set forth below:

R6-5-5010 and R6-5-5227:

GRRC staff asked why the Department has a 15-day appeal period for the 2 child care programs, and a 20-day appeal period for the other programs covered in the rules. GRRC staff asked if these time periods should be consistent.

Response: The 20-day time period is mandated by A.R.S. § 8-506 and does not apply to child care matters. The Department's Child Care Administration has always used the shorter time period to expedite the appeal. Consistency is less critical in this situation because different administrations within the Department operate the child care programs and the other programs covered in this Article. Changing the 15-day period to 20 days would also require automated system changes. The Department elected to leave the 15-day period as is.

R6-5-7508:

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GRRC staff questioned the use of the term "reasonable control" in subsections (A) and (B)(1) regarding good cause for continuing a scheduled hearing date.

Response: The Department uses the term "reasonable" to create an easier standard for appellants. Without the term "reasonable," a hearing officer might be unwilling to find good cause unless the appellant does everything possible within his or her control to avoid the request for continuance, not merely those things which are reasonable given all the circumstances. The term "reasonable" has been construed in both judicial and administrative case law so that the term "reasonable control" is not an unclear standard. The Department kept the term "reasonable" to avoid imposing a higher burden of proof on an appellant.

GRRC staff also questioned why the 20-day notice period is not required for rescheduled hearings in subsection (C).

Response: In the past, rigid compliance with the 20-day notice requirement for rescheduled hearings has resulted in prolonged appeals in cases where the parties needed multiple continuances. It has also caused the Department to miss mandated time-frames for issuance of a decision. Typically, the Office of Appeals reschedules a hearing only after discussions with the parties as to a mutually convenient date. Thus, the Department believes that the lack of 20-day notice is not a problem.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their locations in the rules:
Not applicable.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY
SOCIAL SERVICES**

ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

Section
R6-5-5010. Administrative Appeal Appeals Process

ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS

Section
R6-5-5227. Appeals

ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS

Section
R6-5-5821. Appeals

ARTICLE 59. GROUP FOSTER HOME LICENSING STANDARDS

Section
R6-5-5907. Denial, Suspension or Revocation of a License

ARTICLE 70. ADOPTION AGENCY LICENSING

Section
R6-5-7039. Appeals

ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM

Section

R6-5-7501. Definitions
R6-5-7502. Appealable Actions: Entitlement to a Hearing
R6-5-7503. Computation of Time
R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions
R6-5-7505. Administration: Transmittal of Appeal
R6-5-7506. Stay of Adverse Action Pending Appeal
R6-5-7507. Hearings: Location; Notice; Time
R6-5-7508. Rescheduling the Hearing
R6-5-7509. Hearing Officer: Duties; Qualifications
R6-5-7510. Change of Hearing Officer; Challenges for Cause
R6-5-7511. Subpoenas
R6-5-7512. Parties' Rights
R6-5-7513. Withdrawal of an Appeal
R6-5-7514. Failure to Appear: Default; Reopening
R6-5-7515. Hearing Proceedings
R6-5-7516. Hearing Decision
R6-5-7517. Effect of the Decision
R6-5-7518. Further Administrative Appeal
R6-5-7519. Appeals Board
R6-5-7520. Judicial Review

ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

- R6-5-5010. Administrative Appeal Appeals Process**
- A. A provider may appeal the Department administrative review Administrative Review decision as prescribed in 6 A.A.C. 5, Article 75 A.A.C. R6-5-2401 et. seq., by filing a request for an appeal with the Department within 15 days after the mailing date of the Department's administrative review decision described in R6-5-5009(J).

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- B. No change.
- C. No change.
- D. No change.

ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS

R6-5-5227. Appeals

- A. No change.
- B. No change.
- C. The Department shall conduct All appeals shall be conducted as prescribed pursuant to the procedures set forth in 6 A.A.C. 5, Article 75 R6-5-2405.
- D. No change.

ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS

R6-5-5821. Appeals

- A. An applicant or licensee may appeal the denial, suspension, or revocation of a license as prescribed in 6 A.A.C. 5, Article 75 pursuant to the procedures prescribed in R6-5-2405(A) to (H). Imposition of a provisional license or a corrective action plan is not appealable.
- B. No change.
- C. No change.
- D. Appeals from the decision of a hearing officer are governed by A.R.S. §§ 41-1992(D) and 41-1993 and A.A.C. R6-5-7518 through R6-5-7520.

ARTICLE 59. GROUP FOSTER HOME LICENSING STANDARDS

R6-5-5907. Denial, Suspension or Revocation of a License

- A. The Department shall deny, suspend, or revoke any license when:
 - 1. The foster home is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes; ~~or~~
 - 2. The physical or and/or emotional needs of foster children are not met; ~~or~~
 - 3. Needed medical care is not arranged, or when a foster child's medical or and/or psychiatric plan of treatment is not followed; ~~or~~
 - 4. There is misrepresentation or the violation of public confidence.
- B. No change.
 - 1. No change.
 - 2. No change.
 - 3. When a hearing is requested, the denial, suspension, or revocation of the license is not shall not become final until after the hearing officer issues a decision is published. (Refer to Title 6, Chapter 5, Article 24, Complaints and Appeals.)
 - 4. The Department shall conduct appeals as prescribed in 6 A.A.C. 5, Article 75.

ARTICLE 70. ADOPTION AGENCY LICENSING

R6-5-7039. Appeals

- A. No change.
- B. No change.
- C. The Department shall conduct an appeal appeals from an adverse action as prescribed in 6 A.A.C. 5, Article 75 pursuant to the procedures in R6-5-2405(A) to (H).

- D. The Department shall conduct an appeal Appeals from the decision of a hearing officer as prescribed in shall be conducted pursuant to A.R.S. §§ 41-1992(D) and 41-1993 and R6-5-7518 through R6-5-7520.

ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, AND CHILD CARE PROVIDERS

R6-5-7501. Definitions

The following definitions apply in this Article.

1. "Adverse action" means:
 - a. Denial, suspension, or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and
 - b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.
2. "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children, Youth, and Families and the Child Care Administration.
3. "Adoption agency" has the meaning ascribed to "agency" in A.R.S. § 8-101(2).
4. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).
5. "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.
6. "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.
7. "Child Care Resource and Referral System," which is sometimes referred to as "CCR&R," means the child care provider information system which the Department administers under A.R.S. § 41-1967.
8. "Department" means the Arizona Department of Economic Security.
9. "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.
10. "Family child care home provider" has the meaning prescribed in R6-5-5201(29).
11. "Foster parent" has the meaning prescribed in A.R.S. § 8-501(A)(5).
12. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges adverse action.
13. "Licensee" means a person:
 - a. Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
 - b. Applying for certification as, or certified as, a family child care home provider; or
 - c. Listed on the Child Care Resource and Referral System.

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14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed under A.R.S. § 41-1992(A).
15. "Person" means a natural person, partnership, joint venture, company, corporation, firm, association, society, or institution.

R6-5-7502. Entitlement to a Hearing; Appealable Action

- A.** A licensee who disputes adverse action may obtain an administrative hearing to challenge the action as provided in this Article.
- B.** The following actions are not appealable:
1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
 2. Failure to clear a fingerprint check or criminal history check;
 3. Imposition of non-compliance status as prescribed in R6-5-7035;
 4. Imposition of a corrective action plan as prescribed in R6-5-5818;
 5. Removal of a child from a placement;
 6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
 7. Imposition of a provisional license as prescribed in A.R.S. § 8-509(D).
- C.** Findings made in a Child Protective Services ("CPS") investigation are not appealable under this Article. A person may appeal findings made in a CPS investigation of a licensee as prescribed in A.R.S. § 8-546.12.

R6-5-7503. Computation of Time

- A.** In computing any time period:
1. The term "day" means a calendar day;
 2. The term "work day" means Monday through Friday, excluding Arizona state holidays;
 3. The date of the act, event, notice, or default from which a designated time period begins to run, is not counted as part of the time period; and
 4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B.** A document mailed by the Department is deemed given to the addressee on the date mailed to the addressee's last known address. The mailing date is presumed to be the date shown on the document, unless the facts show otherwise.

R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions

- A.** Except as otherwise provided in R6-5-5010(A) and R6-5-5227, a person who wishes to appeal an adverse action shall file a written request for hearing with the Administration within 20 days of the date on the notice or letter advising the person of the adverse action. The Administration shall provide a form for this purpose, and, upon request, shall help an appellant fill out the form.
- B.** An appellant shall include the following information in the request for hearing:
1. Name, address, and telephone number, and, if applicable, telefacsimile number of the person subject to the adverse action;
 2. Identification of the Administration initiating the adverse action;

3. A description of the adverse action which is the subject of the appeal;
4. The date of the notice of adverse action; and
5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

- C.** The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (B), so long as the request contains sufficient information for the Department to determine the identity of the appellant and the issue on appeal.
- D.** A request for hearing is deemed filed:
1. On the mailing date, as shown by the postmark, if sent first class mail, postage prepaid, through the United States Postal Service to the Department; or
 2. On the date actually received by the Department, if not mailed as provided in subsection (D)(1).
- E.** The Department may determine that a document was timely filed if the sender of the document can demonstrate that the delay in submission was due to any of the following reasons:
1. Department error or misinformation;
 2. Delay or other action by the United States Postal Service; or
 3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- F.** When the Office of Appeals receives a request for hearing that was not timely filed, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excused as provided in subsection (E).
- G.** An appellant whose appeal is denied as untimely may petition for review as provided in R6-5-7518.

R6-5-7505. Administration: Transmittal of Appeal

An Administration that receives a request for appeal shall send the Office of Appeals a copy of the request and the adverse action notice within 2 work days of receipt of the request.

R6-5-7506. Stay of Adverse Action Pending Appeal

- A.** The Department shall not carry out the adverse action until the time for appeal has run, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action; or
 2. The appellant,
 - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice; and
 - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice.
- B.** If an appellant timely appeals an adverse action as provided in R6-5-7504, the Department shall not carry out the adverse action until a hearing officer issues a decision affirming the adverse action, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action;
 2. The appellant,
 - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice; and
 - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice;

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3. The appeal challenges an action that is not appealable according to R6-5-7502(B);
 4. The appellant withdraws the request for hearing; or
 5. The appellant fails to appear for the hearing.
- C. The Department may summarily suspend a license, a certificate, or registration on the CCR & R, as provided in A.R.S. § 41-1064(C).

R6-5-7507. Hearings: Location; Notice; Time

- A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing, or permit a witness to appear telephonically.
- B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing as follows:
1. For appeals of adverse action against a foster parent, within 10 days of the date the Department receives the appellant's request for hearing, as required by A.R.S. § 8-506; and
 2. For all other appeals, no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C. The Office of Appeals shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is scheduled within the 10-day period specified in subsection (B)(1). For hearings scheduled within the 10-day period, the Office of Appeals shall notify the parties telephonically, and send written notice at the earliest date practicable.
- D. The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
 2. The name of the hearing officer;
 3. A general statement of the issues involved in the case;
 4. A statement listing the parties' rights, as specified in R6-5-7511; and
 5. A general statement of the hearing procedures.

R6-5-7508. Rescheduling the Hearing

- A. An appellant may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed. Good cause exists where circumstances beyond the appellant's reasonable control make it difficult or burdensome for the appellant to attend the hearing on the scheduled date.
- B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least 5 work days before the scheduled hearing date. The Office of Appeals may deny an untimely request. Emergency circumstances mean circumstances:
1. Beyond the reasonable control of the party;
 2. Which did not arise until after the 5-day period; and
 3. Which could not reasonably have been anticipated.
- C. When the Office of Appeals reschedules a hearing under this section or R6-5-7514, the Office of Appeals shall notify all interested parties, in writing, prior to the hearing. The 20-day notice requirement in R6-5-7507(C) does not apply to rescheduled hearings.

R6-5-7509. Hearing Officer: Duties and Qualifications

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
1. Administer oaths and affirmations;

2. Regulate and conduct hearings in an orderly and dignified manner, that avoids unnecessary repetition and affords due process to all participants;
3. Ensure that all relevant issues are considered;
4. Exclude irrelevant evidence from the record;
5. Request, receive, and incorporate into the record, relevant evidence;
6. Upon compliance with the requirements of R6-5-7511, subpoena witnesses or documents needed for the hearing;
7. Open, conduct, and close the hearing;
8. Rule on the admissibility of evidence offered at the hearing;
9. Direct the order of proof at the hearing;
10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
 - a. Disqualify himself or herself from the case;
 - b. Continue the hearing to a future date or time;
 - c. Prior to the entry of a final decision, reopen the hearing to take additional evidence;
 - d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article; and
 - e. Exclude non-party witnesses from the hearing room; and
11. Issue a written decision resolving the appeal.

R6-5-7510. Change of Hearing Officer; Challenges for Cause

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit which shall include:
1. The case name and number;
 2. The hearing officer assigned to the case; and
 3. The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least 5 days before the scheduled hearing date.
- C. Unless a party is challenging a hearing officer for cause as provided in subsection (D), a party may request only 1 change of hearing officer.
- D. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- E. A party who brings a challenge for cause shall file a request as provided in subsection (A) and send a copy of the request to all other parties. The request shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- F. The hearing officer being challenged for cause may hear and decide the challenge unless:
1. A party specifically requests that another hearing officer make the determination; or
 2. The assigned hearing officer disqualifies himself or herself from the decision.
- G. The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (C); or
 2. A hearing officer is removed for cause as provided in subsections (D) through (F).
- H. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

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R6-5-7511. Subpoenas

- A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall 1st attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-5-7512(2).
- B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence.
- C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
 - 1. The case name and number;
 - 2. The name of the party requesting the subpoena;
 - 3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
 - 4. A description of any documents or physical evidence to be subpoenaed, including the title, appearance, and location of the item, and the name and address of the person in possession of the item; and
 - 5. A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D. A party who wants a subpoena shall ask for the subpoena at least 5 days before the scheduled hearing date.
- E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is cumulative.
- F. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their state employment, by regular mail, hand-delivery, or state courier service.

R6-5-7512. Parties' Rights

A party to a hearing has the following rights:

- 1. The right to request a postponement of the hearing, as provided in this Article;
- 2. The right to copy, before or during the hearing, any documents in the Department's file on the appellant, and documents the Department may use at the hearing, except documents shielded by the attorney-client or work-product privilege, or as otherwise prohibited by federal or state confidentiality laws;
- 3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-5-7510;
- 4. The right to request subpoenas for witnesses and evidence as provided in R6-5-7511;
- 5. The right to present the case in person or through an authorized representative, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31(a);
- 6. The right to present evidence and to cross-examine witnesses; and
- 7. The right to further appeal, as provided in R6-5-7518 and R6-5-7520, if dissatisfied with an Office of Appeals' decision.

R6-5-7513. Withdrawal of an Appeal

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a with-

drawal form available for this purpose. An appellant may also orally withdraw an appeal on the open record.

- B. Upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or a statement of withdrawal made on the record, the Office of Appeals shall dismiss the appeal.

R6-5-7514. Failure to Appear; Default; Reopening

- A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:
 - 1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
 - 2. Rule summarily on the available record; or
 - 3. Adjourn the hearing to a later date and time.
- B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals, before the scheduled time of hearing, that the appellant cannot attend the hearing, due to good cause, and still desires a hearing or wishes to have the matter considered on the available record.
- C. No later than 10 days after a scheduled hearing date at which a party failed to appear, the non-appearing party may file a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
- D. The hearing officer may decide the issue of good cause on the available record, or may set the matter for briefing or for hearing.
- E. If the hearing officer finds that the party had good cause for non-appearance, the hearing officer shall reopen the proceedings and schedule a de novo hearing with notice to all interested parties as prescribed in R6-5-7508(C).
- F. Good cause exists where the non-appearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

R6-5-7515. Hearing Proceedings

- A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
- B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).
- D. The Office of Appeals shall tape record all hearings or record the hearing by other stenographic means. The Department need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
- E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.
- F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing.
- G. The hearing officer shall call the hearing to order and dispose of any pre-hearing motions or issues.
- H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.

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- I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence. Unless the hearing officer allows a longer period of time, a statement shall not exceed 3 minutes.
- J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
- K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal, and shall exclude any irrelevant evidence.
- L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

R6-5-7516. Hearing Decision

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing, and the applicable law. The 60-day time limit is extended for any delay caused by the appellant.
- B. The hearing decision shall include:
 - 1. Findings of fact concerning the issue on appeal;
 - 2. Citations to the law and authority applicable to the issue on appeal;
 - 3. A statement of the conclusions derived from the controlling facts and law, and the reasons for the conclusions;
 - 4. The name of the hearing officer;
 - 5. The date of the decision; and
 - 6. A statement of further appeal rights and the time period for exercising those rights.
- C. The Office of Appeals shall mail a copy of the decision to each party's representative, or to the party if the party is unrepresented.

R6-5-7517. Effect of the Decision.

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective on the mailing date of the hearing officer's decision. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.

- B. If the hearing officer reverses the Administration's decision to take adverse action, the Administration shall not take the action unless and until the Appeals Board or Arizona Court of Appeals issues a decision affirming the adverse action.

R6-5-7518. Further Administrative Appeal

- A. A party may appeal an adverse decision issued by a hearing officer to the Department's Appeals Board, as prescribed in A.R.S. § 41-1992(C) and (D), by filing a written petition for review with the Office of Appeals within 15 days of the mailing date of the hearing officer's decision.
- B. The petition for review shall:
 - 1. Be in writing.
 - 2. Describe why the party disagrees with the hearing officer's decision, and
 - 3. Be signed and dated by the party or the party's representative.
- C. The party petitioning for review shall mail a copy of the petition to all other parties.
- D. The Office of Appeals shall have the proceedings of the hearing below transcribed for the Appeals Board.

R6-5-7519. Appeals Board

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D) and A.R.S. § 23-672.
- B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information would help in deciding the appeal. The Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required, or any further issues to be considered.
- C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer, and any further evidence or testimony presented to the Board.
- D. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The Board's decision shall specify the parties' rights to further review and the time for filing a request for review.

R6-5-7520. Judicial Review

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

PREAMBLE

- 1. Sections Affected Rulemaking Action
R12-7-117 Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. § 27-516(A)
Implementing statutes: A.R.S. § 27-516(A)(9)

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- 3. **The effective date of the rules:**
June 5, 1998
- 4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening:
4 A.A.R. 475, February 13, 1998
Notice of Proposed Rulemaking:
4 A.A.R. 506, February 20, 1998
- 5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Steven L. Rauzi, Oil and Gas Program Administrator
Address: Arizona Geological Survey
416 West Congress, Suite 100
Tucson, Arizona 85701-1315
Telephone: (520) 770-3500
Fax: (520) 770-3505
- 6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
R12-7-117 specifies requirements for stimulating oil and gas wells.
The Oil and Gas Conservation Commission is amending the rule to clarify reporting requirements. A regulated company recently advised the Commission that the rules were vague and not specific about reporting requirements.
- 7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- 8. **The summary of the economic, small business, and consumer impact:**
The rule directly impacts companies drilling for oil, gas, and geothermal resources. The rule is mostly procedural in nature and does not significantly impact the economy or have a significant impact upon small businesses or consumers. The proposed rule-making will benefit the regulated community by clarifying reporting requirements.
- 9. **A description of the changes between the proposed rules, including supplemental notices, and the final rules (if applicable):**
Based on suggestions and comments made by GRRC staff, several non-substantive changes were made to clarify the text and ensure that rule language conforms to the required rule drafting style.
- 10. **A summary of the principal comments and the agency response to them:**
None received.
- 11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
- 12. **Incorporation by reference and their location in the rules:**
None.
- 13. **Was this rule previously adopted as an emergency rule?**
No.
- 14. **The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

Section
R12-7-117. Artificial Stimulation of Oil and Gas Wells

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

R12-7-117. Artificial Stimulation of Oil and Gas Wells

A. An The operator shall report the artificial stimulation of any well to the Commission in writing within 15 days of the stimulation showing the type of stimulation, the amounts and types of materials used, stimulation pressures applied, and the flow and pressure results before and after stimulation, and the pressures applied.

B. If the artificial stimulation of a well results in any damage to the producing formation, a freshwater formation, casing, or casing seat that permits or may permit communication between fluid-bearing zones, the operator shall immediately notify the Commission and proceed with diligence to use appropriate

means to correct the damage. If the artificial stimulation results in irreparable damage to the well, the operator shall plug and abandon the well pursuant to in-compliance with R12-7-127.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected:

R18-2-101
R18-2-302
R18-2-306
R18-2-320
R18-2-331

Rulemaking Action:

Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 49-104

Implementing statutes: A.R.S. §§ 49-404, 49-425, 49-426, 49-426.01 and 49-426.03

3. The effective date of the rules:

June 4, 1998

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

3 A.A.R. 3367, November 28, 1997

Notice of Proposed Rulemaking:

3 A.A.R. 3342, November 28, 1997

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

Name: Mark Lewandowski or Martha Seaman
Rule Development Section

Address: ADEQ, 3033 North Central
Phoenix, AZ 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222
(Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)

Fax: (602) 207-2251

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

This rule contains minor changes to the Arizona Department of Environmental Quality's (ADEQ) air quality rules in 4 specific areas of stationary source permitting:

1. Correction of deficiencies in the state's Title V program as listed in EPA's October 30, 1996 Federal Register notice.
2. Changes to more effectively implement EPA's hazardous air pollutants (HAP) 112(g) rule, as published by EPA in the December 27, 1996 Federal Register.
3. A correction to a permitting threshold for fuel burning equipment to conform to a recent statutory change.
4. The addition of a pollutant and an emission rate to the definition of "significant" in R18-2-101(97). This pollutant and emission rate match federal law and were inadvertently omitted from ADEQ's recent landfill rule effective April 4, 1997.

ADEQ placed these 4 groups of permit related changes together for purposes of efficiency and because ADEQ determined that these 4 groups of changes were noncontroversial for reasons explained below. In addition, similar deadlines exist for the 1st two.

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The submittal deadline for correction of Arizona's Title V program deficiencies is currently listed as May 30, 1998, (61 FR 55519), while 40 CFR 63.42(a) requires a state 112(g) program to be effective no later than June 29, 1998.

Title V Deficiencies

ADEQ applied for approval of a state-run federal operating permits program on November 15, 1993. The general requirements for approval are listed in 40 CFR 70, which was promulgated in July, 1992. On October 30, 1996, EPA issued interim approval to ADEQ's title V permit program, with full approval conditioned on 6 corrections to be made before June of 1998 (61 FR 55910). Various sanctions, as well as EPA administration and enforcement of a federal permits program, are delineated by EPA as consequences for a state's failure to submit a timely corrective program. The following discussion follows EPA's order of items to be corrected at 61 FR 55919.

The 1st Title V correction occurs at R18-2-101(61)(b)(i). EPA found existing language in this provision regarding fugitive emissions to be potentially misleading and conditioned full approval upon clarification.

The 2nd Title V correction occurs in the final rule at R18-2-320(D). In its final Federal Register notice, EPA interpreted ADEQ rules as allowing parts of a source's permit to avoid full review requirements if the source changes from a Class II to a Class I source. ADEQ proposed new R18-2-320(E) to cover these revisions (subsequently renumbered to R18-2-320(D)), specifically requiring the entire permit for such source to undergo full Title V review during this revision. In a comment on the proposed rule, EPA expressed concern that the ADEQ approach "does not clearly require that the source submit a full, current application when it becomes a title V source." ADEQ therefore has added EPA suggested language in R18-2-320, requiring that the application for such a revision be a Class I permit application.

The 3rd Title V correction is at R18-2-306(A)(10). Of the 2 choices for correction required by EPA, ADEQ has chosen to eliminate a confusing 2nd sentence.

The 4th Title V correction is in R18-2-306(A)(14), which provides for trading of emissions increases and decreases within a permitted facility. EPA has required a clarification that such "non-revision" trades cannot trigger revisions under 2 provisions. This is not a substantive change because the 2 provisions are already similarly listed in R18-2-317(A)(1) and (2).

The 5th Title V correction required in the EPA notice is in regard to R18-2-310, a rule that provides affirmative defenses for excess emissions under certain circumstances. This item, unlike the others, is quite controversial, and is currently in litigation. ADEQ therefore decided not to act on this item in this rulemaking, pending the outcome of the litigation. ADEQ currently expects to propose another rule on this subject in the near future.

The 6th Title V correction is in R18-2-331. It makes a slight modification to the ADEQ rule in subsection (A)(1) so that "material permit conditions" can exist in county permits as well. This was the intent when the section was created in November, 1993. In addition, since the term "control officer" is not currently defined in rule, the definitions from A.R.S. § 49-471, which include "control officer", have been added to the opening language of R18-2-101. "Control officer" is also used in R18-2-324, 402 and 602.

Hazardous Air Pollutants 112 (g) rule

The Clean Air Act Amendments of 1990 included a federal hazardous air pollutant program that required EPA to issue emission standards for all major sources of 188 listed HAP. The emission standards were divided by EPA into various industrial source categories, and by November 15, 2000, EPA is required to have issued all of them. In the meantime, Congress also authorized, and EPA has now implemented, a transition rule known as "112(g)" to assure that effective pollution controls will be required for new major or reconstructed sources of HAP during the period before EPA is required to establish a national standard for a particular industry. (61 FR 68384, December 27, 1996) The rationale is that it is more cost-effective to design and add new air pollution controls at the time when facilities are being built or significantly rebuilt. Since local permitting authorities would be establishing these standards for individual sources before EPA would issue them nationally, these standards are known as "case-by-case MACT" (maximum achievable control technology).

ADEQ recognized that implementation of section 112(g) was possible with just the current rule infrastructure and an update of the incorporation by reference of the federal subpart in R18-2-1101(B)(2). However, for clarification, this rule making further changes existing rules in 2 places. First, language very similar to section 112(g) itself has been inserted at the end of R18-2-302. Second, in R18-2-320, the requirement for a significant revision now explicitly includes situations covered under 112(g). Note that updates of the incorporation by reference from "1996" to "1997", proposed in this rule making in R18-2-1101(A) and (B), were also proposed by ADEQ in an earlier rule making. That earlier rule was approved by GRRC and effective December 4, 1997. (See 3 A.A.R. 3600) Those changes have therefore been dropped from this rule making. The updates were originally proposed in this rule making so that this rule making was independent of the other.

40 CFR 63.42(b) spells out various degrees of federal involvement in case by case MACT determinations should a state fail to adopt a program to implement section 112(g). The bottom line is that 40 CFR 63.40 through 63.44 would be applied to a 112(g) source whether or not the state adopts a 112(g) program as state law.

The 112(g) rule provisions would be applied if a major source of HAP in 1 of the "seven year" or "ten year" MACT categories were to be built or reconstructed, (including new major processes or production units at existing sites, as those terms are used in

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the rule) before the applicable EPA deadline. Since the initial deadline for 7 year MACTs was November 15, 1997, this rule change will primarily affect 112(g) sources in the 60 or so ten year MACT categories. 112(j) regulations, already incorporated by reference by ADEQ in a 1995 rulemaking, apply after the applicable deadline.

ADEQ is not currently aware of any situations that may require its application of the 112(g) rule before November 15, 2000.

Fossil fuel equipment permitting threshold

Laws 1997, Ch. 175, made several changes to Arizona air permitting statutes. One of the changes was to increase the permitting threshold for fossil fuel burning equipment at A.R.S. § 49-426(B) from an aggregate of 500,000 BTUs per hour to a single piece of equipment with 1 million BTUs per hour. When the statute became effective on July 21, 1997, and an ADEQ rule requiring a permit for equipment over 500,000 BTUs became inconsistent with the new statute. ADEQ believes that this rule package is an appropriate place for this noncontroversial and deregulatory change. The 500,000 BTU threshold has been corrected to 1 million in the final R18-2-302(B)(2)(a) and other language consistent with the statute has been included. The language regarding incinerators was deleted because it was redundant. "Fuel burning equipment" as defined at R18-2-101(45) includes incinerators.

Significant emission rate for Municipal Solid Waste Landfill Emissions

In its March 12, 1996, MSW landfill rule, EPA amended 40 CFR 51.166 and 51.21 to include a "significant" emission rate of 50 tons per year for municipal solid waste landfill emissions. (See 61 FR at 9918) ADEQ inadvertently omitted this item from its own landfill rule, effective April 4, 1997, (3 A.A.R. 967) which it submitted to EPA for § 111(d) plan approval in June of 1997. By including this significant emission rate in R18-2-101(97), ADEQ will ensure that NSR/PSD rules will apply to all subject facilities which have increases in landfill gas emissions above the significance level.

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

Not applicable.

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

Identification of Adopted Rulemaking

Title 18, Chapter 2, Articles 1 and 3; sections R18-2-101, R18-2-302, R18-2-306, R18-2-320, R18-2-331

(Please note that the entire Economic, Small Business, and Consumer Impact Statement is included here. No further materials are included in the rulemaking docket.)

ADEQ has determined that it is not required to prepare an economic, small business and consumer impact statement (EIS) for the BTU portion of this rule because the rule qualifies as "deregulatory" under A.R.S. § 41-1055(D)(3). In the proposed rule, ADEQ sought comment on whether the BTU portion of this rule would increase or decrease any monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons. No comment on this section was submitted. Since this portion of the rule increases a permitting threshold, ADEQ has concluded that it is deregulatory under A.R.S. § 41-1055(D)(3).

The changes in this rule related to Title V corrections, 112(g) implementation and the landfill emissions significance rate are changes that would be implemented by the federal government if not enacted into state law. (See discussion in part 6 of this preamble.) Therefore, ADEQ has determined that there is no economic impact attributable to the changes in state rule.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rule making. The 5 listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rule-making are contained in the statutory authority cited in part 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for full EPA approval of ADEQ's Title V operating permits program.
2. Implement rules necessary to implement EPA's § 112(g) rules.
3. Implement rules necessary for approval of Arizona's § 111(d) MSW landfill plan.
4. Make a permitting rule change to be consistent with a new statutory provision.

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ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of federal programs to ADEQ. In addition, for the 1st 3 of these objectives, ADEQ is required to adopt the federal rules without change. ADEQ therefore finds that it is not legal or feasible to adopt any of the 5 listed methods to reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

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

ADEQ made the following changes to the proposed R18-2-320(E) based on a comment received from EPA:

- E. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, ~~the it shall submit a Class I permit application in accordance with R18-2-304.~~ The director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit application, content, and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

ADEQ also made the following change to the proposed rule at R18-2-302(B)(2)(b)(v):

- v. Fuel burning equipment which, at a location or property other than a 1 or 2-family residence, ~~is rated at 1 million BTU per hour or greater, are fired at a sustained rate of more than 1 million Btu per hour for more than an 8-hour period.~~

The Section still implements the statutory requirement that no permit be required for equipment rated at less than 1 million BTU. In addition, it allows ADEQ to avoid requiring permits for boilers that may be rated higher than 1 million but that aren't used as continuously as industrial process boilers, such as swimming pools, apartment complex heaters, etc.

Finally, ADEQ did not adopt the proposed changes to R18-2-1101. These changes, which were updates to federal regulations incorporated by reference necessary for the 112(g) portion of this rule, were adopted by a previous rule making. (3 A.A.R. 3600, December 26, 1997) Since both rule makings were to be pending simultaneously, ADEQ proposed the same changes in this rule making to ensure that it could move forward independently of the other.

Clarity, conciseness and understandability

In addition to the changes described above, numerous changes were made in each section of the proposed rule to improve the rule's clarity, conciseness and understandability, and to conform to current drafting conventions. A complete description of these changes is contained in the Concise Explanatory Statement (CES) for this rule. The CES is available from ADEQ.

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

ADEQ received only 1 comment on this rule. EPA expressed concern "that this approach [ADEQ's proposed rule] does not clearly require that the source submit a full, current application when it becomes a title V source." EPA suggested changes to R18-2-320, and in addition, to R18-2-304. ADEQ has made the changes to R18-2-320 in this rule, but did not make the changes to R18-2-304. ADEQ views the requirement to submit a Class I permit application in the final R18-2-320(D) (proposed as (E)) as sufficient and unambiguous. Consistent with R18-2-304, the change from a Class II to a Class I source dramatically increases the information related to the proposed change. The changes are shown in part 9 of this preamble.

In addition, EPA urged ADEQ to reconsider its approach of not addressing the interim approval issue relating to R18-2-310 in the current rule making. ADEQ remains committed to this approach and will not address this issue in this rule making. ADEQ plans to amend R18-2-310 in the near future.

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

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

None. Incorporations by reference in the proposed rule at R18-2-1101(A) and (B) were already accomplished by a separate rule-making. See 3 A.A.R. 360, December 26, 1997.

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

No.

14. The full text of the rules follows:

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TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-302. Applicability; Classes of Permits

R18-2-306. Permit Contents

R18-2-320. Significant Permit Revisions

R18-2-331. Material Permit Conditions

ARTICLE 1. GENERAL

R18-2-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, 49-471, and 49-541, in this Chapter, unless otherwise specified:

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.
12. No change.
13. No change.
14. No change.
15. No change.
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51. No change.
52. No change.
53. No change.
54. No change.
55. No change.
56. No change.
57. No change.
58. No change.
59. No change.
60. No change.
61. "Major source" means:
 - a. A major source as defined in R18-2-401.
 - b. A major source under Section 112 of the Act:
 - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emissions, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, ~~including any major source of fugitive emissions of any such pollutants, or such lesser quantity as described in Article 11 of this Chapter.~~ Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
 - c. A major stationary source, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
 - i. Coal cleaning plants (with thermal dryers).
 - ii. Kraft pulp mills.

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- iii. Portland cement plants.
- iv. Primary zinc smelters.
- v. Iron and steel mills.
- vi. Primary aluminum ore reduction plants.
- vii. Primary copper smelters.
- viii. Municipal incinerators capable of charging more than 50 tons of refuse per day.
- ix. Hydrofluoric, sulfuric, or nitric acid plants.
- x. Petroleum refineries
- xi. Lime plants.
- xii. Phosphate rock processing plants.
- xiii. Coke oven batteries.
- xiv. Sulfur recovery plants.
- xv. Carbon black plants (furnace process).
- xvi. Primary lead smelters.
- xvii. Fuel conversion plants.
- xviii. Sintering plants.
- xix. Secondary metal production plants.
- xx. Chemical process plants.
- xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
- xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- xxiii. Taconite ore processing plants.
- xxiv. Glass fiber processing plants.
- xxv. Charcoal production plants.
- xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- xxvii. All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under Section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.
- 62. No change.
- 63. No change.
- 64. No change.
- 65. No change.
- 66. No change.
- 67. No change.
- 68. No change.
- 69. No change.
- 70. No change.
- 71. No change.
- 72. No change.
- 73. No change.
- 74. No change.
- 75. No change.
- 76. No change.
- 77. No change.
- 78. No change.
- 79. No change.
- 80. No change.
- 81. No change.
- 82. No change.
- 83. No change.
- 84. No change.
- 85. No change.
- 86. No change.
- 87. No change.
- 88. No change.

- 89. No change.
- 90. No change.
- 91. No change.
- 92. No change.
- 93. No change.
- 94. No change.
- 95. No change.
- 96. No change.
- 97. "Significant" means:

- a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM10	15 tpy
VOC	40 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds):	50 tpy

- b. In ozone nonattainment areas classified as serious or severe, significant emissions of VOC shall be determined under R18-2-405.
- c. ~~In reference to~~ For a regulated air pollutant that is not listed in subsection (a), is not a Class I or II substance listed in Section 602 of the Act, and is not a hazardous air pollutant according to A.R.S. § 49-401.01(11), any emission rate.
- d. Notwithstanding the emission amount listed in subsection (a), any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 µg/m³ (24-hour average).
- 98. No change.
- 99. No change.
- 100. No change.
- 101. No change.

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- 102. No change.
- 103. No change.
- 104. No change.
- 105. No change.
- 106. No change.
- 107. No change.
- 108. No change.
- 109. No change.
- 111. No change.
- 112. No change.
- 113. No change.
- 114. No change.
- 115. No change.
- 116. No change.
- 117. No change.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-302. Applicability; Classes of Permits

- A. Except as otherwise provided in this Article, no person shall commence construction of, operate, or make a modification to any source subject to regulation under this Article, without first obtaining a permit or permit revision from the Director.
- B. There shall be 2 classes of permits as follows:
1. A Class I permit shall be required for a person to commence construction of or operate any of the following:
 - a. Any major source;
 - b. ~~Any~~ solid waste incineration units unit required to obtain a permit pursuant to section 129(e) of the Act;
 - c. ~~An~~ Any affected source; or
 - d. Any source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
 2. Unless a Class I permit is required, a Class II permit shall be required for:
 - a. ~~A person to commence construction of or modify either of the following after rules adopted pursuant to A.R.S. § 49-426.06 are effective:~~
 - i. ~~A source that emits, with controls, or has the potential to emit with controls, ten (10) tons per year or more of any hazardous air pollutant listed under A.R.S. § 49-426.04(A)(1) or twenty five (25) tons per year of any combination of hazardous air pollutants.~~
 - ii. ~~A source that is within a category designated pursuant to A.R.S. § 49-426.05 and that emits, or has the potential to emit, with controls one (1) ton per year or more of a hazardous air pollutant or two and one half (2½) tons per year of any combination of hazardous air pollutants.~~
 - ba. A person to commence construction of or operate any of the following:
 - i. Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;
 - ii. Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112 (r) of the Act;
- incorporated into the permit and shall be enforceable

- iii. Any source that emits or has the potential to emit, without controls, significant quantities of regulated air pollutants;
 - iv. Stationary rotating machinery of greater than 325 brake horsepower; or
 - v. Fuel burning equipment or incinerators that are which, at a location or property other than a 1 or 2 family residence, is fired at a sustained rate of more than \$00,000 1 million Btu per hour for more than an eight-hour 8-hour period.
- eb. A person to make a modification to modify a source which would cause it to emit, or have the potential to emit, quantities of regulated air pollutants greater than or equal to those specified in subdivision (a)(i), (a)(ii) or (b)(iii) of this paragraph subsection (B)(2)(a)(iii).

- C. Notwithstanding subsections (A) and (B) ~~of this Section~~, the following sources shall do not require a permit unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
1. Sources subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;
 2. Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61.145; and
 3. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment that would be classified as a source that would require requires a permit under Title V of the Act, or would be that is subject to a standard under 40 CFR 60 or 61.
- D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the director determines that maximum achievable control technology emission limitation (MACT) for new sources under section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meanings prescribed in 40 CFR 63.41.

R18-2-306. Permit Contents

- A. Each permit issued by the Director shall include the following elements:
1. The date of issuance and the permit term.
 2. Enforceable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance and those operational requirements and limitations that have been voluntarily accepted pursuant to R18-2-306.01.
 - a. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be by the Administrator.

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- c. Any permit containing an equivalency demonstration for an alternative emission limit submitted pursuant to R18-2-304(D) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
 - d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.
3. Each permit shall contain the following requirements with respect to monitoring:
 - a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required pursuant to R18-2-306.01;
 - b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported pursuant to subsection (A)(4) of this Section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required pursuant to under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this ~~subparagraph~~ subsection 3(b); and
 - c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
 4. ~~With respect to recordkeeping, the~~ The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established pursuant to under R18-2-306.01, where applicable, for the following:
 - a. Records of required monitoring information that include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurements;
 - ii. The date(s) analyses were performed;
 - iii. The name of the company or entity that performed the analyses;
 - iv. A description of the analytical techniques or methods used;
 - v. The results of such analyses; and
 - vi. The operating conditions as existing at the time of sampling or measurement;
 - b. Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
5. ~~With respect to reporting, the~~ The permit shall incorporate all applicable reporting requirements including reporting requirements established pursuant to under R18-2-306.01 and require the following:
 - a. Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and R18-2-309(A)(5).
 - b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Notice in accordance with ~~subparagraph subsection (E)(3)(d) of this Section~~ shall be considered prompt for the purposes of this ~~subparagraph~~ subsection 5(b).
 6. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.
 - a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.
 - b. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - c. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.
 - d. Any permit issued pursuant to the requirements of this Chapter and title V of the Act to a unit subject to the provisions of title IV of the Act shall include conditions prohibiting all of the following:
 - i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators;
 - ii. Exceedances of applicable emission rates;
 - iii. ~~The use~~ Use of any allowance prior to the year for which it was is allocated; and
 - iv. Contravention of any other provision of the permit.
 7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
 8. Provisions stating the following:
 - a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes, Title 49, Chapter 3, and the air quality rules, Title 18, Chapter 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforce-

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- able requirement in a permit constitutes a violation of the Act.
- b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - d. The permit does not convey any property rights of any sort, or any exclusive privilege.
 - e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of such records directly to the Administrator along with a claim of confidentiality.
 - f. For any major source operating in a nonattainment area for any pollutant(s) for which the source is classified as a major source, the source shall comply with reasonably available control technology.
9. A provision to ensure that the source pays fees to the Director pursuant to under A.R.S. § 49-426(E) and the rules adopted thereunder, R18-2-326 and R18-2-511.
 10. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit. This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.
 11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
 - a. Shall require the source, contemporaneously with making a change from one 1 operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - b. Shall extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
 - c. Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
 12. Terms and conditions, if the permit applicant requests them, as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
 - a. Shall include all terms required under subsections (A) and (C) of this Section to determine compliance;
 - b. Shall not extend the permit shield described in subsection (D) of this Section to all terms and conditions that allow such increases and decreases in emissions;
 - c. Shall not include trading involving which involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
 - d. Shall meet all applicable requirements and requirements of this Chapter.
 13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If such terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
 14. If a permit applicant requests it, the Director shall issue permits that contain terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection (14) shall not include modifications under any provision of title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide for notice that conforms to R18-2-317(D) and (E) and that describes how the increases and decreases in emissions will comply with the terms and conditions of the permit.
 15. Such other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2 and the rules adopted pursuant thereto in Title 18, Chapter 2.
- B. Federally-enforceable Requirements**
1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
 - a. Except as provided in subsection (B)(2) of this Section, all terms and conditions in a Class I permit, including any provisions designed to limit a source's potential to emit;
 - b. Terms or conditions in a Class II permit setting forth federal applicable requirements; and
 - c. Terms and conditions in any permit which are entered into voluntarily pursuant to under R18-2-306.01, as follows:
 - i. Emissions limitations, controls or other requirements; and
 - ii. Monitoring, recordkeeping and reporting requirements associated with the emissions limitations, controls or other requirements in subsection B(1)(c)(i).
 2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable

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under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.

- C. ~~All permits~~ Each permit shall contain a compliance plan ~~that meets the requirements of as specified in~~ R18-2-309.
- D. Each permit shall include the applicable permit shield provisions ~~set forth in~~ under R18-2-325.
- E. Emergency provision
1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
 2. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of ~~paragraph (3) of this subsection~~ (3) are met.
 3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - b. The permitted facility was at the time being properly operated;
 - c. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
 - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile or hand delivery within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.
 4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F. A ~~class~~ Class I permit issued to a major source shall require that revisions be made pursuant to R18-2-321 to incorporate additional applicable requirements adopted by the Administrator pursuant to the Act that become applicable to a source with a permit with a remaining permit term of ~~three~~ 3 or more years. No revision shall be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than ~~eighteen~~ 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subsection shall comply with ~~provisions in~~ R18-2-322 for permit renewal and shall reset the ~~five~~ 5 year permit term.

R18-2-320. Significant Permit Revisions

- A. Significant revision procedures shall be used for applications requesting permit revisions that do not qualify as minor revisions or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B. ~~All modifications~~ Any modification to a major source ~~source~~ source of federally listed hazardous air pollutants, ~~and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder,~~ shall follow significant permit revision procedures and any rules adopted pursuant to A.R.S. § 49-426.03.
- C. All modifications to sources subject to rules promulgated pursuant to A.R.S. § 49-426.06 shall follow the revision procedures provided in those rules.
- ~~DC.~~ Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected States, and review by the Administrator as they apply to permit issuance and renewal.
- D. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.
- E. The Director shall process the majority of significant permit revision applications received each calendar year within 9 months of receipt of a complete permit application but in no case longer than 18 months. Applications for which the Director undertakes accelerated processing pursuant to R18-2-326(N) shall not be included for this requirement.

R18-2-331. Material Permit Conditions

- A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a "material permit condition" shall mean a condition which satisfies all of the following:
1. The condition is in a permit or permit revision issued by the Director ~~or a control officer~~ after the effective date of this Section November 15, 1993.
 2. The condition is identified within the permit as a material permit condition.
 3. The condition is ~~one~~ 1 of the following:
 - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement.
 - b. A requirement to install, operate or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required pursuant to ~~the requirements of~~ A.R.S. § 49-426.06.
 - c. A requirement for the installation or certification of a monitoring device.
 - d. A requirement for the installation of air pollution control equipment.
 - e. A requirement for the operation of air pollution control equipment.
 - f. An opacity standard required by section 111 or title I, part C or D, of the Act.

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- 4. Violation of the condition is not covered by subsections (A) through (F), or (H) through (J) of A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).
- B. For the purposes of subparagraphs subsections (A)(3)(c), (d) and (e) of this Section, a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this

Section, "circumstances outside the control of the source" shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.

- C. For purposes of this Section, the term "emission standard" shall have the meaning ~~set forth at~~ specified in A.R.S. §§ 49-464(U) and 49-514(T).

NOTICE OF FINAL RULE MAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY WASTE MANAGEMENT

PREAMBLE

1. Sections Affected

R18-8-260
 R18-8-261
 R18-8-262
 R18-8-263
 R18-8-264
 R18-8-265
 R18-8-266
 R18-8-268
 R18-8-270
 R18-8-271
 R18-8-273

Rulemaking Action

Amend
 Amend
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 Amend

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

General Authorizing & Implementing statute: A.R.S. § 49-922

3. The effective date for the rules:

June 4, 1998

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

4 A.A.R. 257, January 16, 1998

Notice of Proposed Rulemaking:

4 A.A.R. 740, March 20, 1998

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

Primary Contact:

Name: Lynn A. Keeling, Rules Specialist

Address: Arizona Department of Environmental Quality
3033 North Central, Room 844A
Phoenix, AZ 85012-2809

Telephone: 602-207-2223 or 800-234-5677 Ext. 2223 (Arizona only)

TTD Number: 602-207-4829

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Secondary Contact:

Name: Martha Seaman, Manager of Rule Development
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3033 North Central, Room 831
Phoenix, AZ 85012-2809
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Fax: 602-207-2251

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

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- A. General Information about the Incorporations by Reference as of July 1, 1997.
- B. Descriptions of the revisions incorporated by reference.
- C. State-initiated change.

THE EXPLANATION OF THE RULE

- A. General Information about the Incorporations by Reference as of July 1, 1997.

Every year the Arizona Department of Environmental Quality (ADEQ) amends the state's hazardous waste rules. The state's hazardous waste rules are generally comprised of the federal regulations, authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments cover changes in the federal regulations promulgated between July 2, 1996 and July 1, 1997.

For Arizona to be authorized to manage the federal hazardous waste program, ADEQ must either incorporate by reference the federal regulations or write state rules that are equivalent to and consistent with federal regulations. Incorporating the federal regulations will keep Arizona's hazardous waste management program funded by the United States Environmental Protection Agency (EPA) and in compliance with A.R.S. § 49-922. The EPA requires that Arizona be re-authorized to maintain the authority to manage the federal hazardous waste program in lieu of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for re-authorization to keep current with changes to federal regulations. Adoption of federal regulations also promotes compliance uniformity among states. Most of the federal regulations incorporated by reference in this rulemaking are required for re-authorization.

To identify the changes made to the incorporations by reference in the rules, the date has been changed from July 1, 1996 to July 1, 1997 in subsection (A) of most sections. Subsection (A) of sections R18-8-260 through 266, 268, 270, 271, and 273 incorporates by reference the federal regulations published in 40 CFR 124, 260 through 266, 268, 270, and 273 as of July 1, 1997 with certain exceptions. Sections 269 and 280 are state rules that do not incorporate federal regulations.

The purpose of this rulemaking is primarily to incorporate the text of federal regulations for re-authorization by the EPA. Modifications to the text incorporated by reference are intended to make the language consistent with state terminology, and not intended to make substantive changes to the content. For example, the federal regulations incorporated by reference refer to the "EPA" because it is the implementing agency, but since Arizona is authorized to implement and enforce the RCRA program contained in the incorporated regulations, "EPA" is usually replaced with "ADEQ" when referring to the agency that implements the regulations. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have any additional impact beyond the federal regulation.

- B. **Descriptions of the revisions incorporated by reference.**

There are 5 rules which have been incorporated by reference. A description of them follows.

- 1. Rule Title: Land Disposal Restrictions Phase III--Emergency Extension of the K088 Capacity Variance. EPA is extending the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for 6 months. Thus, K088 wastes do not have to be treated to meet land disposal restrictions (LDR) treatment standards until July 8, 1997. This extension is needed due to the unanticipated performance problems by the treatment technology which provides most of the available treatment capacity for these wastes. At the time of the extension, the EPA did not believe that sufficient treatment capacity which minimizes short and long-term threats to human health and the environment posed by the land disposal of the potliners was presently available. The length of the extension of the national capacity variance is based on EPA's best current estimate of the time it will take to modify, evaluate, and correct the current deficiencies in treatment performance. Although the extension date has passed, the rule was effective in January of 1997, therefore this incorporation by reference conforms Arizona's rule to the federal revisions. This rule can be found in Volume 62 of the Federal Register p. 1992, dated January 14, 1997.

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2. Rule Title: Military Munitions Rule: Hazardous Waste Identification and Management: Explosives Emergencies: Manifest Exemption for Transport of Hazardous Waste on Right-of Ways on Contiguous Properties. This EPA rule identifies when conventional and chemical military munitions become a hazardous waste under RCRA, and that provides for the safe storage of such waste. This rule also amends existing regulations regarding emergency responses involving both military and non-military munitions and explosives. In addition, this rule exempts all generators and transporters of munitions and explosives that are hazardous waste, not just the military, from the RCRA manifest requirement for the transportation of munitions and explosives that are a hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. This revision is expected to reduce the paperwork burden, for hazardous waste generators whose property is divided by right-of-ways without loss in protection of public health. This rule can be found in Volume 62 of the Federal Register p. 6622, dated February 12, 1997.

ADEQ amended the "Purpose, scope, and applicability" section within 40 CFR Part 262 by adding language to clarify that the provision in the federal regulation which exempts persons responding to an explosive or munitions emergency from having to comply with the standards applicable to hazardous waste generators is valid only "for the limited time period required to control, mitigate, or eliminate the immediate threat. As soon as the immediate response activities are completed, all standards applicable to Part 262 apply." ADEQ further added language in Part 262 stating that "the owner of the object of an emergency response; the owner of the property on which the object of an emergency rests or where the emergency response initiates; or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response." In Sections 264.1, 265.1 and 270.1, Paragraph D was amended to require emergency responders to notify the ADEQ Emergency Response Unit as soon as possible.

Since, on the federal level, language similar to the ADEQ amendments is contained only in the preamble of the federal register that established this rule, the ADEQ's amendments are needed to ensure that the regulated community is aware of the specific requirements and to enhance ADEQ's ability to adequately enforce this rule.

3. Rule Title: Land Disposal Restrictions--Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials, and Miscellaneous Hazardous Waste Provisions. This rule finalizes treatment standards for hazardous wastes generated from wood preserving operations and makes conforming amendments to the standards for wastes from production of chlorinated aliphatics, which carry the F024 hazardous waste code. These new treatment standards are more stringent, but allow combustion as treatment for RCRA jurisdiction waste. In addition, this rule revises the land disposal restrictions (LDR) program to significantly reduce paper work requirements by 1.6 million hours. This rule also finalizes both the decisions to employ polymerization as an alternative method of treatment for certain ignitable waste as well as the decision not to ban certain wastes from biological treatment because there is no need to classify these wastes as "nonamenable." It also clarifies an exception from LDR requirements for de minimis amounts of characteristic wastewaters. Finally, this rule excludes processed circuit boards and scrap metal from RCRA regulations, (it is exempt from the definition of solid waste), which is intended to promote the goal of safe recycling. This rule can be found in Volume 62 of the Federal Register p. 25998, dated May 12, 1997.
4. Rule Title: Hazardous Waste Management System: Testing and Monitoring Activities. This amendment adds new and revised methods as Update III to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 and deletes several obsolete methods from SW-846 and the RCRA regulations. The intent of this action is to provide state-of-the-art analytical technologies for RCRA-related testing, this promoting cost effectiveness and flexibility in choosing analytical test methods, as well as clarifying the RCRA Program's approach to working towards the Performance Based Measurement System (PBMS).
Each test method that was removed was replaced by at least 1 newer method. All the methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results. Use of some of the methods is required by some of the hazardous waste regulations under subtitle C of RCRA, and others function as guidance to satisfy RCRA-related sampling and analysis requirements. This rule can be found in Volume 62 of the Federal Register p. 32452, dated June 13, 1997.
5. Rule Title: Hazardous Waste Management System: Carbamate Production, Identification and Listing of Hazardous Waste: Land Disposal Restrictions. This rule amends regulations to conform with a federal appeals court ruling (98 F.3d 1394) that invalidated in part, Agency regulations listing certain carbamate wastes as hazardous under RCRA. These regulations also pertain to certain hazardous waste management of carbamate industry wastes under RCRA. The vacated hazardous waste listings and associated regulatory requirements are to be treated as if they were never in effect. State regulations, which may be more stringent or broader in scope than federal rules, are not necessarily affected by the court ruling and can list these wastes. However, ADEQ is required to be consistent with and no more stringent than the regulations found in Title 40 of the Code of Federal Regulations, pursuant to A.R.S. § 49-922. This rule can be found in Volume 62 of the Federal Register p. 32974, dated June 17, 1997.

C. State-initiated changes.

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To ensure clarity and consistency, 40 CFR § 261.9, entitled "Requirements for Universal Waste", is amended to add mercury-containing waste lamps to the list of universal wastes that are exempted from regulation under 40 CFR §§ 262 through 270 (as incorporated by R18-8-262 through R18-8-270) when managed as universal waste. By making this change, the exemption list will be consistent with the list of universal wastes found in R18-8-273(D).

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

Not applicable.

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

A. Identification of proposed rulemaking

This waste management rulemaking is known as the 1996-97 amendments to the hazardous waste rules. This rulemaking incorporates changes in federal regulations that were promulgated between July 2, 1996 and July 1, 1997. It is codified in the *Arizona Administrative Code* as follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

B. Introduction

This rulemaking is primarily an incorporation of federal regulations that are effective. In fact many federal provisions incorporated by reference currently may not be applicable in Arizona (for example, the capacity variance for K088 wastes). Most federal regulations currently are effective, except for F032, F034, and F035 wastewaters which will be prohibited from land disposal in 1999. Thus, from the viewpoint that essentially most federal changes currently are in effect, adopting these federal changes would not represent an incremental impact. Although the overall impact is expected to represent a cost-saving benefit, principally due to costs avoided, some entities may experience minimal costs to comply with these federal changes. Even though many changes may be considered less regulatory in that they represent avoided-cost burdens, no losses in the protection of human health and the environment are anticipated.

C. Need for rulemaking

ADEQ staff amends the state hazardous waste rules annually. This is necessary for ADEQ to maintain authority to manage the federal hazardous waste program in lieu of the EPA administering the program in Arizona. Amending the hazardous waste rules allows ADEQ to continue to receive re-authorization and program funds from the EPA. This also enables ADEQ to remain in compliance with A.R.S. § 49-922, which means, among other things, to adopt rules that provide for a program equivalent to and consistent with the federal hazardous waste regulations. ADEQ staff has opted to do this by incorporating federal regulations by reference. The 1996-97 amendments consist entirely of federal changes with 1 state-initiated change that is merely for clarification and conformity.

D. General summary of federal changes

1. The capacity variance for K088 wastes (delaying the imposition of treatment standards for spend aluminum potliners) is not expected to impact AZ industry. According to *County Business Patterns 1995 (Arizona)*, the state has no industries that are involved in the primary production of aluminum (SIC code 3334).
2. The military munitions regulation addresses 4 issues: (1) identification of munitions as waste, (2) transportation of munitions identified as wastes, (3) emergency response actions, and (4) storage standards for waste munitions. The major impact of this rule is on federal agencies. This is because the primary focus is military munitions. However, these changes are expected to reduce the paperwork burden for hazardous waste generators (both military and non-military). These entities could include not only military bases, but universities and industrial parks that may be divided by public or private rights-of-ways.

The EPA estimated, over the next 10 years, that these changes would not only generate an annual cost of \$100,000 to the Department of Defense and an annual cost of \$200,000 to state, local and tribal governments, but cost-saving benefits of \$1,200,000 - \$2,200,000 as a result of costs avoided (see 62 FR 6649). This represents benefits exceeding costs by a range somewhere between 4:1 and 7:1. On a preliminary assessment, ADEQ likewise expects similar benefits to accrue to its regulated entities. This cost-saving benefit is a direct result of avoided costs for new permits, contingency plans, manifests, and retrofitted storage units.

3. The Land Disposal Restrictions (LDR)--Phase IV: Treatment Standards for Wood Preserving Wastes. This rule makes several changes which finalize, revise, or clarify federal requirements. Because of the variety of changes, the impact to regulated entities will vary. However, ADEQ expects these changes to generate cost-saving benefits. Specifically, benefits to Arizona industries are expected to accrue from a significant reduction in the reporting and recordkeeping burden

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in LDR regulations. Previously, LDR regulations required hazardous waste handlers to include notifications with each shipment of waste sent to treaters or disposers. Now, only a single notification is required for all shipments of restricted hazardous wastes, unless a change occurs with the waste, process, or receiving facility. In addition, record retention is reduced from a period of 5 years to 3 years (62 FR 26003-04).

Other changes (for example, point of generation at boiler cleanout; polymerization used as an alternative method of treatment for certain ignitable wastes; certain wastes not being banned from biological treatment; and processed circuit boards being excluded from RCRA regulation) may be viewed as less regulatory which provide opportunities for avoided-cost burdens. According to *County Business Patterns 1995 (Arizona)*, the state has 2 wood preserving industries (SIC code 2491) each with an employment-size class of 20-49. The EPA has concluded that the economic impact is small. The compliance costs of Phase IV LDR regulations nationally on small wood preserving facilities that use inorganic wood preservatives and generate F035 wastes is estimated at less than 1% of their total revenues. Wood preserving facilities that generate F032 and F035 wastes may incur compliance costs greater than 1% of their total revenues. Product substitution to nontoxic or other toxic preservatives that result in less expensive treatment of wastes could result in lower costs to the facilities that follow this trend (62 FR 26016). Thus, for Arizona industries, ADEQ believes that benefits will outweigh costs.

4. The testing and monitoring activities regulation adds new and revised methods as Update III to the 3rd edition of the EPA approved test methods manual, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." It also deletes obsolete methods. The intent is to provide state-of-the-art analytical technologies for waste sampling and analysis for RCRA-related activities. The use of these new and revised methods is expected to reduce costs. For example, new immunoassay methods can be done in the field, thus, replacing expensive gas chromatographic laboratory analysis (62 FR 32461). Since this change only revises available test methods for complying with existing federal regulations, it does not add a compliance burden. As a result of these changes, ADEQ anticipates Arizona industry will benefit from increased flexibility in testing and monitoring solid waste.
5. The final regulation, the carbamate amendment, which invalidates regulations listing certain carbamate wastes as hazardous under RCRA, conforms to the vacated federal hazardous waste listings and regulatory requirements pursuant to a federal appeals court ruling (98 F.3d 1394, D.C. Cir. 1996). Thus, this regulation should be considered less regulatory.

E. Entities impacted

Entities potentially impacted by this rulemaking will vary according to specific rule provisions. The entities also will be affected in varying degrees both within the classes and from 1 class to another. Additionally, this particular rulemaking also impacts federal agencies and various state, local and tribal governments. Potential entities impacted by this rulemaking include: generators (several categories), treatment, storage, and disposal (TSD) facilities, transporters, laboratories, ADEQ (implementing agency), and the public. ADEQ is continuing its research to determine the costs and benefits of this rulemaking. ADEQ encourages anyone with information or data about the impacts of this rulemaking to contact ADEQ staff.

F. Conclusion

Overall, this rulemaking is expected to generate several cost-saving benefits in the form of avoided-cost burdens to Arizona industry. The economic impacts on small businesses is expected to be minimal. Not only will the business community, and political subdivisions, benefit, but ADEQ and the general public as well. ADEQ staff anticipates that these changes will contribute to an improved hazardous waste program in Arizona and be no less protective of human health and the environment. Although numerous changes to federal regulations generate a complexity of impacts, ADEQ staff expects probable benefits to outweigh probable costs of this rulemaking.

Under the state's hazardous waste program, ADEQ cannot provide small businesses with an exemption from these regulations, or even establish less stringent standards or reporting or schedules for compliance and reporting. This is because ADEQ's program must be "equivalent to and consistent with" federal hazardous waste regulations, as required by the EPA and state statute (see A.R.S. § 49-922(A)). A.R.S. § 41-1035 states in part: "If an agency proposes a new rule or an amendment to an existing rule which may have an impact on small businesses, the agency shall consider each of the methods described in this section for reducing the impact of the rule making on small businesses." Therefore, due to the statutory requirement that ADEQ's program be equivalent to and consistent with the federal hazardous waste regulations, ADEQ does not have the authority to consolidate or simplify the rule's compliance or reporting requirements for small businesses, or establish performance standards for small businesses to replace design or operational standards in the rule.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

There were no changes made to the proposed rule.

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

Comment: One commenter noted that the Land Disposal Restrictions Phase IV rule (Federal Register, May 12, 1997; page 25997) contained a clarification in the preamble stating that for utility boiler chemical cleaning wastes (bccw), the point of generation is at the completion of the entire cleaning process, after the aggregation of the initial cleaning rinse with all subsequent rinses. This clarification, as stated, is limited to the situation in which the entire quantity of the boiler cleanout rinses are contained in a "single container". The commenter stated that his company's counsel had discussed the issue with the General Counsel from the EPA's

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Office of Solid Waste to determine EPA's position as to what constitutes a "single container" (that is, can several tanks connected by piping manifold qualify as a "single container system"?). According to the commenter, EPA's position is that inter-connected tanks, as described above and used to collect bccw, constitute a "single container system" for purposes of the point of generation determination, and that additional written clarification to this effect will be forthcoming. Subsequently, the commenter has requested ADEQ to incorporate this verbal clarification by EPA into this rule.

ADEQ's Response: ADEQ confirmed the commenter's statements with the EPA General Counsel on January 16, 1998, but the General Counsel did not know when the written clarification would be forthcoming. Based on the May 12, 1997 Federal Register, p. 25997, and the information received from EPA's General Counsel on the forthcoming clarification, ADEQ issued the commenter a letter stating that ADEQ will allow the commenter to store and manage the bccw. ADEQ prefers to wait until the additional written clarification is issued by EPA before deciding whether any changes to the rule are required. Since the commenter can proceed as requested, ADEQ believes there is no need to immediately incorporate this clarification into a rule; the commenter will not suffer any adverse economic impact without an immediate amendment to the rule. There are only 3 other electric utilities in Arizona that potentially can be affected. Typically, boiler cleanout occurs only every 3 to 5 years and should a similar situation arise, ADEQ can issue the same letter authorizing the effected party to proceed per EPA's clarification as discussed above.

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

Not applicable.

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

Federal Citation	State Citation
40 CFR 260	R18-8-260
40 CFR 261	R18-8-261
40 CFR 262	R18-8-262
40 CFR 263	R18-8-263
40 CFR 264	R18-8-264
40 CFR 265	R18-8-265
40 CFR 266	R18-8-266
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270
40 CFR 124	R18-8-271
40 CFR 273	R18-8-273

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

No.

14. The full text of the rules follow:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT**

ARTICLE 2. HAZARDOUS WASTES

Section

- R18-8-260. Hazardous Waste Management System: General
- R18-8-261. Identification and Listing of Hazardous Waste
- R18-8-262. Standards Applicable to Generators of Hazardous Waste
- R18-8-263. Standards Applicable to Transporters of Hazardous Waste
- R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-266. Standards for the Management of Specific Hazard-

ous Wastes and Specific Hazardous Waste Management Facilities

- R18-8-268. Land Disposal Restrictions
- R18-8-270. The Hazardous Waste Permit Program
- R18-8-271. Procedures for Permit Administration
- R18-8-273. Standards for Universal Waste Management

ARTICLE 2. HAZARDOUS WASTES

- R18-8-260. Hazardous Waste Management System: General**
- A. Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1996~~¹⁹⁹⁷, unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or parts thereof, are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 124 and

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260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.

B. No Change

- C.** All of 40 CFR 260 and the accompanying appendix, as amended as of July 1, 1996~~1997~~, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.

D. No Change

1. *No Change*
2. *No Change*
 - a. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - b. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - iv. *No Change*
 - c. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - d. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - e. *No Change*
 - i. *No Change*
 - (1) *No Change*
 - (2) *No Change*
 - ii. *No Change*
 - (1) *No Change*
 - (2) *No Change*
 - iii. *No Change*
 - (1) *No Change*
 - (2) *No Change*
 - (3) *No Change*
 - (4) *No Change*
 - f. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - iv. *No Change*
 - v. *No Change*

E. No Change

1. *No Change*
2. *No Change*
3. *No Change*
4. *No Change*
5. *No Change*
6. *No Change*
7. *No Change*
8. *No Change*
9. *No Change*
10. *No Change*
11. *No Change*
12. *No Change*
 - a. *No Change*
 - b. *No Change*

- c. *No Change*
- d. *No Change*
- e. *No Change*
- f. *No Change*
- g. *No Change*
- h. *No Change*
- i. *No Change*

13. *No Change*
14. *No Change*
15. *No Change*
16. *No Change*
17. *No Change*
18. *No Change*
19. *No Change*
20. *No Change*
21. *No Change*
22. *No Change*
 - a. *No Change*
 - b. *No Change*
23. *No Change*
24. *No Change*
25. *No Change*
26. *No Change*
27. *No Change*
28. *No Change*
29. *No Change*
30. *No Change*
31. *No Change*
32. *No Change*

F. No Change

1. *No Change*
2. *No Change*
3. *No Change*
 - a. *No Change*
 - b. *No Change*
4. *No Change*
5. *No Change*
6. *No Change*
 - a. *No Change*
 - b. *No Change*
7. *No Change*

G. No Change

H. No Change

I. No Change

J. No Change

K. No Change

L. No Change

M. No Change

1. *No Change*
2. *No Change*
3. *No Change*

R18-8-261. Identification and Listing of Hazardous Waste

- A.** All of 40 CFR 261 and accompanying appendices, as amended as of July 1, 1996~~1997~~ (and no future editions), with the exception of § 261.5(j), are incorporated by reference and modified by the following subsections of R18-8-261 and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 261 and its appendices in 61 Federal Register 59932, on November 25, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.

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- B. *No Change*
- C. *No Change*
- D. *No Change*
- E. *No Change*
- F. *No Change*
- G. *No Change*
- H. *No Change*

I. § 261.6, entitled "Requirements for recyclable materials", paragraphs (a)(1) through (a)(3) are amended as follows:

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C, F, G, and H (as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(as incorporated by R18-8-270 and R18-8-271)]:

- (i) Recyclable materials used in a manner constituting disposal (subpart C);
- (ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (subpart H);
- (iii) Recyclable materials from which precious metals are reclaimed (subpart F);
- (iv) Spent lead-acid batteries that are being reclaimed (subpart G).

(3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.

(ii) Scrap metal; that is not excluded under § 261.4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801(A)(5)] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and

(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds 1 or more of the characteristics of hazardous waste in part 261, subpart C [(as incorporated by R18-8-261)].

J. *No Change*

K. § 261.9, entitled "Requirements for Universal Waste" is amended by adding paragraph (d):

(d) Mercury containing waste lamps as described in R18-8-273.

~~K.L.~~ *No Change.*

~~L.M.~~ *No Change.*

R18-8-262. Standards Applicable to Generators of Hazardous Waste

A. All of 40 CFR 262 and the accompanying appendix, as amended as of July 1, ~~1996~~1997, (and no future editions), are incorporated by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State. ~~In addition, all amendments to Part 262 and its appendices in 61 Federal Register 59932, on November 25, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.~~

B. *No Change*

- 1. *No Change*
- 2. *No Change*

3. *No Change*

C. § 262.10, entitled "Purpose, scope, and applicability", paragraph (i) is amended as follows:

(i) [For the limited time period required to control, mitigate, or eliminate the immediate threat.] persons responding to an explosives or munitions emergency in accordance with 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response; the owner of the property on which the object of an emergency rests or where the emergency response initiates; or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]

C.D. No Change

D.E. No Change

E.F. No Change

F.G. No Change

G.H. No Change

H.I. No Change

1. *No Change*

2. *No Change*

I.J. No Change

J.K. No Change

K.L. No Change

L.M. No Change

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

A. All of 40 CFR 263, as amended as of July 1, 1996~~1997~~, (and no future editions), is incorporated by reference a (and modified by the following subsections of R18-8-263, and on file with the DEQ and the Office of the Secretary of State.

B. *No Change*

C. *No Change*

D. *No Change*

E. *No Change*

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, 1996~~1997~~, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(l), are incorporated by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State. ~~In addition, all amendments to Part 264 and its appendices in 61 Federal Register 59932, on November 25, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.~~

B. *No Change*

C. § 264.1, entitled "Purpose, scope, and applicability", paragraph (g)(8)(i)(D) is amended as follows:

(D) ~~An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material,~~

or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 207-2330 or (800) 324-5677, extension 2330.]

C.D. No Change

1. *No Change*

2. *No Change*

D.E. No Change

E.F. No Change

F.G. No Change

G.H. No Change

H.I. No Change

1. *No Change*

2. *No Change*

I.J. No Change

J.K. No Change

K.L. No Change

L.M. No Change

M.N. No Change

N.O. No Change

1. *No Change*

2. *No Change*

3. *No Change*

4. *No Change*

5. *No Change*

6. *No Change*

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, 1996~~1997~~ (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State. ~~In addition, all amendments to Part 265 and its appendices in 61 Federal Register 59932, on November 25, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.~~

B. *No Change*

C. § 265.1, entitled "Purpose, scope, and applicability", paragraph (c)(11)(i)(D) is amended as follows:

(D) ~~An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 207-2330 or (800) 324-5677, extension 2330.]~~

C.D. No Change

1. *No Change*

2. *No Change*

D.E. No Change

E.F. No Change

F.G. No Change

G.H. No Change

H.I. No Change

I.J. No Change

J.K. No Change

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1. *No Change*
2. *No Change*
3. *No Change*

K.L. *No Change*

L.M. *No Change*

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

- A. All of 40 CFR 266 and accompanying appendices as amended as of July 1, 1996~~1997~~ (and no future editions), are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State.
- B. *No Change*

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, 1996~~1997~~ (and no future editions), with the exception of Part 268~~(B)~~, Subpart B, are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 268 and its appendices in 61 Federal Register 43924, on August 26, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.

R18-8-270. The Hazardous Waste Permit Program

- A. All of 40 CFR 270, as amended as of July 1, 1996~~1997~~ (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 270 and its appendices in 61 Federal Register 59932, on November 25, 1996 are incorporated by reference and on file with the DEQ and the Office of Secretary of State.

B. *No Change*

1. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
2. *No Change*
 - a. *No Change*
 - b. *No Change*

C. § 270.1 entitled "Purpose and scope of these regulations", paragraph (c)(3)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 207-2330 or (800) 324-5677, extension 2330.]

C.D. *No Change*

D.E. *No Change*

E.F. *No Change*

F.G. *No Change*

G.H. *No Change*

1. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
 - d. *No Change*
2. *No Change*

3. *No Change*

a. *No Change*

b. *No Change*

c. *No Change*

4. *No Change*

5. *No Change*

6. *No Change*

a. *No Change*

b. *No Change*

7. *No Change*

a. *No Change*

b. *No Change*

c. *No Change*

d. *No Change*

e. *No Change*

f. *No Change*

g. *No Change*

h. *No Change*

i. *No Change*

j. *No Change*

8. *No Change*

9. *No Change*

H.I. *No Change*

I.J. *No Change*

J.K. *No Change*

K.L. *No Change*

L.M. *No Change*

M.N. *No Change*

N.O. *No Change*

O.P. *No Change*

P.Q. *No Change*

Q.R. *No Change*

R18-8-271. Procedures for Permit Administration

- A. All of 40 CFR 124 and the accompanying appendix as amended as of July 1, 1996~~1997~~ (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, are incorporated by reference and modified by the following subsections of R18-8-271 and are on file with the DEQ and the Office of the Secretary of State.

B. *No Change*

C. *No Change*

D. *No Change*

E. *No Change*

F. *No Change*

G. *No Change*

H. *No Change*

I. *No Change*

J. *No Change*

K. *No Change*

L. *No Change*

M. *No Change*

N. *No Change*

O. *No Change*

P. *No Change*

Q. *No Change*

R. *No Change*

S. *No Change*

T. *No Change*

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R18-8-273. Standards for Universal Waste Management

A. All of 40 CFR 273, as amended as of July 1, 1996~~1997~~ (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-273 and are on file with the DEQ and the Office of the Secretary of State.

B. *No Change*

C. *No Change*

1. *No Change*

a. *No Change*

b. *No Change*

2. *No Change*

a. *No Change*

b. *No Change*

D. *No Change*

E. *No Change*

F. *No Change*

G. *No Change*

H. *No Change*

I. *No Change*

J. *No Change*

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

PREAMBLE

1. Sections Affected

R18-15-101

R18-15-107

R18-15-108

R18-15-110

R18-15-110

R18-15-111

R18-15-111

R18-15-112

R18-15-113

R18-15-204

R18-15-206

R18-15-207

R18-15-304

R18-15-305

R18-15-306

R18-15-307

R18-15-403

Rulemaking Action

Amend

Amend

Amend

Renumber

New Section

Renumber

Amend

Renumber

Renumber

Amend

Amend

Amend

Amend

Amend

Amend

Amend

Amend

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

Authorizing and Implementing statutes: A.R.S. §§ 49-373(B)(7), 49-374, 49-374.01, 49-376

3. The effective date for the rules:

June 4, 1998

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Docket Opening

3 A.A.R.3119 November 7, 1997

Notice of Proposed Rule

3 A.A.R. 3543 December 19, 1997

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

Primary Name: Lynn A. Keeling *on behalf of the Board of Directors of the Water Infrastructure Finance Authority of Arizona*

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

Telephone: (602) 207-2223; (800) 234-5677, Ext. 2223 (AZ only)

Fax: (602) 207-2251

TTD: (602) 207-4829

Secondary Name: Greg Swartz

Address: Water Infrastructure Finance Authority
3033 North Central Avenue
Phoenix, AZ 85012

Telephone: (602) 207-4707; (800) 234-5677, Ext. 4707 (AZ only)

Fax: (602) 207-4888

TTD: (602) 207-4829

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

During the 43rd Legislative Session, House Bill 2304, Chapter 130, Laws 1997 was passed. The governor signed this bill into law on April 22, 1997. The law became effective April 22, 1997 due to an emergency enactment. This legislation renamed the Wastewater Management Authority of Arizona to the Water Infrastructure Finance Authority of Arizona (WIFA). Prior to this legislation, WMA operated as a financing organization for wastewater treatment systems and nonpoint source projects. The new Authority now finances public drinking water facilities as well as wastewater facilities.

A rulemaking was completed in September of 1997, creating a new Chapter 15 in Title 18 of the Arizona Administrative Code. This chapter contains the same criteria for the clean water revolving fund as was previously found in the WMA fund priority classes (Title 18, Chapter 10, Wastewater Management Authority of Arizona) and added the funding priority classes for drinking water facilities (as defined in R18-15-101).

For FY 1998, WIFA created an intended use plan and project priority list for the clean water revolving fund and the drinking water revolving fund. Applications for funding were mailed out in the 2nd quarter of 1997 to all known wastewater treatment facilities, potential non-point source projects, and drinking water facilities. On September 10, 1997, a draft Intended Use Plan was mailed to Arizona cities, towns, Indian tribes, sanitation districts, drinking water facilities, and interested parties for their review and comment. This draft included the anticipated fundable range from the FY 1998 Project Priority List. The draft priority list was prepared based upon specific requests received from Arizona communities.

The classing, scoring, and ranking for the drinking water revolving fund priority list resulted in approximately 94 facilities having the same class, with many having the same score. WIFA believes this clustering was a result of too general a ranking of facilities. WIFA decided that the clustering indicated a need for the rule to be amended so that the classification and scoring of facilities would create a clearer distinction among facilities.

WIFA discussed the clustering problem with ADEQ and others who participated in preparing the draft intended use plan. As a result of the discussions the following amendments were proposed. The classes provide a general category for need. Class A facilities are most likely to pose an immediate threat to human health and the environment because of the documented presence of continuous or intermittent violations of the national primary drinking water standards involving acutely toxic contaminants. Class A facilities also include multi-year funded facilities. Multi-year funded projects must have been funded at least 20%. Class B facilities have a documented violation of the national primary drinking water standards involving non-acutely toxic contaminants, and some corrective action or mitigation measure must have been initiated. Class C facilities need to upgrade or rehabilitate existing delivery capability or existing facility design as a result of a documented violation of the physical plant. Class D facilities need to upgrade or rehabilitate existing delivery capability or existing facility design, but the upgrade or rehabilitation is not required as a result of a documented violation of the physical plant. Class E facilities have a goal to consolidate or regionalize service of previously separated drinking water facilities. Class F facilities are projects without any other designation.

Within the drinking water revolving fund, Class A for continuing projects now has a qualifier to ensure that high priority multi-year projects are the only projects that may automatically qualify for Class A on subsequent funding years. For a project to automatically qualify as a Class A project, WIFA now requires a multi-year project to have been classified as either Class A, B or C in the prior year (rather than any class). The project must have received at least 20 points within the class, based upon the prior year's need. This is to avoid the potential situation of a multi-year funding commitment automatically qualifying for Class A in subsequent years, irrespective of need or classification.

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Class C contained more than 50% of the projects in the draft project priority list for the 1997 drinking water revolving fund. WIFA found that Class C's designation of "condition of facility" was too general and did not sufficiently distinguish between problems that were documented by ADEQ and those that were known, but had not risen to the level of ADEQ's attention. Within the drinking water revolving fund, Class C was reduced to include only drinking water facilities that have documented violations in the water system physical plant. WIFA believes that if a violation has been documented by ADEQ, it is more likely that the violation is more severe than a non-documented violation of the water system physical plant. This may not be true in all cases, but WIFA tried to develop some criteria to distinguish the need for funding among drinking water facilities.

Within the drinking water revolving fund, Class D was amended to include what used to be part of Class C, that is, projects that rehabilitate existing delivery capability or existing facility design or upgrades that are not a result of documented violations of the physical plant. This is intended to distinguish facilities that are out of compliance and presumptively a health problem from others that are not presumptively a health problem. WIFA understands that regardless of documented violations, there may still be a health problem in both cases. However, if there is a health problem that is documentable, it is anticipated that the facility should be in either Class A or Class B. Therefore, the separation within what used to be Class C into Classes C and D is believed to better rank the need rather than a general class called condition of the facility.

The previous drinking water revolving fund Class D was for consolidation or regionalization of services. The prior Class D is now designated as Class E due to the separation of Class C into Classes C and D. As a result, the previously designated Class E is now Class F. No other new classes have been added.

To further distinguish the ranking criteria for drinking water facilities within a class, the single criteria of the "condition of the facilities and sources" has been replaced with the following 4 criteria:

1. Acquiring, Rehabilitating or Developing Sources (ARD)
2. Treatment Upgrade or Treatment Expansion (TUE)
3. Distribution System (DS)
4. Storage Facility (SF)

Rather than assigning a total of 125 points to condition of facility, elements of the condition of the facility are as follows:

- 50 points are now assigned to ARD
- 30 points to TUE, DS, and SF.

Therefore, it is possible a maximum of 140 may be awarded, however review of many systems shows a tendency for systems to need 1 or 2 elements upgraded or repaired rather than all possible elements for example, water source, distribution system, and storage. The Acquiring, Rehabilitating or Developing Sources is believed to have a greater need for funding rather than either the treatment upgrade or treatment expansion, the distribution, or the storage facility. WIFA believes that absent a good water source, a facility is highly unlikely to be providing any water let alone quality water.

The drinking water revolving fund point assignment for Acquiring, Rehabilitating or Developing Sources (ARD) is split into 2 primary categories:

1. Up to 20 points for a new source capacity. If the new source is a renewable source the full 20 points are assigned. Only 10 points are awarded for a non-renewable source. This is intended to provide an incentive for facilities to seek out renewable sources.
2. In addition to the points awarded for the type of the new source, if the drinking water facility is under served by its current source, 30 points may be awarded for correcting contaminated or depleted water. It may be corrected by acquiring, rehabilitating or developing a new source. Expansion of the service area because of contaminated or insufficient water is assigned 15 points, as this may be the only solution. A new source for future growth is assigned 0 points to show no credit for future growth.

The primary change from the previous point assignments is that the condition of the facility is not used to determine the points. It is believed condition of the facility is better described by the type of change employed to correct the problem (contaminated or depleted water source), especially because the condition of many facilities is poor. The point assignment for the new source capacity remains the same, however it is 1 of 2 solutions that may be applied to a problem. A facility may obtain a new renewable water source while also rehabilitating a water source to serve a current service area. This section no longer focuses on the upgrade or rehabilitation capacity or a component of the system on a general level. The new point assignment identifies developing new sources and what service the new source will meet (current, expanded, or future growth).

Treatment upgrade and treatment expansion for drinking water facilities replaces the general criterion of upgrading or rehabilitating existing, required disinfection equipment. This criterion breaks down the points into 1 of 2 methods, that is, upgrade surface water or upgrade ground water. Each type of upgrade may be assigned 30 points maximum and 10 points minimum, therefore no priority is given to treatment of the type of water. There can be 30 points assigned for treatment of surface water micro-organisms,

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or 30 points assigned for treatment of ground water with chlorination, or 20 points assigned for treatment of chemical constituents that are harmful if people are exposed to them, or 10 points assigned for treatment of chemical constituents that are not harmful if people are exposed to them.

The drinking water revolving fund Distribution System is amended to have 30 points assigned. This was an element of the condition of facilities and sources, but it is now listed as a separate priority class to distinguish the need of a distribution system versus a new source or treatment. There are 4 possible solutions a distribution system may employ as shown below:

1. Rehabilitation, replacement or repair of existing lines with either inadequate line size or inadequate pressure. (Inadequate line size or pressure poses the most problems to a system that will affect the public's health).
2. Rehabilitation, replacement or repair of existing lines. (This type will include other problems such as corroded pipes or water loss from poor connections).
3. Installation of new lines. (This is presumed to cure a need for water that cannot be presently met).
4. Rehabilitation, replacement or repair of a hydropneumatic tank.

The rule then assigns points ranging from 5 points to 30 points, for the method used to achieve the solutions listed above.

The drinking water revolving fund Storage Facility is amended to have 30 points assigned. WIFA allows 30 points for no storage, 25 points for storage which needs rehabilitation to cure inadequate storage or inadequate pressure, or 25 points for expansion of storage. Rehabilitating or expanding storage may be assigned 0 points for servicing future growth (the lowest priority), to 10 points for current growth, 15 or 20 points for servicing an expanded area, 20 or 25 points for servicing an existing area, and 25 points for inadequate design of the storage facility (not applicable to the expanded storage).

To ensure that there are no more tie scores, WIFA added section K to the priority list ranking criteria for drinking water facilities. This section states that tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefiting connection. Although this may appear to favor large facilities, it is merely a tie breaker. WIFA believes that other criteria, such as needing a new source of water, or an acutely toxic contaminate will rank smaller water systems before large water systems. Therefore, the tie breaker is not expected to skew the project priority list to be top heavy with large systems, it only means that given 2 facilities with the exact score within a class, the larger system may precede the smaller system.

WIFA found that the project construction did not need to be linked to ADEQ's on-site inspections. Therefore the project construction section has been amended to state that the construction funding will be withheld until ADEQ issues an approval to construct to the applicant. This is a more responsible distribution of funding. This change was also applied to the clean water revolving fund and all other financial assistance.

WIFA must ensure all drinking water funds are used by projects within a year of creation of the project priority list. The drinking water funding reverts back to the federal general fund if the state does not use the money within that period of time. To ensure that WIFA does not lose any funding, as we don't receive enough to meet the needs of the state at this time, the rule has a standard for bypassing projects that are in the fundable range, but are not ready to be funded in the current fiscal year. The Board is directed to bypass a project within a fiscal year and offer funding to the next highest ranking project on the project priority list if either one of the following occurs:

1. The Board determines that substantial progress has not been made on a project toward being ready to proceed within 8 months of notification from WIFA that the project is within the fundable range of projects for that fiscal year; or
2. The Board determines that the project will not be ready to proceed within the current fiscal year.

WIFA found with the 1st project priority list, that the 3rd ranked project, which was a Class A project, could not be ready in the 1st year. WIFA needs to show the funds are being used to prevent loss of funding. Therefore, the rule describes the standard for determining when a project is bypassed. In the case of the project that was number 3 out of 168 projects, the project will remain a Class A, and as soon as the facility is ready to proceed, the Board will be able to fund the project. In other words, the bypassing of this project probably will not prevent it from being funded in a subsequent year. The only possible project that might miss being funded is a class D project that made the fundable range as a result of higher ranking projects, but then was not ready to proceed that year.

A new section was added for Bid Document Review. This section is R18-15-110, and it affects both the Drinking Water Revolving Fund and the Clean Water Revolving Fund. WIFA discovered some projects were being awarded to contractors without requirements for compliance with state and federal law. WIFA does not want to be penalized or lose funding as result of this, therefore the requirement of compliance is expressly stated. WIFA is now required to review all bid documents to ensure compliance with federal and state law prior to their release to prospective bidders.

Disbursements and Repayments, R18-15-111 was modified to clarify the procedure for repayments. Disbursements are to have been pre-approved by WIFA, therefore, repayment will automatically occur if the repayment amount is within 10% of the approved disbursement. A facility may amend the disbursement at any time, therefore this will not penalize changes that have been

approved. This change to the rule is intended to ensure clarity among borrowers about qualified reimbursements.

Subsections were added to the Disbursement and repayment section to expressly state all required forms to be submitted. The forms include the MBE, WBE, SBRA reporting. All invoices, canceled checks and proof of payment are required for disbursement. To conform to standard construction disbursement procedures, WIFA now requires that the last substantial reimbursement be processed only after all permits are in place. The last substantial reimbursement is defined as 10% of a contract less than \$1,000,000, 5% for a contract that is greater than \$1,000,000 but less than \$5,000,000, and 2% for a contract that exceeds \$5,000,000.

Definitions were added for clarity, and some grammatical changes were also made.

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

Not Applicable.

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

A. Identification of this rulemaking

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. MANAGEMENT

ARTICLE 2. CLEAN WATER REVOLVING FUND

ARTICLE 3. DRINKING WATER REVOLVING FUND

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

B. Introduction

The primary purpose of these rules are to amend the scoring for the drinking water revolving fund to minimize clustering of many facilities within 1 class, to clarify standard procedures in the funding process, and to establish a method to break a tie score. Article 1 addresses the management by WIFA, and general funding procedures that apply to both the Clean Water Revolving Fund (for wastewater treatment facilities) and the Drinking Water Revolving Fund (for drinking water facilities), Article 2, the Clean Water Revolving Fund. The process for qualifying and receiving low-interest loans from WIFA for a drinking water facility is contained in Article 3, the Drinking Water Revolving Fund. Article 4 explains the process for other financial assistance authorized by Arizona Revised Statutes (A.R.S.) 49-379, "Water Quality Bonds as Legal Investments."

WIFA is a public financing agency. It does not regulate any consumer or business. Its sole purpose is to provide low-interest loans to wastewater treatment facilities, nonpoint source projects, and drinking water facilities for solving problems that impact the environment and human health. Congress has authorized grant money to be used as collateral for the low-interest loans, thereby creating a state revolving fund. There are 2 funds. The clean water fund is for wastewater treatment facilities and nonpoint source projects, and the drinking water fund is for the drinking water facilities. Although the beneficiaries are different for each fund, the concept of the program remains the same, that is, a priority list is also created based upon the problem (the more immediate impact on human health, the greater the problem), the priority list is used to create an intended use plan which is published and open to public comment. After comments and corrections are received, the intended use plan is amended to reflect new information. WIFA will then begin to obligate funds to the entities which are ready to proceed.

WIFA is a self-supporting agency. It must pay for the administrative costs either by leveraging loans, or in the case of the drinking water fund, it may use up to 4% of the federal grant money for such costs. Each fund requires a state match of 20% to receive the maximum amount of federal grant money for loans. The clean water fund has never received a state match, therefore its 20% has been generated from loan leveraging. However, WIFA has held its administrative costs to 2% of the amount loaned. In the case of the drinking water fund, the Arizona legislature authorized \$3.4 million for the 20% state match, however, it may not be used for WIFA administrative costs.

WIFA received more than 200 applications from drinking water facilities for its 1st year to rank and classify their need. Out of all these facilities, a total funding need of \$242 million has been identified. Based upon the timing of the need, approximately 168 requested funding in fiscal year 1997-1998, with 13 requesting funding in fiscal year 1998-1999, and 1 requesting funds in fiscal year 2001-2002. The sum of 168, 13, and 1 is less than 200 because some applicants dropped out. WIFA was pleased to be able to fund at least 1 facility in each county in Arizona. WIFA has the funds to assist approximately 68 facilities. However, the facility that rated number 3 in need, will not be ready to proceed within the next year or two. Due to this problem, and the need to put the funds to use within 24 months of their appropriation to WIFA, this rule now provides criteria for bypassing a project listed:

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1. The Board determines that substantial progress has not been made on a project toward being ready to proceed within 8 months of notification from WIFA that the project is within the fundable range of projects for that fiscal year; or
2. The Board determines that the project will not be ready to proceed within the current fiscal year.

WIFA has found from experience with wastewater treatment facilities that it often takes 1 to 2 years for a facility to figure out how to organize, plan the needs, and begin implementation. WIFA will work with the facility, but WIFA understands that it cannot make a facility "hurry" therefore, the bypass procedure was created. WIFA also knows that the number 3 project will be funded as soon as it is ready to proceed. Therefore, WIFA does not believe that the bypass procedure will impact funding in a negative manner.

The requirements added for Bid Document Review, R18-15-110, do not appear to impose a new cost. The requirement that WIFA review the bid documents prior to their release to prospective bidders is a proactive step to ensure compliance with all Arizona statutes and federal requirements for funding the project. The requirements added to R18-15-111, Disbursements and Repayments place a check on the required documentation, and set a standard for deviations from the approved reimbursement. If the actual reimbursement is within 10% of the previously approved reimbursement, the reimbursement will be processed provided the following are included:

- certification and signature document,
- a cost incurred report,
- the MBE, WBE, SBRA report,
- invoices,
- proof of payment.

This procedure should have been included in the rule, because it is a standard reimbursement requirement for any federally funded project.

Another amendment is found in R18-15-111. The last substantial request for construction funds reimbursement may not be paid until all required facility permits are in place. The rule defines the last substantial reimbursement as 10% of the contract amount on a contract less than \$1 million, 5% for a contract amount greater than or equal to \$1 million and less than \$5 million, or 2% of the contract amount which is equal to or greater than \$5 million. This is not expected to impact anyone unless the facility has failed to obtain all facility permits, and WIFA should not fund a project that has not received all required facility permits. It is not good business to be loaning money to a facility that has not received all permits (because it may not be in compliance), and federal funding requires compliance with all state and federal laws, or some demonstration that the funds will bring the facility into compliance. WIFA does not believe this requirement will have an impact because it will not prevent a project from being funded, it may cause a delay, but it is an appropriate delay. Worst case, this may extend the time before the last significant payment is made. Even if the construction is done to correct a deficiency in the system, all permits should be obtained to ensure the deficiency is properly corrected.

The most significant amendment to this rule is the restructuring of the classes and the assignment of points within the classes for the drinking water revolving fund. The scoring for the 1st project priority list resulted in almost 1/2 of the facilities clustering in Class C, which was the upgrade or rehabilitate existing delivery capability or existing facility design. This category alone included 5 types of projects. The projects might be: obtaining a new source of water, upgrading and rehabilitating the distribution system, upgrading or rehabilitating the storage facility, or treating the water or upgrading the treatment system for the water. WIFA realized that there are so many facilities that have upgrade or rehabilitation problems, that it seemed most fair to make 2 categories of Class C. This was done by splitting it into Classes C and D. Class C is intended to include upgrading or rehabilitating the existing delivery capability or existing design, but only as a result of a violation in the water system physical plant as documented by an ADEQ field engineer. This will place systems with documented violations, such as a consent order, to be classified ahead of systems without a documented violation. Since there is not enough money to fund all systems, WIFA believes this criteria is the most equitable way to distinguish need for upgrading or rehabilitating the system. Thus, Class D now contains the systems that need to be upgraded or rehabilitated, but not as a result of a documented violation.

Within each of the classifications, the broad class of "condition of the facilities and sources" was broken into acquiring, rehabilitating or developing sources, treatment upgrade or treatment expansion, upgrading or rehabilitating the distribution system, and upgrading or rehabilitating the storage facility. WIFA took 125 points previously assigned to condition of facility and sources, and reassigned 140 points as follows:

- 50 points maximum for acquiring, rehabilitating or developing sources;
- 30 points maximum for treatment upgrade or treatment expansion,
- 30 points maximum for rehabilitating or upgrading the distribution system,

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30 points maximum for rehabilitating or upgrading the storage facility.

WIFA determined it reasonable to rank the need for a water source higher than a need for treatment/upgrade of a distribution system or storage facility. Absent enough water from the current source, the system can never come into compliance with sufficient water pressure, ability to deliver on an ongoing basis, and it may have some quality issues (filtration or chemical content). Therefore, the impact from this amendment would be to ensure those systems without sufficient water receive 50 points. It is probably reasonable to rate the other 3 conditions with the same number of points each because each relates to an element of the facility that would impact delivery of water. The cumulative impact of a facility without storage capability, an inadequate distribution system, and poor treatment could collectively rate it over 1 without adequate source water. With the prior point assignment, a system could receive up to 20 points for new source from a renewable source, whereas the amendment allows 30 points for acquiring, rehabilitating, or developing a new water source. Within the context of the 140 points, the change does not appear to substantially skew the point assignment. In fact, if the current priority list is recalculated, it appears that most of Class C, which is proposed to become Classes C and D, will probably be funded because many highly ranked facilities cannot be ready to proceed in this 1st year. Therefore, the overall impact of specifying the condition of the facility appears to better clarify the actual ranking, yet it does not appear to have prevented anyone in this class from being funded this year.

C. Potential Impacts on Regulated Industry

WIFA concluded that this rulemaking will impact the following regulated industries:

- (1) **Drinking Water Facility** (A.R.S. § 49-371): a community water system or a nonprofit noncommunity water system as defined in the Safe Drinking Water Act (P.L. 93-523; 88 STAT. 1660; P.L. 95-190; 91 STAT. 1393; P.L. 104-182; 110 STAT. 1613) that is located in Arizona excluding water systems owned by federal agencies.
- (2) **Wastewater Treatment Facility** (A.R.S. § 49-371): a facility as defined in the clean water act, located in this state which is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the Clean Water Act.
- (3) **Nonpoint Source Project** (A.R.S. § 49-371): a project designed to implement a certified water quality management plan or the nonpoint source program approved by the United States Environmental Protection Agency pursuant to section 319 of the Clean Water Act.

The impact to these industries will be in a beneficial manner even though there is a cost. WIFA emphasizes that although a cost is associated with obtaining a low-interest loan, it is a voluntary program to assist facilities that may otherwise find it very difficult, if not impossible, to obtain funding to come into compliance or correct a problem. Specifically, the regulated industry obtains the low-interest loan from WIFA based upon a need that impacts human health or the environment. The more immediate adverse affect on human health (e.g. arsenic in the drinking water), the greater the chance to receive a low-interest loan to correct the problem. In other words, WIFA loans money to correct problems.

Each regulated industry still needs to correct the problem whether funded by WIFA or a lending institution. Therefore, although a cost is incurred by each regulated industry, WIFA believes that the low-interest loan offers a less costly solution to a problem that must be corrected. Thus, the net impact upon the regulated industries represents a cost-savings benefit.

D. Social Impacts

This rulemaking is not expected to have a quantifiable social cost. This is because compliance by the regulated industry is not a requirement for the rule, but goal as a result of funding "out of compliance" facilities. It is not anticipated that the rule amendments will add any deadweight-welfare losses (policy changes that make people worse off), adjustment costs for displaced resources, or other business or market costs. Because WIFA does not anticipate any type of reduction in industry output, deadweight-welfare losses are expected to be zero, that is, because no net losses in consumers' and producers' surplus are anticipated. Finally, this rulemaking will not have an impact on state revenues.

The social cost to society (mainly Arizona residents) would be principally comprised of real-resource costs incurred by the regulated community. However, this is not a regulatory rule that adds new standards, it merely clarifies the point assessment for quantifying the need of a facility for funds. Compliance with the Clean Water Act and Safe Drinking Water Act is a goal as a result of the funding from WIFA. Other social costs include costs that will be incurred by WIFA (implementing agency). WIFA will continue to perform its mission, that is, public financing, however, this rule will clarify procedures and classifying need, thereby enabling WIFA to better inform the affected facilities. Rule development costs should not be included in an EIS because they represent sunk costs once a rulemaking is effective.

WIFA expects both direct and indirect social benefits to accrue as a result of the cost-saving benefits. For example, WIFA's ability to provide low-interest loans to the regulated entities means that construction or repairs previously not affordable can now be accomplished. Although this may appear to be new revenue, it is revenue producing activity that was already required and not completed due to a lack of resources. Although the cost of funding probably will be passed onto the beneficiaries, the consumers, in the form of a rate increase, this cost should not be considered a result of this

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rulemaking. However, the consumers will benefit by protection of human health and the environment (which was previously not achievable), as well as less of a rate increase than if funded by a conventional bank. This has the potential to improve the protection of human health and the environment which is expected to have a positive social impact.

E. Anticipated Impacts on Employment, Revenues, and Expenditures

This rulemaking is not expected to impact short- or even long-run employment, production, or revenues. This conclusion applies to both private and public sectors. Because of the nature of this rulemaking, WIFA expects in output, no increases or decreases in employment, or expenditures. WIFA does not expect any facilities to be funded who might otherwise would not have been funded, nor does WIFA expect any facility that would have been funded to lose any possible ability to be funded. The only measurable change from this rule is that a facility that was ranked in Class C, might fall into Class D if not funded this past year, and if it was a part of a multi-year funded project, it will not automatically be placed in Class A. Secondary economic effects on employment and other factors (e.g., city, town and regional areas, energy, capital availability, and trade), whether they are likely or not to exist, have not been considered in this EIS. Finally, WIFA does not expect any administrative burden arising from this rulemaking. Thus, no additional FTEs will be required as a result of this rulemaking.

F. General Impact on Small Businesses and Reduction of Impacts

WIFA is authorized to provide low-interest loans only to small businesses that are drinking water facilities. Since this rule is not regulatory in nature, the only evaluation for the general impact on small business is "How can WIFA reduce any impacts from the rule." WIFA believes that it already reduces the potential impact on small business by providing to each facility all the research and preparation of information for obtaining a loan. The facility merely fills out a 2-page document that identifies who they are, what the general perceived need is, and how much money is requested (the amount of money is initially optional, because WIFA will help generate that figure). Then WIFA researches the demographics of the revenue base to determine the facility's ability to repay the loan, and it provides technical assistance to help design a cost-effective solution. After a solution has been selected and an amount determined, WIFA assists with any voter authorization, for example, ballot preparation and public notice. Upon receipt of voter authorization, the project is most likely "ready to proceed." Therefore, WIFA is available throughout the process to assist a facility especially a small business facility that has never taken on this kind of project.

WIFA's revolving fund is targeted to help small businesses and small communities, because those entities tend to have the smallest user base and as a result have not been able to upgrade or rehabilitate their system. Therefore the general impact is a greater availability to affordable loans for improving drinking water facilities. Wastewater treatment facilities are owned and operated by political subdivisions and therefore excluded from this section.

G. Alternative Rulemaking Provisions

WIFA has the ability to reduce impacts on political subdivisions by forgiving the principal on loans from the drinking water revolving fund. It would be helpful if WIFA could provide forgivable principal to the private sector drinking water facilities, however the Arizona Constitution does not allow subsidy by government to the private sector. Therefore, forgivable principal as a reduced impact on small business is not a lawful alternative.

WIFA has the ability to pass administration costs for the low-interest loans onto the regulated entity. To reduce impacts to small business, WIFA currently shares the administrative costs especially with small businesses. WIFA could absorb all administrative costs, however, WIFA is expressly limited to 4% of the aggregate of federal capitalization grants (A.R.S. § 49-374(A)(4), and the 43rd Legislature disallowed the 1997 appropriation to be used for administering the fund). Therefore, WIFA may not legally absorb all administrative costs to reduce the impact on small business.

WIFA has designed a 1-page application to specifically assist small businesses. WIFA has also reduced the impact of providing information for obtaining a loan specifically to assist small businesses, thereby creating a level playing field for all applicants. For example, if the city of Phoenix applied for a loan, it would probably have information about the median household income, statistics on demographics and other information readily available to inform WIFA of their community. To maintain a level playing field during the application process, WIFA obtains all statistical information, demographic information, and any other public information for the applicant, thereby minimizing the effort on small businesses and small communities.

H. The probable costs and benefits to the political subdivisions directly affected.

The political subdivisions directly affected include wastewater treatment facilities, nonpoint source projects, and drinking water facilities. These facilities are impacted in the same manner as small business in that they can now solve problems with lower interest loans which means a benefit to their ratepayers. In the case of a political subdivision that may receive a low-interest loan from the drinking water revolving fund, WIFA may forgive the principal (see the Safe Drinking Water Act). Forgivable principal is done in the form of negative interest. The cost from this decision is a reduction in the revolving fund, but the benefit is expected to be improved compliance and continued operation and maintenance of the system. WIFA does not intend to deplete the revolving fund by loaning it out and then forgiving all the principal.

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WIFA intends to use this option in the instance that it can benefit the facility long term and without a negative impact on the fund.

I. The probable cost-benefit to government agencies.

The Arizona Corporation Commission (ACC) is minimally affected by these rules because the private drinking water facilities must request a rate increase from the ACC to ensure payment of the loan. However, WIFA believes this to be a minimal impact because ACC is trying to streamline the approval process, and political subdivisions must have voter or petitioner authorization to go into debt, therefore the same type of a process exists for any facility that enters an agreement to borrow and repay low-interest loans with WIFA.

K. Data limitations and methods employed to attempt to obtain data if adequate data were not available.

WIFA knows the universe of drinking water facilities because they must submit information about the facility to ADEQ. It is estimated that there are 1800 drinking water facilities of which 49 are small businesses. WIFA was able to mail personal invitations to each known facility for the workshops and the oral proceedings. Due to the attendance of more than 400 people, it is believed that a large number of facilities were reached regarding this rulemaking. Most data were obtained by inquiry of the people invited to the workshops, therefore a representative sample is believed to have been used for making decisions regarding this rulemaking. However, no data were provided to WIFA from any regulated industry regarding additional costs as a result of these changes.

L. The probable benefits outweigh the probable costs.

This rulemaking is atypical for a government agency, because most government agencies are in the business of education, compliance, and enforcement. A goal of WIFA is to provide low-interest loans, which will in all cases trigger an increased rate for the consumer, however, it is believed that the rate will be lower than could have been achieved by any other alternative method except a grant. This rulemaking amends the low-interest loan program, therefore a rate increase is not expected due to these rules. Replenishment of the fund is necessary to continue the loan program. The Safe Drinking Water Act does allow for up to 15% of the grant money received from Congress to be used in a grant manner. WIFA will endeavor to match this money to recipients who are able to receive and use the money immediately. The 15% is a set aside only for drinking water facilities that supply water to fewer than 10,000 people. Therefore, it is a limited grant. At this time, there are very few other grants being given, therefore it is believed this program's benefits outweigh the costs.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

Due to the amendments in the proposed rule, that is the underline and strikeout, all changes made after proposal and prior to the final rulemaking are noted in **bold**.

ISSUE: WIFA on its own determined that a definition of MBE, WBE, SBRA Reporting would be helpful to the reader.

CONCLUSION: R18-15-101 was amended as follows:

29. "MBE, WBE, SBRA Reporting" means identifying and documenting ~~Minority Owned Businesses, Women Owned Businesses, and Small Business Enterprise in a Rural Area~~ **each minority business enterprise, women owned business enterprise, and small business in a rural area that participate** in a contract funded in whole or in part by WIFA.

ISSUE: WIFA on its own determined that the usage of "service area" within the rule needed a definition.

CONCLUSION: R18-15-101 was amended by adding the following definition:

38. "Service area" means the area within a municipality's boundaries, or the boundaries of a municipal, sanitary, irrigation, or county improvement district (for wastewater treatment or drinking water facilities), or is the area served by either a public service corporation (as defined in Article 15, Section 2 of the Arizona Constitution) or a homeowners association.

ISSUE: WIFA on its own determined that Class C, violations of the physical plant should be documented by an ADEQ field engineer.

ANALYSIS: Some, but not all violations of the physical plant are brought to the attention of ADEQ. WIFA believes that violations requiring ADEQ's attention deserve a higher priority. Therefore, the notation that the violation be documented by ADEQ (see the bold, underlined language) was added to screen out minor violations.

CONCLUSION: The amendment to R18-15-305(E) is in bold below:

R18-15-305. Drinking Water Revolving Fund Priority Classes

- E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for

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all drinking water facilities that have violations in the water system physical plant as documented by an ADEO field engineer.

ISSUE: WIFA on its own determined that the point assignment for the distribution system, hydropneumatic tank, and the storage facility was inconsistent with other point assignments.

ANALYSIS: The general rule for point assignment is to give the most points to serve an existing service area and the fewest points or no points for growth. Therefore, R18-15-306 subsections (C), (D), (E) and (F) are amended in the following ways.

Federal funding for the Drinking Water Revolving Fund is not to be used for any growth and development. Growth and development means an area where property has not been developed and is not a part of the existing service area. It is acceptable to assist systems that were underbuilt, that is they were not designed to provide service to the existing service area. It is also acceptable to assist a system that expands its service area to help an adjacent area that is already populated to improve their water delivery system. For example, some service areas expand because their neighbors are hauling water, when they are able to pipe water to them. However, it is not acceptable to use federal funds for growth and development, that is an area that is not populated. Therefore, 5 points that was previously assigned for growth is now reduced to zero.

Subsections (C), (D), (E), and (F) were also amended to remove any reference to "current growth", and the modifier "future" from growth. This results in only 1 reference to "growth." Current growth was intended to address growth within the area of the Certificate of Convenience and Necessity, however, WIFA believes that the service to the existing service area includes what was previously referred to as "current growth." Review of this section revealed a misuse of the term "method." In most cases, method was used for the word "item", therefore, "method" has been deleted from each subsection except for R18-15-306(D). WIFA discovered the same term was described in 2 different ways, that is "current service area" and "existing service area" were used to mean the same thing. All references to "current service area" have been amended to us "existing service area".

CONCLUSION: R18-15-306(C), (D), (E), and (F) were amended as follows:

C. Condition of Facility and Source (CFS) -- ~~If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate Acquiring, Rehabilitating, or Developing Sources of a drinking water facility (ARD) -- the~~ The Board shall award CFS ~~ARD~~ points up to a maximum of ~~125~~ 50 points as follows:

- ~~1. 20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.~~
- ~~2. 20 points to construct, upgrade, or rehabilitate a component of the water treatment facility, other than disinfection equipment.~~
- ~~3. 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution facility.~~
- ~~4. 20 points to upgrade or rehabilitate existing, required disinfection equipment.~~
- ~~5. 15 points to protect an existing water source from an existing or future contamination threat, the project having been funded under 42 U.S.C. § 300j.~~
- ~~6. 15 points to upgrade or rehabilitate an existing well or spring box.~~
- ~~7. 10 points to repair an existing transmission or distribution system.~~
- ~~8. 5 points to reduce a taste, odor or corrosion problem at an existing facility.~~

20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.

2. Acquire, rehabilitate, or develop a water source to serve the following for a maximum of 30 points as follows:

- a. 30 points ~~to serve current~~ for an existing service area because the current source is contaminated or depleted.
- b. 15 points ~~to serve~~ for an expanded service area because the new area has contaminated or insufficient water.
- c. 5 0 points ~~to serve future~~ for growth.

D. Treatment Upgrade (either surface water or ground water but not both) or Treatment Expansion (excluding Upgrade and Expand) (TUE) -- The Board shall award TUE points up to a maximum of 30 points as follows:

1. Treatment Upgrade of either surface or ground water by 1 of the following methods for a total of 30 points:
 - a. Upgrade surface water by 1 of the following methods:
 - i. 30 points for treatment of micro-organisms.
 - ii. 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.

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- iii. 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.
- b. Upgrade ground water by 1 of the following methods:
 - i. 30 points for treatment with chlorination.
 - ii. 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.
 - iii. 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.
- E. Distribution System (DS) -- The Board shall award DS points up to a maximum of 30 points ~~by 1 of the following methods~~ as follows:
 - 1. 30 points maximum for rehabilitation, replacement, or repair of existing lines with inadequate line size or inadequate pressure ~~by 1 of the following as follows: methods~~
 - a. 30 points for ~~service to~~ an existing service area.
 - b. 25 points for ~~service to~~ an expanded service area where the new area has poor quality water.
 - e. ~~10 points for service for current growth.~~
 - dc. ~~50 points for service for future~~ for growth.
 - 2. 30 points maximum for the rehabilitation, replacement, or repair of existing lines by 1 of the following methods as follows:
 - a. 30 points for leaks.
 - b. 25 points for wrong materials or inadequate design.
 - c. 20 points for insufficient depth of lines.
 - 3. 25 points maximum for the installation of new lines ~~by 1 of the following methods~~ as follows:
 - a. 25 points to install new lines to loop an existing service area.
 - b. 25 points to install new lines to service for an existing service area.
 - c. 20 points to install new lines to service for an expanded service area because the new area has poor quality or no water.
 - d. ~~10 points to install new lines to service current growth.~~
 - ed. ~~50 points to install new lines to service future~~ for growth.
 - 4. 30 points maximum to rehabilitate, replace, or repair a hydropneumatic tank as follows.
 - a. 30 points for a hydropneumatic tank that serves an existing service area.
 - b. ~~25 points for a hydropneumatic tank that serves current growth.~~
 - eb. 20 points for a hydropneumatic tank that serves an expanded service area.
- F. Storage Facility (SF) -- The Board shall award SF points up to a maximum of 30 points ~~1 of the following methods~~ as follows:
 - 1. 30 points for no storage.
 - 2. 25 points maximum to rehabilitate storage or inadequate storage or inadequate pressure by 1 of the following methods as follows:
 - a. 25 points for inadequate design of the storage facility.
 - b. 20 points for ~~service to~~ an existing service area.
 - c. 15 points for ~~service to~~ an expanded service area because the new area has poor quality water.
 - d. ~~10 points for service for current growth.~~
 - ed. ~~50 points for service for future~~ for growth.
 - 3. 25 points maximum for expanded storage by 1 of the following methods as follows:
 - a. 25 points for ~~service to~~ an existing service area.
 - b. 20 points for ~~service to~~ an expanded service area because the new area has poor quality water.

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~~e. 10 points for service for current growth.~~

~~d.c. 50 points for service for future for growth.~~

ISSUE: WIFA in conjunction with the GRRC Staff made the following corrections to enhance the clarity of the rule.

CONCLUSION: R18-15-108(E), R18-15-110, R18-15-111, R18-15-206(K), R18-15-207(B), R18-15-304(G), R18-13-306(K), R18-15-307(B), R18-15-403(C) were amended as follows:

R18-15-108(E)

- E. The Board shall bypass a project within a fiscal year and offer funding to the next highest ranking project on the project priority list if either ~~one~~ 1 of the following occurs:

R18-15-110

To ensure compliance with all Arizona statutes and federal requirements for funding the project, the applicant shall submit bid documents for review and comment by the Authority prior to the ~~releasing~~ release of the documents to prospective bidders or contractors.

R18-15-111(A)

- A. ~~The Authority shall ensure that disbursements are consistent with the financial assistance agreement and incurred project expenses. Disbursement~~ The Authority shall honor disbursement requests if the disbursements are consistent with the financial assistance agreement and they are within 10 percent % of the project dollar disbursement schedule agreed to by both parties at the beginning of the contract, or the amended schedule based upon prior Board approval.

R18-15-111 (E), (F)

- E. Each disbursement request must shall include copies of invoices, canceled checks, or some other document documents to that show proof of payment.
- F. The Authority shall not process the last substantial reimbursement request for construction funds reimbursement shall not be processed for payment until all required facility permits are in place. The last substantial reimbursement request is defined as follows:

R18-15-206

- K. After scoring within each class, the Board shall rank tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefiting connection.

R18-15-207(B)

2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ ~~41-2501 et seq.~~ Title 41, Chapter 23.

R18-15-304(G)

- G. The Board shall make additions or modifications to the Priority List when ~~all~~ 1 or more of the following conditions ~~are is~~ are met:

R18-15-306(K)

- K. After scoring within each class, the Board shall rank tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefiting connection.

R18-15-307(B)

2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ ~~41-2501 et seq.~~ Title 41, Chapter 23.

R18-15-403(C)

2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ ~~41-2501 et seq.~~ Title 41, Chapter 23.

ISSUE: WIFA in conjunction with the GRRC Staff found that "may" was used in a requirement for project construction, which was inconsistent with the Clean Water Revolving Fund requirement.

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CONCLUSION: R18-15-207 was amended as follows:

- A. WIFA may shall withhold all construction funding until the Department issues an approval to construct for the applicant.

ISSUE: WIFA on its own discovered that the section title for R18-15-107 did not match the title found in the text of the rule. The title in the table of contents reads "Environmental Review Process", whereas the title in the text of the rule reads "Environmental Review."

CONCLUSION: The title in the table of contents was amended as follows:

R18-15-107. Environmental Review Process

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

There were no written or oral comments received for this rulemaking. The changes made after the rule was proposed came about during discussions by the WIFA staff with the Region IX EPA and the Board.

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

Not applicable.

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

Not applicable.

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

No.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. MANAGEMENT

Section

- R18-15-101. Definitions
R18-15-107. Environmental Review Process
R18-15-108. Readiness to Proceed
R18-15-110. Bid Document Review
~~R18-15-110~~ R18-15-111. Disbursements and Repayments
~~R18-15-111~~ R18-15-112. Administration
~~R18-15-112~~ R18-15-113. Disputes

2. *No Change*
3. *No Change*
4. *No Change*
5. *No Change*
6. *No Change*
7. *No Change*
8. *No Change*
9. *No Change*
10. *No Change*
11. *No Change*
12. *No Change*
13. *No Change*
14. *No Change*
15. *No Change*
16. *No Change*
17. *No Change*
18. *No Change*
19. *No Change*
20. *No Change*
21. *No Change*
22. *No Change*
23. *No Change*
24. *No Change*
25. *No Change*
26. *No Change*
27. *No Change*
28. *No Change*

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

- R18-15-204. Clean Water Revolving Fund Priority List
R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria
R18-15-207. Project Construction

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

- R18-15-304. Drinking Water Revolving Fund Priority List
R18-15-305. Drinking Water Revolving Fund Priority Classes
R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria
R18-15-307. Project Construction

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

Section

- R18-15-403. Project Construction

ARTICLE 1. MANAGEMENT

R18-15-101. Definitions

No Change

1. *No Change*

29. "MBE, WBE, SBRA Reporting" means identifying and documenting each minority business enterprise, women owned business enterprise, and small business in a rural

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area that participates in a contract funded in whole or in part by WIFA.

- 2930.No Change
- 3031.No Change
- 3132.No Change
- 3233.No Change
- 3334.No Change
- 3435.No Change
- 3536.No Change
- 3637.No Change

38. "Service area" means the area within a municipality's boundaries, or the boundaries of a municipal sanitary irrigation, or county improvement district (for wastewater treatment or drinking water facilities), or is the area served by either a public service corporation (as defined in Article 15, Section 2 of the Arizona Constitution) or a homeowners association.

- 3739.No Change
- 3840.No Change
- 3941.No Change

R18-15-107. Environmental Review Process

- A. No Change
- B. No Change
 - 1. No Change
 - 2. No Change
 - 3. No Change
- C. No Change
 - 1. No Change
 - 2. No Change
 - 3. No Change
 - 4. No Change
 - 5. No Change
 - 6. No Change
- D. No Change
- E. No Change
 - 1. No Change
 - 2. No Change
 - 3. No Change
 - 4. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
 - 5. No Change
 - 6. No Change
- F. No Change
 - 1. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
 - 2. No Change
- G. No Change
 - 1. No Change
 - 2. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
 - 3. No Change
 - 4. No Change

- a. No Change
- b. No Change
- c. No Change
- d. No Change
- e. A determination of consistency with the Certified Water Quality Management Plan, if applicable.
- f. No Change

- H. No Change
- I. No Change
- J. No Change
 - 1. No Change
 - 2. No Change
 - 3. No Change
 - 4. No Change
 - 5. No Change
 - 6. No Change

R18-15-108. Readiness to Proceed

- A. No Change
- B. No Change
 - 1. No Change
 - 2. No Change
 - a. No Change
 - i. No Change
 - ii. No Change
 - iii. No Change
 - iv. No Change
 - b. No Change
 - 3. No Change
 - a. No Change
 - b. No Change
 - 4. No Change
 - a. No Change
 - b. No Change
 - 5. No Change
 - a. No Change
 - b. No Change
 - 6. No Change
 - a. No Change
 - b. No Change
- C. No Change
- D. No Change
- E. The Board shall bypass a project within a fiscal year and offer funding to the next highest ranking project on the project priority list if either 1 of the following occurs:
 - 1. The Board determines that substantial progress has not been made on a project toward being ready to proceed within 8 months of notification from WIFA that the project is within the fundable range of projects for that fiscal year; or
 - 2. The Board determines that the project will not be ready to proceed within the current fiscal year.

R18-15-110. Bid Document Review

To ensure compliance with all Arizona statutes and federal requirements for funding the project, the applicant shall submit bid documents for review and comment by the Authority prior to the release of the documents to prospective bidders or contractors.

R18-15-110R18-15-111. Disbursements and Repayments

- A. The Authority shall ensure that disbursements are consistent with the financial assistance agreement and incurred project expenses. The Authority shall honor disbursement requests if

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the disbursements are consistent with the financial assistance agreement and within 10% of the project dollar disbursement schedule agreed to by both parties at the beginning of the contract, or the amended schedule based upon prior Board approval.

- B. *No Change*
- C. *No Change*
- D. Each disbursement request shall be on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost incurred report, and a MBE, WBE, SBRA report. All disbursement forms shall be completely filled out before the disbursement can be processed by the Authority.
- E. Each disbursement request shall include copies of invoices, canceled checks, or other documents that show proof of payment.
- F. The Authority shall not process the last substantial reimbursement request for construction funds reimbursement for payment until all required facility permits are in place. The last substantial reimbursement request is defined as follows:
 - 1. 10% of the contract amount on a contract less than \$1,000,000;
 - 2. 5% of the contract amount on a contract greater than or equal to \$1,000,000 and less than \$5,000,000;
 - 3. 2% of the contract amount on a contract greater than or equal to \$5,000,000.

R18-15-111-R18-15-112. Administration

- A. *No Change*
- B. *No Change*

R18-15-112-R18-15-113. Disputes

- A. *No Change*
- B. *No Change*
- C. *No Change*

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-204. Clean Water Revolving Fund Priority List

- A. *No Change*
- B. *No Change*
- C. *No Change*
- D. *No Change*
- E. *No Change*
- F. *No Change*
- G. The Board shall make additions or modifications to the Priority List when 1 or more of the following conditions are met:
 - 1. The project meets the criteria for Priority Class A specified in R18-15-205(B).
 - 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.
 - 3. The additions or modifications are made by the Board at a public meeting.
 - 4. Additional funds are made available.
- H. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*
- I. *No Change*

R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria

- A. *No Change*
- B. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*
- C. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*
 - 5. *No Change*
 - 6. *No Change*
 - 7. *No Change*
- D. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*
 - 5. *No Change*
- E. *No Change*
 - 1. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
 - d. *No Change*
 - 2. *No Change*
- F. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
- G. *No Change*
 - 1. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
 - d. *No Change*
 - 2. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
 - 3. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
 - 4. *No Change*
 - a. *No Change*
 - b. *No Change*
 - c. *No Change*
- H. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*
- I. *No Change*
 - 1. *No Change*
 - 2. *No Change*
 - 3. *No Change*
 - 4. *No Change*

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J. No Change

K. After scoring within each class, the Board shall rank tied scores by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefiting connection.

R18-15-207. Project Construction

A. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:
1. An on-site inspection by the Department.
2. The development by the applicant or recipient of a sludge management use and disposal plan.
3. A review of all set-back requirements by the Department.
WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.

B. No Change

- 1. No Change
2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 Title 41, Chapter 23.
3. No Change
a. No Change
b. No Change
i. No Change
ii. No Change
iii. No Change
iv. No Change
v. No Change
vi. No Change

C. No Change

- 1. No Change
2. No Change

D. No Change

- 1. No Change
2. No Change
3. No Change
4. No Change

E. No Change

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-304. Drinking Water Revolving Fund Priority List

- A. No Change
B. No Change
C. No Change
D. No Change
E. No Change
F. No Change

G. The Board shall make additions or modifications to the Priority List when all 1 or more of the following conditions are met:

- 1. No Change
2. No Change
3. Additional funds are made available

H. No Change

- 1. No Change
2. No Change
3. No Change
4. No Change

I. No Change

R18-15-305. Drinking Water Revolving Fund Priority Classes

- A. No Change
B. No Change

1. No Change

2. No Change

3. No Change

4. No Change

5. No Change

C. Class A: Continuing Construction Projects -- In addition to R18-15-305(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi fiscal year funding commitment with the applicant, the Board designated the project as Priority Class A, Priority Class B, or Priority Class C in a prior fiscal year, and the project received at least 20 points under R18-15-306(E) R18-15-306(H).

D. No Change

1. No Change

2. No Change

3. No Change

4. No Change

5. No Change

E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for all drinking water facilities that have violations in the water system physical plant as documented by an ADEQ field engineer.

F. Class D -- The Board may designate a project as Priority Class D if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for all drinking water facilities that require rehabilitation or upgrades that are not a result of violations.

FG. Class DE -- The Board may designate a project as Priority Class DE if the goal of the project is to consolidate or regionalize service of previously separate drinking water facilities.

GH. Class EF -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) of Class A through Class E, as Priority Class EF.

R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria

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

PV = HC + CFS ARD + TUE + DS + SF + LFC + PYF + CR where:

PV = Priority Value

HC = Health Criteria

CFS = Condition of Facilities and Sources

ARD = Acquiring, Rehabilitating, or Developing Sources

TUE = Treatment Upgrade or Treatment Expansion

DS = Distribution System

SF = Storage Facility

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

B. No Change

1. No Change

2. No Change

3. No Change

4. No Change

C. Condition of Facility and Source (CFS) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabili-

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tate Acquiring, Rehabilitating, or Developing Sources of a drinking water facility (ARD) -- The Board shall award ~~CFS ARD~~ ARD points up to a maximum of ~~25~~ 50 points as follows:

1. 20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.
2. 20 points to construct, upgrade, or rehabilitate a component of the water treatment facility, other than disinfection equipment.
3. 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution facility.
4. 20 points to upgrade or rehabilitate existing, required disinfection equipment.
5. 15 points to protect an existing water source from an existing or future contamination threat, the project having been funded under 42 U.S.C. § 300j.
6. 15 points to upgrade or rehabilitate an existing well or spring box.
7. 10 points to repair an existing transmission or distribution system.
8. 5 points to reduce a taste, odor or corrosion problem at an existing facility.
20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.

2. Acquire, rehabilitate, or develop a water source to serve the following for a maximum of 30 points as follows:
 - a. 30 points for an existing service area because the current source is contaminated or depleted.
 - b. 15 points for an expanded service area because the new area has contaminated or insufficient water.
 - c. 0 points for growth.

D. Treatment Upgrade (either surface water or ground water but not both) or Treatment Expansion (excluding Upgrade and Expand) (TUE) -- The Board shall award TUE points up to a maximum of 30 points for either surface or ground water by 1 of the following methods for a total of 30 points:

1. Upgrade surface water by 1 of the following methods:
 - a. 30 points for treatment of micro-organisms.
 - b. 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.
 - c. 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.
2. Upgrade ground water by 1 of the following methods:
 - a. 30 points for treatment with chlorination.
 - b. 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.
 - c. 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.

E. Distribution System (DS) -- The Board shall award DS points up to a maximum of 30 points as follows:

1. 30 points maximum for rehabilitation, replacement, or repair of existing lines with inadequate line size or inadequate pressure as follows:
 - a. 30 points for an existing service area.
 - b. 25 points for an expanded service area where the new area has poor quality water.
 - c. 0 points for growth.

2. 30 points maximum for the rehabilitation, replacement, or repair of existing lines as follows:

- a. 30 points for leaks.
- b. 25 points for wrong materials or inadequate design.
- c. 20 points for insufficient depth of lines.

3. 25 points maximum for the installation of new lines as follows:

- a. 25 points to install new lines to loop an existing service area.
- b. 25 points to install new lines for an existing service area.
- c. 20 points to install new lines for an expanded service area because the new area has poor quality or no water.
- d. 0 points to install new lines for growth.

4. 30 points maximum to rehabilitate, replace, or repair a hydropneumatic tank as follows:

- a. 30 points for a hydropneumatic tank that serves an existing service area.
- b. 20 points for a hydropneumatic tank that serves an expanded service area.

F. Storage Facility (SF) -- The Board shall award SF points up to a maximum of 30 points as follows:

1. 30 points for no storage.
2. 25 points maximum to rehabilitate storage or inadequate storage or inadequate pressure as follows:
 - a. 25 points for inadequate design of the storage facility.
 - b. 20 points for an existing service area.
 - c. 15 points for an expanded service area because the new area has poor quality water.
 - d. 0 points for growth.
3. 25 points maximum for expanded storage as follows:
 - a. 25 points for an existing service area.
 - b. 20 points for an expanded service area because the new area has poor quality water.
 - c. 0 points for growth.

DG. No Change

1. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
 - e. No Change
2. No Change
 - a. No Change
 - b. No Change
 - c. No Change
3. No Change
 - a. No Change
 - b. No Change
 - c. No Change
4. No Change
 - a. No Change
 - b. No Change
 - c. No Change

EH. No Change

1. No Change
2. No Change
3. No Change
4. No Change

FI. No Change

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1. *No Change*
2. *No Change*
3. *No Change*
4. *No Change*

GJ. *No Change*

K. After scoring within each class, the Board shall rank tied scores by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefiting connection.

R18-15-307. Project Construction

- A. ~~The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection. WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.~~
- B. *No Change*
1. *No Change*
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ ~~41-2504~~ Title 41, Chapter 23.
 3. *No Change*
 - a. *No Change*
 - b. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - iv. *No Change*
 - v. *No Change*
 - vi. *No Change*
- C. *No Change*
1. *No Change*
 2. *No Change*
- D. *No Change*
1. *No Change*
 2. *No Change*

3. *No Change*
 4. *No Change*
- E. *No Change*

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

R18-15-403. Project Construction

- A. *No Change*
- B. ~~The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection. If applicable, WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.~~
- C. *No Change*
1. *No Change*
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ ~~41-2504~~ Title 41, Chapter 23.
 3. *No Change*
 - a. *No Change*
 - b. *No Change*
 - i. *No Change*
 - ii. *No Change*
 - iii. *No Change*
 - iv. *No Change*
 - v. *No Change*
 - vi. *No Change*
- D. *No Change*
1. *No Change*
 2. *No Change*
- E. *No Change*
1. *No Change*
 2. *No Change*
 3. *No Change*
 4. *No Change*
- F. *No Change*