

# 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* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 12. NATURAL RESOURCES

#### CHAPTER 4. GAME AND FISH COMMISSION

[R05-94]

#### PREAMBLE

- 1. Sections Affected**

R12-4-104	<b><u>Rulemaking Action</u></b>
R12-4-107	Amend
R12-4-115	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. § 17-231  
Implementing statutes: A.R.S. §§ 17-231(A)(2), (3), and (8) and 17-234
- 3. The effective date of the rules:**

May 2, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 3762, September 10, 2004  
Notices of Proposed Rulemaking: 10 A.A.R. 4157, October 15, 2004, and 10 A.A.R. 4163, October 15, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Carlos Ramirez, Rulewriter  
Address: Arizona Game and Fish Department  
2221 W. Greenway Rd. DORR  
Phoenix, AZ 85023-4399  
Telephone: (602) 789-3288, ext. 206  
Fax: (602) 789-3677
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**

The Commission believes these amendments are necessary to improve the draw success rate for applicants and maintain interest in hunting. The Commission also believes the amendments are necessary to maintain resident hunting opportunity.

The Commission is amending R12-4-104, R12-4-107, and R12-4-115 to require that an applicant for a hunt permit-tag or a restricted nonpermit-tag purchase a hunting license before or at the time the applicant applies. An applicant for a restricted nonpermit-tag will also be required to pay a five-dollar application fee to cover the administrative cost for the supplemental hunt application process.

In addition, the Commission believes that hunters who consistently apply for big game permits should be given some increase in the odds of receiving a permit through the random draw. Therefore, the Commission is amending R12-4-107 to establish a "loyalty bonus point." A loyalty bonus point is an additional bonus point that is issued to an individual who has applied for a hunt permit-tag for a particular genus for five consecutive years. To maintain a loyalty bonus point, the individual who receives it must reapply every year following the year in which the loyalty bonus point is issued. For the purposes of the loyalty bonus point program, year one is 2001. The Commission's objective is to issue an additional bonus point to individuals who have demonstrated continuous patronage and support. In general, those individuals are resident hunters, although nonresidents are also eligible to receive loyalty bonus points.

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The Department is amending these rules as part of a host of rulemakings designed to achieve the larger objective of maintaining resident hunting opportunity. The Department has determined that there are no less costly alternative methods of achieving the objectives of this rulemaking.

**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 each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**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:**

This rulemaking will benefit the Department by increasing revenue. It will create a cost for individuals who choose to take advantage of the state's recreational wildlife hunting opportunities; however, those individuals will benefit as increased costs to apply for tags diminish the number of competing applications submitted. The rulemaking will also create a cost to individuals who apply for restricted nonpermit-tags. Establishing a loyalty bonus point program will benefit hunters who have applied for a hunt permit-tag for a specific genus for five consecutive years. Because these individuals tend to be resident hunters, the rulemaking will generally benefit them more than nonresident hunters, although nonresident hunters are also eligible to receive a loyalty bonus point. Overall, wildlife resources and hunters will benefit from the amendments because license fees go directly to wildlife conservation, development, and management, which result in the state's quality resources that are recognized across the country. The rulemaking will not affect other agencies or political subdivisions of this state, or businesses, revenues, or payroll expenditures. It will not affect private or public employment, or the state general fund. The Department is amending these rules as part of a host of rulemakings designed to achieve the larger objective of maintaining resident hunting opportunity. The Department has determined that there are no less costly alternative methods to achieve the objectives of this rulemaking.

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

Minor, non-substantive changes were made between the proposed rules and the final rules.

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

**Written Comment:** (2) As a nonresident hunter, I feel that increasing the cost to apply for a tag by requiring someone to purchase a license would exclude the nonresident hunters in general, and only provide wildlife opportunities for the wealthy.

**Agency Response:** This rulemaking results in part from a recent Ninth Circuit court ruling. The Department and its resident customers believe these amendments to Commission rules will maintain resident hunting opportunity while still providing nonresident hunting opportunity. Furthermore, the amendments will provide additional revenue to the Department, which will be used to maintain its current level of wildlife resource management. The requirement that a license be purchased to apply for a big game permit applies to both residents and nonresident hunters.

**Written Comment:** I do not support the loyalty bonus point rule, because I believe it is another way to buy extra bonus points. I do not support the requirement to purchase a license to apply for the draw. This is an attempt to get back at nonresidents, but it will hurt residents too. It's discriminatory, because we shouldn't be forced to buy a license unless we receive a tag. This will hurt the residents that only want to hunt if they are drawn for the animal that they apply for. You are going to price the average family out of the draw. This rulemaking does not promote hunting amongst youth.

**Agency Response:** The Department disagrees. The loyalty bonus point is not purchased. It is given to individuals who have demonstrated continuous patronage of the agency by purchasing a license for the past five years. The Department also disagrees that this rulemaking is an attempt to "get back" at nonresidents or will drive families from the draw. Both nonresidents and young hunters are eligible to receive a loyalty bonus point. The Department and its resident customers believe these amendments will achieve the objective of maintaining resident hunting opportunity while still providing nonresident hunting opportunity.

**Written Comment:** I support the proposed requirement for all big game permit applicants to purchase a hunting license.

**Agency Response:** The Department appreciates your support.

**Written Comment:** I support the proposed loyalty bonus point.

**Agency Response:** The Department appreciates your support.

**Written Comment:** There may be an unintended consequence of the loyalty bonus point. The more bonus points an applicant has, the less it will help. At some point, it may hurt your chances of being drawn. Because every person that applies gets more, your chance decreases. If your numbers don't go up as fast as the proportion in the draw, then you lose opportunity.

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**Agency Response:** The Department disagrees. This assessment is based on a misunderstanding of how the draw works. This comment assumes that a bonus point gives an individual more chance in the draw, which is only partially correct. In actuality, a bonus point entitles an individual to receive a random number that is used in the draw. The more random numbers that an individual receives, the greater the chance that one of them will be low enough to be within the range of random numbers drawn for a tag for a particular hunt. Because the random number associated with each bonus point is generated independently of the random number associated with all other bonus points, any additional bonus point that an individual receives has very little if any impact on the draw odds for anyone else.

**Written Comment:** I support this rulemaking and the analysis completed to date.

**Agency Response:** The Department appreciates your support.

**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 made as an emergency rule?**

No

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section:

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing

R12-4-107. Bonus Point System

R12-4-115. Supplemental Hunts and Hunter Pool

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing**

- A. For the purposes of this Section, "group" means all applications contained in a single envelope or submitted electronically over the internet as part of the same application. No more than four individuals may apply as a group except that no more than two individuals may apply as a group for bighorn sheep. Nonresidents, see subsection R12-4-114(D)(E).
- B. An applicant ~~applying~~ for a hunt permit-tag or a bonus point shall apply using a Hunt Permit-tag Application Form, available at Department offices, the Department's internet web site, and license dealers. An applicant using the Hunt Permit-tag Application Form to apply for a hunt permit-tag or a bonus point shall ~~also~~ apply at times and locations established by the hunt permit-tag application schedule that is published annually by the Department and available at Department offices, the Department's internet web site, and license dealers.
- C. An applicant shall sign the Hunt Permit-tag Application Form, or provide permission to another person to sign the application form for ~~them~~ the applicant. If applying electronically over the internet, an applicant shall attest to, or provide permission to another person to attest to, the information electronically provided.
- D. ~~Each~~ An applicant shall provide the following information on the Hunt Permit-tag Application Form:
  1. Name Applicant's name, home mailing address, residency status, and date of birth;
  2. The applicant's social security number, as required under A.R.S. §§ 25-320(N) and 25-502(K), and the applicant's Department identification number, if different from the social security number ~~on the Hunt Permit-tag Application Form~~;
  3. If licensed to take wildlife in this state, the number of the applicant's license for the year ~~that corresponds with the applicable hunt number~~ the hunt will take place;
  4. If not licensed for the year ~~that corresponds with~~ in which the applicable hunt ~~number~~ will take place, the applicant shall purchase a license by ~~complete~~ completing the License Application portion of the Hunt Permit-tag Application Form, providing the applicant's name, Department identification number, home mailing address, class of license for which application is made, residency status, length of Arizona residency (if applicable), date of birth, sex, weight, height, and color of hair and eyes; and
  5. ~~Each~~ An applicant ~~under the age of~~ younger than age 14 applying for a hunt other than big game and not required to have a license under A.R.S. § 17-335(B) shall indicate "juvenile" in the space provided for the license number on the Hunt Permit-tag Application Form.

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- E. ~~Each~~ An applicant shall ~~enclose~~ include as part of the hunt permit-tag application, fees as set in R12-4-102 for the following:
1. The fee for the applicable hunt permit-tag, unless the application is submitted electronically over the internet or telephone;
  2. ~~A~~ The permit application fee; and
  3. ~~If a license is requested, a fee for the license~~ The license fee if the applicant has not previously purchased a license for the year that corresponds with the applicable hunt number.
- F. ~~Each~~ An applicant shall enclose payment as part of the hunt permit-tag application, made payable, in U.S. currency, to the Arizona Game and Fish Department, by certified check, cashier's check, money order, or personal check. If applying electronically over the internet or telephone, an applicant shall include payment by valid credit card as a part of the hunt permit-tag application, ~~payment by valid credit card.~~
- G. ~~Each~~ An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the drawing, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
- H. ~~Each~~ An applicant shall make all hunt choices for the same genus within one application.
- I. An applicant shall not include applications for different genera of wildlife in the same envelope.
- J. All members of a group shall apply for the same hunt numbers and in the same order of preference. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- K. ~~Each~~ An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule published annually by the Department.
  2. For genera that have multiple hunts within a single calendar year, ~~hunters that~~ an individual who successfully draw ~~draws~~ draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if ~~they have~~ the individual has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
  3. If the bag limit is more than one per calendar year, ~~any person~~ an individual may apply as specified in the hunt permit-tag application schedule published annually by the Department for remaining hunt permit-tags in unfilled hunt areas.
- L. ~~A person~~ An individual shall not apply for a bighorn sheep or buffalo hunt permit-tag ~~when that person~~ if the individual has ever taken the bag limit for that species.
- M. To participate in the bonus point system, an applicant shall comply with R12-4-107.
- N. Any Hunt Permit-tag Application Form not prepared or submitted in accordance with this Section, or not prepared in a legible manner, is not valid and shall be rejected and all fees refunded. If the Department rejects an application from any member of a group, the Department shall reject all applications from the group.
- O. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- P. The Department shall mail hunt permit-tags to successful applicants. The Department shall return application overpayments to ~~an the~~ applicant designated "A" on the Hunt Permit-tag Application Form ~~overpayments and hunt permit-tag and license fees received with an unsuccessful application.~~ Permit application fees received with valid applications shall not be refunded. License fees submitted with an application for a bonus point shall not be refunded.
- Q. If the Director determines that Department error resulted in the rejection of an application, the Director may authorize an additional hunt permit-tag ~~permit-tag~~ or the awarding of a bonus point ~~in order~~ to correct the error, provided if the issuance of an additional permits hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for ~~a the~~ hunt permit-tag would have otherwise been successful based on its random number. An applicant who is denied a hunt permit-tag or a bonus point under this procedure may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-107. Bonus Point System**

- A. For the purpose of this Section, ~~"bonus point hunt number" means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section. the following definitions apply:~~
1. "Bonus point hunt number" means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section; and
  2. "Loyalty bonus point" means a bonus point awarded to an individual who has applied for a hunt permit-tag for a specific genus identified in subsection (B) consecutively for a five-year period.
- B. The bonus point system grants ~~each individual~~ an individual one entry in each drawing for antelope, bighorn sheep, buffalo, deer, or elk for each bonus point ~~which~~ that individual has accumulated under this Section. Each bonus point entry is in addition to the entry normally granted by R12-4-104. When processing "group" applications, as defined in R12-4-104, the Department shall use the average number of bonus points accumulated by the individuals in the group, rounded to the nearest whole number. If the average is equal to or greater than .5, the total will be rounded ~~up~~ to the next ~~highest~~ higher number.

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- C. The Department shall award one bonus point to ~~each~~ an applicant who submits a valid Hunt Permit-tag Application Form if all of the following apply:
1. The application is unsuccessful in the drawing; or the application is for a bonus point only;
  2. The application is not for a ~~hunt permit-tag~~ permit-tag left over after the drawing ~~which are~~ and available on a first-come, first-served basis as prescribed in R12-4-114; and
  3. The applicant, before the drawing, ~~has purchased~~ purchases a hunting license valid for the year ~~that corresponds with the applicable hunt number in which the hunt takes place.~~ The applicant shall either provide the hunting license number on the application or submit an application and fees for the license with the Hunt Permit-tag Application Form; ~~indicating that the applicant is to be issued the license even if not drawn for a hunt permit tag.~~
- D. ~~Each~~ An applicant who purchases a bonus point only shall:
1. Submit a valid Hunt Permit-tag Application Form, as prescribed in R12-4-104, with the Commission-assigned bonus point hunt number for the particular genus as the first choice hunt number on the application. Placing the bonus point only hunt number as a choice other than the first choice or including any other hunt number on the application invalidates the application;
  2. Include with the application, payment for the ~~permit~~ hunt permit-tag application fee and a fee for a hunting license if the applicant does not already possess a license valid for the year for which the draw is conducted (If an applicant who purchases a bonus point has not already purchased a license for the year for which the applicant is applying, the applicant shall also submit all applicable information designated under R12-4-104(D)(4). If an applicant who purchases a bonus point has already purchased a license for the year for which the applicant is applying, the applicant shall also submit the number of the applicant's license); and
  3. Submit only one Hunt Permit-tag Application Form for the same genus for each season that bonus points are issued for that ~~season~~ genus.
- E. ~~Each~~ With the exception of the hunter education bonus point, each bonus point accumulated is valid only for the genus designated on the Hunt Permit-tag Application Form.
- F. Except for a permanent bonus ~~points~~ point awarded for hunter education or loyalty bonus points that are accrued and forfeited as prescribed in subsection (K), all of an individual's accumulated bonus points for a genus are forfeited if:
1. The individual is issued a hunt permit-tag for that genus in a computer drawing; or
  2. The individual fails to submit a Hunt Permit-tag Application Form for that genus for five consecutive years.
- G. An applicant issued a first-come hunt permit-tag under R12-4-114(C)(2)(d) after the computer drawing does not lose bonus points for that ~~tag~~ genus, and a valid but unsuccessful applicant for a first-come hunt permit-tag remaining after the computer drawing does not gain a bonus point.
- H. The Department shall award one permanent bonus point for each genus upon an individual's first graduation from the Department's Arizona Hunter Education Course or for serving as a Department hunter education instructor.
1. The Department shall credit an individual who graduated after January 1, 1980, but before January 1, 1991, or an individual certified by the Department as an active hunter education instructor after January 1, 1980, with one permanent bonus point for each genus if the individual provides the following information on a form available from the Department: Department identification number; name; address; residency status and length of Arizona residency, if applicable; date of birth; sex; weight; height; color of hair and eyes; and, for an individual other than an instructor, the month and year of graduation from the Department's Arizona Hunter Education Course.
  2. An instructor or an individual who has graduated from the Department's Arizona Hunter Education Course shall submit the required form 30 days before a drawing's application ~~date~~ deadline, as specified in the hunt permit-tag application schedule, in order for the bonus point to be counted by the Department in that drawing.
- I. The Department shall make an applicant's total number of accumulated bonus points available on the Department's application web site or IVR telephone system. If the applicant disagrees with the total, the applicant shall provide previous notices or proof of compliance with this Section to prove Department error. In the event of an error, the Department shall correct the applicant's record.
- J. The Department shall ~~record~~ credit bonus points under an applicant's Department identification number ~~and~~ for the genus on the application. The Department shall not transfer bonus points between ~~persons~~ individuals or genera.
- K.** The following provisions apply to the loyalty bonus point program:
1. The Department shall award a loyalty bonus point if an applicant applies for a hunt permit-tag for a specific genus consecutively for a five-year period, and purchases a hunting license or combination hunting and fishing license for each of the five consecutive years.
  2. An applicant retains a loyalty bonus point once accrued as long as the applicant applies annually for a hunt permit-tag for the genus for which the loyalty bonus point was accrued.
  3. If an applicant who has accrued a loyalty bonus point fails to apply in any calendar year for a hunt permit-tag for the genus for which the loyalty bonus point was accrued, the applicant's loyalty bonus point for that genus is forfeited.
  4. For the purpose of the loyalty bonus point program, year one of the calculation of consecutive application years is 2001, and the Department shall award a loyalty bonus point to an applicant who qualifies for the loyalty bonus point on or after the effective date of this Section.

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5. A loyalty bonus point is accrued in addition to all other bonus points.
- L. The Department shall reinstate any bonus points forfeited for a successful hunt permit-tag application for military personnel, military reserve personnel, national guard personnel, or public agency employees who are unable to use ~~a~~ the hunt permit-tag due to mobilization, activation, or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this ~~Section~~ subsection. To request that forfeited bonus points be reinstated under these circumstances, an applicant shall submit the following to the Arizona Game and Fish Department, Draw Section, 2221 W. Greenway Rd., Phoenix, AZ 85023:
1. A letter from the applicant requesting reinstatement of bonus points;
  2. The hunt number for which the ~~tag~~ hunt permit-tag is valid;
  3. Evidence of mobilization or duty status, such as a letter from the public agency or official orders;
  4. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
  5. The valid, unused ~~tag~~ hunt permit-tag, which must be received before the beginning date of the hunt for which the ~~tag~~ hunt permit-tag is valid, or evidence of mobilization or activation that precluded the applicant from submitting the tag before the beginning date of the hunt.

**R12-4-115. Supplemental Hunts and Hunter Pool**

- A. For the purposes of this Section, the following definitions apply:
1. "Management objectives" means goals, recommendations, or guidelines contained in Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations;
  2. "Hunter pool" means ~~a file of applications for supplemental hunts~~ all individuals who have submitted an application for a supplemental hunt; and
  3. "Supplemental hunt" means a season established by the Commission for the following purposes:
    - a. Take of depredating wildlife under A.R.S. § 17-239;
    - b. Take of wildlife under an Emergency Season if the Commission adopts, amends, or repeals a Commission order for reasons constituting an immediate threat to the health, safety, or management of wildlife or its habitat, or to public health or safety; or
    - c. Take of wildlife under a population management hunt if the Commission has prescribed restricted nonpermit-tags by Commission order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.
- B. For the purposes of authorizing a population management hunt, the Commission through Commission order shall open a season or seasons and prescribe a maximum number of restricted nonpermit-tags that the Director may issue under this Section.
- C. The Director shall implement a population management hunt under the open season or seasons prescribed in subsection (B) if the Director finds that:
1. Regular seasons have not met or will not meet management objectives;
  2. Take of wildlife is necessary to meet management objectives; and
  3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.
- D. To implement a population management hunt under subsection (B), the Director shall do the following:
1. Select season dates, within the range of dates prescribed by the Commission through Commission order;
  2. Select specific hunt areas, within the range of hunt areas prescribed by the Commission through Commission order;
  3. Select the legal animal that may be taken from the list of legal animals prescribed by the Commission through Commission order;
  4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags prescribed by the Commission through Commission order; and
  5. Reduce restricted nonpermit-tag fees up to 75% ~~for population management hunts~~ if the normal fee structure will not generate adequate participation, ~~either~~ from either applicants in the hunter pool, or from hunt permit-tag holders under subsection (G).
- E. The Director shall not issue more restricted nonpermit-tags than the maximum number prescribed by the Commission through Commission order.
- F. To participate in a supplemental hunt, ~~a person~~ an individual shall obtain a restricted non-permit tag as prescribed by this Section. A restricted non-permit tag is valid only for the supplemental hunt for which it is issued.
- G. If the season dates and open areas of ~~the~~ a supplemental hunt prescribed by the Commission through Commission Order exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw, the Department shall make the restricted nonpermit-tags available only to ~~the~~ holders of the hunt permit-tags, and not the hunter pool.

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- H. To obtain a restricted nonpermit-tag under subsection (G), an applicant shall provide to a Department office the applicant's name, address, Department identification number, and hunt permit-tag number on a form prescribed by the Department.
  - a. ~~An~~ The applicant shall provide verification that ~~he or she~~ the applicant legally obtained ~~a~~ the hunt permit-tag for the hunt described under subsection (G) by presenting the hunt permit-tag to a Department office for verification.
  - b. ~~An~~ The applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit prescribed by the Commission.
- I. The Department or its authorized agent shall maintain a hunter pool for supplemental hunts and shall randomly select applicants from the ~~current~~ hunter pool ~~file~~ for participation in a supplemental hunt, ~~provided that~~ if the season dates and open areas of the supplemental hunt do not exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw.
- J. When issuing restricted nonpermit-tags ~~from to~~ the hunter pool, the Department or its authorized agent shall randomly select applicants from the ~~current~~ hunter pool ~~file~~. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by telephone at least three times during a 24-hour period. If an applicant cannot be contacted or cannot participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application. The Department or its authorized agent shall draw no more applications after the number of restricted nonpermit-tags prescribed in subsection (D)(4) ~~or remaining under subsection (F)~~ have ~~has~~ been issued.
- K. The Department shall purge and renew the hunter pool annually.
- L. An applicant for a supplemental hunt shall submit ~~the permit application fee prescribed in R12-4-102 along with~~ the following information on a form available from the Department or its authorized agent:
  - 1. ~~Name~~ Applicant's name, home mailing address, whether a resident or nonresident, and date of birth;
  - 2. Daytime and evening telephone numbers; ~~and~~
  - 3. The species that the applicant would like to hunt if drawn- ; ~~and~~
  - 4. The number of the applicant's hunting license for the year that corresponds with the applicable supplemental hunt.
- ~~M.~~ Along with the application form, an applicant for a supplemental hunt shall submit the permit application fee prescribed in R12-4-102.
- ~~M.N.~~ Neither a current hunting license number nor a fee or application for a hunting license is required with the supplemental hunt application form. The Department shall not accept group applications, as described in R12-4-104, for supplemental hunts.
- ~~N.O.~~ A hunter pool applicant who is drawn and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
  - 1. The fee for the tag as prescribed by R12-4-102, or as prescribed by subsection (D)(5) if the fee has been reduced, and
  - 2. The number of the applicant's hunting license, valid for the year of the supplemental hunt.
- ~~O.P.~~ The Department ~~reserves~~ shall reserve a restricted nonpermit-tag for an applicant only for the period of time specified by the Department when contact is made with the applicant. A restricted nonpermit-tag not purchased within the specified period of time shall be issued to another applicant drawn from the ~~current~~ hunter pool as prescribed by this Section. The Department or its authorized agent shall remove from the ~~current~~ hunter pool the application of any successful applicant who does not purchase a tag after being contacted and agreeing to purchase the tag.
- ~~P.Q.~~ The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to supplemental hunts. A supplemental hunt application submitted in accordance with this Section does not invalidate any application for a hunt permit-tag. The issuance of a restricted nonpermit-tag does not authorize an individual to exceed the bag limit established by the Commission for that calendar year.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R05-95]

PREAMBLE

- |  |   |
|--|---|
| <p><b>1. Sections Affected</b><br/>R12-4-114</p>   | <p><b>Rulemaking Action</b><br/>Amend</p> |
| <p><b>2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b><br/>Authorizing statutes: A.R.S. §§ 17-101, 17-231(A)(1), 17-331(A), and 17-371</p> |   |

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Implementing statutes: A.R.S. §§ 17-231(A)(1), 17-231(A)(2) and (8), 17-331(A), 17-332(A), and 17-371

**3. The effective date of the rules:**

May 2, 2005

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

Notice of Public Information: 10 A.A.R. 3093, August 6, 2004

Notices of Rulemaking Docket Openings: 10 A.A.R. 3762, September 10, 2004

Notices of Proposed Rulemaking: 10 A.A.R. 4169, October 15, 2004, and 10 A.A.R. 4157, October 15, 2004

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

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Fax: (602) 789-3677

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

Under this rulemaking, the Commission shall set aside 15% of the total available bighorn sheep hunt permit-tags in any calendar year, rounded down to the nearest whole number, to be issued to nonresidents. The Commission has selected 15% as the number that is the least restrictive means to maintain resident hunting opportunity. According to the Ninth Circuit decision in *Montoya v. Manning*, 301 F.3d 985 (9th Cir. 2002), Arizona has a legitimate interest in maintaining recreational hunting opportunity for its residents. The court did not provide guidance on how Arizona is to maintain resident hunting opportunity, except to require that the means the Commission uses to maintain recreational hunting opportunities for its residents must be the least discriminatory alternative to achieve that goal. The Department conducted an analysis to establish an amount for a nonresident set-aside. From the Department's own research of available recorded data, from 1953 to 1959, nonresident hunters obtained an average of about 15.4% of all hunt permit-tags for bighorn sheep. In 1960, the Commission imposed a limit of 10% on the number of bighorn sheep permits available to nonresidents. From 1975 to 1992, based on application numbers and projected draw odds, the Department has determined that without the 10% cap, nonresident hunters would have obtained up to 20% of all bighorn sheep hunt permit-tags; thus, resident hunting opportunities would have decreased an additional 5% from 1953 to 1959 levels. Without the 10% cap in place, nonresidents would have increasingly eroded the percentage of permits for residents.

The purpose of this rule is to fix resident opportunity at a percentage based upon resident opportunity before the Commission imposed the 10% cap on nonresident tags ("historical opportunity"). The approach is intended to satisfy the constitutional requirements that the rule restrict nonresidents no more than necessary to maintain resident opportunity. By setting aside 15% of the bighorn sheep permits for nonresidents, the rule is the least discriminatory alternative to maintain the historical level of resident opportunity for bighorn sheep permits. Any tags that are not issued to nonresidents in the 15% set-aside will not be used, and will not be available to resident applicants. As a result of the Ninth Circuit decision, the Commission is also deleting R12-4-114(E), the 10% cap on nonresident hunt permit-tags for bull elk and antelope.

As part of this rulemaking, the Commission is also amending the rule to increase the number of hunt permit-tags that may be issued to bonus point holders from 10% to 20%. The Commission's objective is to issue more hunt permit-tags to applicants who have accumulated bonus points.

These amendments will not conflict with amendments proposed in any other notices submitted as part of this rule-making effort. The Commission has determined that there are no less costly alternative methods of achieving the objectives of the proposed rulemaking.

The analysis in the Ninth Circuit ruling also applied to the 10% cap placed on hunt permit-tags for buffalo. The Commission intended to delete this 10% cap; however, this revision was not included as a result of Department oversight. The Commission will amend R12-4-114(D) to resolve this omission with all practical speed, and will not enforce the cap until the amendment becomes effective.

**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 each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not review any study relevant to the rule. Although the Department does not believe it qualifies as a "study," the Department reviewed and relied on data indicating the percentage of bighorn sheep tags awarded or that would have been awarded to nonresidents from 1953 to 1959 and 1975 to 1992.

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**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:**

This rulemaking will benefit resident hunters in general by maintaining the level of resident hunting opportunities in Arizona, while still ensuring nonresident hunting opportunity. The rulemaking will not create any significant additional costs to the Department, and will create no costs to its customers. The rulemaking will not create an impact to other agencies or political subdivisions of this state, or businesses, revenues, or payroll expenditures. It also will not impact public or private employment or general state revenues.

No businesses are directly subject to this rulemaking. Other than minimal administrative costs, the Department will not incur any additional costs beyond the costs of the rulemaking as a result of the rulemaking. The Department is making amendments to R12-4-114 as part of host of rulemakings that are being proposed in order to achieve a larger objective, to maintain resident hunting opportunity. The Department has determined that there are no less costly alternative methods of achieving the objectives of this rulemaking.

Overall, the Department has determined that the benefits of this rulemaking outweigh any costs.

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

In the Notice of Proposed Rulemaking, R12-4-114(E) stated that the "Department shall set aside an amount not greater than 15% of the total available bighorn sheep tags in any calendar year" for nonresidents. In the Notice of Final Rulemaking, the same Section states that the "Department shall set aside 15% of the total available bighorn sheep hunt permit-tags in any calendar year." This is a non-substantive change that removes unnecessary jargon and makes the rule more clear, concise, and understandable. Also, minor grammatical changes were made at the request of G.R.R.C. staff.

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

**Written comment:** This rulemaking is an attempt to stay ahead of another lawsuit by simply giving the nonresidents 15% percent of the tags. As a resident hunter, I find this unacceptable. The set-aside should apply to deer and elk only.

**Agency response:** The Department disagrees, and believes that by setting aside 15% of the bighorn sheep permits for nonresidents, the rule is the least restrictive means to maintain the historical level of resident opportunity for bighorn sheep permits. The Department has not been challenged legally on this issue, and feels that raising the level of non-resident participation from 10% to 15% and creating a set-aside for this percentage is justified based on the historical resident opportunity the Department is working to maintain.

**Written comment:** I support the proposed creation of a 15% set-aside percentage of bighorn sheep permit-tags for nonresidents.

**Agency response:** The Department agrees, and appreciates the support.

**Written comment:** If you increase the number of tags that will be issued to bonus point holders, pretty soon there will only be 50% of the tags available to the general public.

**Agency response:** The Department disagrees. The objective of this rulemaking is to maintain resident hunting opportunity by issuing more hunt permit-tags to those individuals who have continuously applied for a tag, but have been unsuccessful in drawing; these individuals are typically residents. The Department is aware that this is a consequence of the rulemaking, but believes that it is necessary in order to achieve the objective. The Commission has considered this aspect of the rulemaking and has determined that the benefits of the rulemaking outweigh any costs.

**Written comment:** Increasing the bonus point pass will help those applicants who have been applying for years, but this rulemaking does not help with retaining young hunters who do not have bonus points.

**Agency response:** The objective of the rulemaking is to maintain resident hunting opportunity, not to retain young hunters. Therefore, the Department has not made any changes in response to this comment.

**Written comment:** I support the proposed increase in the bonus point pass percentage from 10% to 20%.

**Agency response:** The Department appreciates your support.

**Written comment:** By increasing the bonus point pass from 10% to 20%, this limits participation by juniors and younger hunters, because they have fewer bonus points. It also decreases the number of permits that are available to hunters that do not have the maximum number of bonus points. This is an ill-conceived notion that limits the average hunter's participation.

**Agency response:** The Department disagrees. The objective of this rulemaking is to maintain resident hunting opportunity by issuing hunt permit-tags to those individuals who have continuously applied for a tag, but have been unsuccessful in drawing; these individuals are typically residents. The Department is aware that this is a consequence of the rulemaking, but believes that it is necessary in order to achieve the objective. The Commission has considered this consequence of the rulemaking and believes that the intended result of maintaining resident hunting opportunity by

increasing the bonus point pass percentage is in the best interest of the resident hunters and wildlife resources of the state.

**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 made as an emergency rule?**

No

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags**

- A. In accordance with A.R.S. § 17-332 and the provisions of this Section, the Department shall annually provide numbered tags for sale to the public. The Department shall ensure that each tag includes a transportation and shipping permit as prescribed in A.R.S. §§ 17-332 and 17-371, and that each tag is made of tear-resistant material with an adhesive back covered by a detachable paper backing and clearly identifies the animal for which the tag is valid.
- B. If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its authorized agent, or both, shall sell nonpermit-tags.
1. To obtain a nonpermit-tag, an applicant shall provide to a license dealer or Department office the applicant's name, home mailing address, and Department identification number.
  2. An applicant shall not apply for or obtain nonpermit-tags in excess of the bag limit prescribed by the Commission when it established the season for which the nonpermit-tags are valid.
- C. If the number of hunt permits for a species in a particular hunt area must be limited, a Commission order establishes a hunt number for that hunt area, and a hunt permit-tag is required to take the species in that hunt area.
1. To apply for a hunt permit-tag, an applicant shall submit an application under R12-4-104.
  2. The Department shall use the following procedure to determine whether a hunt permit-tag will be issued to an applicant:
    - a. The Department shall reserve a maximum of ~~40%~~ 20% of the hunt permits for each hunt number to issue to ~~persons~~ individuals and groups who have bonus points that have been issued according to R12-4-107.
    - b. The Department shall issue the reserved hunt permit-tags for hunt numbers designated by eligible applicants as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
      - i. First, to eligible applicants with the greatest number of bonus points for that genus;
      - ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next greatest number of bonus points for that genus; and
      - iii. If there are still tags remaining, to the next eligible applicants with the next greatest number of bonus points; continuing until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
    - c. The Department shall ensure that the first selection from all unreserved hunt permit-tags is by random drawing.
    - d. If the bag limit established by Commission order is more than one per calendar year, or if there are hunt permit-tags remaining unissued after the random drawings, the Department shall ensure that these hunt permit-tags are available on a set date on a first-come, first-served basis as specified in the hunt permit-tag application schedule published annually by, and available from, the Department.
- D. The Department shall ensure that no more than 10% of the total available ~~bighorn sheep or buffalo~~ hunt permit-tags in any calendar year are issued to nonresidents and that no more than 50% nor more than two ~~bighorn sheep or buffalo~~ hunt permit-tags of the total available in any hunt number are issued to nonresidents.
- E. ~~The Department shall ensure that no more than 10% of the total available hunt permit tags are issued to nonresidents for the following hunts, except that when hunt numbers have 10 or less available hunt permit tags, no more than one hunt permit tag is issued to a nonresident:~~
1. All hunts for bull elk, and

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~~2. All hunts for antlered deer north of the Colorado River.~~

The Department shall set aside 15% of the total available bighorn sheep hunt permit-tags in any calendar year, rounded down to the nearest whole number, to be issued to nonresidents and shall ensure that no more than 50% nor more than two bighorn sheep hunt permit-tags of the total available in any hunt number are issued to nonresidents.

**NOTICE OF FINAL RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

[R05-62]

*Editor's Note: The following Notice of Final Rulemaking is republished due to errors in Section R18-5-104 that were inadvertently introduced when it was originally published at 11 A.A.R. 1006, March 4, 2004. A corrected version of the notice is being republished here.*

**PREAMBLE**

**1. Sections Affected**

Article 1  
R18-5-101  
R18-5-104  
R18-5-107  
R18-5-109  
R18-5-115

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend

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

Authorizing statutes: A.R.S. §§. 49-104, 49-202, 49-203, 49-351, 49-352, 49-353 and 49-361

Implementing statutes: A.R.S. §§ 49-352, 49-361

**3. The effective date of the rules:**

April 2, 2005

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 1319, April 2, 2004  
Notice of Proposed Rulemaking: 10 A.A.R. 3257, August 20, 2004  
Notice of Proposed Rulemaking (reprint): 10 A.A.R. 3367, August 27, 2004

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

Name: Jon Fiegen  
Address: Arizona Department of Environmental Quality  
1110 W. Washington St. (MC 5415B-2)  
Phoenix, AZ 85007  
Telephone: (602) 771-4596 or toll-free number in Arizona: (800) 234-5677  
Fax: (602) 771-4634  
E-mail: fiegen.jon@azdeq.gov

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

**A. Background for Proposed Rules**

The primary rationale for this rulemaking is to improve the operator certification program administered by the Arizona Department of Environmental Quality (ADEQ), which certifies operators of drinking water and wastewater facilities. The requirements relating to the certification of public water system operators come primarily from the federal Safe Drinking Water Act (SDWA), which seeks to ensure that drinking water supplied to consumers by public water systems is safe to drink, that consumers are confident that their water is safe to drink and that certified operators operate public water systems. The Environmental Protection Agency (EPA) promulgated final guidelines for the certification and recertification of water system operators in February 1999 (64 FR 5916 through 5921, February 5, 1999).

The amendments remove repetitive language, clarify requirements and add a five-year retention schedule for professional development hours for operators. One amendment makes a clarification in the classification of water treatment facilities. The amendments also make changes to ADEQ's enforcement authority. One amendment allows ADEQ to place an operator on either suspension or probation for violations. Prior to this amendment, A.A.C. R18-5-109 authorized ADEQ to revoke the certificate of an operator for one year for violations of A.A.C. R18-5-109. Since the creation of ADEQ in 1987 until September 2004, ADEQ had not revoked an operator certificate. The rule did not authorize any other corrective action for an operator. ADEQ has had no discretion to revoke a certificate for less than one year, even if, for example, ADEQ and the operator were to agree that a six-month revocation was a more appropriate sanction for the violations committed. For these reasons, ADEQ is amending this rule to authorize ADEQ to impose corrective actions that can respond more appropriately to a range of compliance and enforcement matters.

The statutory authority for this rulemaking comes from ADEQ's general rulemaking authority (A.R.S. §§ 49-104, 49-203), ADEQ's designation of responsibility for the federal Clean Water Act and Safe Drinking Water Act (A.R.S. § 49-202), ADEQ's authorization over potable water in public water systems (A.R.S. §§ 49-351, 49-353) and ADEQ's responsibility to certify operating personnel for water and wastewater facilities pursuant to A.R.S. §§ 49-352 and 49-361. There is also a federal incentive created by 42 U.S.C. 300j-12(a)(1)(ii), which states that the Environmental Protection Agency must withhold 20 percent of each state's capitalization grant unless that state has met the requirements of 42 U.S.C. 300g-8, relating to operator certification. The Department's primary purpose is to increase public health and safety by strengthening the operator certification program.

B. Section-by-Section Explanation of the Rules

R18-5-101 sets forth definitions for this Article.

R18-5-104 sets forth general requirements for the operation of water and wastewater facilities and specific requirements for the owners and operators of water and wastewater facilities.

R18-5-107 sets forth the requirements for certificate renewal for operators of water and wastewater facilities.

R18-5-109 sets forth the enforcement mechanisms the Department may employ with operators of water and wastewater facilities.

R18-5-115 sets forth the criteria for classifying the grades of water treatment and water distribution facilities.

**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 each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**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:**

The amendments do not diminish a previous grant of authority of a political subdivision of this state.

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

A. Identification of Rule

Title 18, Chapter 5, Article 1, "Classification of Treatment Plants and Certification of Operators."

B. Background and Summary

Arizona has a Safe Drinking Water program approved by the EPA that governs drinking water, public water systems and operators of public water systems. ADEQ also regulates wastewater facilities and wastewater facility operators. Under the current rule, ADEQ may only revoke the certificate of an operator for noncompliance. Possessing only operator certificate revocation authority creates a program with a "one-size-fits-all" enforcement mechanism. The expanded enforcement mechanism will provide ADEQ with greater flexibility and an increased ability to take corrective actions with water and wastewater facility operators that are appropriate to the violations committed.

The addition of probation and suspension can provide better protection of the public health and the environment. This is vital to Arizona's program because the primary purpose of the Safe Drinking Water Act is to ensure that drinking water supplied to consumers by public water systems is safe to drink. ADEQ must also have this same enforcement authority for wastewater facility operators for the protection of public health and the environment. Additionally, EPA calls upon states with an approved drinking water program to have the ability to suspend a public water system operator's certificate for noncompliance, or take other appropriate enforcement measures. Since EPA calls upon states with an approved drinking water program to have this ability, the adoption of suspension and probation as additional enforcement measures will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in Arizona. The adoption of suspension and probation as additional enforcement measures to address noncompliance by operators of wastewater facilities will also assist ADEQ in protecting the public health, safety and the environment.

This rulemaking makes changes to five of the sixteen sections in Article 1. ADEQ believes that the results of these changes will represent cost-saving benefits in terms of improved protection to public health and safety. For example,

the marginal costs to owners of water and wastewater facilities from replacing the services of an operator placed on suspension are expected to be less than the potential value of marginal benefits to consumers and general public. In other words, what it might cost facility owners to replace an operator placed on suspension is expected to be less than the additional public health and safety benefits expected to be obtained from such an action.

Although potential costs and benefits are described in part "D" below, ADEQ anticipates the incremental cost to implement this rule probably will be minimal.

**C. Entities Directly Impacted**

Entities that could be directly affected, bear costs, or directly benefit from this rule include: owners of water facilities and wastewater facilities, operators, ADEQ, and the public. Water and wastewater facilities include private and public owners. The federal government, state agencies, various political subdivisions of the state and private entities own and operate these facilities and could be impacted by this rulemaking. The public includes consumers and citizens at large. According to ADEQ's database, there are approximately 1,650 water facilities, 966 wastewater facilities and 5,798 certified operators.

ADEQ does not anticipate an impact to other state agencies or to the state General Fund.

**D. Potential Costs and Benefits**

**Owners of Facilities.** The potential for increased operating costs for owners of water facilities and wastewater facilities may arise for facilities that would find it necessary to replace the services of an operator who has been suspended. A facility faced with the necessity of finding replacement services for a suspended operator may encounter increased transaction costs to find a replacement operator. In addition, the cost for a certified operator may or may not be equivalent to prior service costs. Smaller facilities located in rural or remote areas generally employ a single operator. Unlike a larger facility with several operators, these facilities must always replace an operator placed on suspension. A smaller system in a rural or remote area may face greater difficulties in finding a replacement operator, depending upon the supply of qualified operators available to assume operation. However, if transaction costs are minimal and replacement service costs are relatively equivalent to prior costs, the impact should be "minimal." In cases where transaction costs become more expensive and/or replacement service costs exceed what the facilities were previously paying, the relative impact may be greater.

Even though the potential does exist for higher costs, ADEQ anticipates that significantly higher costs would be the exception rather than the anticipated scenario. Furthermore, relatively larger facilities may not experience any impact in the event of an operator suspension because of multiple operators already employed at those facilities. Finally, the threat of suspension or probation may actually work as an incentive for existing and new operators to perform their job tasks and to operate the facilities in compliance with the law.

**Certified operators.** Certified operators are individuals who hold a current certificate issued by ADEQ. Earning professional development hours (PDHs) for certificate renewals is an existing requirement. Although the rule currently requires an operator to provide PDH records to ADEQ upon request, the requirement to maintain the documentation for at least five years is a new requirement under these rules. ADEQ views the impact of this new requirement to be minimal.

ADEQ has the pre-existing authority to revoke an operator's certificate for one year for violations of A.A.C. R18-5-109. The amendment to R18-5-109 authorizes ADEQ to suspend an operator's certificate or place an operator on probation for violations of R18-5-109. Suspension means the operator cannot perform the functions and responsibilities of an operator during the suspension. Probation means the operator can continue to work as an operator, while complying with the terms of probation which may include, for example, a requirement to take additional professional development hours to improve skills.

While suspension means an operator cannot perform the functions and responsibilities of an operator during the suspension, an operator under suspension may or may not lose employment status or income. A larger facility which employs more than one operator may re-assign the operator under suspension to other duties during the suspension. Such an operator may experience little or no loss of income. An operator serving as the sole operator for one or more facilities could not continue to work as an operator during the probation, incurring a total loss of income as an operator. This potential adverse impact is no different from the pre-existing adverse impact from certificate revocation, except that revocation is for one year while suspension would be for a lesser period of time.

According to the U. S. Department of Labor, Bureau of Labor Statistics, the median annual earnings of water and wastewater facility operators were \$33,390 in 2002. The earnings of operators in the 10th percentile were less than \$20,220, while the earnings of operators in the 90th percentile were more than \$52,110. Thus, an operator earning the median income under suspension for six months would lose \$16,695 in operator income. Operators under suspension for six months whose earnings were \$20,220 and \$52,110 would lose \$10,110 and \$26,055, respectively, in operator income. Therefore, losses in earning power could range from \$10,110 to \$26,055 during a six-month period.

Unlike suspension, an operator placed on probation can continue to operate a facility while complying with the terms of the probation. Probation may include the completion of additional professional development hours, increased reporting of operator activity, limitations on activity the operator may perform or other terms which address deficiencies in operator performance. The cost of completing additional professional development hours may be borne by the

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operator or the facility. ADEQ provides regular operator training free of charge which may alleviate additional charges to an operator under probation who is required to obtain additional education.

While the authority to place an operator on suspension or probation represents a potential increased risk to these operators, the outcome, including improved operator performance, may be viewed as a positive and beneficial one. Nevertheless, as with any party subject to an enforcement action, the potential does exist for an operator whose certificate has been suspended or who has been placed on probation to be negatively impacted by lost or reduced income or other costs associated with an enforcement action.

ADEQ. In addition to the minimal rule development costs incidental to the rulemaking process, ADEQ does not anticipate the need for additional employees, equipment, or other explicit and implicit costs to accrue as a result of implementing this rulemaking. Even though the ability to suspend an operator's certificate or place an operator on probation would fall under a category of increased enforcement costs, ADEQ does not anticipate a significant increase in enforcement costs.

ADEQ expects that the implementation of these rule changes will strengthen the program that certifies and regulates the operators of water and wastewater facilities. Drinking water that is safe to drink is of critical importance to everyone. The proper operation of public water systems that deliver water to consumers is a vital step in maintaining safe drinking water. Similarly, it is important to public health and safety and the environment that wastewater is adequately treated through the proper operation of wastewater facilities. The adoption of suspension and probation as additional enforcement mechanisms for wastewater and water facility operators will improve ADEQ's oversight over these programs and will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in the state.

Consumers and general public. Initially, this rulemaking is not expected to generate costs to consumers or to the general public. However, the potential does exist for owners/operators to pass on increased compliance costs to consumers, where possible. Minimum increases in costs may be viewed as a cost of doing business without passing these costs to consumers. Facility owners and operators are constrained by a variety of economic considerations, including the price elasticity of demand and supply. ADEQ believes probable benefits to outweigh probable costs because of the potential for increased public protection. In some cases, the potential exists for cost-avoidance benefits to facilities due to improving the operation of systems and mitigating the potential for facilities being out of compliance. Thus, this rulemaking can be viewed as a direct link to improving the well-being of consumers and the general public.

E. Rule Impact Reduction on Small Businesses

State law requires agencies 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 of the rulemaking. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. Methods that may be used include the following: (1) Exempt them from any or all rule requirements, (2) Establish performance standards which would replace any design or operational standards, or (3) Institute reduced compliance or reporting requirements. An agency may accomplish the third method by establishing less stringent requirements, consolidating or simplifying them, or setting less stringent schedules or deadlines.

After assessing the various methods for reducing the impact on small businesses, ADEQ has been unable to implement any of the suggested methods. Owners and operators of these facilities must meet the requirements of these rules to maintain an adequate and appropriate Safe Drinking Water program and wastewater program in Arizona.

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

Below is a list of certain changes made between publication of the notice of proposed rulemaking and this notice of final rulemaking, as well as the reasons for the changes:

Change: R18-5-115(A) Clarifying amendment

Reason: Clarify the provision that water distribution facilities that do not treat water or that treat water in the distribution system with chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system are not to be graded as water treatment facilities.

Change: Add footnote and asterisk to R18-5-115 (B)(1) chart

Reason: The footnote clarifies that the presence of a fire protection system and a testable backflow prevention assembly at a facility earns a total of five points for the system, not ten points.

Other technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

**11. A summary of comments and agency responses:**

ADEQ received one written comment letter. Because no one came to the public hearing, no oral comments were received.

Comment: Commenter makes statements regarding his client, a certified operator. Some of these remarks are specific to an ongoing enforcement action with this certified operator. Although events in the enforcement action have pro-

ceeded since the commenter sent the comment letter to ADEQ, ADEQ will not respond to those statements that are generalized remarks about the ongoing enforcement action that do not also comment on this rulemaking.

**Comment:** Commenter states that there is a lack of standards to be used in choosing among the compliance and enforcement measures in R18-5-109.

**Analysis:** In drafting R18-5-109, ADEQ looked at the operator certification programs in several states. These states have similar programs to ADEQ's, due in part to the requirements of the federal Safe Drinking Water Act and the necessity to obtain EPA program approval to avoid significant cuts in federal funding to implement the program. ADEQ found several states that have compliance and enforcement rules similar to R18-5-109 that authorize the denial, revocation, suspension or other enforcement action to be taken against an operator based upon listed violations of the applicable laws and rules. These states authorize the regulating state agency to take enforcement actions such as suspension or revocation without any limiting criteria in rule. ADEQ believes it is appropriate to pattern its enforcement rule in part on the enforcement rules of other states which implement the same federal program to facilitate EPA approval of ADEQ's program.

The structure and authority of R18-5-109(B) follows the model of numerous rules within the Arizona Administrative Code involving numerous agencies. These state agency rules authorize the agencies to take a range of enforcement actions such as denial, revocation or suspension of a permit or certificate for violations listed in the individual rules. These rules do not limit the agency's discretion to determine the appropriate enforcement response by defining in rule which violations will receive which sanction. See A.A.C. R3-3-210, R3-3-1110, R4-3-411(A), R4-23-204(D), R4-23-901, R4-46-501, R6-5-5226(A), R12-4-605, R19-3-203, R20-2-603(G), R18-2-1016(G), R18-2-1019(H), R18-9-A213(A). Additionally, there are numerous Arizona statutes that authorize the state to select among different compliance measures for identified violations of the law, e.g. the A.R.S. Title 32 statutes, Professions and Occupations.

These rules do not limit the ability of these agencies to impose revocation, suspension, or other listed compliance measures to certain prescribed situations. ADEQ cannot identify in advance every conceivable enforcement situation in order to list in rule the appropriate compliance measure, particularly where multiple violations have occurred. Traditionally, enforcement discretion is a matter of agency policy. ADEQ, like other agencies granted enforcement authority by the Legislature, must maintain its ability to adjudge each situation on a case-by-case basis. As with any agency, the severity of the violation or violations will guide the enforcement response. Also, creating rigid standards in rule would prevent ADEQ in being able to negotiate settlements that contain terms and conditions agreed upon by ADEQ and the operator.

#### Corrective Actions

Because this rulemaking authorizes two new corrective actions, suspension and probation, it is appropriate to discuss each of the actions. Revocation, imposed through an administrative order, means an operator cannot operate a facility during the one-year revocation. An operator whose certificate is revoked must re-take the written examination to become re-certified. A term of suspension, imposed through an administrative order, means the operator cannot operate a facility during the term of the suspension. On the expiration of the suspension, the operator would not have to re-take the examination to resume operator responsibilities at a facility. A term of probation, imposed through an administrative order, will allow the operator to continue to work as an operator under conditions identified in the order, such as a requirement to take additional professional development hours (PDHs), restrictions on certain activities, or other conditions to address deficiencies in performance. For example, if an operator has made errors in collecting water samples for testing, ADEQ could require the operator to take additional training (PDHs) in proper water sample collection to improve the operator's ability to comply with state and federal law and to assist the facility in delivering water to the public that is safe to drink.

It is important to note that neither revocation, suspension, nor probation mandates that a facility owner terminate the affected operator's employment. Suspension and revocation mean the affected operator cannot continue to perform the functions and responsibilities of an operator. This does not mean that a facility owner cannot decide to re-assign the affected operator to non-operator duties. A larger facility, in particular, could choose to re-assign the operator under an enforcement action to other responsibilities that are not operator responsibilities while other operators assumed the affected operator's operational duties. A facility that has a single operator under suspension or revocation must replace that operator with a substitute operator in good standing. An operator under probation is subject to the limitations set forth in the administrative order establishing the probation.

In the types of corrective actions that may arise under this Article, revocation would generally be imposed for those violations that endangered public health, safety, or welfare or for repeat violations. Suspension would generally be imposed for serious violations while probation would generally be imposed for a non-serious, first-time violation. Revocation, suspension, or probation, would generally be imposed only after the operator has failed or refused to respond to or comply with informal attempts at achieving compliance. ADEQ normally attempts to negotiate a license revocation, suspension, or probation with the consent of the licensee, if possible. If this is unsuccessful, or unwarranted under the circumstances, ADEQ reserves the right to issue the license revocation, suspension, or probation unilaterally.

As stated, agency enforcement decision-making is traditionally a matter entrusted to the agency's discretion. The state agency rules cited earlier that authorize the agencies to take various types of enforcement actions based upon

listed violations do not limit the ability of these agencies to impose revocation, suspension, or other listed compliance measures to certain situations prescribed in rule.

For these reasons, R18-5-109 is valid as written.

Response: No change

Comment: The commenter states a preference for a recommendation from the operator certification committee to suspend or revoke. The comment then states that if this is not feasible, at least senior management should be involved in the decision-making process.

Analysis: Commenter requests that senior management be involved in the decision-making process involving enforcement matters. ADEQ senior management is involved in the decision-making process involving enforcement matters. ADEQ senior management approves every enforcement action that ADEQ takes, such as an administrative order requiring revocation, suspension, or probation.

The operator certification committee, created in rule by ADEQ to assist ADEQ in technical matters upon request, primarily assists ADEQ in validating the written operator examinations as required by EPA and provides advice on operator program rulemaking. This committee was not created to advise ADEQ on individual enforcement matters and ADEQ does not intend to alter its established agency-wide compliance and enforcement process.

Response: No change

Comment: Commenter states a belief that suspension or probation of an operator may have more of an economic impact than ADEQ's analysis concludes.

Analysis: ADEQ's economic impact analysis addresses the potential increased costs to operators, determining that the potential does exist for an operator whose certificate has been suspended or placed on probation to be negatively affected by reduced earnings or other costs associated with an enforcement action. Both facility owners and operators have been subject to similar potential increased costs from ADEQ's existing authority to revoke an operator's certificate.

Regarding the economic impact to an operator who is subject to a preliminary investigation, ADEQ must conduct investigations of possible violations of law in order to implement the law. The investigation includes fact-finding and communications with the affected party to resolve misunderstandings, to exchange information, and to narrow disputes. Generally an affected party seeks the opportunity to present its case to ADEQ prior to ADEQ taking an enforcement action, which ADEQ welcomes in order to narrow issues and, where possible, reach an agreed upon settlement. These investigations can and do resolve disputes prior to enforcement, saving costs to the affected party by avoiding litigation and other costs.

Response: No change

Comment: Commenter states that R18-5-109(A) mixes denial with suspension, revocation, and probation, stating that these are different concepts, particularly in light of A.R.S. § 41-1092.11. Commenter states that it "would be better to say 'If the Department decides to deny a license, or decides to initiate proceedings to suspend or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with'" A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.

Analysis: A.A.C. R18-5-109(A) requires ADEQ to act in accordance with the requirements of A.R.S. Title 41, Chapter 6, Article 10 (Uniform Administrative Hearing Procedures) and ADEQ's own administrative procedure rules, 18 A.A.C. 1, Article 2 (Administrative Appeals) whenever ADEQ denies, suspends, or revokes an operator certificate or places an operator on probation. A.R.S. Title 41, Chapter 6, Article 10 affords persons affected by certain agency actions determining legal rights, duties or privileges notice and an opportunity for an administrative hearing. A.A.C. R18-5-109(A) merely places the public on notice that each of these ADEQ decisions is subject to the administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 and the ADEQ administrative hearing rules.

Accordingly, for the purpose of A.A.C. R18-5-109(A), denial is no different from suspension, revocation, or probation because all of these actions are subject to the requirements of A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2. In this regard, there is no distinction to be made between denial and the other actions listed in this subsection. Thus, there is no reason to separate them out in this subsection. A.R.S. § 41-1092.11 does not alter this analysis or require a change in the existing text.

Commenter's proposed phrase that ADEQ "decides to initiate proceedings" for suspension, revocation, or probation has the potential for confusion. The phrase "to initiate proceedings" means different things to different people. The initiation of proceedings could mean when the Director issues an order or when an ADEQ compliance officer writes an internal memo recommending that an order be issued for the compliance officer's immediate supervisor to consider or some other date in the process. ADEQ would interpret this phrase to mean the Director's issuance of an administrative order to revoke, suspend, or place an operator on probation, which is the meaning of the current language. However, this is not the only possible interpretation of the proposed phrase and ADEQ's interpretation would not necessarily be clear to the public if ADEQ adopted the phrase "to initiate proceedings." The actual suspension, revocation or probation of an operator certificate is clear and understandable.

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Finally, there is one way in which denial is different from probation, suspension, and revocation and the rule recognizes this difference. A.A.C. R18-5-109(B) addresses the factors ADEQ must consider in determining whether to revoke or suspend a certificate or to place an operator on probation while R18-5-109(C) addresses the factors ADEQ must consider in determining whether to deny certification. Certification denial refers to individuals who do not meet the qualifications to become a certified operator.

Response: No change

Comment: Commenter states that suspension or revocation should be based on an objective determination of misconduct on the part of the operator. Commenter states that R18-5-109(B) should provide: "The Department may suspend or revoke a certificate, or place an operator on probation, if the Department finds that the operator..."

Analysis: ADEQ currently does what the commentator is requesting. Each order that denies, revokes or suspends a certificate or places an operator on probation, contains findings of fact and conclusions of law, as required by A.R.S. § 41-1092.03(A).

Response: ADEQ has amended the rule in response to the comment and to conform the rule to other ADEQ enforcement rules.

Comment: The commenter states that R18-5-109(B)(9) regarding failing to cooperate with an investigation should be an aggravating factor to be considered in determining whether to revoke or suspend or place an operator on probation but should not be an independent basis for taking action.

Analysis: Failure to cooperate with ADEQ in an investigation, set forth in R18-5-109(B)(9), is a serious matter. Often the operator is the only individual with information necessary for ADEQ to be able to determine whether drinking water being delivered to the public is safe for human consumption or whether a wastewater facility is operating properly to protect the environment. An operator's refusal to communicate with ADEQ relating to a water or wastewater facility is a purposeful act that impedes ADEQ's ability to implement two significant laws relating to water quality. This concept is not a new one. A.A.C. R6-5-5226 authorizes the Department of Economic Security to deny, suspend or revoke the certification for family care home providers if an applicant or provider "fails or refuses to cooperate with the Department in providing information required by these rules or any information necessary to determine compliance with these rules." Finally, it would appear that violations of this provision typically would occur with other violations of R18-5-109(B).

Response: ADEQ has provided additional detail and guidance to the public regarding the types of actions that constitute failure to cooperate with ADEQ under R18-5-109(B).

Comment: Commenter states that any remedial requirements placed on an operator during probation should be tailored to remediation of the problem at hand.

Analysis: The limitation that the commenter seeks is provided in the first sentence, which states that probation shall address deficiencies in operator performance. The examples in the second sentence also address deficiencies in operator performance. However, to clarify further, ADEQ has added additional clarifying language to this subsection.

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

None

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

None

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

No

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND  
CERTIFICATION OF OPERATORS

Section

- R18-5-101. Definitions
- R18-5-104. General Requirements
- R18-5-107. Certificate Renewal

- R18-5-109. Denial, Suspension, Probation, and Revocation  
R18-5-115. Grades of Water Treatment Plants and Distribution Systems

**ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS**

**R18-5-101. Definitions**

The terms in this Article have the following meanings:

“Certified operator” or “operator” means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection, ~~and is responsible for the daily onsite operation or the remote operation from a central location of all or a part of a facility.~~

“Collection system” means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

“Department” means the Department of Environmental Quality or its designated representative.

“Director” means the Director of the Department of Environmental Quality or the Director’s designated representative.

“Direct responsible charge” means day-to-day decision making responsibility for a facility or a major portion of a facility.

“Distribution system” means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

“Facility” means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

“Industrial waste” means the liquid, gaseous, or solid waste produced at an industrial operation.

“Onsite operator” means an operator who visits a facility at least daily to ensure that ~~it~~ the facility is operating properly.

“Onsite representative” means a ~~person~~ an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

“Operator” has the same meaning as certified operator, as defined in this Section.

“PDH” means professional development hour, as defined in this Section.

“Population equivalent” means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

“Professional development hour” or “PDH” means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

“Public water system” has the same meaning prescribed in A.R.S. § 49-352.

“Qualifying discipline” means engineering, biology, chemistry, or a closely related technical or scientific discipline.

“Qualifying experience” means experience, skill, or knowledge obtained through ~~prior~~ employment that is applicable to the technical or operational control of all or part of a facility.

“Remote operator” means an operator who is not an onsite operator.

“Validated examination” means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

“Wastewater” means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

“Wastewater treatment plant” means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

**R18-5-104. General Requirements**

A. A facility owner shall ensure that at all times:

1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility.
- ~~1.2. Only a certified operator can make a decision.~~ An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator ~~can~~ may make a planning decision regarding water quality or water quantity ~~as long as if~~ as long as if the decision is not a direct operational process control or system integrity decision that affects public health.
- ~~2. The operator in direct responsible charge of the facility is certified for the class of facility, at which the operator works, and at or above the grade of the facility for which the operator works;~~
3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
6. The names of all current operators are on file with the Department.

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- B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ~~ten~~ 10 days of the replacement.
- C. ~~The~~ An operator shall notify the Department in writing within ~~ten~~ 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.
- D. ~~A facility owner shall ensure that an operator holding certification in a particular class and grade only operates a facility of the same class and the same or lower grade for which the operator is certified.~~ An operator shall operate each facility in compliance with applicable state and federal law.
- E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.
- F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
  - 1. The remote operator is certified for the class of each facility and at or above the ~~class and~~ grade of each facility operated by the remote operator.
  - 2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of ~~(E)(8)~~ subsection (F)(8) are met. The onsite representative is not required to be an operator if the facility has a remote operator who is certified at or above the grade of the facility.
  - 3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility, ~~providing written instructions, and ensuring~~ ensures that adequate records are kept.
  - 4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
  - 5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
  - 6. The remote operator operates each facility in compliance with applicable state and federal laws.
  - 7. The remote operator inspects a facility as often as necessary to ~~assure~~ ensure proper operation and maintenance, but in no case less than:
    - a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
    - b. Monthly for a Grade 1 wastewater treatment plant;
    - c. Twice a month for a collection system that serves fewer than 2,500 people; and
    - d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
  - 8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
    - a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
    - b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
    - c. The remote operator inspects the facility weekly.

**R18-5-107. Certificate Renewal**

- A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.
- B. To renew a certificate, an operator shall complete and submit to the Department an operator certificate renewal form approved by the Department. ~~an~~ An operator shall maintain documentation and provide ~~the documentation~~ to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs ~~that is~~ in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the operator may apply required PDHs ~~may be applied~~ to all certificates if the PDHs are acquired within ~~that~~ the applicable certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.
- C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

**R18-5-109. Denial, Suspension, Probation, and Revocation**

- A. ~~The~~ If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with ~~shall act under~~ A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 ~~to deny or revoke a certificate.~~

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- B.** ~~If it is~~ The Department may determine whether to revoke or suspend a certificate, or place an operator on probation, if the Department shall consider whether finds that the operator:
1. Operates a facility in a manner that violates federal or state law;
  2. Negligently operates a facility or negligently supervises the operation of ~~the~~ a facility;
  3. Fails to comply with a Department ~~orders~~ order or ~~consent decrees~~ order of a court;
  4. Obtains a certificate by fraud, deceit, or misrepresentation;
  5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
  - ~~5-6.~~ Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or ~~management~~ supervision of the a facility; or
  - ~~6-7.~~ Endangers the public health, safety, or welfare;
  8. Fails to comply with the terms or conditions of probation or suspension; or
  9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.
- C.** The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.
- ~~C-D.~~** In order to be recertified, a ~~an person~~ individual whose certificate is revoked shall reapply and be reexamined as a new applicant. A ~~An person~~ individual whose certificate is revoked is not eligible for admission to a certification examination for 12 months from the effective date of the revocation.
- E.** The Department may place an operator on probation to address deficiencies in operator performance. The terms of probation may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.
- F.** During the period of suspension or revocation, an individual whose certificate is suspended or revoked shall not operate a facility of any class or grade.
- G.** An operator whose certificate is suspended or revoked shall immediately notify the owner of a facility where the operator is employed of the suspension or revocation.

**R18-5-115. Grades of Water Treatment Plants and Distribution Systems**

- A.** Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points ~~#~~ the Department assigns for each plant characteristic-
1. No Change
  2. No Change
- B.** Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points ~~#~~ the Department assigns for each system characteristic.
1. The Department shall assign points for the purpose of grading a distribution system as follows:

System Characteristics	Points
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
Fire Protection Systems/ <u>Testable Backflow Prevention Assemblies</u> *	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9

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\*The presence of one or both of these devices earns five points for the facility.

2. No Change
  - a. No Change
  - b. No Change
  - c. No Change
  - d. No Change
3. No Change