

NOTICES OF EXEMPT RULEMAKING

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

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

PREAMBLE

- 1. Sections Affected**

R7-3-501	<u>Rulemaking Action</u>
R7-3-506	Amend
R7-3-507	Amend
R7-3-508	New Section
- 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. § 15-1852(A)
Implementing statutes: A.R.S. §§ 15-1871 through 15-1873
- 3. The effective date of the rules:**

August 8, 2002
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 1553, March 29, 2002
Notice of Proposed Rulemaking: 7 A.A.R. 2619, June 21, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Verna L. Allen, Executive Director
Address: 2020 N. Central Avenue, Suite 550
Phoenix, AZ 85004
Telephone: (602) 258-2435
Fax: (602) 258-2483
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The Commission for Postsecondary Education's purpose in promulgating the proposed rules and amendments is to bring the Arizona Family College Savings Program (Program) Rules into conformity with federal H.R. 1836, Economic Growth and Tax Relief Reconciliation act of 2001, which was signed by President Bush on June 7, 2001, with § 529 of the Internal Revenue Code (Code) and IRS Notices promulgated pursuant to § 529 of the Code, and with amendments made by HB 2098 (Laws 2002, Ch. 122) to A.R.S. § 15-1871 et seq.
- 7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

No study is available or was relied upon.
- 8. 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
- 9. The summary of the economic, small business, and consumer impact:**
 - a. An identification of the proposed rulemaking: Arizona Family College Savings Plan, R7-3-501, R7-3-506, R7-3-507, and R7-3-508 adopted pursuant to A.R.S. §§ 15-1871 through 15-1877

- b. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Persons directly affected are account owners.
- c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rule-making on the Commission, and on any political subdivision or business directly affected by the proposed rule-making: The Commission will bear any administrative costs as a consequence of the proposed rulemaking.
- d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: None
- e. A statement of the probable impact of the proposed rulemaking on small business: None
- f. A statement of the probable effect on state revenues: No effect is anticipated as this Program is self-supported.
- g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

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

Not applicable

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

On February 27, 2002, the Commission had discussions and approved the Notice of Rulemaking Docket Opening for the AFCSP Program Rules amendments for R7-3-501, R7-3-506, R7-3-507, and R7-3-508. On May 8, 2002, the Commission held a public meeting for review and approval of the Proposed Rulemaking amendments covering the aforementioned. And, on August 7, 2002, the Commission held another meeting for public comments and approved the final amendment language for the aforementioned.

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

Not applicable

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

Not applicable

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

No

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section

- R7-3-501. Definitions
- R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
- R7-3-507. Oversight of Financial Institutions
- R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

- A. No change
- B. No change
- C. “Cash” means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier’s check, certified check, money order, payroll deposit, traveler’s check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
- D. No change
- E. No change
- F. No change
- G. ~~“Direct the investment” means specifying or attempting to specify the particular financial instruments (such as certificates of deposit) or ownership interests (such as stock certificates or interests in mutual funds) either individually, or within a fund family or other group of financial instruments or ownership interests held as an investment group, into which the~~

~~account holder's contributions or earnings will be invested. Direct the investment does not mean selecting an initial type of investment program if more than 1 program is offered.~~

~~H.G.~~ "Higher education institution" means a higher education institution as defined in A.R.S. § 15-1871(7), provided that, solely for the purposes of determining whether a withdrawal or distribution is subject to a penalty under R7-3-506, the term shall not include any institution that is not also an "eligible educational institution" as defined in Code § 529(e)(5).

~~H.H.~~ "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.

~~H.I.~~ "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. No change

B. Withdrawals

1. Qualified Withdrawals.

In order to make a qualified withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from a higher education institution. In addition to the certification, a withdrawal shall be deemed qualified only if:

- a. The financial institution is provided with a copy of an invoice from the higher education institution, and the distribution is made directly to the higher education institution; or
- b. The financial institution is provided with a copy of an invoice from the higher education institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the higher education institution; or
- c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.

2. Withdrawal Based on Death, Disability, or Scholarship

A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.

3. Non-Qualified or Unsubstantiated Withdrawals

Pursuant to A.R.S. §§ 15-1875(H), (I), and (J), the Commission has authority to assess penalties for non-qualified withdrawals. If an account holder fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account holder seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.

- a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.
- b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institution's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account holder and beneficiary, in writing, of any withholding.
- c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the higher education institution attended by the designated beneficiary or the higher education institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated bene-

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ficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.

4. **Substantiation Procedures**

Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the higher education institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.

5. **Distributions Made after December 31, 2001**

R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.

- C. The account holder may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account holder. If the account holder disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

R7-3-507. Oversight of Financial Institutions

- A. No change
B. No Investment Direction. A financial institution shall not permit an account holder to move funds, once deposited, that in any way would result in investment direction under § 529(b)(5) of the Code ~~or A.A.C. R7-3-501(F)~~.
C. No change
D. No change
E. No change
F. No change

R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

- A.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 through 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.
- B.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 through 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT**

PREAMBLE

- 1. Sections Affected**
- | | |
|------------|---------------------------------|
| R18-13-701 | <u>Rulemaking Action</u> |
| R18-13-702 | Amend |
| R18-13-704 | Amend |
| R18-13-705 | New Section |
| R18-13-706 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 49-104(B)(4)
Implementing statutes: A.R.S. §§ 49-762.03(F) and 49-857(C)
- 3. The effective date of the rules:**
November 1, 2002
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Barry Abbott, Program Supervisor |
| Address: | Arizona Department of Environmental Quality
Waste Programs Division
Solid Waste Section
1110 W. Washington
Phoenix, AZ 85007 |
| Telephone: | (602) 771-2226 or (800) 234-5677, enter 771-2226 (toll-free in Arizona only) |
| Fax: | (602) 771-2302 |
| E-mail: | abbott.barry@ev.state.az.us |
| TTD: | (602) 771-4829 |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

This rulemaking is exempted from regular rulemaking by A.R.S. § 49-762.03(F).

This rulemaking amends R18-13-701 as follows:

Several new definitions were added pertaining to costs that are used in newly added rule sections describing how the Department calculates the hourly billing rate. The definition of "substantial change" was repealed and a new definition of "change" was added to comply with a previous amendment to A.R.S. § 49-762.06. The definition "direct cost" was amended to clarify that the Arizona Department of Environmental Quality (Department) can bill for time spent by a plan reviewer when briefing supervisors about the approval or disapproval of the facility plan, in assembling the facility file, and inputting data into the licensing time-frames computer tracking program.

This rulemaking amends R18-13-702 as follows:

Schedules A, B, and C of subsection (A) were amended by increasing the maximum fees in all three schedules. This is the first increase since the maximum fees were first adopted and is an inflationary increase only. The methodology used to calculate the new maximum fees was to divide each of the former maximum fees by the first hourly plan review rate of \$38.30 to obtain the estimated number of plan review hours used to establish the initial maximum fees. Each of the estimated number of plan review hours was then multiplied by the proposed \$58.81 hourly plan review rate to establish the new maximums.

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Schedule B was further amended by establishing a new category for updates of demonstration of financial responsibility. Previously, financial assurance updates were considered Type III changes which have a higher initial fee. The new initial fee for financial assurance updates is lower and closer to the Department's cost to review the updates.

Subsection (C) was repealed because the Department does not issue interim bills, but only bills once, upon completion of the plan review project, that is, approval or denial of the application.

Subsections (D) and (E) were amended to reflect the Department's current billing and fee collection procedures.

Subsections (G), (H), and (I) were repealed because the new Sections, R18-13-704 through R18-13-706 were added to describe the procedures the Department follows in determining the hourly bill rate.

Subsection (J) was amended by increasing the hourly plan review rate from \$42.91 to \$58.81 per hour, an increase of \$15.90 per hour.

Subsections (K), (L), and (M) were repealed because they pertained to transition issues that were necessary when the rules were first adopted.

This rulemaking adds Sections R18-13-704 through R18-13-706 to describe the procedures the Department follows in determining the hourly bill rate.

Background of this Rulemaking

Under the solid waste statutes, A.R.S. § 49-762.03(F) states "*the Department shall collect from the applicant a reasonable fee based on the Department's reasonable direct costs, not including indirect costs for the processing, review, approval or disapproval of the plan, to be reviewed on an annual basis.*" Under the special waste statutes, A.R.S. § 49-857(C) states "*the director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan.*" The difference between the two statutes, is the solid waste statute does not allow the cost recovery for indirect costs whereas the special waste statute allows cost recovery for all costs. Because the same person could be reviewing a solid waste facility plan that contains a special waste component, the SWS has chosen to bill both the solid waste and special waste reviews at the same rate, that is, the lower solid waste fee rate. The SWS believes that all direct costs associated with maintaining a plan review program are reasonable and should be recovered through the plan review fee program.

The SWS began charging for plan review fees on July 1, 1996. The initial hourly rate of \$38.30 was derived from the 1994 Arthur Anderson report entitled *Solid and Special Waste Section: Workload Analysis and Rate Determination Study, Final Report*. That rate was codified in rule under Title 18, Chapter 13, Article 7, which took effect on July 1, 1996. In March 1999, the SWS conducted its own plan review fee study. That study indicated that the hourly rate should be increased to \$42.91. Accordingly, the rule was amended in 1999. In March 2002, The SWS conducted and finalized the 2002 Fee Study. The purpose of the 2002 Fee Study was to determine if the hourly rate that the SWS charges for facility plan reviews should be changed.

The 2002 Fee Study is based on a methodology similar to that employed in the SWS's 1999 study and the 1994 Arthur Anderson report. The 2002 Fee Study showed that the updated plan review hourly rate should be \$58.81. This rate is based on current salaries of the SWS employees and the SWS's actual operating, and equipment expenses from the previous year.

Billable Hours

The methodology used in the 2002 Fee Study to calculate the number of billable hours starts with the number of hours in the work year. The state uses 2,080 hours for a work year. From this starting point, 768 non-billable administrative hours were deducted. Next, 101 non-billable programmatic hours were deducted. The total number of billable hours is 1,211.

The 2002 Fee Study resulted in a 101-hour decline in the number of billable hours used in the previous two rulemakings. The previous two rulemakings used 1,312 billable hours. The decline in the number of available billable hours can be contributed mainly to a high turnover rate in staff, and increased efforts to be more responsive to the public. In the 1999 study, the Plan Review Unit had nine employees (seven plan reviewers, a manager and a secretary). In the 2002 Fee Study, the Plan Review Unit had six employees (five plan reviewers, a manager and a secretary for part of the year). Only one of the plan reviewers from the 1999 study is still a member of the Plan Review Unit. As result of the high employee turnover rate in the Plan Review Unit as well as the SWS as a whole, the SWS has begun a two-hour per month training program consisting of a review of state statutes and rules, and federal regulations. Additionally, the Plan Review Unit Manager meets more frequently with the newer staff, which resulted in an increase in the number hours for staff meetings. The increase in public education is a result of the SWS's telephone information line. Each SWS staff must answer the information line one day a month, which averages out to be about 30 minutes a month.

Hourly Fee Rate

The methodology used in the 2002 Fee Study to calculate the hourly plan review fee rate consisted of first calculating the average salary for the five plan reviewers. The next step was to add the employee related costs. Employee related costs are social security, health and other benefits and leave costs, and are calculated as a percentage of the employee's salary. The next step was to calculate the SWS's prorated costs. The prorated costs are section management and unit supervisory costs, and operating, travel and equipment cost per each of the SWS's employees. The prorated costs were then added to the average salary and employee related costs to arrive at an average plan reviewer cost of \$71,225. To determine the hourly rate, the average plan reviewer cost was divided by the number of billable hours of 1,211 to arrive at a hourly plan review fee rate of \$58.81.

A significant change in the way the 2002 Fee Study differs from the Arthur Anderson study in determining the hourly fee rate is that the Arthur Anderson study did not provide for cost recovery for the non-billable programmatic costs. The SWS agrees that the applicant should not be billed for the non-billable programmatic cost, but the SWS believes that non-billable programmatic costs are a direct cost and therefore should be recovered just as non-billable administrative costs are recovered.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying each study, and any analysis of each study and other supporting material:

A report by Arthur Anderson & Company entitled *Solid and Special Waste Section: Workload Analysis and Rule Determination Study, Final Report* November 1994.

An internal report prepared by the Solid Waste Section entitled *2002 Solid Waste Section Plan Review Fee Study* March 2002.

Both studies are available for review. To arrange for reviewing the reports, please contact Barry Abbott as specified under item #5 of this Preamble.

8. 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

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

Identification of the rulemaking:

This rulemaking pertains to the fees that the Department charges for the review of solid waste and special waste facility plan review fees. The rule is codified in Title 18, Chapter 13, Article 7.

Summary of information included in the economic, small business and consumer impact statement:

Because this rulemaking increases the hourly plan review fee rate by \$15.90, the Department expects an increase in the total amount of money an applicant pays for the review.

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

Currently, there are 39 operating municipal solid waste landfills, 15 closed or inactive municipal solid waste landfills, two medical waste transfer facilities, one medical waste treatment facility and two special waste treatment facilities that are subject to facility plan approval. Both the open and closed/inactive landfills must update their demonstration of financial assurance annually. The other facilities must update their demonstrations triennially.

Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

From January 1, 2002 through March 29, 2002, the Solid Waste Section billed a total of 435 hours for plan review projects. At the present hourly plan review rate of \$42.91 the Department billed \$18,665.85. At the proposed hourly rate of \$58.81, the amount that would have been billed would have been \$25,582.35, an increase of \$6,916.50. If the billing hours remain the same for all four quarters in FY 2003, the Department projects an annual increase of \$27,666. The types of facility plan reviews conducted during the January through March period were: 20 financial assurance updates; two new facility plans; and four Type III changes.

Statement of probable impact of the rulemaking on small businesses:

Because this is a cost recovery program, that is, all direct costs associated with maintaining the plan review program should be recovered, the Department believes that everyone should pay the same hourly rate. There are no other opportunities, such as reducing notification filings, for lessening the impact to small businesses.

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

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable

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

A.R.S. § 49-762.03(F) requires the director to provide for reasonable notice and a hearing. The time, place, and nature of the proceedings for the rulemaking are as follows:

Date: October 1, 2002

Time: 1:30 p.m. to 2:30 p.m.

Location: Hall of Fame (Carnegie Library), 1101 W. Washington, Phoenix, AZ

Nature: Public hearings on the proposed rules, with opportunity for formal comments on the record.

Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

The close of written comment is at 5:00 p.m. on October 4, 2002.

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

Not applicable

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT**

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

Section

R18-13-701. Definitions

R18-13-702. Solid Waste Facility Plan Review Fees

R18-13-704. Number of Billable Hours

R18-13-705. Determining the Average Cost Per Employee

R18-13-706. Determining the Hourly Billing Rate

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-701. Definitions

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and A.A.C. Title 18, Chapter 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit" means the permit that is required pursuant to A.R.S. § 49-241.
2. "Application" means the solid waste facility plan that an operator submits to the Department for approval.
- ~~2.~~3. "C & D landfill" means a Non-MSWLF that only accepts construction or demolition waste as defined in A.R.S. § 49-701.
4. "Change" means either a Type III or a Type IV change to an approved solid waste facility plan which the director has determined requires the submission of an amended facility plan in accordance with either A.R.S. § 49-762.06 or the design and operation rules adopted under A.R.S. §§ 49-761 and 49-762.06.
- ~~3.~~5. "Complex plan" means any of the following:
 - a. A solid waste facility plan that contains two or more different types of waste storage, treatment, or disposal components.
 - b. A solid waste plan for multiple solid waste facilities.
 - c. A solid waste facility plan that includes a special waste management plan component or an application for an Aquifer Protection Permit.
- ~~4.~~6. "Direct cost" means the costs of ~~employee salary and fringe benefits, equipment, travel expenses, operating supplies, and other costs that can be identified specifically with solid waste facility plan review to the Department to maintain a plan review program, excluding indirect costs, but consisting of programmatic cost, non-billable administrative cost, and non-billable programmatic cost.~~
7. "Direct labor cost" means time spent by a plan reviewer in: the actual review of a facility plan; data input for licensing time-frames tracking; developing the facility file; time at the facility or proposed site; time at a public hearing; and time at meetings with the applicant or the applicant's representatives.

- 8. "Indirect cost" means the cost that the Department charges all of its non-general fund programs. Examples of indirect cost are: rent; utilities; and the Department's administrative support programs such as human resources, payroll, time keeping, etc.
- 5. "Fiscal year" means the 12 month period which begins on July 1 and is dated for the next calendar year and ends on the following June 30.
- ~~6-9.~~ "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
- ~~7-10.~~ "New solid waste facility plan" means either of the following:
 - a. A plan submitted for review by the operator of a new solid waste facility, as defined in A.R.S. § 49-701.
 - b. The plan submitted by an operator of an existing solid waste facility as defined in A.R.S. § 49-701, that is operating without prior Department plan approval.
- 11. "Non-billable administrative cost or time" means time spent by a plan reviewer doing activities that are not directly related to a plan review project. Examples of non-billable administrative time are: holidays and leave time; time spent by a plan reviewer in training, attending staff meetings, answering phones, preparing reports, etc.
- 12. "Non-billable programmatic cost or time" means time spent by a plan reviewer doing activities directly related to a plan review project, but that are outside the applicant's control. Examples of non-billable programmatic time are: answering inquiries from the public and attending public meetings about the plan review project; writing progress reports and briefings for supervisors; and traveling to the facility site or to public meetings and hearings.
- ~~8-13.~~ "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701(14).
- 14. "Other reasonable direct cost" means costs documented in writing by the Department relating to plan review. Examples of other reasonable direct cost are laboratory analysis charges, public notice advertising, presiding officer expenses, court reporter expenses, facility rentals, and contract services.
- 15. "Programmatic cost or time" means those costs that are directly associated with a plan review project, consisting of both direct labor cost and other reasonable direct cost.
- ~~9-16.~~ "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.
- ~~10.~~ "Substantial change" means a change to an approved solid waste facility plan which the director has determined requires the submission of an amended facility plan in accordance with design and operation rules adopted pursuant to A.R.S. Title 49, Chapter 4, Article 4.
- ~~11-17.~~ "Special waste management plan component" means a portion of a solid waste facility plan that is prepared and submitted to the Department in accordance with A.R.S. § 49-857 for approval pursuant to A.R.S. §§ 49-857.01 and 49-762.

R18-13-702. Solid Waste Facility Plan Review Fees

- A. With each ~~solid waste facility plan application~~ submitted for approval pursuant to A.R.S. § ~~49-762, 49-762.03~~, the applicant shall remit an initial fee in accordance with one of the schedules in this subsection, unless otherwise provided in subsection (B). This ~~Section subsection~~ also lists the maximum fees that the Department will bill the applicant, for which the owner or applicant shall be billed for a plan submitted to the Department for approval. All fees paid shall be payable to the state of Arizona. ~~The Department shall deposit the fees paid Fees paid to the Department shall be deposited~~ into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Schedule A New - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$5,936	\$37,074 <u>56,900</u>
C & D Landfill and Other Non-MSWLF	\$2,987	\$22,826 <u>35,000</u>
Other Solid Waste Facilities	\$1,609	\$15,473 <u>23,800</u>
Special Waste Management Plan Component	\$556	\$2,383 <u>3,700</u>

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Schedule B Substantial Change or <u>and</u> Update of Demonstration of Financial Responsibility in Accordance with A.R.S. § 49-770 - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
<u>Change to</u> Solid Waste Facilities Plans:		
MSWLF	\$766	\$18,537 <u>28,400</u>
C & D Landfill and Other Non-MSWLF	\$597	\$11,413 <u>17,500</u>
Other Solid Waste Facilities	\$322	\$7,736 <u>11,900</u>
<u>Change to</u> Special Waste Management Plan Component	\$278	\$1,191 <u>1,800</u>
<u>Update of Demonstration of Financial Responsibility</u>	<u>\$278</u>	<u>\$1,800</u>

Schedule C Closure - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$1,379	\$9,728 <u>15,000</u>
C & D Landfill and Other Non-MSWLF	\$1,532	\$10,417 <u>16,000</u>
Other Solid Waste Facilities	\$1,226	\$11,949 <u>18,300</u>
Special Waste Management Plan Component	\$111	\$477 <u>700</u>

- B.** For a complex plan, fees shall be determined as follows:
- The initial fee submitted with the plan shall be equal to the initial fee for the single component with the highest initial fee as set forth in schedules in subsection (A).
 - The maximum fee shall be the sum total of the maximum fee for each individual component as set forth in schedules in subsection (A).
- C.** ~~For each plan being reviewed, the Department shall issue an itemized interim bill to the applicant with each letter of deficiency or letter of intent to approve the facility plan. The applicant shall pay the interim bill within 45 days of receipt of the bill. If the interim bill is not paid within 45 days, the Department shall mail a notice of the past due balance to the applicant. If the applicant does not pay the interim bill within 30 days of receipt of the notice of past due balance, the Department shall either cease review of the plan or withhold final approval of the plan pending payment of the interim bill.~~
- D.C.** ~~The Department shall issue to the applicant a final itemized bill at the same time within 30 days after the Department issues the approval to operate or informs the applicant in writing of denial of approval or disapproval of the application. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance of the approval to operate, or denial of the approval the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall send the applicant a final itemized bill for the difference between the initial fee and any interim fees paid and the actual cost of reviewing the plan, list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A) or (B). Such difference shall be paid in full within 45 days of receipt of the bill. The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.~~
- E.D.** ~~The Department shall keep a record of all fees due, including the costs associated with denial of approval. Any amount due the Department shall be paid to the Department within 45 days of issuance of the approval. If the final bill is not paid within the 45 30 days, the Department shall mail a second notice of past due balance to the applicant. Failure to pay the amount due within 15 60 days of receipt of the notice of past due balance shall result in the automatic Department initiation of proceedings by the Department for suspension of the approval, in accordance with A.R.S. § 41-782, and the. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 41-782. The~~

Department shall ~~review no~~ not review any further plans for an entity which has not paid all fees due for a previous approval or denial of approval review of a solid waste facility plan.

- ~~F.E.~~ When determining actual cost under subsection ~~(D)~~ (C), the Department shall use an hourly billing rate for all direct labor hours spent working on the review of a plan, plus any other reasonable direct cost ~~specified in subsection (F)~~; which were incurred but are not included in the hourly billing rate.
- ~~G.~~ Billable labor hours spent working on the review of a solid waste facility plan shall consist of time spent by solid waste plan review technical staff on tasks specifically related to the processing, approval, or denial of a particular solid waste facility plan, including time at the facility or proposed site inspecting the facility or site, time at a public hearing, time at meetings with the public, or time at meetings with the applicant or the applicant's representatives, including the time at a preapplication conference.
- ~~H.~~ Direct labor hours shall not include any of the following:
- ~~1. Training necessary for review of a specific plan.~~
 - ~~2. Travel to or from any facility, meetings, or hearings which is necessary in conjunction with a plan review.~~
 - ~~3. Time by clerical or supervisory staff, unless the clerical or supervisory staff is filling in for a particular technical staff member in that person's absence.~~
- ~~I.~~ Other allowable direct costs that the Department shall include in the plan review fee, if applicable, are any of the following:
- ~~1. Laboratory analysis charges.~~
 - ~~2. Public notice advertising.~~
 - ~~3. Presiding officer expenses.~~
 - ~~4. Court reporter expenses.~~
 - ~~5. Facility rentals.~~
 - ~~6. Contract services.~~
 - ~~7. Other reasonable, direct, plan review related expenses documented in writing by the Department.~~
- ~~J.F.~~ The hourly rate is \$42.94-58.81, beginning October 1, 1999. September 1, 2002, and shall remain in effect until it is either changed or repealed. If the fee schedule or hourly rate is not changed, the current fee schedule and hourly rate shall remain in effect for each successive fiscal year. The hourly rate is based on an annual sum of the following solid waste facility plan review program related costs divided by the total number of direct labor hours allocated for solid waste facility plan review for that year:
- ~~1. Salary and the costs of employee benefits for plan review technical employees directly involved in the review of solid waste facility plans.~~
 - ~~2. Salary and costs of employee benefits for plan review support employees, such as supervisory and clerical personnel, prorated on a per employee bases.~~
 - ~~3. Other operating expenses attributable to all solid waste facility plan review employees.~~
 - ~~4. Per diem expenses and travel expenses.~~
 - ~~5. Capital equipment.~~
- ~~K.~~ Except as provided in subsection (M), an applicant who has submitted an administratively complete plan for a solid waste facility plan approval before July 1, 1996, shall not be required to remit an initial fee and shall be billed only for those direct labor hours and other direct costs incurred by the Department on or after July 1, 1996. If a solid waste facility plan is not administratively complete on July 1, 1996, an initial fee for that type of plan shall be paid at the time of resubmission.
- ~~L.~~ An applicant who has submitted an administratively complete plan for a special waste management component before July 1, 1997, shall not be required to remit an initial fee and shall be billed only for direct hours and other direct costs incurred by the Department on or after July 1, 1997. If a special waste management component plan is not administratively complete before July 1, 1997, an initial fee for that type of plan shall be paid at the time of resubmission.
- ~~M.~~ The fees listed in Schedules A, B, and C for the special waste management plan component of a solid waste facility plan are effective July 1, 1997.

R18-13-704. Number of Billable Hours

The Department shall determine the number of billable hours by subtracting from the number of hours in a work year, both the non-billable administrative hours and the non-billable programmatic hours.

R18-13-705. Determining the Average Cost Per Employee

The Department shall determine the average cost per employee by dividing the Department's total direct cost for maintaining the plan review program equally between the plan reviewers as outlined in the following steps:

1. By calculating the average salary of the plan reviewers.
2. By calculating an average employee related cost and adding the average employee related cost to the average plan reviewer's salary from subsection (1).
3. By prorating the section's management cost, to which the plan reviewers are assigned, on a per section employee basis, and adding the section management prorated cost to the total cost from subsection (2).

4. By prorating the unit's management costs, to which the plan reviewers are assigned, on a per unit employee basis, and adding the prorated unit management cost to the total cost from subsection (3).
5. By prorating the section's operating, travel and equipment cost, to which the plan reviewers are assigned per section employee, and adding the prorated operating, travel and equipment cost to the total cost from subsection (4).

R18-13-706. Determining the Hourly Billing Rate

The Department shall determine the hourly billing rate by dividing the average cost per employee from R18-13-705(5) by the number of billable hours from R18-13-704.