

# 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 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R06-170]

#### PREAMBLE

- |   |  |
|---|--|
| <b><u>1. Sections Affected</u></b><br>R4-30-221 | <b><u>Rulemaking Action</u></b><br>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. §§ 32-106 (A)(1), 32-106 (A)(3), and 32-106(A)(4)  
Implementing statutes: A.R.S. §§ 32-122.01(A)(2), 32-122.01(A)(3), 32-122.01(B)(2), 32-122.01(B)(3)
- 3. The effective date of the rules:**  
July 1, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 2797, July 29, 2005  
Notice of Proposed Rulemaking: 11 A.A.R. 4076, October 21, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Julie Ruff  
Address: Arizona State Board of Technical Registration  
1110 W. Washington St., Suite 240  
Phoenix, AZ 85007  
Telephone: (602) 364-4940  
Fax: (602) 364-4931  
E-mail: julie.ruff@btr.state.az.us
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**  
A.R.S. § 32-106(B) authorizes the Board to decide which branches of engineering it shall recognize in registering engineers. The National Council of Examiners for Engineers and Surveyors (NCEES) has recognized Architectural Engineering as an engineering branch of practice and has created a national qualifying examination for this branch. The Board Technical Registration is amending its rules to recognize architectural engineering as a branch of practice.
- 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:**  
There are no significant impacts on the public, registrants, or other government agencies.

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

The Board made minor clarifications throughout the rules for consistency. Minor format and grammatical changes were also made at the request of the Governor's Regulatory Review Council staff.

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

There were no comments on the rule.

**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 made as an emergency rule?**

No.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

Section

R4-30-221. Engineering Branches Recognized

ARTICLE 2. REGISTRATION PROVISIONS

**R4-30-221. Engineering Branches Recognized**

- A. The Board shall recognize the branches of engineering described below for review of experience, selection of examination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the registrant's seal. The branches do not limit the areas of a registrant's practice of engineering (See R4-30-301(18)).
1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning agricultural machinery, drainage, irrigation, terracing, farm electricity, or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, ~~and~~ or industry.
  2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building mechanical, acoustical, electrical, lighting, or structural systems.
  - 2-3. Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals ~~beneficiation~~ beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, ~~and~~ or systems for heat transmission.
  - 3-4. Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning highways, streets, transportation systems, drainage and flood control structures, surface and sub-surface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators, or site fire protection systems.
  - 4-5. Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction ~~of~~ for projects concerning control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment ~~plants~~ plants, power plants, pollution abatement ~~system~~ systems, transportation ~~system~~ systems, ~~and~~ or other dynamic processes and systems.
  - 5-6. Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning ~~use in~~ power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems, or electrical installations.
  - 6-7. Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction ~~for projects concerning~~ of water and wastewater systems, domestic and process (industrial/commercial)

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solid waste and hazardous materials ~~system systems~~, air quality ~~system systems~~, ~~and or~~ health, safety, and environmental protection including, but not limited to systems relating to emergency response, risk analysis, radiation protection, noise toxicology, ~~and or~~ industrial hygiene.

- 7-8. Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.
  - 8-9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction ~~or for projects concerning~~ geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological ~~structure structures determinations~~, ~~and or~~ geophysical mapping of geological formations and groundwater locations.
  - 9-10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.
  - 10-11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.
  - 11-12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning ~~in~~ the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral ~~beneficiation~~ beneficiation, or the development of metal alloys.
  - 12-13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures, ~~or~~ metallurgical works and production procedures.
  - 13-14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis, ~~or~~ nuclear fuels.
  - 14-15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations, ~~or~~ the development of petroleum products.
  - 15-16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities, ~~or~~ public health systems.
  - 16-17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses, ~~or~~ similar members used singly or as part of a larger structure.
- B. An applicant shall submit to the Board a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after notification by the Board that the application has been evaluated by the Board shall submit the request in writing and pay an additional application fee.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R06-171]

PREAMBLE

1. **Sections Affected**  
R4-30-301
1. **Rulemaking Action**  
Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. §§ 32-106(A)(1)  
Implementing statute: A.R.S. §§ 32-106(F)
3. **The effective date of the rules:**  
July 1, 2006
4. **A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R 2798, July 29, 2005  
Notice of Proposed Rulemaking: 11 A.A.R. 4078, October 21, 2005
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Julie Ruff  
Address: Arizona State Board of Technical Registration  
1110 W. Washington St., Suite 240  
Phoenix, AZ 85007  
Telephone: (602) 364-4940  
Fax: (602) 364-4931  
E-mail: julie.ruff@btr.state.az.us
6. **An explanation of the rule, including the agency's reason for initiating the rule:**  
Receiving a fee as an expert witness contingent on the outcome of a dispute is against public policy, as evidenced by a prior Arizona Court of Appeals ruling, *Laos v. Soble (1972)*.
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:**  
Any economic impact associated with the rule is attributable to a prior Arizona Court of Appeals ruling that it is against public policy to receive a fee as an expert witness that is contingent on the outcome of the dispute. There is no significant economic impact on the public, registrants, or on other government agencies from the rule language itself.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
The Board made minor clarifications in subsections (1), (7), (8), (9), and (16). The Board removed the term "knowingly" from subsection (3) because the cited statute provides information regarding mental state. The Board inserted address information in subsection (13). Minor format and grammatical changes were made at the request of the Governor's Regulatory Review Council staff.
11. **A summary of the comments made regarding the rule and the agency response to them:**  
There were no comments on the rule.

**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 made as an emergency rule?**

No.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 3. REGULATORY PROVISIONS**

R4-30-301. Rules of Professional Conduct

**ARTICLE 3. REGULATORY PROVISIONS**

**R4-30-301. Rules of Professional Conduct**

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation, or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not knowingly commit bribery of a public servant as proscribed in A.R.S. § 13-2602, knowingly commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty, if the violation is reasonably related to the registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an ~~assignment~~ engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the ~~project or~~ engagement in question.
8. A registrant shall not accept compensation for services related to the same ~~project or professional~~ engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
  - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
  - b. Any monetary, financial, or beneficial interest the registrant ~~may hold~~ holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party, appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Lands Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, as adopted by the Board on June 15, 2001, the provisions of which are incorporated in this subsection by reference and on file with the Office of the Secretary of State. This incorporation by reference does

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- not include any later amendments or editions and is available at the Board's office and APLS at www.aia.org.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
  15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
  16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
  17. Except as provided in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
    - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
    - b. The work is exempt under A.R.S. § 32-143.
  18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
  19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services for which the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
  20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
  21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

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**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY  
UNDERGROUND STORAGE TANKS**

[R06-138]

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R18-12-101	Amend
Article 6	Amend
R18-12-601	Repeal
R18-12-601	New Section
R18-12-602	Repeal
R18-12-602	New Section
R18-12-603	Repeal
R18-12-603	New Section
R18-12-604	Repeal
R18-12-604	New Section
R18-12-605	Repeal
R18-12-605	New Section
R18-12-605.01	Repeal
R18-12-606	Repeal
R18-12-606	New Section
R18-12-607	Repeal
R18-12-607	New Section
R18-12-607.01	Repeal
R18-12-608	Repeal
R18-12-608	New Section
Appendix A	Repeal
R18-12-609	Repeal
R18-12-609	New Section
R18-12-610	Repeal
R18-12-610	New Section
R18-12-611	New Section

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R18-12-612 New Section  
R18-12-613 New Section  
R18-12-614 New Section  
R18-12-615 New Section

**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(B)(4) and 49-1014(A)

Implementing statute: A.R.S. §§ 49-1052, 49-1053, 49-1054, 49-1091, and 49-1091.01

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

June 4, 2006

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 509, February 13, 2004 (expired)

Notice of Rulemaking Docket Opening: 11 A.A.R. 2658, July 15, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 3020, August 12, 2005

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

Name: Tara Rosie, Manager  
State Assurance Fund Section, Tank Programs Division

Telephone: (602) 771-4725

E-mail: Rosie.Tara@azdeq.gov

Name: Philip A. McNeely, Director  
Tank Programs Division

Telephone: (602) 771-7645

E-mail: McNeely.Philip@azdeq.gov

Address: Arizona Department of Environmental Quality  
1110 W. Washington St. (4415A-3)  
Phoenix, AZ 85007

Toll-free number: (800) 234-5677, then enter seven-digit phone number

Fax: (602) 771-4381

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

Contents of Explanation of the Rule:

- A. Introduction
- B. Summary
- C. Corrective Action Service Provider Qualifications
- D. Incorrect Applications
- E. Section-by-Section Explanation of the Rule

**A. Introduction**

This rule will amend the underground storage tank assurance account rules so that they reflect the current governing statutes and processes. The statutes governing the state assurance fund have changed several times since the rules were last revised in December 1996, including several substantial changes in the 2004 regular session of the Legislature.

As reflected in the Committee On Appropriations', Minutes of Meeting, dated Tuesday, April 13, 2004, S.B. 1306 (Laws 2004, Chapter 273) was intended, in part, to prevent money from taxpayers to "flow freely" into the pockets of consultants and to ensure that volunteers, as well as owners and operators, "will have to bear part of the expense to hold down the cost of cleanup." Quoting Representative Eddie Farnsworth, the sponsor of the original legislation.

To alleviate a potential for fraud and abuse and to emphasize owners', operators' and volunteers' fiscal responsibility in controlling costs, S.B. 1306 added A.R.S. § 49-1052(Q), which imposed a \$5,000.00 minimum amount on applications, unless one of three specific conditions exists; added the requirement that volunteers must comply with the pre-approval process "for any claims made for costs incurred in excess of one hundred thousand dollars at a single facility" to A.R.S. § 49-1053; added a ten percent copayment obligation for volunteers at A.R.S. § 49-1052(I), with the ability to have the copayment obligation waived if certain conditions are satisfied; and added the requirement that volunteers (at A.R.S. § 49-1052(I)) and owners and operators (at A.R.S. § 49-1054(A)) submit certification that they have paid the copayment obligation or have agreed to pay the copayment obligation as demonstrated in an existing agreement. The copayment obligation imposed for volunteers is consistent with the copayment obligation that has been in place for owners and operators.

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Additionally, Senate Bill 1306 established that only releases of a regulated substance reported to the Department before July 1, 2006 are subject to coverage for corrective action costs from the underground storage tank assurance account. Applications for preapproval of corrective actions must be filed with the Department no later than 5:00 p.m. on June 30, 2009, and applications for reimbursement or direct payment requests must be filed with the Department no later than 5:00 p.m. June 30, 2010.

Considerable stakeholder input has gone into the development of this rule. During the informal comment period, two draft versions of this rule were provided to the UST Policy Commission and distributed to interested stakeholders for review and the Department accepted two rounds of informal written comment. Additionally, several meetings were held at the Legislature last session where the contents of this rule were discussed.

During the formal comment period, many questions were raised regarding why the Department has chosen to promulgate these rules, given the fact that the assurance account terminates on June 30, 2010. The current rules do not reflect many of the statutory changes that have taken place since December 1996, or in some circumstances, are in direct conflict with other changes that have been made to the governing statutes. The following list highlights some of the statutory conflicts between the current rules and their governing statutes:

- **Sunset date for release eligibility** – Current rules do not reflect release eligibility sunset date of July 1, 2006, established by SB 1306 in 2004
- **Termination of Fund** – Current rules do not reflect the fund’s sunset dates established by SB 1306 in 2004
- **Permanent Closure eligibility** – Current rules do not reflect changes made to A.R.S. § 49-1052(A) regarding permanent closure eligibility
- **Eligibility Requirements of A.R.S. § 49-1052(F)** – Current rules do not acknowledge statutory changes to A.R.S. § 49-1052(F) (e.g. ability to cure tax and fee delinquencies, impact of enforcement actions on eligibility, and compliance with financial responsibility requirements for releases reported after July 1, 1996.)
- **A.R.S. § 49-1054(C)(1) and (C)(2) vs. R18-12-607.01. (N),(O), and (P)** – R18-12-607.01 (N),(O), and (P) are inconsistent with the changes enacted by A.R.S. § 49-1052(C)(1) and (C)(2)
- **R18-12-604. (Individual Applicant: Application Requirements)** – Current rules require submission of financial information for financial need priority point assignment. There is no provision for waiver of financial need priority ranking points or allowance for submission of financials only when ranking is necessary. Additionally, current rules require submission of information on past payments and projections of future remedial costs - this information is not relevant to the current SAF application business process.
- **R18-12-605.01. Soil Clean-up Standards** – This provision is inconsistent with A.R.S. § 49-1052(N). Additionally, the promulgation of the Release Reporting and Corrective Action rules essentially rendered this provision moot.
- **R18-12-606. (Determination Of Priority Of Payment: Ranking Process)** - Current rule mandates use of a ranking process (including assignment of points) for each payment “round,” and provides for point accrual for preapproval – which is in direct conflict with 49-1053. Additionally, the current rule does not provide specific information for the applicant to determine how ranking points are calculated. The formulation of financial need stems from an agreement with stakeholders when the first Grant rule was in development.
- **R18-12-607. (Direct Pay And Preapproval Of Funds)** - Current rule confines a “direct payment” as payment to a designated representative. Therefore, payment may be made only to the applicant or a designated representative. Additionally, current rule restricts preapprovals to those the Department determines are necessary to commence or continue corrective action; which is in conflict with 49-1053. Lastly, the current rule lists criteria that must be met before preapproval of funds may be granted by the Department, which conflicts with 49-1053.
- **R18-12-608. Reduction in Reimbursement** - Repealed by H.B. 2226 (41st Legislature, 2nd Regular Session, 1994).
- **R18-12-609. Payment Determinations; Disagreements** – Rendered moot by A.R.S. § 49-1091 in 1998.
- **R18-12-610. Appeals** – Rendered moot by A.R.S. § 49-1091 in 1998.

**B. Summary**

This rule accomplishes the following objectives:

- Prescribes a set of uniform definitions and procedures that implement the statutes on the underground storage tank assurance account.
- Provides requirements universal to all applications and direct payment requests, as well as specific requirements unique to reimbursement and preapproval applications and direct payment requests.
- Revises the content of R18-12-101 by adding or amending those definitions necessary to interpret the requirements of this rule.
- Requires little change in the way the Department is currently operating the underground storage tank assurance account. The major change involves the prequalification standards for corrective action service providers. In the current rule, the Department pre-qualifies consulting and contracting firms and qualifies individual consultants and contractors at the time each application is received and reviewed by the Depart-

ment. In the rule, the standards for consultants and contractors defer to the existing requirements for either registration from the Arizona State Board of Technical Registration (BTR) or licensure from the Registrar of Contractors (ROC). Consequently, compliance with corrective action service provider standards as established by those organizations will be reviewed at the time each application or direct payment request is received by the Department.

- Establishes the Department's standard of review for approving an application or direct payment request, and details the actions to be taken when an owner, operator, or volunteer disagrees with and chooses to appeal a written decision or determination of the Department.
- Establishes the procedures related to ranking of applications and requests if such a ranking becomes necessary.

### C. Corrective Action Service Provider Qualifications

The qualification standards for performing corrective action services and prequalification status provisions have been modified in this rule to require either registration from the BTR or licensure from the ROC, as applicable. The requirement for demonstrated "experience" has been eliminated as a qualification criterion, as was the ability of a consultant to use education as an alternative to a BTR credential. The purpose of this change is to eliminate the duplication of regulation of consultants and contractors and to eliminate the requirement that the Department license consultants and contractors. This reduction in burden will allow the Department to concentrate its resources on the processing of claims. In its February, March, and April 2005 quarterly circulation, the BTR, through its Executive Director, communicated the Board's intent to increase enforcement efforts against firms identified as offering services without a current registration. The Department acknowledges this proactive approach and will forward to the BTR for appropriate action instances of firms believed to be performing corrective action services without a current registration. Lastly, the category of tester has been eliminated from the rule because these firms do not serve as corrective action service providers.

### D. Incorrect versus Incomplete Applications or Requests

The Department has identified several application and direct payment request conditions as "incorrect" on the basis that these conditions cannot be or have not been cured in order to gain eligibility for coverage from the assurance account. Under the rule, the Department will issue final, and not interim, determinations on incorrect applications and direct payment requests. The purpose of this change is to minimize the costs and burdens of two appeal processes on both the Department and the applicants and to encourage applicants to (1) submit only eligible applications or direct payment requests and (2) to cure deficiencies prior to the submission of a claim to the Department.

Additionally, incorrect reimbursement applications or direct payment requests are distinguishable from incomplete reimbursement applications or direct payment requests. Incomplete reimbursement applications or direct payment requests can be completed and cured by an owner or operator. A.R.S. § 49-1052 (B) provides the time-frame for the Department to identify and notify an owner or operator that a reimbursement application or direct payment request is incomplete and provides a time-frame for the owner or operator to provide the additional information. Furthermore, if the owner or operator needs additional time to submit the missing information, A.R.S. § 49-1052 (B) gives the owner or operator the ability to request and requires the Department to grant an additional 60 days. A.R.S. § 49-1052(B) does not address incomplete preapproval applications, however, the Department has elected in the past and will continue to apply some of the provisions of A.R.S. § 49-1052(B) to preapproval applications. The Department will notify an owner or operator that a preapproval application is incomplete and provide 30 days for the owner or operator to provide the additional information.

### E. Section-by-section Explanation of the Rule

#### ARTICLE 1

##### Introduction

The definitions that apply to all of the UST rules (Technical Requirements, Release Reporting and Corrective Action, Financial Responsibility, State Assurance Fund (SAF), Grant, and Tank Service Providers) are located in this Section. The centralization of definitions within Article 1 was implemented in the 1992 rulemaking that codified the initial rules on the SAF and financial responsibility. Use of one Section for all definitions gives the reader an UST "dictionary" and avoids repeating terms as would be required if each Article contained its own definitions.

##### R18-12-101. Definitions

The 20 new or modified terms defined for implementation of this rule on the SAF are:

- "Application,"
- "Copayment,"
- "Corrective action rules,"
- "Corrective action service provider,"
- "Cost work sheet,"
- "Direct payment,"
- "Direct payment request,"

“Eligible person,”  
“Eligible activities,”  
“Incremental cost,”  
“Incurred,”  
“Phase of corrective action,”  
“Submitted,”  
“Substituted work item,”  
“Summary of work,”  
“Task,”  
“Under review,”  
“Volunteer,”  
“Work item,” and  
“Work objectives of the preapproved work plan.”

## ARTICLE 6

### Introduction

Article 6, titled “Underground Storage Tank Assurance Account” was first promulgated in September 1992 and last updated in December 1996. The Underground Storage Tank Assurance Account is more commonly known throughout the UST community as the State Assurance Fund, or SAF. The monies in the SAF come from a tax imposed on operations of underground storage tanks regulated under A.R.S. Title 49, Chapter 6. The tax is measured at a rate of one cent per gallon of regulated substance placed in an underground storage tank. The applicability of the UST Excise Tax may be reviewed at A.R.S. § 49-1031. Federal and state law requires owners and operators of USTs to investigate and report suspected and confirmed UST releases. The Department requires owners and operators of leaking underground storage tanks (LUSTs) to conduct an investigation to determine the extent of contamination, submit a site characterization report, and take appropriate corrective action steps. In short, the purpose of the SAF is to assist eligible persons in remediating soil, groundwater, and surface water contaminated by leaking underground storage tanks by paying up to 90 percent of the reasonable and necessary costs associated with performing eligible corrective actions in response to a release from an underground storage tank. Volunteers that have had their copayment obligation waived by the Department and owners and operators who are performing corrective action activities above their allocated liability are eligible to receive coverage of up to 100 percent of the reasonable and necessary costs incurred for responding to releases from underground storage tanks.

The rule on the underground storage tank assurance account is organized as follows:

- Eligibility (R18-12-601)
- Applicability (R18-12-602)
- General Application and Direct Payment Request Requirements (R18-12-603)
- Reimbursement Application Process (R18-12-604)
- Preapproval Application Process (R18-12-605)
- Direct Payment Request Process (R18-12-606)
- Schedule of Corrective Action Costs (R18-12-607)
- Scope and Standard of Review (R18-12-608)
- Copayments: Applicability, Waivers, and Credits (R18-12-609)
- Interim Determinations, Informal Appeals and Requests for Information (R18-12-610)
- Final Determinations and Formal Appeals (R18-12-611)
- Priority of Assurance Account Payments (R18-12-612)
- Determining Financial Need Priority Ranking Points (R18-12-613)
- Financial Documents for Determining Financial Need Priority Ranking Points (R18-12-614)
- Risk Priority Ranking Points (R18-12-615)

### **R18-12-601. Eligibility**

Subsection (A) establishes a maximum coverage of 90 percent of the reasonable and necessary costs of eligible corrective actions, up to the statutory maximum as set forth at A.R.S. § 49-1054(A), for all but three situations. The first exception is owners and operators are eligible to receive 50 percent of the reasonable and necessary costs of eligible corrective actions for releases reported after June 30, 2000 from UST systems not meeting new tank standards that were not permanently or temporarily closed or upgraded prior to December 22, 1998. The second exception is volunteers that have been deemed eligible for a copayment waiver from the Department are eligible to receive 100 percent of the reasonable and necessary costs of eligible corrective actions. The third exception is owners and operators who perform corrective actions above the owner’s and operator’s proportional liability are eligible to receive 100 percent of the reasonable and necessary costs of eligible corrective actions that exceed their allocated liability, in accordance with A.R.S. § 49-1019(E).

Subsection (B) provides that the activities eligible for coverage from the assurance account are those described at A.R.S. § 49-1052(A) for releases reported to the ADEQ UST Program before July 1, 2006. The eligible activities

must satisfy the scope and standard of review provisions of R18-12-608 and the applicable requirements of A.R.S. Title 49, Chapter 6 and rules made thereunder.

Subsection (C) provides for the denial of applications or direct payment requests that are incorrect through the issuance of a final determination under R18-12-611; sets forth that an interim determination or decision will not be issued for incorrect applications or direct payment requests; and establishes specific conditions under which applications or direct payment requests will be deemed incorrect by the Department.

Subsection (D), in accordance with Laws 2004, Chapter 273, Section 9, provides 5:00 p.m. on June 30, 2009, as the deadline for submittal of an application for preapproval of corrective actions, and 5:00 p.m. on June 30, 2010, as the deadline for submitting any reimbursement application or direct payment request. No reimbursement application or direct payment request shall be accepted after 5:00 p.m. June 30, 2010.

**R18-12-602. Applicability**

Subsection (A) provides that all applications and direct payment requests submitted to the Department after the effective date of the final rules are subject to the requirements of Article 6, with two exceptions. First, while all direct payment requests must meet the requirements of R18-12-606, the Department will evaluate direct payment requests related to a preapproved work plan approved prior to the effective date of these rules against the original preapproved application. The preapproved costs associated with the work plan that was approved by the Department will govern how the direct payment request will be evaluated. Lastly, the Department may terminate an approved preapproval application and associated work plan in accordance with R18-12-605(G).

Subsection (B) provides that these rules will not supersede provisions governing applications or direct payment requests in an order of the Director or a court of competent jurisdiction.

**R18-12-603. General Application and Direct Payment Request Requirements:**

Subsection (A) establishes that all reimbursement and preapproval applications and direct payment requests must be on a form prescribed by the Department and provides that only an eligible person or the designated representative of an owner or operator can submit a reimbursement or preapproval application or a direct payment request.

Subsection (B) establishes the general contents of a reimbursement and preapproval application and direct payment request. An application or direct payment request must contain information on the eligible person and the facility that are the subject of the application or direct payment request, and the corrective action service provider performing the eligible activities. Each application or direct payment request must identify the phase or phases of corrective action for which coverage is being sought, and whether or not the eligible person waives priority ranking points or requests notice in accordance with R18-12-612(A), in the event the Director determines the need for priority ranking. For owners and operators for which the sum of all claimed and approved costs associated with a release exceed \$500,000.00, documentation that the conditions at A.R.S. § 49-1052(F)(5) have been met, as well as a demonstration of compliance with the financial responsibility requirements, as applicable. The application or direct payment request must identify any other applicable insurance coverage capable of providing coverage to the release(s) that are the subject of the application or direct payment request and any claims submitted against that coverage. A statement notifying the Department of any agreement demonstrating that the eligible person has agreed to pay the copayment and a copy of the agreement, if requested by the Department, must also be included with the application or direct payment request, along with proof of payment, via cancelled checks or financial institution statements, if the eligible person is the person designated to appear on the warrant for payment. If neither copies of cancelled checks nor financial institution statements are available, a sworn statement, by individual invoice, from the corrective action service provider will suffice. For a designated representative of an owner or operator, a copy of the written assignment to the designated representative of any rights, title and interest the owner or operator may have in the proceeds of a claim for corrective action costs from the assurance account must be provided to the Department. Lastly, the eligible person is required to submit a signed and notarized certification statement regarding specific eligibility and application or direct payment request content issues; and the primary corrective action service provider must submit a signed and notarized certification statement regarding specific qualification standards for the person performing, supervising or managing the eligible activities and attesting that the costs being claimed are for work that was actually performed.

**R18-12-604. Reimbursement Application Process**

Subsection (A) establishes the non-preapproved corrective action activities for which an eligible person or designated representative of an owner or operator may submit a reimbursement application to the Department for coverage. The non-preapproved corrective action activities that may be requested in a reimbursement application include costs associated with: the sampling, analysis and the report associated with confirming a release requiring corrective actions following a site check or UST closure; initial response, abatement, and site characterization activities performed; free product investigation and removal; full site characterization activities and any appropriate remedial response to contamination; the performance of a risk assessment and LUST case closure activities; corrective action activities deemed preapproved under R18-12-605(I); and permanent closure of a tank, provided the requirements at A.R.S. §§ 49-1052(A)(3), 49-1052(A)(4) or 49-1052(A)(6) are satisfied. This subsection also provides for an eligible person to request a credit towards the copayment amount for the costs of professional services to prepare the reimbursement application and provides for an owner or operator to request a credit towards the copayment amount for the costs of

upgrading or replacing an UST system that is a subject of the reimbursement application, provided the requirements of A.R.S. § 49-1054(D) are satisfied.

Subsection (B) establishes specific requirements for reimbursement applications that are in addition to the general application requirements of R18-12-603. A reimbursement application must include specific documentation demonstrating that the claimed costs are eligible for coverage from the assurance account. Required documentation includes, but is not limited to: a summary of work on a Department provided form; reference to performed corrective action, by title, date, and location within the document, to any written report or other written information previously submitted to the Department; copies of unaltered invoices documenting actual costs incurred for each eligible activity; and completed cost worksheets. If the reimbursement application requests that the Department credit, towards the copayment amount, the costs of professional services for preparing the reimbursement application or the costs of upgrading or replacing an UST system that is a subject of the reimbursement application, then this subsection also sets forth specific documentation requirements for each scenario. Lastly, this subsection provides that in the event an eligible activity is identified in the schedule of corrective action costs as being payable on a time and materials basis, then details on time and materials for the eligible activity must be submitted in order to obtain coverage.

Subsection (C) provides the conditions that must be satisfied before the Department can approve a reimbursement application for coverage.

Subsection (D) establishes the conditions under which the Department will approve for payment a reimbursement application for costs associated with a report.

Subsection (E) provides for Departmental notification to the eligible person or the designated representative of an owner or operator of its determination regarding a reimbursement application.

Subsection (F) establishes the ability for the Department to approve a part of the costs that are the subject of a reimbursement application, provided specific conditions are met, while denying the remaining costs.

Subsection (G) establishes that the Department must reimburse approved costs in a reimbursement application, minus any copayment amount determined under R18-12-609, using assurance account monies and if necessary, in the order of priority determined according to R18-12-612.

**R18-12-605. Preapproval Application Process**

Subsection (A) establishes the corrective action activities for which an eligible person or the designated representative of an owner or operator may request preapproval from the Department through the submittal of a preapproval application. The corrective action activities that may be requested in a preapproval application include free product investigation and removal; full site characterization activities and any authorized remedial response to contamination; the performance of a risk assessment; and LUST case closure activities.

Subsection (B) requires a preapproval application to be in a form prescribed by the Department and mandates that a preapproval application include the general requirements of R18-12-603 and the work plan requirements of R18-12-605(C).

Subsection (C) establishes the required contents of the preapproval work plan and estimated costs to complete the plan that must be submitted with a preapproval application. The preapproval work plan must contain the work objectives of the proposed work plan and provide a brief description of the proposed work, including contingencies. The phase or phases of corrective actions being addressed must be identified, and a brief history of the facility and LUST site must be provided, including information regarding potential receptors and a lithologic and geologic description of the site. A detailed site plan, including pertinent site specific information, a site location map, and a site vicinity map are also required components of a preapproval work plan. Rationales for all proposed and contingency soil borings and monitor wells as well as all existing and proposed remedial systems must be provided, along with a detailed time schedule for implementing corrective actions and completing the proposed and any contingency work objectives. If access to a property not under the control of the eligible person is or may be required to complete the necessary corrective actions, then the work plan must include a proposed plan for obtaining access to that property. Lastly, the work plan must include a cost estimate consistent with the task, incremental and time and material costs described in the schedule of corrective action costs established and maintained under R18-12-607.

Subsection (D) provides the conditions that must be satisfied before the Department can approve a preapproval application.

Subsection (E) provides for Departmental notification to the eligible person or designated representative of an owner or operator of its determination regarding a preapproval application.

Subsection (F) establishes the Department's discretion to approve a part of the corrective actions and corresponding costs that are the subject of a preapproval application, provided specific conditions are met, while denying the remaining corrective actions and costs in a preapproval application.

Subsection (G) establishes the specific conditions under which the Department may terminate an approved preapproval application and associated work plan. The Department has the discretion to terminate preapproval applications and associated work plans that were preapproved prior to and after the effective date of these rules. In the event that the Department exercises its discretion to terminate an approved preapproval application and work plan, the Depart-

ment must notify the eligible person of the termination in accordance with R18-12-610, by issuing an interim determination and giving the eligible person informal appeal rights.

Subsection (H) allows an eligible person or designated representative of an owner or operator to submit a direct payment request in accordance with R18-12-606, following the Department's written approval of a preapproved work plan and completion of some or all of the preapproved corrective actions. The Department will only accept a direct payment request from an eligible person for coverage of costs associated with eligible activities preapproved in a preapproval application. As a corollary, a reimbursement application will not be approved by the Department for eligible corrective actions, in a phase or phases of corrective action, which have been preapproved by the Department. Subsection (I) describes the eligible activities, but not the costs, which are deemed preapproved for volunteers that confirm a new release at a single facility or that discover free product at and from a release after \$100,000.00 of corrective action costs have been incurred at the facility. Following the discovery of a new release or free product, there may be corrective action activities that need to be initiated immediately or as soon as practicable, to minimize or prevent the spread of contamination or to provide adequate protection to public health and welfare and the environment. The preapproval process will not accommodate the urgency involved in performing these corrective action activities, therefore these crucial eligible activities have been deemed preapproved. The eligible activities, but not the costs, that have been deemed preapproved are the sampling, analysis, and the report associated with confirming a release requiring corrective actions following a site check or UST closure; initial response, abatement, and site characterization activities for the first 90 days after the date the new release is discovered; and free product investigation and removal for the first 90 days after the date the free product is discovered. If further corrective actions are required, the volunteer must submit a preapproval application that meets the requirements of R18-12-605(A) and (B) prior to the expiration of the applicable 90 day time period.

**R18-12-606. Direct Payment Request Process**

Subsection (A) establishes the conditions under which an eligible person or designated representative of an owner or operator may submit a direct payment request. A direct payment request must relate to either a request for payment of preapproved corrective action costs incurred performing preapproved corrective actions; or a request for payment of non-preapproved corrective action costs that meet the requirements of R18-12-606(D). This subsection also provides for an eligible person to request a credit towards the copayment amount for the costs of professional services to prepare the preapproval application and/or the direct payment request and provides for an owner or operator to request a credit towards the copayment amount for the costs of upgrading or replacing an UST system that is a subject of the direct payment request, provided the requirements of A.R.S. § 49-1054(D) are satisfied.

Subsection (B) requires that a direct payment request be on a form prescribed by the Department and establishes specific requirements for direct payment requests. A direct payment request includes, but is not limited to, the following: the application number of the preapproval application against which the direct payment request is being submitted; identification of the eligible person and a certification statement that meets the requirements of R18-12-603(B)(8); specific information on the completed corrective actions that are the subject of the direct payment request; any request that the Department credit, towards the copayment amount, the costs of professional services directly related to preparation of the preapproval application and/or the direct payment request; any request that the Department credit, towards the copayment amount, the costs of upgrading or replacing an UST system that is the subject of the direct payment request, provided the request meets the requirements at R18-12-604(B)(3); and proof of payment, via cancelled checks or financial institution statements, if the eligible person is the person designated to appear on the warrant for payment. Additionally, a direct payment request must include information related to the issuance of the payment warrant that meets the requirements of R18-12-603(B)(8). Furthermore, to eliminate tracking errors or potential multiple payments, this subsection requires that a request for credit for preparation of the preapproval application against the copayment must be included in the eligible person's first direct payment request submitted against the preapproval application and the request must include the invoice(s) for the costs for professional services directly related to preparation of the preapproval application. Lastly, this subsection provides that in the event an eligible activity is identified in the schedule of corrective action costs as being payable on a time and materials basis, then details on time and materials for the eligible activity must be submitted in order to obtain coverage.

Subsection (C) provides the specific conditions that must be satisfied before the Department can approve a direct payment request.

Subsection (D) establishes the required information that must be included in a direct payment request for non-preapproved costs of corrective actions that meet the requirements of A.R.S. §§ 49-1054(C)(1) and (C)(2).

Subsection (E) establishes the conditions under which the Department will approve for payment a direct payment request for costs associated with a report.

Subsection (F) provides for Departmental notification to the eligible person or designated representative of an owner or operator of its determination regarding a direct payment request.

Subsection (G) establishes the ability for the Department to approve a part of the costs that are the subject of a direct payment request, provided certain conditions are met, while denying the remaining costs in a direct payment request. Subsection (H) establishes that the Department must make direct payment of approved costs in a direct payment request, minus any copayment amount determined under R18-12-609, using assurance account monies and if necessary, in the order of priority determined according to R18-12-612.

**R18-12-607. Schedule of Corrective Action Costs**

Subsection (A) requires that the Department establish a schedule of corrective action costs in accordance with A.R.S. § 49-1054(C). The Department must establish costs based on its determination of fairness and reasonableness and on price information received by the Department, including invoices submitted by corrective action service providers under contract with the Department pursuant to A.R.S. § 49-1017. In establishing costs, the Department may also consider corrective action costs of eligible activities in other states.

Subsection (B) provides that the schedule of corrective action costs must include phases of corrective action, task based and incremental corrective action costs, and costs for eligible activities invoiced on a time and materials basis that the Department considers fair and reasonable. The schedule of corrective action costs must contain descriptions of each phase of corrective action, and descriptions and allowable costs for each task and increment included in the schedule.

Subsection (C) identifies the required information which the Department will use to evaluate the reasonableness of costs being claimed on a time and materials basis. The required information for corrective action service providers and any subcontractors includes: the hourly labor rate, time and cost for each labor classification utilized in the corrective action service; the equipment rate, time, and cost for each equipment classification utilized in the corrective action service; and itemized material costs expended in the corrective action service. Lastly, the eligible person must identify all costs referenced in this subsection to a summary of work or any written report already on file with the Department.

**R18-12-608. Scope and Standard of Review**

Subsection (A) establishes that the basis for an approval or denial of an application or direct payment request will be the information provided in the application or direct payment request and any supporting information required by this Article. Additionally, the Department may also review any other available information that relates to the corrective action activities being claimed in the application or direct payment request.

Subsection (B) requires that the Department evaluate eligible activities to ensure that they are reasonable and necessary and have met, or when completed will meet, the reporting requirements and corrective action requirements of A.R.S. § 49-1004 or 49-1005; and prescribes the specific standards the Department will use in its evaluation of reimbursement and preapproval applications and direct payment requests, respectively.

Subsection (C) establishes the Department's standard of review for approving an application or direct payment request. The Department must determine whether the eligible person, the corrective action service provider, the UST that is the source of the release, the release and all eligible activities that are the subject of an application or direct payment request meet the requirements of A.R.S. Title 49, Chapter 6 and the implementing rules. Additional conditions set forth include, but are not limited to: the corrective action employed must be the most cost effective alternative to remediate soil, groundwater or surface water under the risk-based corrective action rules at R18-12-263 through R18-12-263.02; the phase(s) of corrective action, task and any incremental cost associated with eligible activities must be included and be within the amounts established in the schedule of corrective action costs; for time and materials review, the schedule of corrective action costs must describe the task or activity as being payable on a time and materials basis; all costs associated with a task must be included in the same application or direct payment request, unless a justification for its exclusion is provided in the summary of work; and for reimbursement and direct payment requests, the costs claimed were actually incurred.

Subsection (D) establishes the conditions under which an application or direct payment request under review by the Department may be supplemented and corrected by the eligible person. An application or direct payment request may be supplemented or corrected only as requested by the Department or as necessary by the eligible person to support the costs claimed in an application or direct payment request. Supplemental information is to be limited to clarifying or providing additional backup documentation and corrections should be limited to clerical errors. No new invoices or costs may be added to the amount originally claimed in the application or direct payment request, and no supplement, correction, modification or alteration of a work plan for preapproval can be made after the Department approves the preapproval application.

Subsection (E), consistent with the principle of *res judicata*, establishes that the Department will deny the resubmittal of any application or direct payment request or any component of an application or direct payment request after the eligible person has exhausted the informal and formal appeal processes described under R18-12-610 and R18-12-611, respectively; or if the eligible person failed to file a notice of disagreement or appeal, as applicable, in a timely manner for the application, direct payment request or component of the application or direct payment request.

Subsection (F) establishes a specific set of costs that are not eligible for coverage or credit against the copayment amount that are in addition to any other determination made by the Department under this Article that costs are not eligible for coverage or credit. This list represents a compilation of types of ineligible costs that have been erroneously included in applications and direct payment requests in the past or the Department otherwise deemed ineligible.

Subsection (G) allows the Department to approve coverage, subject to the provisions of A.R.S. §§ 49-1052 and 49-1054 and this Article, for corrective action costs incurred for reducing the concentration of a chemical of concern to a level below the applicable corrective action standard, if it is demonstrated that the eligible person was unable to con-

trol the technology to prevent reduction in concentration of chemicals of concern to a level below the applicable corrective action standard.

**R18-12-609. Copayments: Applicability, Waivers, and Credits**

Subsection (A) provides that eligible persons must certify to the Department, using a form provided by the Department, that they have met or will meet the copayment requirements of A.R.S. §§ 49-1052(I) and 49-1054(A). If the eligible person meets the certification requirement by having entered into a written agreement with a corrective action service provider to pay the copayment amount, the Department may request submission of a copy of the agreement which the Department must keep confidential to the extent allowed by law. This subsection further requires that the Department withhold the applicable copayment amounts as follows: for a reimbursement application, the copayment amount is defined by the percentage of the approved amount on the reimbursement application minus any allowable credits; and for a direct payment request, the copayment amount is defined by the percentage of the approved amount on the direct payment request itself, minus any allowable credits, and not on the percentage of the total amount approved in the preapproval application. There is no copayment obligation associated with a preapproval application.

Subsection (B) establishes that owners and operators are responsible for a 10 percent or 50 percent copayment obligation, as applicable, in accordance with A.R.S. § 49-1054(A) and R18-12-609(A) and R18-12-601(A)(1), or not responsible for a copayment as set forth at R18-12-601(A)(3).

Subsection (C), consistent with A.R.S. § 49-1052(I), establishes a 10 percent copayment obligation for volunteers and the conditions under which the volunteer may request and the Department may grant a waiver of the 10 percent copayment obligation. The Department may waive a volunteers' copayment obligation if the volunteer demonstrates that 10 percent of the approved costs in a reimbursement application or direct payment request exceeds the assessed valuation of the real property that is the subject of the corrective actions in the reimbursement application or direct payment request. A volunteer makes this demonstration by providing a copy of the unaltered official record of the county indicating the tax assessed full cash value of the property.

Subsection (D), consistent with A.R.S. § 49-1052(A)(7), allows the Department to credit against the copayment amount the professional fees for the preparation of an application or direct payment request, in accordance with the schedule of corrective action costs. This subsection further establishes that the total amount that can be credited to an application or direct payment request cannot exceed the copayment obligation for that application or direct payment request, and any costs incurred for professional fees that exceed the copayment obligation for that application or direct payment request cannot be credited to any other application or direct payment request.

Subsection (E), consistent with A.R.S. § 49-1054(D), establishes that the Department may credit against an owner's or operator's copayment obligation, the costs incurred, at the time of corrective action, for upgrading or replacing the UST system(s) which are the source of the release that is the subject of a reimbursement application or direct payment request. To obtain this credit against the copayment amount, the upgrade or replacement activities must meet the requirements of 40 CFR §§ 280.21 and 280.20, respectively. The total amount credited to a reimbursement application or direct payment request cannot exceed the copayment obligation for that reimbursement application or direct payment request. Lastly, the Department may apply the cost incurred for upgrading or replacing the above-referenced UST system(s) as a credit to one or more reimbursement applications or direct payment requests until the total amount paid for upgrading or replacing the above-referenced UST system(s) is accounted for or until 10 percent of the applicable coverage for the release is credited, whichever occurs first.

**R18-12-610. Interim Determinations, Informal Appeals and Requests for Information**

Subsection (A) requires the Department to issue a written interim determination on an application or direct payment request in accordance with A.R.S. § 49-1091, as long as the application or direct payment request is not found to be incorrect under R18-12-601(C). A written interim determination must also include information related to filing a notice of disagreement. The 90-day time period for the Department to issue the written interim determination under A.R.S. § 49-1091(I) may be extended under A.R.S. § 49-1052(B), if the application is determined to be incomplete.

Subsection (B) provides that an owner, operator, or volunteer may submit a notice of disagreement in response to a written interim determination of the Department, as set forth at A.R.S. § 49-1091(C), or for the Department's failure to issue a written interim determination within 90 days of receipt of an application or direct payment request, in accordance with A.R.S. § 49-1091(I). If a notice of disagreement is filed, the notice of disagreement must be in writing and contain the original signature of the owner, operator, or volunteer; be submitted within 30 days of receipt of the applicable written interim determination; identify and describe the specific portions of the written interim determination with which the owner, operator, or volunteer disagrees; and include a request for an informal appeal meeting with the Department, if the owner, operator, or volunteer desires such a meeting.

Subsection (C), consistent with A.R.S. § 49-1091(C), establishes that if an owner, operator, or volunteer requests an informal appeal meeting with the Department in accordance with R18-12-610(B), the Department must schedule the meeting within 30 days of receiving the notice of disagreement containing the request. Any informal appeal meeting scheduled must be held at the Department at a date and time that is mutually agreed upon between the Department and the owner, operator, or volunteer; and the owner, operator, or volunteer must attend either in person or telephonically, unless they designate, in writing, a person who can represent them at the informal appeal meeting. The owner,

operator, or volunteer must also notify the Department if they intend to bring an attorney to the informal appeal meeting, so the Department can arrange to have an assistant attorney general present.

Subsection (D) provides that the Department may request additional information from an owner, operator, or volunteer who files a notice of disagreement, in accordance with A.R.S. § 49-1091(E), if the information is necessary for the Department to make a final determination on an application or direct payment request. For the information to be considered in the Department's final determination, the Department must receive the requested information within 15 days of the Department's request. An owner, operator, or volunteer may request an additional 60 days to submit the requested information, provided that they make their request for additional time before the information is originally due to the Department. An owner, operator, or volunteer may also provide additional information relating to the subject of the notice of disagreement, which was not requested by the Department, to assist the Department in making a final determination. If necessary, the time-frame for the Department to issue a final determination will be extended to allow the Department at least 15 days to review any additional information.

Subsection (E) establishes that if monies are available in the assurance account, the Department must issue with the written interim determination, or within 15 days of the date of the written interim determination, a payment warrant of approved costs to the eligible person or designated representative to whom the owner or operator has assigned payment under R18-12-603(B)(9).

**R18-12-611. Final Determinations and Formal Appeals**

Subsection (A) establishes that the Department must issue a written final determination to an eligible person regarding an application or direct payment request in accordance with A.R.S. § 49-1091(E) or under R18-12-601(C). The written final determination must meet the requirements of A.R.S. Title 41, Chapter 6, Article 10, the Uniform Administrative Hearing Procedures (UAHP). Consistent with the UAHP, the written final determination must identify the statute or rule on which the Department's action is based, and include a description of the eligible person's right to request a hearing and an informal settlement conference, if desired.

Subsection (B) establishes that an eligible person may appeal a written final determination of the Department by submitting a written notice of appeal or request for hearing with an original signature of the eligible person, in accordance with A.R.S. § 41-1092.03. The Department will forward notices of appeal and requests for hearing filed by the eligible person or an Arizona-licensed attorney representing the eligible person to the Office of Administrative Hearings in accordance with A.R.S. § 41-1092.03.

Subsection (C) provides that the written interim determination, issued under R18-12-610(A), becomes the written final determination if the Department fails to issue a written final determination under R18-12-611(A), as set forth at A.R.S. § 49-1091(E). Any notice of appeal or request for hearing relating to a written interim determination that becomes the written final determination must be submitted in accordance with R18-12-611(B). Such notice of appeal or request for hearing must be submitted to the Department within 30 days of the date on which the written final determination under R18-12-611(A) was due to be issued.

**R18-12-612. Priority of Assurance Account Payments**

Subsection (A) establishes that if the Director determines that the assurance account balance may not be sufficient to pay all approved amounts for applications and direct payment requests that are in process or anticipated to be submitted, then the Department must rank applications and direct payment requests in accordance with R18-12-612(B) and give general notice of the ranking period and direct written notice to each eligible person or designated representative of an owner or operator with an application or direct payment request in process who has not waived financial need priority points. This subsection further establishes the time-frame for issuing the general notice and the individual written notice, as well as the contents of the direct written notice.

Subsection (B) establishes that if it is necessary for the Department to rank applications or direct payment requests under R18-12-612(A), the Department shall establish a ranking period during which the Department assigns priority ranking points and makes payment in accordance with R18-12-612 (C),(D) and (E). The Department must hold a ranking period when accumulated monies in the assurance account, or a portion of the assurance account, are not sufficient to pay all approved costs on reimbursement applications and direct payment requests in process. The ranking period begins on the date the Director determines that the monies in the assurance account are insufficient to pay all approved costs on reimbursement applications and direct payment requests in process and terminates when the Department is able to pay all approved costs on reimbursement applications and direct payment requests in process. Subsection (C) establishes the specific criteria for the Department to use in assigning priority ranking points to applications and direct payment requests during the ranking period.

Subsection (D) provides that, during the ranking period, the Department must rank applications and direct payment requests from the highest to lowest total numerical score in accordance with R18-12-612(C). For applications and direct payment requests with equal scores, the Department must assign the higher priority to the application or direct payment request that was submitted earlier.

Subsection (E) specifies that during the ranking period, the Department must pay available assurance account monies to each scored application and direct payment request in consecutive descending numerical order of priority, until all ranked applications and direct payment requests have been paid, or until the remaining available assurance account

monies are insufficient to make payment equal to the approved amount of the next consecutively ranked application or direct payment request.

Subsection (F) specifies that for any ranked application or direct payment request that did not receive payment under R18-12-612(E), the Department must defer those applications and direct payment requests.

Subsection (G) establishes the Department's obligation to pay for eligible activities performed in accordance with A.R.S. § 49-1053 outside the ranking process, as set forth at A.R.S. § 49-1053(J). Additionally, the Department must pay eligible attorney fees, consultant fees and costs, as provided for in A.R.S. § 49-1091.01, outside the ranking process, as set forth at A.R.S. § 49-1054(F).

**R18-12-613. Determining Financial Need Priority Ranking Points**

Subsection (A) establishes that the Department will assign 0 financial need priority ranking points if the eligible person expressly waives financial need priority points or if they fail to submit a balance sheet and form that meets the requirements of R18-12-614 within 15 calendar days before a ranking period.

Subsection (B) establishes how the Department will evaluate priority ranking points for non-profit and not-for-profit entities.

Subsection (C) establishes how the Department will assign 0 to 50 priority ranking points for an eligible person who is not a local government.

Subsection (D) establishes how the Department will assign 0 to 50 priority ranking points for an eligible person who is a local government.

**R18-12-614. Financial Documents For Determining Financial Need Priority Ranking Points**

Subsection (A) establishes the content of the form that must be submitted by an eligible person who requests priority ranking points for financial need. The form required by this subsection must be submitted with a balance sheet that meets the requirements at R18-12-614(B).

Subsection (B) establishes the minimum requirements that the balance sheet, required to be submitted with the form in R18-12-614(A), along with all prepared notes and schedules must satisfy.

**R18-12-615. Risk Priority Ranking Points**

Subsection (A) requires the Department to assign ranking points for risk to human health and the environment, ranging from 10 to 45 points, based upon the LUST classification provided by the eligible person under R18-12-261.01. If the LUST classification has not been provided to the Department, then the Department will assign 0 risk priority points.

Subsection (B) establishes the priority ranking point scale to be used by the Department in assigning ranking points for risk to human health and the environment, as required by R18-12-615(A).

**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:**

**A. Identification of the Rule**

Title 18, Chapter 12, Articles 1 and 6. Article 1 contains definitions and applicability provisions; Article 6 contains assurance account requirements.

This is known as the Underground Storage Tank Assurance Account rulemaking. The Underground Storage Tank Assurance Account is more commonly known throughout the UST community as the State Assurance Fund, or SAF. The SAF is neither a federally nor state mandated program. The SAF was added to the UST statutes by the Arizona Legislature as a means of providing financial assistance to eligible persons conducting corrective actions in response to releases from regulated underground storage tanks. The SAF is an option available to eligible persons, which is in addition to the other financial assurance mechanisms available to owners and operators under A.R.S. § 49-1006, A.A.C. Title 18, Chapter 12, Article 3, and Title 40, Code of Federal Regulations, Part 280, Subpart H.

The current SAF rules are fairly complicated and difficult to compare with the new SAF rules. The current SAF rules were originally made in 1992 and were supplemented twice in 1996, when they reached their present form. The passage of Senate Bill 1306 in 2004 along with other statutory changes since 1996 have required that the rules be modified again to implement changes in legislation. Additionally, as reflected in the Committee On Appropriations', Minutes of Meeting, dated Tuesday, April 13, 2004, S.B. 1306 was intended, in part, to prevent money from taxpay-

ers to “flow freely” into the pockets of consultants and to ensure that volunteers, as well as owners and operators, “will have to bear part of the expense to hold down the cost of cleanup.” The new rules have substantially changed the format of the current rules, added the “new” provisions of the law, removed sections, and added many administrative changes. Because of this, it is very difficult to trace many of the provisions in the current rules to those in the new rules.

The method of proceeding involves evaluating the changes between the current and new rules from two viewpoints. First, the current set of rules, R18-12-601 through R18-12-610, are examined to identify any changes in the new rule and how those changes might affect owners, operators, volunteers, corrective action service providers, small businesses, the Department of Environmental Quality (ADEQ) and the public. Second, the new rules (R18-12-601 through R18-12-615) are also examined to determine how the new provisions of law and any new administrative changes may affect any of the above.

**Current Rules:**

*R18-12-601. Qualification Standards for Performing Corrective Action Services*

The standards for service providers have been removed to another Section (R18-12-603(B) and R18-12-608(F)) in the new Rule. In the new rule, requirements for registration and licensure for consultants and contractors are established by requiring either registration from the Arizona Board of Technical Registration (BTR) or licensure from the Registrar of Contractors (ROC). The category of “Testers” is eliminated. The requirement for demonstrated “experience” is eliminated as a qualification, as is the ability of a consultant to use education as an alternative to a BTR credential. Any corrective action service provider (either firm or individual) determined not to meet the requirements of the current R18-12-601 before the effective date of the new rule would not be qualified under the new rule. Compliance with corrective action service provider standards will be reviewed at the time each application or direct payment request is received by ADEQ.

The only difference between the current R18-12-601 and the new R18-12-603(B) and R18-12-608(F) is the elimination of work experience as a standard for qualification and the category of tester.

*R18-12-602. Prequalification Status*

The standards for “prequalification” of corrective action service providers have been eliminated from the new rule. The requirement for registration and licensure of these persons is in the new rules (R18-12-603(B) and R18-12-608(F)) and will be reviewed by ADEQ at the time the application or direct payment request is received. ADEQ will not publish a list of “pre-qualified” service providers when the new rule is effective. Any application for prequalification has been eliminated. In addition, corrective action service providers are no longer required to indemnify ADEQ and the state of Arizona for any liability incurred by the state arising out of Departmental designation of the firm as one prequalified to perform corrective action services.

ADEQ will depend on the BTR and ROC for oversight of the qualifications of any corrective action service provider. The current rules allow ADEQ to revoke prequalification status for substandard work and failure to meet standards for remediation. It is doubtful that the BTR or ROC is capable of detecting these types of problems with corrective action service providers. However, ADEQ can provide information on substandard work to the BTR and ROC if detected.

Under the new rules, ADEQ will review qualifications through verification of Registration/Licensure. This will mitigate the administrative burden on ADEQ but will require the eligible person to find a corrective action service provider that is competent to conduct SAF eligible activities. Currently, eligible persons have a relative sense of surety in retaining a firm on the ADEQ published list of prequalified service providers in spite of the ADEQ’s disclaimer on the quality of work that may be performed by any listed entity.

Since ADEQ will no longer predetermine which corrective action service providers meet minimum qualification requirements, the burden remains on the technical staff of the UST Corrective Action Section of ADEQ to ensure that the corrective actions performed at LUST sites meet industry standards and satisfy regulatory requirements. This will lessen the administrative burden on ADEQ’s SAF personnel during the review process, because they no longer have to review qualification documentation to verify level of experience or education. However, removal of detailed ADEQ-specific criteria potentially places greater responsibility on an eligible person intending to select a qualified service provider to comply with ADEQ cleanup requirements. The eligible person must determine that the potential corrective action service provider meets the BTR or ROC requirements and has experience sufficient to effectively perform the corrective action or other eligible activity. Effectively, the eligible person must either use a referral from another business, referral from trade organizations or business associations, or work through the Yellow Pages to find a person with the required credentials and experience to perform corrective action services.

Additionally, removing the prequalification list may put small environmental consulting and remediation businesses at a comparative disadvantage, since large firms may be able to compete more favorably with advertising and contacts that small businesses lack. However, trade organizations such as the Arizona Petroleum Marketers Association and Automotive Service Association of Arizona allow corrective action service providers to become members or associate members of their organizations, and may give small environmental consulting and remediation businesses an opportunity to contact their members who are UST owners and operators.

Notices of Final Rulemaking

At present, SAF staff receives less than one phone call per month from owners and operators requesting guidance on finding corrective action service providers and these calls tend to be from owners or operators that are located outside of Arizona.

R18-12-603. Retention of Prequalification Status

The standards for retention of prequalification of corrective action service providers have been eliminated from the new rule as they are rendered moot with the elimination of the provisions for prequalification.

*R18-12-604. Individual Applicant: Application Requirements*

The provisions of this current Section have been removed to four Sections of the new rule (R18-12-603(B), R18-12-604(B), R18-12-605(B) and R18-12-606(B)). R18-12-603(B) establishes the universal content for reimbursement and preapproval applications, and direct payment requests; however, content unique to each is in R18-12-604(B), R18-12-605(B), and R18-12-606(B), respectively.

The major difference between application/direct payment request content between the current R18-12-604 and the above referenced subsections of the new rule is the elimination of the requirement to submit financial information. The financial information has been necessary for prioritizing SAF payment (ranking). The new rule provides for a voluntary submission when and if ranking is necessary. The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. Because the probability of instituting ranking is low, the requirement for submission of financial information for each eligible person is a waste of resources for all concerned. Also, the requirements for submitting income tax returns with applications have been eliminated.

The present administrative cost to ADEQ of reviewing and storing the mandatory submitted documents will be significantly diminished, if not eliminated by the new rule. Similarly, the eligible persons will not be required to develop and submit potentially sensitive financial information unless it will directly and eminently serve the objectives of the eligible person. There will be a savings in time and money for all concerned.

*R18-12-605. Determination of Reasonableness of Cost*

The provisions of this Section of the current rule regarding the establishment of cost schedules have been removed to R18-12-607 and the list of eligible costs have been revised in R18-12-608 of the new rule.

*R18-12-605.01. Soil Clean-up Standards*

The provisions of this Section of the current rule have been removed to R18-12-608 of the proposed rule as necessary to supplement provisions elsewhere in A.A.C. Title 18, Chapter 12.

R18-12-606. Determination of Priority of Payment: Ranking Process

The provisions of this Section of the current rule have been removed to R18-12-612 through R18-12-615 of the new rule. The priority ranking will no longer be undertaken on a periodic basis but at a time determined by the Director of ADEQ. Since priority ranking is only necessary when funds become limited, it may not be necessary to use this process.

The ranking process is approximately the same as that in the current rule. However it has been consolidated in the new rule to reflect the actual practice employed when ranking was necessary.

*R18-12-607. Direct Pay and Preapproval of Funds*

The provisions of this Section of the current rule have been removed to R18-12-603 and R18-12-605 of the new rule. The preapproval process has been significantly modified to reflect current statute and to implement the rules on release reporting and corrective action made August 20, 2002, including using the LUST Site Classification scheme under R18-12-261.01, to determine the relative risk of a release.

*R18-12-607.01. Pre-approval*

The provisions of this Section of the current rule have been removed to R18-12-605 and R18-12-606 of the new rule. The preapproval process has been significantly modified to reflect current statute and the rules on release reporting and corrective action made August 20, 2002.

*R18-12-608. Reduction in Reimbursement*

This Section of the current rule has been eliminated in the new rule. The provisions of the current R18-12-608 were rendered moot on April 25, 1994 with the passage of HB 2226 (41st Legislature, 2nd Regular Session, 1994) which repealed its authorizing statute (A.R.S. § 49-1053) and provided for return of withheld SAF payments due to application of the rule.

*R18-12-609. Payout Determination; Disagreements*

The provisions of this Section of the current rule have either been removed to R18-12-604, R18-12-605 and R18-12-606 related to SAF determinations or removed (in favor of reliance on A.R.S. § 49-1091) in the new rule.

*R18-12-610. Appeals*

The provisions of this Section of the current rule are redundant with the provisions of A.R.S. Title 41, Chapter 6, Article 10 and are removed from the new rule in favor of reliance on the governing statutes.

**New Rules:**

*R18-12-601. Eligibility*

The provisions of this Section reflect the statutory coverage maximum established by A.R.S. § 49-1054, while accounting for the waiver of copayment obligations for volunteers under A.R.S. § 49-1052(I) and the allocated liability considerations established under A.R.S. § 49-1019(E). Additionally, this Section reflects the activities eligible for coverage as described at A.R.S. § 49-1052(A) and incorporates the deadlines established by Laws 2004, Chapter 273, Section 9.

Lastly, the conditions listed at R18-12-601(C), represents those conditions that cannot be corrected, or, in the case of delinquent fees and taxes, have not been cured in order to gain eligibility for coverage from the SAF. If the eligible party has documentation that refutes the Department's position, the formal appeal process, which includes the ability to request and hold an informal settlement conference, is available to the eligible person.

If the situation exists where the application or direct payment request is determined to be incorrect, based on administrative or clerical errors, then the eligible person can simply correct the error(s), and prepare and submit a new application or direct payment request. Incurring attorney's fees and other appeal costs to correct the error(s) is not necessary.

It is important to note that it is more likely that administrative and clerical errors would cause an application or direct payment request to be incomplete, as set forth at A.R.S. § 49-1052(B). A.R.S. § 49-1052(B) provides the time-frame for the Department to identify and notify an owner or operator that a reimbursement application or direct payment request is incomplete and provides a time-frame for the owner or operator to provide the additional information. Furthermore, if the owner or operator needs additional time to submit the missing information, A.R.S. § 49-1052(B) gives the owner or operator the ability to request and requires the Department to grant an additional 60 days.

If the Department determines that an application or direct payment request is incorrect under R18-12-601(C), no other determinations regarding individual costs will be made. Therefore, once all ineligibility issues have been resolved, a new application or direct payment request can be submitted and the Department will review the application and direct payment request in accordance with the rules. By submitting only eligible applications and direct payment requests, and curing delinquent fees and taxes prior to submitting an application or direct payment request to the Department; determinations under R18-12-601(C) can be avoided.

*R18-12-602. Applicability*

The provisions of this Section establish that all applications and direct payment requests submitted to the Department after the effective date of the rules are subject to the requirements of this Article, and that these rules will not supersede the provisions governing applications or direct payment requests in an order of the Director or a court of competent jurisdiction.

Pursuant to R18-12-602(A), the Department will pay direct payment requests submitted against a preapproval work plan approved by the Department prior to the effective date of the rules in accordance with R18-12-606 and the Department's preapproval.

The Department is confident that requiring direct payment requests submitted after the effective date of these rules to be in compliance with these rules, even if the preapproval application against which the direct payment request is submitted is not subject to these rules, will not be burdensome. The basis for this assertion is that the corrective actions that are the subject of the preapproved work plan, no matter when that work plan was approved, must satisfy the requirements of A.R.S. § 49-1005, and when applicable, the Release Reporting and Corrective Action rules (R18-12-250 through R18-12-264.01). The direct payment requests, the phases of corrective actions, and the tasks and incremental costs established within the cost schedule, are all directly based on the corrective action statutes as well as the Release Reporting and Corrective Action rules. Therefore, if the claimed activities are consistent with the preapproved work plan, complying with the direct payment requests established under these rules will not create an adverse economic impact.

*R18-12-603. General Application and Direct Payment Request Requirements*

The provisions of this Section establish the universal content for reimbursement and preapproval applications, and direct payment requests. Under this Section, if ranking is required, the eligible person is given the option of submitting financial information to obtain ranking priority points. There is a change in the standard for document preparation in the new rule (R18-12-614(B)(4)) which requires a financial statement "prepared by an independent public accountant from a firm that is not affiliated with the eligible person." The Department reviewed invoices from a CPA that has developed financial statements for UST owners and operators on behalf of the Department. The cost associated with complying with R18-12-614(B)(4) was found to be less than \$500.00. Since this cost is directly related to the preparation of an application or direct payment request, the cost incurred for this service can be applied against the eligible person's copayment obligation by being claimed as an increment to the task-based cost for application

preparation. Given the unlikelihood that ranking will be required in the future, relief from the expense of submitting a balance sheet and income tax statements with each application, the minimal cost associated with the preparation of a balance sheet under the new rule, and the fact that the cost incurred for the preparation of the balance sheet can be applied against the eligible person's copayment obligation; the Department does not believe that this requirement will create any financial hardships for persons seeking coverage from the SAF and a savings may well be realized.

*R18-12-604. Reimbursement Application Process*

The provisions of this Section establish the corrective action activities for which an eligible person or the designated representative of an owner or operator may request reimbursement from the Department through the submittal of a reimbursement application, and requires a reimbursement application to be on a form prescribed by the Department and mandates that a reimbursement application include the general requirements of R18-12-603. The reimbursement application may also include requests for certain credits to be applied to the copayment obligation of the eligible person or designated representative of the owner or operator as well as content requirements specific to a reimbursement application. The Section also establishes the process to be applied in ADEQ determination of the approved amount for a reimbursement application.

*R18-12-605. Preapproval Application Process*

The provisions of this Section establish the corrective action activities for which an eligible person or the designated representative of an owner or operator may request preapproval from the Department through the submittal of a preapproval application, and requires a preapproval application to be in a form prescribed by the Department and mandates that a preapproval application include the general requirements of R18-12-603. The preapproval application must also include a work plan meeting the requirements of R18-12-605(C). The Section also establishes the process to be applied in ADEQ determination of the approved amount for a preapproval application.

This rule also provides a procedure under which the Department may terminate an antiquated work plan, after granting the eligible person both informal and formal appeal rights under R18-12-610 and R18-12-611. The Department may only terminate under the following seven enumerated instances:

1. The eligible person at the time of the approval of the preapproval application is no longer an eligible person;
2. The work objectives of the preapproved work plan have been accomplished or the release has been closed by the Department under R18-12-263.03 for more than one year;
3. The eligible person has made no request for coverage related to corrective actions in the preapproved work plan within two years of the Department's final determination approving the preapproved work plan or within two years of the submission of the last direct payment request against the preapproved work plan;
4. Information available to the Department indicates site conditions have changed to the extent that the provisions for payment of non-preapproved work at A.R.S. §§ 49-1054(C)(1) and (C)(2) cannot be applied to meet the work objectives of the preapproved work plan;
5. Information available to the Department indicates that site conditions have changed to the extent that the work preapproved in the work plan is no longer reasonable, necessary, cost-effective or technically feasible;
6. The total approved amount on all direct payment requests equal or exceed the preapproved amount. The termination shall be effective upon approval of the first direct payment request that includes approved costs that when added to all other approved costs on all other direct payment requests equals or exceeds the preapproved amount; or
7. The corrective actions in the preapproved work plan will no longer provide protection to human health and the environment.

The Department intends the language "information available to the department indicates site conditions have changed ..." to mean something significant has occurred at the site rendering the chosen remedial alternative ineffective, or more importantly, a change at or near the site increases the risk to human health or the environment. For example, a work plan may have been approved for monitored natural attenuation; however, a neighbor has since installed a well on their property, lowering the water table and causing the formation of free product. Under this circumstance, the chosen remedial alternative is no longer appropriate and the risk posed to the neighbors' well is quite significant. Therefore, the Department would exercise its discretion and terminate the work plan, giving the eligible person an opportunity to informally appeal the Department's decision.

Lastly, this Section provides a workable procedure for the implementation of A.R.S. § 49-1053(A). A.R.S. § 49-1053(A) reads, in relevant part, "Beginning on July 1, 2005, a person taking corrective action pursuant to section 49-1052, subsection I [i.e. volunteers] shall proceed only in accordance with the preapproval process described in rule for any claims made for costs incurred in excess of one hundred thousand dollars at a single facility."

The Department realized that following the discovery of a new release or free product, there may be corrective action activities that need to be initiated immediately or as soon as practicable, to minimize or prevent the spread of contamination or to provide adequate protection to public health and welfare and the environment. Therefore, the Department identified several crucial eligible activities and deemed them preapproved for a period of 90 days.

Since the activities contemplated after the discovery of a new release are consistent with the initial response, abatement, and site characterization requirements of R18-12-261, the Department believes that the 90-day time-frame for

performing the necessary activities and submitting an initial site characterization under R18-12-261 is quite appropriate for the deemed preapproved provisions at R18-12-605(I).

Additionally, the Department had originally intended the free product investigation and removal activities to be consistent with the requirements of R18-12-261.02, and therefore, had deemed these activities preapproved for a period of 45 days. However, the Department, after receiving informal comments submitted by interested stakeholders during the informal comment period, elected to extend this time period to 90 days to keep all time-frames under R18-12-605(I) consistent.

The provisions at R18-12-605(I) should not be read to mean that the volunteer must wait until the 90-day time period has lapsed before preparing and submitting a preapproval application to the Department. With effective project management and advanced planning, a preapproval application can be prepared and submitted prior to the expiration of the 90-day period.

It should be noted that under the current rule, these activities are deemed preapproved for only the first 45 days after discovery (R18-12-607.01(D)(5)). The provisions of the current rule were codified in response to a statutory requirement mandating preapproval for all claimed corrective action work performed from August 15, 1996 to May 28, 1998. Despite the demonstrated workability of the 45 day allowance in the current rule, this rule doubles the allotted time.

#### *R18-12-606. Direct Payment Request Process*

The provisions of this Section establish the corrective action activities for which an eligible person or the designated representative of an owner or operator may request direct payment from the Department through the submittal of a direct payment request, and requires a direct payment request to be on a form prescribed by the Department and mandates that a direct payment request include the general requirements of R18-12-603. The direct payment request may also include requests for certain credits to be applied to the copayment obligation of the eligible person or designated representative of the owner or operator as well as content requirements specific to a direct payment request. The Section also establishes the process to be applied in ADEQ determination of the approved amount for a reimbursement application.

Additionally, this Section provides for an eligible person to request a credit towards the copayment amount for the costs of professional services to prepare the preapproval application and/or the direct payment request and provides for an owner or operator to request a credit towards the copayment amount for the costs of upgrading or replacing an UST system that is a subject of the direct payment request, provided the requirements of A.R.S. § 49-1054(D) are satisfied. Furthermore, to eliminate tracking errors or potential multiple payments, this Section requires that a request for credit for preparation of the preapproval application against the copayment must be included in the eligible person's first direct payment request submitted against the preapproval application and the request must include the invoice(s) for the costs for professional services directly related to preparation of the preapproval application.

R18-12-606(D) sets forth the procedures for implementing A.R.S. § 49-1054(C)(1) and (C)(2). A.R.S. § 49-1054(C)(1) deals with cost for a work item that is substituted for a work item that was set forth in the preapproved work plan. The provisions in subsection R18-12-606(D)(1) of the rule deals specifically with this issue; and distinguishes it from the concept addressed by A.R.S. § 49-1054(C)(2). Additionally, the definition of the term "substituted work item" as well as the intent of R18-12-608(B)(3)(b) is consistent with the provisions found at A.R.S. § 49-1054(C)(1) and R18-12-606(D)(1), in that they address the situation of payment from the SAF when a work item is substituted for a work item that was set forth in a preapproved work plan.

The Department's position is that in order for a work item to be substituted for a work item that was set forth in a preapproved work plan; the substituted work item must accomplish the same work objective as the preapproved work item. If the work items accomplish different objectives, then intuitively one cannot be in substitution for the other.

A.R.S. § 49-1054(C)(2) deals with cost for work that was not specified in the work plan and was not performed in substitution for another work item. Germane to this discussion is the stem of A.R.S. § 49-1054(C) which reads, in relevant part, "The Department shall pay for work item costs as if the work was specified within the preapproved work plan **if the work is within the work objectives of a preapproved work plan, ...**" (emphasis added.) In this situation, R18-12-606(D)(2) and R18-12-608(B)(3)(c), consistent with A.R.S. § 49-1054(C)(2), discusses how payment from the SAF can be achieved.

Pursuant to A.R.S. § 49-1054(C)(2), the cost associated with reasonable and necessary work that is not specified within a preapproved work plan, and is not a substituted work item is eligible for payment from the SAF if the work: is within the work objectives of the preapproved work plan; does not result in payments under the preapproved work plan to exceed the total preapproved amount; and does not exceed the cost schedule for that work item.

If there are work items that have been preapproved, but site conditions render those work items unnecessary or costs incurred are less than what was preapproved for a work item, then the eligible person may waive (i.e. agree not to make future claim for) the costs preapproved for those unnecessary work items or the remaining balance (e.g. those cost savings) and request the monies be applied to the costs of the reasonable and necessary work that was not specified in the preapproved work plan, to the extent that it does not result in payments under the preapproved work plan to exceed the total preapproved amount.

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If the eligible person chooses to use the cost savings to cover the costs of the reasonable and necessary work that is not specified within a preapproved work plan, then the eligible person must waive any current or future claim for the cost or remaining balance, as applicable, of the preapproved work item subject to this scenario. R18-12-606(D)(3) and R18-12-608(B)(3)(d) specifically deal with the waiver provisions.

A.R.S. § 49-1054(C)(2) also provides additional flexibility to the person making the direct payment request. In the event all of the provisions for payment in A.R.S. § 49-1054(C)(2) are met, except for the prohibiting of payment in excess of the preapproved amount, full payment may still be made. The subsection allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as specifically provided in A.R.S. § 49-1054(C)(2). In the event prioritization of SAF payments (ranking) becomes necessary, only the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2). It is important to understand that, pursuant to A.R.S. § 49-1054(C)(2), all of the pre-approved amount must be exhausted through approved costs of specifically preapproved activities, substituted activities, or non-preapproved activities that are reasonable, necessary and within the work objectives of the preapproved work plan before the amount subject to ranking can be determined.

*R18-12-607. Schedule of Corrective Action Costs*

The provisions of this Section require that the Department establish a schedule of corrective action costs in accordance with A.R.S. § 49-1054(C). A.R.S. § 49-1054(C), in relevant part, requires that “[a]t least every three years, the department shall establish a cost schedule which the department considers reasonable. For those years that the department does not establish a cost schedule, all costs shall be adjusted annually in accordance with the percentage change in the bureau of labor statistics annual number for the final producer price index for finished goods less food and energy not seasonally adjusted.” Undergoing a formal rulemaking for the establishment of the cost schedule is neither contemplated by the governing statutes nor realistically feasible, given the required frequency imposed on the Department and the time and resources necessary to promulgate a formal rule. Additionally, two separate statutory provisions require that the persons affected by a substantive policy be informed prior to the effective date of the substantive policy.

A.R.S. § 49-1014(B)(1) requires that the Director “...provide written notice to persons regulated by this chapter before the effective date of a policy or guideline that affects the substantive rights of owners and operators or other parties regulated under the underground storage tank program.” Additionally, A.R.S. § 49-1092(D)(3) requires that the UST Policy Commission “[h]ave a least thirty days to review and make recommendations to the director before the department’s adoption of substantive policies or guidelines of the program that affect the substantive rights of owners and operators or other regulated parties.”

Therefore, while the establishment of new cost schedules will be subject to public participation through the UST Policy Commission and notice must be given to all affected parties prior to implementation of the new cost schedule; the Department will not have to go through the formal rulemaking process to establish new cost schedules.

The Department must establish costs based on its determination of fairness and reasonableness and on price information received by the Department, including costs submitted to the SAF for eligible activities over the history of the program and invoices submitted by corrective action service providers under contract with the Department pursuant to A.R.S. § 49-1017. In establishing costs, the Department may also consider corrective action costs of eligible activities in other states.

A.R.S. § 49-1054(C) prohibits the Department from paying incurred costs that “exceed the amount for that task in the applicable cost schedule.” Therefore, an economic impact may be created when an eligible person incurs costs in excess of the established cost schedule.

*R18-12-608. Scope and Standard of Review*

The provisions of this Section codify all of the statutory requirements that must be satisfied before payment from the SAF can be disbursed. The Department has been questioned by the regulated community during UST Policy Commission meetings, UST Program conferences, informal discussions, and numerous appeal meetings on how the Department determines a cost to be reasonable and necessary. The Department has answered this question by placing its standard of review in rule.

The rule language simply codifies all of the statutory requirements applicable when determining if a requested cost is eligible for payment from the SAF, and the Department finds that a collection of all legal requirements into one list will assist the public and the Department in administration of the program more efficiently.

The requirements of rule R18-12-608(C) are listed below with the accompanying statutory authority cited at the end of each requirement:

1. A corrective action is reasonable and necessary if the standard of subsection (B) is met and if all of the following are true:
  - a. For soil remediation, the corrective action employed is the most cost effective alternative to remediate soil under the risk based corrective action rules at R18-12-263 through R18-12-263.02 to health based levels that allow either restricted or unrestricted use of the property that is the subject of the corrective actions [A.R.S.

- § 49-1052(N)];
- b. For groundwater or surface water remediation, the corrective action employed is the most cost effective alternative to remediate groundwater or surface water under the risk-based corrective action rules at R18-12-263 through R18-12-263.02 [A.R.S. § 49-1052(N)];
  - c. The corrective action is an eligible activity associated with a phase of corrective action and the phase or phases of corrective action that are the subject of the application or direct payment request are identified by the eligible person [A.R.S. §§ 49-1054(C) and 49-1014(A)];
  - d. The phase or phases of corrective action, task and any incremental cost is included in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
  - e. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
  - f. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed [A.R.S. § 49-1054(C)];
  - g. The eligible activities were actually performed in accordance with the applicable description in the schedule of corrective action costs [A.R.S. §§ 49-1054(C) and 49-1014(A)];
  - h. To the extent practicable, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work. The Department shall not approve incremental costs associated with a task if the task and other incremental costs associated with the task have been submitted in a separate reimbursement application or direct payment request, unless it includes a reference to the previously submitted summary of work that documents the rationale required by this subsection. The separate reimbursement application or direct payment request under this subsection shall be subject to all applicable standards of this Section [A.R.S. § 49-1014(A)];
  - i. The corrective action is technically feasible [A.R.S. § 49-1052(D)]; and
  - j. For reimbursement applications and direct payment requests, the costs claimed were actually incurred [A.R.S. § 49-1054(C)].
2. A permanent closure is reasonable and necessary if all of the following are true:
    - a. The permanent closure meets the requirements of A.R.S. § 49-1008 and implementing rules [A.R.S. §§ 49-1052(A)(3), (A)(4) and (A)(6)];
    - b. The permanent closure is eligible for coverage under A.R.S. § 49-1052(A) [A.R.S. § 49-1052(A)];
    - c. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
    - d. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed [A.R.S. § 49-1054(C)]; and
    - e. The costs claimed were actually incurred [A.R.S. § 49-1054(C)].
  3. A cost is reasonable if it does not exceed a corresponding cost or costs in the schedule of corrective action costs. For costs that are not in the schedule of corrective action costs, a cost is reasonable as determined by the Department using the standard described in R18-12-607 [A.R.S. §§ 49-1054(C) and 49-1014(A)].

When the Department approves a preapproval work plan and application, the Department, in essence, has determined that the eligible person has met the standard of review established under R18-12-608(C). When a direct payment request is submitted against the work plan, the Department will review the direct payment request in accordance with R18-12-606.

A separate review for compliance with R18-12-608(C) is not directly performed on the direct payment request unless the request includes substitutions or waivers under A.R.S. § 49-1054(C)(1) or (C)(2). While R18-12-608(C) establishes the standard of review; R18-12-608(B) establishes the method for applying those standards to the reimbursement application, preapproval application and direct payment request. In R18-12-608(B)(3), a direct payment request must be reviewed, but only to determine if the corrective action: 1) was performed as set forth in the preapproval (R18-12-608(B)(3)(a)); 2) was substituted for a preapproved corrective action, and accomplished the same objective of the preapproved corrective action using a different methodology and satisfied the other criteria for substitutions required for payment as established in A.R.S. § 49-1054(C)(1) (R18-12-608(B)(3)(b)); and/or 3) was not preapproved and is not a substitution, but is within the work objectives of the preapproved work plan and meets the other criteria required for payment as established in A.R.S. § 49-1054(C)(2) (R18-12-608(B)(3)(c)).

Therefore, if the direct payment request includes work items specifically preapproved, the conditions at R18-12-608(C) are presumed to be satisfied by virtue of the review that was conducted during the review and approval process of the preapproval application. Only when the direct payment request includes work items that are

not performed as specifically preapproved is further review required. The standards for payment of substituted work items in A.R.S. § 49-1054(C)(1) must be verified as must the payment standards for the non preapproved, non substituted work items in A.R.S. § 49-1054(C)(2).

Among the requirements of A.R.S. § 49-1054(C)(2), the Department must determine that the non preapproved, non substituted work item is reasonable and necessary before payment can be made. The standards for this determination are in R18-12-608(C)(1).

All of the conditions listed at R18-12-608(C) are statutory requirements that must be satisfied before payment from the SAF can be made, and R18-12-608(C)(1)(h) is authorized by A.R.S. § 49-1014(A) and is not a mandatory requirement.

R18-12-608(C)(1)(h) reads in relevant part, “**To the extent practicable**, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work.” Emphasis added.

If some costs, for whatever reason, cannot be included in the reimbursement application or direct payment request, then the eligible person need only provide that information in the summary of work along with a rationale for its exclusion. The Department intends this provision to simplify the process for both the eligible person and the Department by keeping costs for a particular task together in one application or direct payment request, to the extent practicable.

Experience has taught the Department that when costs that are related to one another are billed separately over multiple applications and direct payment requests; errors, confusion and unnecessary appeals result. The Department does, however, acknowledge that including all costs associated with a particular task may not be feasible in each and every situation. Therefore, the rule provides flexibility to accommodate these situations.

In R18-12-608(F), the Department used its judgment and experience in identifying ineligible costs that are commonly submitted for coverage from the SAF. The establishment of this list is designed to clearly communicate the costs the Department has deemed ineligible. By adhering to this list, eligible persons avoid all appeal costs associated with the listed items.

The requirements of rule R18-12-608(F) are listed below with the accompanying statutory authority cited at the end of each requirement:

1. Costs associated with a document identified on the following list unless the document identified is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed, provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration: [A.R.S. § 49-1052(D)]
  - a. The LUST site classification form under R18-12-261.01;
  - b. The LUST site characterization report under R18-12-262(D);
  - c. A corrective action plan under R18-12-263(D) and R18-12-263.02;
  - d. A corrective action completion report under R18-12-263.03(D);
  - e. Periodic site status reporting under R18-12-263(G).
2. Costs for eligible activities if the corrective action service provider who is a contractor did not hold a valid license from the Arizona Registrar of Contractors and, if required, a valid certification under Article 8 at the time of performance of the eligible activity. [A.R.S. § 49-1052(D)]
3. Under A.R.S. § 49-1052(A)(1), costs for collecting, analyzing and reporting samples pursuant solely to a site check or to investigate a suspected release, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirms a release requiring corrective action and the report required under R18-12-260(C) shall be eligible for assurance account coverage. [A.R.S. § 49-1052(A)(1)]
4. Under A.R.S. § 49-1052(A)(2), costs for collecting, analyzing and reporting samples associated solely with an UST system permanent closure, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirm a release and the report required under R18-12-271(D) shall be eligible for assurance account coverage. [A.R.S. § 49-1052(A)(2)]
5. Subject to subsection (G), costs for other than the most cost effective risk based corrective action in accordance with A.R.S. § 49-1005 and implementing rules. [A.R.S. § 49-1052(N)]
6. Unless the tier evaluation meets the requirements of R18-12-263.01(A), costs for performing a risk-based tier II or tier III risk assessment. [A.R.S. § 49-1052(N)];
7. Costs for installing engineering controls, unless the installation of the engineering controls meets the requirements of A.R.S. § 49-1052(D), A.R.S. § 49-1005 and implementing rules, as necessary to achieve risk-based corrective action standards in accordance with R18-12-263.01. [A.R.S. § 49-1052(N)]
8. Costs for maintaining engineering controls. [A.R.S. § 49-1052(A)(5)]

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9. Costs for preparing a preapproval application or work plan that was not submitted to the Department, approved by the Department, and implemented by the eligible person. [A.R.S. § 49-1054(C) and A.R.S. § 49-1014(A)]
10. Costs for remodeling, renovating, replacing or reconstructing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning or similar item at the facility. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
11. Costs for demolishing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning or similar item at the facility unless the demolition is reasonable and necessary and meets the requirements under A.R.S. § 49-1052(D) to complete the corrective action. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
12. Costs for resurfacing with new materials of a kind and quality exceeding those in place before corrective action. Any eligible resurfacing shall be limited to the same area of surfacing required to be removed or destroyed during the corrective action. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
13. Attorney fees, consultant fees and costs for appeals that do not meet the requirements under A.R.S. § 49-1091.01, unless fees and costs are awarded under A.R.S. § 41-1007. [A.R.S. § 49-1091.01]
14. Costs for activities that are not eligible for coverage under A.R.S. § 49-1052(A) or that do not contribute to corrective action to the release that is the subject of the application or direct payment request. [A.R.S. § 49-1052(A) and A.R.S. § 49-1014(A)]
15. Costs related to documentation in an application or direct payment request if the Department has reason to believe the documentation has been altered or falsified. [A.R.S. § 13-2311]
16. Costs for professional services to prepare the application or direct payment request if the application or direct payment request is incomplete, incorrect, or if zero claimed costs are approved. [A.R.S. § 49-1052(A)(7), A.R.S. § 49-1014(A) and A.R.S. § 49-1052(D)]
17. Costs for repair, restoration or replacement of property due to damage, theft, pilferage, vandalism or malicious mischief. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
18. Except for interest payable under A.R.S. § 49-1052(K), costs for loss of time or market. [A.R.S. § 49-1052(K)]. The list found at R18-12-608(F) will result in cost savings to the SAF, however, an economic impact may be created if an eligible person elects to incur costs for any of the ineligible activities listed.

The 2005 cost schedules include task-based costs for application preparation that allow from \$933 to \$1,368, depending on type and amount of invoices submitted, to be claimed as a credit against the copayment amount for preparation of an application or direct payment request. The Department wants to encourage eligible persons and the professionals preparing applications and direct payment requests to exercise care and caution when preparing an application or direct payment request for submittal to the Department.

R18-12-609. Copayments: Applicability, Waivers, and Credits

The provisions of this Section establish: 1) that owners and operators are responsible for a 10 percent or 50 percent copayment obligation, as applicable, in accordance with A.R.S. § 49-1054(A) and R18-12-609(A) and R18-12-601(A)(1), or not responsible for a copayment as set forth at R18-12-601(A)(3); 2) a 10 percent copayment obligation for volunteers and the conditions under which the volunteer may request and the Department may grant a waiver of the 10 percent copayment obligation, in accordance with A.R.S. § 49-1052(I); and 3) that eligible persons must certify to the Department, using a form provided by the Department, that they have met or will meet the copayment requirements of A.R.S. §§ 49-1052(I) and 49-1054(A). If the eligible person meets the certification requirement by having entered into a written agreement with a corrective action service provider to pay the copayment amount, the Department may request submission of a copy of the agreement which the Department must keep confidential to the extent allowed by law.

A.R.S. § 49-1052(I) reads, in relevant part, "A person who takes corrective action pursuant to this subsection shall submit certification to the department that the person has paid the remaining costs or has agreed to pay those remaining costs as **demonstrated** in an existing agreement." Emphasis added. A.R.S. § 49-1054(A) reads, in relevant part, "The owner or operator shall pay the remaining costs of the eligible activities pursuant to section 49-1052, subsection A and shall submit certification that the owner or operator has paid those remaining costs or has agreed to pay those remaining costs as **demonstrated** in an existing agreement." Emphasis added.

Each of these provisions establishes two authorities. First, to receive payment, the person must make certification. The certification is that the person has either paid or has agreed to pay the copayment amount. The second empowerment is in the use of "demonstrated." This authorizes ADEQ, in the event the certification relates to the agreement to pay the copayment amount, to receive the agreement "demonstrating" the validity of that certification. This is parallel to the empowerment in A.R.S. § 49-1054(C) as respects SAF payment for costs "actually incurred." ADEQ has required this payment demonstration since the initial payment from the Assurance Account.

To lessen the burden on both the eligible person and ADEQ, the rule provides for submission of these agreements (i.e. the demonstration) upon request of ADEQ instead of a blanket requirement that the demonstration be made with each certification. The rule, possibly, could be revised to require the demonstration with each certification where an agreement is involved. ADEQ feels, however, this is not necessary and is utilizing its discretion in implementing the statute.

R18-12-610. Interim Determinations, Informal Appeals and Requests for Information

The provisions of this Section codify the informal appeal process authorized by A.R.S. § 49-1091, following the issuance of a written interim determination on an application or direct payment request.

A.R.S. §§ 49-1091(A), (B), (C), and (I) each limit owners, operators and volunteers as being the only parties capable of filing a written notice of disagreement (i.e. an informal appeal) in regards to a written interim decision or determination of the Department or the Department's failure to issue a written interim decision or determination. This rule establishes the procedures for filing an informal appeal; the procedures for requesting and the time-frame for scheduling an informal appeal meeting; the procedures for requesting and the time-frame for submitting additional information, including the ability for the eligible person to request an extension to the time-frame for the submittal; and the procedures for issuing a payment warrant for approved costs, less any applicable copayment amount.

*R18-12-611. Final Determinations and Formal Appeals*

The provisions of this Section codify the formal appeal process authorized by A.R.S. § 49-1091, following the issuance of a written interim determination on an application or direct payment request. § 49-1091(E) sets forth that "[t]he department shall issue a final written decision or determination within 45 days of receiving the notice of disagreement or within fifteen days of a meeting pursuant to subsection C of this section, whichever is later. If no notice of disagreement is filed, the department shall issue a final written decision or determination within 45 days after the issuance of the interim decision or determination."

Lastly, A.R.S. § 49-1091(E) reads, in relevant part, "[t]he final written decision or determination is the only decision or determination that is appealable as an appealable agency action as defined in § 41-1092 or a contested case as defined in § 41-1001."

*R18-12-612. Priority of Assurance Account Payments*

The provisions of this Section establish the procedures for implementing the requirements of A.R.S. § 49-1052(G). This rule establishes that if the Director determines that the assurance account balance will not be sufficient to pay all approved amounts for applications and direct payment requests that are in process or anticipated to be submitted, then the Department must rank applications and direct payment requests in accordance with R18-12-612(B) and give general notice of the ranking period and direct written notice to each eligible person or designated representative of an owner or operator with an application or direct payment request in process who has not waived financial need priority points. This subsection further establishes the time-frame for issuing the general notice and the individual written notice, as well as the contents of the direct written notice.

The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. This opinion is based in part on the fact that no new releases will be eligible for coverage after June 30, 2006 and the Department will continue to close existing releases, thereby reducing the universe of sites applying for coverage.

If, however, the Director determines it necessary to rank applications or direct payment requests for payment, then the appropriate time to rank applications and direct payment requests would be during that period of time that ranking is necessary. R18-12-612(B) establishes that ranking period.

With respect to ranking a direct payment request, A.R.S. § 49-1054(C)(2) allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as specifically provided in A.R.S. § 49-1054(C)(2). In the event prioritization of SAF payments (ranking) becomes necessary, only the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2).

*R18-12-613. Determining Financial Need Priority Ranking Points*

The provisions of this Section establish the procedures for evaluating and assigning priority ranking points for non-profit and not-for-profit entities, as well as eligible persons who are local governments and not a local government. The tables used to determine financial need priority ranking points are the same as used to determine these points when SAF applications required prioritization under the current rule. Effectively there is no change and, therefore, no economic impact to any party.

*R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points*

The provisions of this Section establish the content of the form that must be submitted by an eligible person who requests priority ranking points for financial need and the minimum requirements that the balance sheet, required to be submitted with the form in R18-12-614(A), along with all prepared notes and schedules must satisfy.

The provisions of R18-12-614 are applicable if and only if the Director determines that it is necessary to rank applications and direct payment requests for payment. The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. Additionally, should the Director make the determination that ranking is necessary; the requirements of R18-12-614 are only applicable to those eligible persons who elect to be evaluated for relative finan-

cial need. Those who did not waive financial priority points, but instead requested direct written notice of ranking, pursuant to R18-12-603(B)(7) will receive information specific to the requirements of this Section.

Furthermore, the Department reviewed invoices from a CPA that has developed financial statements for UST owners and operators on behalf of the Department. The cost associated with complying with R18-12-614(B)(4) was found to be less than \$500.00. Since this cost is directly related to the preparation of an application or direct payment request, the cost incurred for this service can be applied against the eligible person's copayment obligation by being claimed as an increment to the task-based cost for application preparation. Given the unlikelihood that ranking will be required in the future, the minimal cost associated with the preparation of a balance sheet, and the fact that the cost incurred for the preparation of the balance sheet can be applied against the eligible person's copayment obligation; the Department does not believe that this requirement will create a financial hardship for eligible persons seeking coverage from the SAF.

*R18-12-615. Risk Priority Ranking Points*

The provisions of this Section require the Department to assign ranking points for risk to human health and the environment, ranging from 10 to 45 points, based upon the LUST classification provided by the eligible person under R18-12-261.01. If the LUST classification has not been provided to the Department, then the Department will assign 0 risk priority points. Additionally, this rule establishes the priority ranking point scale to be used by the Department in assigning ranking points for risk to human health and the environment.

The Department does not anticipate having to rank SAF applications for payment prior to the expiration of the program. However, should ranking be necessary, the LUST Site Classification form contained within the approved LUST site characterization report submitted under R18-12-262(D), or in the event the Department has not approved the LUST site characterization report, the LUST Site Classification form on file when the ADEQ Director determines ranking is necessary in accordance with R18-12-612(A), is appropriate for determining risk priority ranking points. The information available following full characterization of a site allows the Department to make an informed decision as to the true risk a LUST site poses to human health and the environment.

In the proposed rulemaking, the Department requested examples of cost-saving benefits from UST owners and operators and other interested parties. Cost saving benefits were not provided. However, the Department received many comments asserting the creation of economic hardships as a result of these rules. The Department took a hard look at these comments to determine how these perceived economic impacts could be best addressed. During the analysis of these comments, it became clear to the Department that the economic hardships described were created when the provisions of the rule were not fulfilled. Given the amount of comments received on this issue, the Department elected to respond to the comments individually in Section 11 of this preamble (the summary of comments and the agency responses.)

Federal and state law requires owners and operators of USTs to investigate and report suspected and confirmed UST releases. The Department requires owners and operators of leaking underground storage tanks (LUSTs) to conduct an investigation to determine the extent of contamination, submit a site characterization report, and take corrective action steps. Participation in the SAF is not a requirement. The SAF is an optional program that is available to assist eligible persons remediating soil, groundwater, and surface water contaminated by leaking underground storage tanks by paying up to 90 percent of the reasonable and necessary costs associated with performing eligible corrective actions in response to a release from an underground storage tank.

The Department believes that the promulgation of the SAF rule may have an economic impact on businesses that do not comply with the rule requirements. However, the Department anticipates cost-saving benefits to accrue to all persons eligible for SAF coverage who comply with the rule requirements, because this rule codifies all of the statutory requirements necessary for the disbursement of SAF monies, clearly identifies costs that are not eligible for coverage from the SAF – thereby eliminating a significant number of appeals, and eliminates the costs associated with preparing, submitting, reviewing, and storing financial information, until such time that ranking SAF applications and direct payment requests become necessary. Furthermore, the Department believes that these rules are consistent with the statutes and will allow claims to be processed in a more timely manner.

This rule will amend the underground storage tank assurance account rules to reflect the current governing statutes. This rule provides clarification on what is required by eligible persons seeking coverage from the SAF. The activities required under the rule implement the various statutory changes that have taken place since the rules were last revised in December 1996. As a result, the Department believes that the costs to impacted parties to learn and comply with the rule will be minimal.

The expectation of this rule is that the use of standardized forms and streamlined processes will allow for more accurate and complete submittals. This would increase the efficiency of the review and approval process for both the persons eligible for SAF coverage and the Department. Again, the outcome will be cost-saving benefits to both the regulated community and the Department. As a result, the transition from the current process to the new process will not be burdensome. The Department expects these changes to maintain protection for public health and the environment. Finally, these rules are not expected to impose net costs on the regulated community, small businesses, political subdivisions, or the public at large in Arizona. The public is expected to benefit indirectly from a more efficient SAF program. The overall conclusion is that probable benefits of this rule will outweigh probable costs.

This rule is not expected to have a direct impact on either private or public employment. In general, the Department does not expect this rule to impact employment, production, or output. Finally, since the imposition of the tax is statutorily mandated, this rule is not expected to have a negative impact on state revenues.

The Department expects this rule to substantially reduce application/direct payment request preparation costs for eligible persons seeking coverage from the SAF because the Department: 1) clearly identifies statutory conditions of eligibility at R18-12-601(C); and 2) enumerates for the first time in one rule all the statutory requirements for obtaining payment at R18-12-608. Because potential savings are site specific, it is not possible to monetize the savings.

These changes should not increase the cost of implementation for the Department. The Department expects an overall cost savings because of the anticipated increased efficiency from Rules R18-12-601(C) and R18-12-608, the elimination of twelve separate conflicts between the existing rules and their governing statutes, and the elimination of the requirement that the Department qualify consultants and contractors.

Releases from leaking UST systems reported after June 30, 2006 will not be eligible for SAF coverage (*see* S.B. 1306 Sec. 9, Laws 2004, Chapter 273, 46th Legislature, 2nd Regular Session, 2004.) Therefore, ADEQ anticipates an influx of reported releases between the time of this rulemaking and July 1, 2006. These reported releases will certainly result in an increase in the number of reimbursement and preapproval applications and the resultant direct payment requests submitted against the preapproval applications. S.B. 1306, Sec. 9 also establishes that ADEQ cannot accept preapproval applications after 5:00 p.m. on June 30, 2009, and no reimbursement applications or direct payment requests may be accepted after 5:00 p.m. on June 30, 2010. This rule will expedite the processing of this significant influx of applications and direct payment requests.

This rulemaking will benefit all impacted parties by clarifying the requirements for securing SAF coverage, thereby increasing the likelihood of more expedient approvals, and potentially, payments from the Assurance Account. Eligible persons will benefit from the time (“opportunity cost of money”) savings resulting from clearer requirements for securing necessary documentation for application/direct payment request preparation as well as the benefit obtained through more efficient Departmental reviews. The corrective action service providers will benefit from increased work and improved standards for required documentation and, for those who will be the payee on SAF approvals, more efficient Departmental reviews. The Department will benefit from receiving the information necessary to make a determination on the application and direct payment request without the delay due to requests for missing information, and the anticipated savings in resources through reduced appeals. The Department should be able to process the increased workload without increasing the current number of FTE positions; and the general public will benefit through expedited cleanup of the environment.

### C. Affected Classes of Persons

These rules impact four classes of persons. The first class of persons impacted by the rules are those that are eligible for SAF coverage. These are UST owners, operators, volunteers, and political subdivisions taking corrective actions pursuant to A.R.S. § 49-1052(H). A “subset” of this eligible persons class is the class of designated representatives of owners and operators. Designated representatives are, by statute, eligible to apply for SAF coverage on behalf of the owner or operator and to receive SAF monies as approved by the Department. The second class covers the corrective action service providers. This class includes the primary consultant and any subcontractors necessary to complete eligible activities, such as drillers, laboratories, surveyors, etc. The third class is the Arizona Department of Environmental Quality. The fourth and final class is the general public.

The rules impact the eligible person’s class by providing coverage for up to 90 percent of the reasonable and necessary costs incurred for responding to releases from underground storage tanks. Volunteers that have had their copayment obligation waived by the Department and owners and operators who are performing corrective action activities above their allocated liability are eligible to receive coverage of up to 100 percent of the reasonable and necessary costs incurred for responding to releases from underground storage tanks. The potential eligible persons impacted by this rulemaking include persons undertaking corrective action on the current 1,700 open leaking underground storage tank (LUST) cases and any newly discovered releases reported to the Department before July 1, 2006. The actual number of eligible persons impacted is significantly less than the number of active releases because more than one LUST case can exist at a single facility and more than one facility with one or more LUST cases may be owned or operated by a person. Additionally, not all releases regulated by the UST Corrective Actions Section are eligible for coverage from the SAF (e.g. federally owned releases, or releases of naphtha-type or kerosene-type jet fuel).

The rules provide an eligible person with, among other things, the activities that are eligible for coverage, the applicable types of documents used to seek SAF coverage (i.e. reimbursement application, preapproval application, or direct payment request), and the required components of each application or direct payment request and any appropriate back-up documentation that may be needed to support costs claimed. The rules also clarify the administrative appeal rights that may be available to an owner, operator or volunteer following a written determination from the Department.

With respect to the corrective action service provider class, the rules provide for coverage of corrective action activities pertinent to their individual area of expertise. The rules further establish the information that must appear on documents prepared or provided by the primary service provider. Typically, these consist of supporting invoices and reports of activities actually performed and/or plans for proposed activities. The rules also establish that the primary service provider may be a payee of SAF coverage approved by the Department.

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The rules impose requirements on the Department as well as the eligible person's class. By bringing the A.A.C. current with legislative changes, ADEQ's administrative expense will be reduced and processing and approval of coverage expedited. While this is a benefit to ADEQ it is also a benefit to all classes of persons eligible to receive SAF monies as well as the general public.

The rules, in conjunction with the current standards established under statute and the UST release reporting and corrective action rules (A.A.C. R18-12-250 through R18-12-264.01), increase the likelihood that releases from underground storage tanks will be identified, investigated and remediated, therefore minimizing any negative impact to the health and welfare of the general public. Additionally, the rules, through establishment of more efficient implementation of the statutory provisions, will provide further incentives for cleaning up abandoned gas stations, removing potential health risks and community eye sores, and prevent existing gas stations from being abandoned due to the existence of contamination.

**D. Rule Impact Reduction on Small Business**

State law requires agencies to reduce the impact of rules on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rules. The Department 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) exempting them from any or all rule requirements, (2) establishing performance standards which would replace any design or operational standards, or (3) instituting reduced compliance or reporting requirements. An agency may accomplish the third method by doing the following: (1) establishing less conservative requirements, (2) consolidating or simplifying them, or (3) setting less stringent schedules or deadlines.

The Department cannot exempt a small business, or even establish a less stringent standard or schedule for it, or any business, from the SAF requirements because all businesses applying for coverage from the SAF must comply with the SAF statutes found at Arizona Revised Statutes Title 49, Chapter 6, Article 3, §§ 49-1051 through 49-1055. Any reductions in impacts have been built into the governing statutes, such as the provision in S.B. 1306 (Laws 2004, Chapter 273) which establishes that the SAF will serve as the primary assurance mechanism for up to \$500,000.00. However, the entire process of seeking coverage from the SAF has been simplified and made more efficient; hence, this ultimately will provide a reduction in adverse economic impacts to small businesses.

The Department concludes that this rule contains the least costly and least intrusive provisions for achieving the goals and objectives of the SAF program.

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

Minor formatting and grammatical corrections were made at the request of G.R.R.C. staff. Additionally, the Department received several comments that necessitated minor, nonsubstantive changes. The following changes either correct minor errors or clarify the applicable provision; changes between the proposed and final rulemakings are blacklined:

In R18-12-603(B)(9), the following corrections were made to ensure that eligible persons continue to be able to make direct assignments and to lessen the frequency for submitting a completed Internal Revenue Service form W-9:

“A signed and notarized statement, with original signature of the eligible person or the designated representative of the owner or operator identifying by name, address, daytime telephone number, fax number, and federal employer identification (tax) number or social security number, of the eligible person designated representative of an owner or operator that is to appear on the payment warrant. A completed Internal Revenue Service form W-9 for the eligible person or designated representative of an owner or operator, if any, that is to appear on the payment warrant shall be included with the reimbursement application or direct payment request. If, unless the eligible person is applicable Internal Revenue Service form W-9 has been on file with the person identified to appear on the payment warrant, the reimbursement application or direct payment request shall include proof that the eligible person paid the costs, consisting of copies of cancelled checks or financial institution statements Department for less than one year.”

In R18-12-603(B)(9), the following correction was made to provide the eligible person with the ability to submit a sworn statement, by invoice number, from the corrective action service provider, in the event copies of cancelled checks or financial institution statements are unavailable:

“If the eligible person is the person identified to appear on the payment warrant, the reimbursement application or direct payment request shall include proof that the eligible person paid the costs, consisting of copies of cancelled checks or financial institution statements. If neither copies of cancelled checks nor financial institution statements are available, a sworn statement, by individual invoice, from the corrective action service provider.”

In R18-12-603(B)(10)(b), the language was modified as follows, to be consistent with R18-12-603(B)(10)(c):

“For consultants, the corrective actions were performed, supervised, or managed by the corrective action service provider in accordance with the requirements of the Arizona Board of Technical Registration, as applicable;”

In R18-12-605(C), the following revision was made to the first paragraph to clarify that the work plan must meet the format of this Section and that a form will not be developed by the Department:

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“Work Plan Requirements. The preapproval application shall include a preapproval work plan in a ~~form~~ format prescribed by the Department that shall be sealed by a registrant holding a valid registration with the Arizona Board of Technical Registration, as applicable, at the time the work plan is sealed and that shall contain all of the following information, as applicable to the planned corrective actions:”

In R18-12-606(D)(3), the following revision was made to specify that the waiver provisions of this subsection was applicable to both subsections (D)(1) and (D)(2):

“A waiver with the original signature of the eligible person waiving any current or future claim for the cost of the preapproved work item subject to ~~the substitution~~ subsections (D)(1) and (D)(2), as applicable.”

In R18-12-608(E), the following revision was made to clarify that an application or direct payment request will be denied if the application or direct payment request contains any cost that was previously reviewed and denied by the Department and the eligible person has either exhausted the administrative appeal processes of R18-12-610 and R18-12-611, or failed to timely file a notice of disagreement or appeal, as applicable:

“Resubmittal. The Department shall deny ~~the resubmittal of~~ any application or direct payment request ~~or if any component of an~~ the application or direct payment request is being resubmitted after the eligible person has exhausted the administrative remedies as described under R18-12-610 and R18-12-611, as applicable, or has failed to timely file a notice of disagreement or appeal, as applicable, for the application or direct payment request or component.”

In R18-12-608(F)(1), the language of the first paragraph was modified to the following to limit the sealing of technical documents to only those circumstances where the document contains information that is subject to the requirements of the Arizona Board of Technical Registration:

“Costs associated with ~~both~~ a document identified on the following list ~~and the corrective actions underlying the document~~ unless the document identified ~~on the following list~~ is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed, provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration and consistent with the registrant’s authority.”

In R18-12-610(A), the last sentence was revised to delete an incorrect reference to A.R.S. § 49-1091(E):

“The 90-day time period under A.R.S. § 49-1091(I) may be suspended in accordance with A.R.S. § 49-1052(B) ~~or extended under A.R.S. § 49-1091(E).~~”

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

**A. General Comments (Economic Impact Comments are in Subsection B)**

**1. The new rules are not required and the focus and intent of the rule are contrary to statutory purpose.**

**ANALYSIS:** The current rules do not reflect many of the statutory changes that have taken place since December 1996, or in some circumstances, are in direct conflict with other changes that have been made to the governing statutes. The following list highlights some of the statutory conflicts between the current rules and their governing statutes:

- **Sunset date for release eligibility** – Current rules do not reflect release eligibility sunset date of July 1, 2006, established by SB 1306 in 2004
- **Termination of Fund** – Current rules do not reflect the fund’s sunset dates established by SB 1306 in 2004
- **Permanent Closure eligibility** – Current rules do not reflect changes made to A.R.S. § 49-1052(A) regarding permanent closure eligibility
- **Eligibility Requirements of A.R.S. § 49-1052(F)** – Current rules do not acknowledge statutory changes to A.R.S. § 49-1052(F) (e.g. ability to cure tax and fee delinquencies, impact of enforcement actions on eligibility, and compliance with financial responsibility requirements for releases reported after July 1, 1996.)
- **A.R.S. § 49-1054(C)(1) and (C)(2) vs. R18-12-607.01. (N),(O), and (P)** – R18-12-607.01 (N),(O), and (P) are inconsistent with the changes enacted by A.R.S. § 49-1052(C)(1) and (C)(2)
- **R18-12-604. (Individual Applicant: Application Requirements)** – Current rules require submission of financial information for financial need priority point assignment. There is no provision for waiver of financial need priority ranking points or allowance for submission of financial information only when ranking is necessary. Additionally, current rules require submission of information on past payments and projections of future remedial costs - this information is not relevant to the current SAF application business process.
- **R18-12-605.01. Soil Clean-up Standards** – This provision is inconsistent with A.R.S. § 49-1052(N). Additionally, the promulgation of the Release Reporting and Corrective Action rules essentially rendered this provision moot.
- **R18-12-606. (Determination Of Priority Of Payment: Ranking Process)** - Current rule mandates use of a ranking process (including assignment of points) for each payment “round,” and provides for point accrual for preapproval – which is in direct conflict with 49-1053. Additionally, the current rule does not provide specific information for the applicant to determine how ranking points are calculated. The formulation of financial need stems from an agreement with stakeholders when the first Grant rule was in development.

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- **R18-12-607. (Direct Pay And Preapproval Of Funds)** - Current rule confines a “direct payment” as payment to a designated representative. Therefore, payment may be made only to the applicant or a designated representative. Additionally, current rule restricts preapprovals to those the Department determines are necessary to commence or continue corrective action; which is in conflict with 49-1053. Lastly, the current rule lists criteria that must be met before preapproval of funds may be granted by the Department, which conflicts with 49-1053.
- **R18-12-608. Reduction in Reimbursement** - Repealed by H.B. 2226 (41st Legislature, 2nd Regular Session, 1994).
- **R18-12-609. Payment Determinations; Disagreements** – Rendered moot by A.R.S. § 49-1091 in 1998.
- **R18-12-610. Appeals** – Rendered moot by A.R.S. § 49-1091 in 1998.

The statutes governing the state assurance fund have changed several times since the rules were last revised in December 1996, including several substantial changes in the 2004 regular session of the Legislature. Among other things, Senate Bill 1306 passed in 2004, (Laws 2004, Chapter 273) established that only releases of a regulated substance reported to the Department before July 1, 2006 are subject to coverage for corrective action costs from the underground storage tank assurance account. Additionally, applications for preapproval of corrective actions must be filed with the Department no later than 5:00 p.m. on June 30, 2009 and applications for reimbursement or direct payment requests must be filed with the Department no later than 5:00 p.m. June 30, 2010.

Lastly, as reflected in the Committee On Appropriations’, Minutes of Meeting, dated Tuesday, April 13, 2004, it is clear that the intent of S.B. 1306 was, in part, to prevent money from taxpayers to “flow freely” into the pockets of consultants and to ensure that volunteers, as well as owners and operators, “will have to bear part of the expense to hold down the cost of cleanup.” The Department has drafted these rules to eliminate all of the statutory conflicts that currently exist and to satisfy the legislative intent of S.B. 1306.

**RESPONSE:** No change

**2. The proposed rule appears to be more intent on reducing the payments from the fund than protecting the public.**

**ANALYSIS:** The UST Release Reporting and Corrective Action rules prescribe the actions to be taken, following a release from a regulated UST system, to protect human health and the environment. The SAF rules prescribe the manner in which corrective action activities will be paid, using tax dollars. In response to comments made during informal and formal appeal meetings and Policy Commission meetings over the past several years, the Department has attempted to clearly define and clarify those activities that are frequently claimed on SAF applications but are not eligible for coverage from the SAF. By clearly identifying statutory conditions of eligibility in Rule R18-12-601(C), the Department hopes to eliminate the time spent by eligible persons in gathering information to file claims for ineligible activities; the time spent by eligible persons and the Department in preparing for and participating in appeal meetings regarding ineligible activities; and the time spent by the Department in reviewing claimed activities that are ineligible for coverage.

This approach of clearly providing a list of ineligible activities was successfully utilized in the Grant rule (A.A.C. Title 18, Chapter 12, Article 7 at R18-12-702(B)) adopted May 23, 1996. As result, the Department is confident that similar success will be achieved by including such a list in the SAF rules.

As to the claims that the rules impose “burdensome new requirements,” will cause additional delays in an already lengthy process, or will slow down payments from the SAF or the performance of corrective action activities, the Department disagrees. The rules for the first time clearly identify conditions that are not eligible for coverage at R18-12-601(C), assemble in one rule all the statutory requirements for obtaining payment at R18-12-608(C) and (F), and any new requirements are procedural in nature.

**RESPONSE:** No change

**3. The rule is in conflict with A.R.S. § 49-1054(C), in that the rule clearly is more restrictive than the statute because the rule limits the substituted item to the objectives of the approved work item rather than the objectives of the work plan.**

**ANALYSIS:** A.R.S. § 49-1054(C), as it relates to this comment, discusses two distinct concepts/scenarios. In the first scenario, A.R.S. § 49-1054(C)(1) deals with cost for a work item that is substituted for a work item that was set forth in the preapproved work plan. The provisions in subsection R18-12-606(D)(1) of the rule deal specifically with this issue; and distinguish it from the concept addressed by A.R.S. § 49-1054(C)(2). Additionally, the definition of the term “substituted work item” as well as the intent of R18-12-608(B)(3)(b) is consistent with the provisions found at A.R.S. § 49-1054(C)(1) and R18-12-606(D)(1), in that they address the situation of payment from the SAF when a work item is substituted for a work item that was set forth in a preapproved work plan.

The Department stands firm that in order for a work item to be substituted for a work item that was set forth in a pre-approved work plan; the substituted work item must accomplish the same work objective as the preapproved work item. If the work items accomplish different objectives, then intuitively one cannot be in substitution for the other. The definition of “substituted work item” does not preclude an eligible person from changing an item. The definition simply requires that if a work item is to be substituted for a work item that was preapproved, then the substitution must meet the requirements of A.R.S. § 49-1054(C)(1), the governing statute.

The claim that the definition of “substituted work item” precludes the Department from paying for approved activities that exceed the costs proposed in the work plan is misleading. The definition of “substituted work item” requires that the substitution meet the requirements of A.R.S. § 49-1054(C)(1). A.R.S. § 49-1054(C)(1)(b) requires that the Department pay the cost for a work item that was substituted for a work item that was set forth in the preapproved work plan, if the cost **does not exceed** “[t]he cost of the work item originally preapproved.” In other words, A.R.S. § 49-1054(C)(1)(b) explicitly prevents the Department from paying costs for a “substituted work item” that exceeds the costs of the work item originally preapproved.

The second scenario, found at A.R.S. § 49-1054(C)(2), deals with cost for work that was not specified in the work plan and was not performed in substitution for another work item. Germane to this discussion is the stem of A.R.S. § 49-1054(C) which reads, in relevant part, “The Department shall pay for work item costs as if the work was specified within the preapproved work plan **if the work is within the work objectives of a preapproved work plan, ...**” (emphasis added.) In this scenario, R18-12-606(D)(2) and R18-12-608(B)(3)(c), which are consistent with and not in conflict with A.R.S. § 49-1054(C)(2), discuss how payment from the SAF can be achieved.

Pursuant to A.R.S. § 49-1054(C)(2), the cost associated with reasonable and necessary work that is not specified within a preapproved work plan, and is not a substituted work item is eligible for payment from the SAF if the work: is within the work objectives of the preapproved work plan; does not result in payments under the preapproved work plan to exceed the total preapproved amount; and does not exceed the cost schedule for that work item.

If there are work items that have been preapproved, but site conditions render those work items unnecessary or costs incurred are less than what was preapproved for a work item, then the eligible person may waive (i.e. agree not to make future claim for) the costs preapproved for those unnecessary work items or the remaining balance (e.g. those cost savings) and request the monies be applied to the costs of the reasonable and necessary work that was not specified in the preapproved work plan, to the extent that it does not result in payments under the preapproved work plan to exceed the total preapproved amount.

If the eligible person chooses to use the cost savings to cover the costs of the reasonable and necessary work that is not specified within a preapproved work plan, then the eligible person must waive any current or future claim for the cost or remaining balance, as applicable, of the preapproved work item subject to this scenario. R18-12-606(D)(3) and R18-12-608(B)(3)(d) specifically deal with the waiver provisions.

A.R.S. § 49-1054(C)(2) also provides additional flexibility to the person making the direct payment request. In the event all of the provisions for payment in A.R.S. § 49-1054(C)(2) are met, except for the prohibiting of payment in excess of the preapproved amount, full payment may still be made. The subsection allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as if it were a separate reimbursement application. As specifically provided in A.R.S. § 49-1054(C)(2), in the event prioritization of SAF payments (ranking) becomes necessary, the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2). It is important to understand that, pursuant to A.R.S. § 49-1054(C)(2), all of the preapproved amount must be exhausted through approved costs of specifically preapproved activities, substituted activities, or non-preapproved activities that are reasonable, necessary and within the work objectives of the preapproved work plan before the amount subject to ranking can be determined.

The Department recognizes that use of the “Substitution and Waiver” form for claiming both A.R.S. § 49-1054(C)(1) and (C)(2) costs has become common practice, and believes that the rule language may have been interpreted as discontinuing this practice. It is not the intent of the Department to change this process. In fact, the content of this form is described in the Proposed R18-12-606(D)(1) for the substitutions and R18-12-606(D)(2) for the waivers and, if necessary, amounts in excess of the preapproved amount. If modifications to the form are necessary to clarify which portions of the form apply to which portions of the statute and rule, the Department will work with the UST Policy Commission to make the necessary modifications.

**RESPONSE:** The Department believes that use of the term “substitution” in R18-12-606(D)(3) could be adding to the confusion. Additionally, it is not explicitly clear that this subsection applies to both R18-12-606(D)(1) and (D)(2). Therefore, to clarify the intent of this provision, R18-12-606(D)(3) has been changed by striking the phrase “the substitution” and replacing it with “subsections (D)(1) and (D)(2), as applicable”.

**4. R18-12-601(C) provides that in certain circumstances, an application will be deemed incorrect and will be denied without any interim determination by the agency.**

**ANALYSIS:** The Department has identified several conditions as “incorrect” on the basis that these conditions cannot be corrected, or, in the case of delinquent fees and taxes, have not been cured in order to gain eligibility for coverage from the assurance account. The conditions listed at R18-12-601(C) are not interpretations of the Department but statutory conditions of eligibility, as such, the Department does not believe that the provisions of A.R.S. § 49-1091 are applicable. As a result, Department will issue final, and not interim, determinations on incorrect applications and direct payment requests. The purpose of this change is to minimize the costs and burdens of two appeal processes on both the Department and the applicants and to encourage applicants to (1) submit only eligible applications or direct payment requests and (2) to cure delinquent fees and taxes prior to the submission of a claim to the Department. The Department’s final determinations are fully appealable under R18-12-611(A) and Arizona’s Administrative Procedures Act including the rights to an informal settlement conference under § 41-1092.06.

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Over the past several years, numerous comments have been made by eligible persons and interested parties stating that the Department has not clearly identified what costs the Department considers to be ineligible for SAF coverage. As a result, eligible persons have spent valuable resources applying for coverage only to find out that the Department considers those costs ineligible for coverage. This has led to the filing of numerous appeals by the eligible party, in hopes of getting clarification as to the Department's position.

The conditions listed at R18-12-601(C) represent those conditions that cannot be corrected, or, in the case of delinquent fees and taxes, have not been cured in order to gain eligibility for coverage from the SAF. If the eligible party has documentation that refutes the Department's position, the formal appeal process, which includes the ability to request and hold an informal settlement conference, is available to the eligible person. The Department believes that having two appeals processes for the conditions listed at R18-12-601(C) is not efficient or effective use of limited state resources, and notes that the Department's final determinations under R18-12-601(C) are fully appealable under R18-12-611(A).

**RESPONSE:** No change

**5. Costs other than resubmittals will be subject to a final determination without an interim determination and informal appeal rights where an application is denied because a portion of it contains costs that were previously submitted.**

**ANALYSIS:** The Department has reviewed this comment and concluded that this can only be an issue if an application or direct payment request includes costs that have previously been denied and the appeal process has run or been allowed to lapse. The Department wants to encourage eligible persons to only file applications and direct payment requests for eligible costs. Care and caution should be exercised when filing an application or direct payment request to ensure that only eligible costs are being claimed; all eligibility requirements have been satisfied; all fee and tax delinquencies have been cured; and all application and direct payment components, including backup documentation, have been provided. The Department's final determinations are fully appealable under R18-12-611(A) and Arizona's Administrative Procedure Act including the rights to an informal settlement conference under § 41-1092.06. The Department is again encouraging eligible persons to only seek payment for costs that are eligible for coverage, and the Department seeks to provide a full appeal (which includes an appeal under A.R.S. § 49-1091) to the eligible person to resolve the issue – but only one full appeal on the original submittal of the application or direct payment request.

**RESPONSE:** No change

**6. R18-12-608(E) provides that portions of an application can be denied while other portions are approved for payment and paid. Therefore, the incorrect portions, such as items that may be a resubmittal, could be addressed by denying the application in part, rather than returning an application that contains, at least in part, items eligible for reimbursement.**

**ANALYSIS:** When reviewed closely, the conditions deemed to be "incorrect" are eligibility criteria for coverage. It is highly unlikely that a condition under R18-12-601(C) would exist, with the exception of resubmittal, while other aspects of the application or direct payment request contained costs payable from the SAF. With respect to the resubmittal provision, if the issue has already been the subject of a denial and the appeal process has run or been allowed to lapse, then the eligible person should exercise proper caution to ensure that those costs are not claimed in a subsequent application or direct payment request. The Department is again encouraging eligible persons to only seek payment for costs that are eligible for coverage, and the Department seeks to provide a full appeal to the eligible person to resolve the issue – but only one full appeal on the original submittal of the application or direct payment request.

Tangentially to the issue of prohibiting the resubmittal of costs were concerns that elimination of the ability to pool issues will result in more frequent appeals, and financially needy eligible persons may be discouraged from contesting denied costs because of the costs of more frequent appeals. The Department believes that the frequency of appeals will be significantly reduced because of the fact that the Department: 1) clearly identifies statutory conditions of eligibility at R18-12-601(C); and 2) enumerates for the first time in one rule all the statutory requirements for obtaining payment at R18-12-608(C) and (F). As such, the Department hopes to eliminate the time spent by eligible persons in gathering information to file claims for ineligible activities; the time spent by eligible persons and the Department in preparing for and participating in appeal meetings regarding ineligible activities; and the time spent by the Department in reviewing claimed activities that are ineligible for coverage. Lastly, The Department has used its judgment and experience in dealing with ineligible costs that are commonly submitted for coverage from the SAF to establish the list that appears at R18-12-608(F). The establishment of this list is designed to clearly communicate the costs the Department has deemed ineligible. By adhering to this list, eligible persons avoid all appeal costs associated with the listed items.

It is important to keep in mind that if the Department determines that an application or direct payment request is incorrect under R18-12-601(C), no other determinations will be made regarding individual costs. Therefore, this rule does not conflict with the severability provisions of R18-12-604(F), R18-12-605(F), or R18-12-606(G). Denial of the application or direct payment request under R18-12-601(C) as a final determination provides the eligible person an immediate appeal of the eligibility issue or resubmittal to the Office of Administrative Hearings, and preserves the eligible person's full rights to submit any new eligible costs not previously reviewed by the Department for review in a new application or direct payment request. In other words, once all eligibility issues have been resolved, a new

application or direct payment request can be submitted and the Department will review the application and direct payment request in accordance with the rules.

**RESPONSE:** No change

**7. The Proposed Rule fails to provide for any process by which any person or entity can receive a determination of eligibility.**

**ANALYSIS:** Eligibility has to be determined on a case-by-case basis at the time an application or direct payment request is submitted. R18-12-601 (C) and R18-12-608(B) and (C) provide the statutory conditions (i.e. the eligibility requirements) that must be satisfied before payment from the SAF can be made. A blanket determination that an eligible person is always eligible for coverage cannot be made before an application or direct payment request is made.

For example, an owner or operator who fails to pay the next regularly scheduled annual tank fee, by statute can lose eligibility until the delinquency is cured. So if the Department were to issue a determination letter granting eligibility before the scheduled annual tank fee due date, that determination would become meaningless the date after which the annual tank fee was due. At this point, continued eligibility cannot be determined until after the Department has issued a delinquency notice and the owner or operator has had 30 days to cure the delinquency. If the delinquency is cured within the 30 days, then eligibility continues uninterrupted; however, if the delinquency is not cured within the 30 days, then eligibility is lost until such time that the delinquency is eventually cured. The owner or operator will then be able to submit a new application for coverage.

Nevertheless, when the Department receives an application or direct payment request, it will determine eligibility and the eligible person may appeal any decision under R18-12-611 to obtain a full appeal on any appealable issue, including eligibility. With respect to several commenter's reference to R18-12-601(C) and A.R.S. § 49-1091; again, the Department does not believe that the provisions of A.R.S. § 49-1091 are applicable to the conditions found at R18-12-601(C), because the conditions listed at R18-12-601(C) are not interpretations of the Department but statutory conditions of eligibility.

Finally, the Department does provide technical assistance to Arizonans to help them understand the requirements of the SAF.

**RESPONSE:** No change

**8. The proposed rule R18-12-609(D) provides that credits for professional fees for application preparation can only be applied against the copayment amount calculated from the particular application in question and can not be carried forward.**

**ANALYSIS:** A.R.S. § 49-1052(A)(7) provides that the Department shall provide coverage from the SAF for "[c]osts incurred for professional fees **directly related** to the preparation of an assurance account application. The Department shall credit these fees toward the applicant's copayment obligation." Emphasis added. The application preparation fees are incurred for one application and the credit is to the copayment obligation for that application.

In contrast, A.R.S. § 49-1054(D) requires the Department to allow upgrade and replacement costs incurred at the time of corrective actions to be applied against the eligible person's copayment obligation, and the statute specifically states, "to be applied on a dollar for dollar basis not to exceed ten percent of the reasonable and necessary costs for corrective actions ..." A.R.S. § 49-1054(D) clearly allows the amount of credit to ten percent of the amount of total coverage provided under A.R.S. § 49-1054(A). The only way to comply with this provision is to allow the incurred "upgrade" or "replacement" costs to be credited to as many applications or direct payment requests as necessary to either reach the total costs incurred or the total copayment on the total coverage (whichever occurs first). The provision for such a "rollover" of costs is lacking in A.R.S. § 49-1052(A)(7). Thus the Department will apply the credit for professional fees for application preparation only against that individual application or direct payment request.

A.R.S. § 49-1052(A)(7) does not permit the cost incurred by an eligible person for professional fees associated with the preparation of an application to be applied against other applications (past or future), and this practice may result in some eligible persons not paying any portion of the required ten percent copayment obligation, as opposed to eligible persons losing part of their copayment credit, as claimed in some comments. This ten percent copayment obligation is intended to keep the eligible person involved with the corrective actions and keep costs down. Adherence to the plain language of A.R.S. § 49-1052(A)(7), along with implementation of A.R.S. § 49-1052(Q), added to the statutes by S.B. 1306 in 2004, should eliminate a common practice of separating costs into multiple applications with the intent of accumulating copayment credits to offset the eligible person's statutorily imposed copayment obligation on future applications or direct payment requests.

**RESPONSE:** No change

**9. R18-12-606(C)(4) states that ADEQ shall not approve payment of invoices in a direct payment request where the invoice exceeds the cost estimate provided in the preapproval work plan; in conflict with A.R.S. § 49-1054(C)(2).**

**ANALYSIS:** The provisions found at R18-12-606(C)(4) relate to A.R.S. § 49-1054(C), but do not relate to § 49-1054(C)(2). The language at R18-12-606(C)(4) essentially establishes that the Department will not pay invoiced costs that exceed the schedule of corrective action costs established under R18-12-607 or the cost estimate under R18-12-605(C)(12), or for direct payment requests against preapproval applications approved before the effective

date of this rule package, the applicable cost ceiling or the amount that was originally preapproved. This provision is consistent with the language of A.R.S. § 49-1054(C), which states, in part, “[t]he Department shall pay the costs... that do not exceed the amount for that task in the applicable cost schedule.” The provisions at R18-12-606(C)(4) are consistent with the existing rule found at R18-12-607.01(N).

**RESPONSE:** No change

**10. Since the definitions of “task” and “phase of corrective action” rely on the schedule of corrective action costs which is not part of the rule but rather a list that qualifies as a substantive policy statement as defined in A.R.S. § 41-1001(20), reference to any form or the schedule of corrective action costs will result in formal rulemaking requirements being imposed on ADEQ each time ADEQ seeks to modify any form or the schedule of corrective action costs.**

**ANALYSIS:** A.R.S. § 49-1054(C), in relevant part, requires that “[a]t least every three years, the department shall establish a cost schedule which the department considers reasonable. For those years that the department does not establish a cost schedule, all costs shall be adjusted annually in accordance with the percentage change in the bureau of labor statistics annual number for the final producer price index for finished goods less food and energy not seasonally adjusted.” Undergoing a formal rulemaking for the establishment of the cost schedule is neither contemplated by the governing statutes nor realistically feasible, given the required frequency imposed on the Department and the time and resources necessary to promulgate a formal rule. Additionally, two separate statutory provisions require that the persons affected by a substantive policy be informed prior to the effective date of the substantive policy.

A.R.S. § 49-1014(B)(1) requires that the Director “...provide written notice to persons regulated by this chapter before the effective date of a policy or guideline that affects the substantive rights of owners and operators or other parties regulated under the underground storage tank program.” Additionally, A.R.S. § 49-1092(D)(3) requires that the UST Policy Commission “[h]ave a least thirty days to review and make recommendations to the director before the department’s adoption of substantive policies or guidelines of the program that affect the substantive rights of owners and operators or other regulated parties.”

Therefore, while the establishment of new cost schedules will be subject to public participation through the UST Policy Commission and notice must be given to all affected parties prior to implementation of the new cost schedule; the Department will not have to go through the formal rulemaking process to establish new cost ceilings.

The schedule of corrective action costs are statutorily mandated under A.R.S. § 49-1054(C) and therefore it is not necessary to incorporate by reference the schedule into this rule. Pursuant to A.R.S. § 41-1028(A), “[a]n agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.” Clearly, the schedule of corrective action costs are not codes, standards, rules or regulations of an agency of the United States or of this state and therefore need not be incorporated by reference.

**RESPONSE:** No change

**11. R18-12-610(A) allows an extension of time for issuance of an interim determination, which is governed by A.R.S. 49-1091(I), based upon A.R.S. § 49-1052(B) and A.R.S. § 49-1091(E). ADEQ’s reliance on A.R.S. § 49-1091(E) to extend the 90-day time period mandated in A.R.S. § 49-1091(I) is an error and contrary to the express language of the statute.**

**ANALYSIS:** The Department concurs with this comment. A.R.S. § 49-1091(E) deals with the time-frame for the Department to issue a final written decision or determination, and circumstances under which that time-frame can be extended. Whereas A.R.S. § 49-1091(I) sets forth that the Department’s failure to issue a written interim decision within 90 days of receipt of an application for preapproval, direct payment or reimbursement is a basis for an informal appeal. A.R.S. § 49-1052(B) establishes the only circumstance under which the 90-day time-frame can be extended.

**RESPONSE:** The Department has corrected this error by striking the reference to A.R.S. § 49-1091(E).

**12. R18-12-611(B) limits the parties that may file a formal appeal to “eligible persons” (i.e. owners, operators, and volunteers) as defined by the rules. A.R.S. § 41-1092.03(B) governs the proper parties for appeal of a final determination. Therefore, ADEQ’s limitations on who may file an appeal of a final determination are contrary to A.R.S. § 41-1092.03(B).**

**ANALYSIS:** A.R.S. § 49-1014(A) requires that the Director adopt rules, in accordance with Title 41, Chapter 6, that are necessary to provide procedures for the administration of Title 49, Chapter 6. This rule package is promulgating rules for the administration of Title 49, Chapter 6, Article 3; so therefore it would be inappropriate to attempt to include in these rules, language administering a Title 41 provision. Title 49 of A.R.S., in Section 49-1091 limits formal appeals to owners, operators, and volunteers.

A.R.S. §§ 49-1091(A),(B), (C) and (I) each limit owners, operators and volunteers as being the only parties capable of filing a written notice of disagreement (i.e. an informal appeal) in regards to a written interim decision or determination of the Department or the Department’s failure to issue a written interim decision or determination. Additionally, § 49-1091(E) sets forth that “[t]he department shall issue a final written decision or determination within 45 days

of receiving the notice of disagreement or within fifteen days of a meeting pursuant to subsection C of this section, whichever is later. If no notice of disagreement is filed, the department shall issue a final written decision or determination within 45 days after the issuance of the interim decision or determination.”

Lastly, A.R.S. § 49-1091(E) reads, in relevant part, “[t]he final written decision or determination is the **only** decision or determination that is appealable as an appealable agency action as defined in § 41-1092 or a contested case as defined in § 41-1001.” Emphasis added. The Department stands firm that the rule language is consistent with the statutory language found at A.R.S. § 49-1091.

The Department uses the term “eligible person” in R18-12-611(B) of the proposed rule instead of “party” because A.R.S. § 49-1091, the authorizing statute for informal appeals in the underground storage tank program, explicitly limits the number of people able to file an appeal under that provision to a person who undertakes corrective action pursuant to Section 49-1052, subsection I (i.e. a volunteer) **or** an owner **or** an operator, satisfying the exclusion requirement under A.R.S. § 41-1002(B). The limitation prescribed by A.R.S. § 49-1091 is consistent with the definition of the term “eligible person.” Lastly, A.R.S. § 49-1091 establishes an additional limitation in that **only** the final written decision or determination is appealable as an appealable agency action as defined in § 41-1092 or a contested case as defined in § 41-1001. The restriction regarding those who may file an appealable agency action under the UST statute was imposed by the legislature, and the proposed rule simply codifies the legislature intent.

**RESPONSE:** No change

**13. R18-12-605(G) states it will apply retroactively to allow ADEQ to terminate work plans prepared and approved under the rules currently in place today, under certain conditions including, but not limited to, “information available to the department indicates site conditions have changed ...” This conflicts with A.R.S. § 49-1054(C)(1) which allows for substitution of the work items in a work plan on an individual basis to continue to meet the objectives of the work plan.**

**ANALYSIS:** The rule provides a procedure under which the Department may terminate an antiquated work plan, after granting the eligible person both informal and formal appeal rights under R18-12-610 and R18-12-611. The Department may only terminate under seven enumerated instances.

Regarding instance number 5, it is incorrect to read, “information available to the department indicates site conditions have changed ...” to be in conflict with A.R.S. § 49-1054(C)(1). An eligible person’s decision to use a different work item to accomplish the same work objective does not, in and of itself, create a change in site conditions.

The Department intends this language to mean something significant has occurred at the site rendering the chosen remedial alternative ineffective, or more importantly, a change at or near the site increases the risk to human health or the environment. For example, a work plan may have been approved for monitored natural attenuation; however, a neighbor has since installed a well on their property, lowering the water table and causing the formation of free product. Under this circumstance, the chosen remedial alternative is no longer appropriate and the risk posed to the neighbors’ well is quite significant. Therefore, the Department would exercise its discretion and terminate the work plan, giving the eligible person an opportunity to informally appeal the Department’s decision.

A.R.S. § 49-1054(C)(1) deals with cost for a work item that is substituted for a work item that was set forth in the pre-approved work plan. The provisions in subsection R18-12-606(D)(1) of the rule deal specifically with this issue; and distinguish it from the concept addressed by A.R.S. § 49-1054(C)(2). Additionally, the definition of the term “substituted work item” as well as the intent of R18-12-608(B)(3)(b) is consistent with the provisions found at A.R.S. § 49-1054(C)(1) and R18-12-606(D)(1), in that they address the situation of payment from the SAF when a work item is substituted for a work item that was set forth in a preapproved work plan.

The Department stands firm that in order for a work item to be substituted for a work item that was set forth in a pre-approved work plan; the substituted work item must accomplish the same work objective as the preapproved work item. If the work items accomplish different objectives, then intuitively one cannot be in substitution for the other. The definition of “substituted work item” does not preclude an eligible person from changing an item. The definition simply requires that if a work item is to be substituted for a work item that was preapproved, then the substitution must meet the requirements of A.R.S. § 49-1054(C)(1), the governing statute.

**RESPONSE:** No change

**14. R18-12-609(A) allows ADEQ to demand a copy of an agreement between an applicant and a service provider regarding a co-payment obligation. This is contrary to A.R.S. § 49-1052(I) and A.R.S. § 49-1054(A) which only requires that an applicant disclose in the applicant certification that the agreement exists.**

**ANALYSIS:** A.R.S. § 49-1052(I) reads, in relevant part, “A person who takes corrective action pursuant to this subsection shall submit certification to the department that the person has paid the remaining costs or has agreed to pay those remaining costs as **demonstrated** in an existing agreement.” Emphasis added. A.R.S. § 49-1054(A) reads, in relevant part, “The owner or operator shall pay the remaining costs of the eligible activities pursuant to section 49-1052, subsection A and shall submit certification that the owner or operator has paid those remaining costs or has agreed to pay those remaining costs as **demonstrated** in an existing agreement.” Emphasis added.

Each of these provisions establishes two authorities. First, to receive payment, the person must make certification. The certification is that the person has either paid or has agreed to pay the copayment amount. The second empower-

ment is in the use of “demonstrated.” This authorizes ADEQ, in the event the certification relates to the agreement to pay the copayment amount, to receive the agreement “demonstrating” the validity of that certification. This is parallel to the empowerment in A.R.S. § 49-1054(C) as respects SAF payment for costs “actually incurred.” ADEQ has required this payment demonstration since the initial payment from the Assurance Account.

To lessen the burden on both the eligible person and ADEQ, the rule provides for submission of these agreements (i.e. the demonstration) upon request of ADEQ instead of a blanket requirement that the demonstration be made with each certification. The rule, possibly, could be revised to require the demonstration with each certification where an agreement is involved. ADEQ feels, however, this is not necessary and is utilizing its discretion in implementing the statute.

**RESPONSE:** No change

**15. R18-12-608(C) sets up “Standard of Review” for both applications and direct payments. The statute, A.R.S. § 49-1054(C) states that preapproved costs “are deemed reasonable, necessary, and reimbursable”. However, this section of the rule appears to establish a 2<sup>nd</sup> level of review for preapproval payments, which would be unnecessary and time consuming.**

**ANALYSIS:** It is incorrect to read R18-12-608(C) as establishing a second level of review. The Department has been questioned by the regulated community during UST Policy Commission meetings, UST Program conferences, informal discussions, and numerous appeal meetings on how the Department determines a cost to be reasonable and necessary. The Department has answered this question by placing its standard of review in rule.

It is neither the Department’s intention nor is it a legal possibility for the rules to circumvent or supersede their governing statutes. When the Department approves a preapproval work plan and application, the Department, in essence, has determined that the eligible person has met the standard of review established under R18-12-608(C). When a direct payment request is submitted against the work plan, the Department will review the direct payment request in accordance with R18-12-606.

A separate review for compliance with R18-12-608(C) is not directly performed on the direct payment request unless the request includes substitutions or waivers under A.R.S. § 49-1054(C)(1) or (C)(2). While R18-12-608(C) establishes the standard of review; R18-12-608(B) establishes the method for applying those standards to the reimbursement application, preapproval application and direct payment request. In R18-12-608(B)(3), a direct payment request must be reviewed, but only to determine if the corrective action: 1) was performed as set forth in the preapproval (R18-12-608(B)(3)(a)); 2) was substituted for a preapproved corrective action, and accomplished the same objective of the preapproved corrective action using a different methodology and satisfied the other criteria for substitutions required for payment as established in A.R.S. § 49-1054(C)(1) (R18-12-608(B)(3)(b)); and/or 3) was not preapproved and is not a substitution, but is within the work objectives of the preapproved work plan and meets the other criteria required for payment as established in A.R.S. § 49-1054(C)(2) (R18-12-608(B)(3)(c)).

Therefore, if the direct payment request includes work items specifically preapproved, the conditions at R18-12-608(C) are presumed to be satisfied by virtue of the review that was conducted during the review and approval process of the preapproval application. Only when the direct payment request includes work items that are not performed as specifically preapproved is further review required. The standards for payment of substituted work items in A.R.S. § 49-1054(C)(1) must be verified as must the payment standards for the non preapproved, non substituted work items in A.R.S. § 49-1054(C)(2).

Among the requirements of A.R.S. § 49-1054(C)(2), the Department must determine that the non preapproved, non substituted work item is reasonable and necessary before payment can be made. The standards for this determination are in R18-12-608(C)(1). All of the conditions listed at R18-12-608(C) are statutory requirements that must be satisfied before payment from the SAF can be made, and R18-12-608(C)(1)(h) is authorized by A.R.S. § 49-1014(A) and is not a mandatory requirement. The language from A.R.S. § 49-1054(C) referenced in the comment does not negate these other statutory requirements. The rule language simply codifies all of the statutory requirements applicable when determining if a requested cost is eligible for payment from the SAF, and the Department finds that a collection of all legal requirements into one list will assist the public and the Department in administration of the program more efficiently.

The requirements of rule R18-12-608(C) are listed below with the accompanying statutory authority cited at the end of each requirement:

1. A corrective action is reasonable and necessary if the standard of subsection (B) is met and if all of the following are true:
  - a. For soil remediation, the corrective action employed is the most cost effective alternative to remediate soil under the risk based corrective action rules at R18-12-263 through R18-12-263.02 to health based levels that allow either restricted or unrestricted use of the property that is the subject of the corrective actions [A.R.S. § 49-1052(N)];
  - b. For groundwater or surface water remediation, the corrective action employed is the most cost effective alternative to remediate groundwater or surface water under the risk-based corrective action rules at R18-12-263 through R18-12-263.02 [A.R.S. § 49-1052(N)];

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- c. The corrective action is an eligible activity associated with a phase of corrective action and the phase or phases of corrective action that are the subject of the application or direct payment request are identified by the eligible person [A.R.S. §§ 49-1054(C) and 49-1014(A)];
  - d. The phase or phases of corrective action, task and any incremental cost is included in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
  - e. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
  - f. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed [A.R.S. § 49-1054(C)];
  - g. The eligible activities were actually performed in accordance with the applicable description in the schedule of corrective action costs [A.R.S. §§ 49-1054(C) and 49-1014(A)];
  - h. To the extent practicable, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work. The Department shall not approve incremental costs associated with a task if the task and other incremental costs associated with the task have been submitted in a separate reimbursement application or direct payment request, unless it includes a reference to the previously submitted summary of work that documents the rationale required by this subsection. The separate reimbursement application or direct payment request under this subsection shall be subject to all applicable standards of this Section [A.R.S. § 49-1014(A)];
  - i. The corrective action is technically feasible [A.R.S. § 49-1052(D)]; and
  - j. For reimbursement applications and direct payment requests, the costs claimed were actually incurred [A.R.S. § 49-1054(C)].
2. A permanent closure is reasonable and necessary if all of the following are true:
    - a. The permanent closure meets the requirements of A.R.S. § 49-1008 and implementing rules [A.R.S. §§ 49-1052(A)(3), (A)(4) and (A)(6)];
    - b. The permanent closure is eligible for coverage under A.R.S. § 49-1052(A) [A.R.S. § 49-1052(A)];
    - c. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs [A.R.S. § 49-1054(C)];
    - d. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed [A.R.S. § 49-1054(C)]; and
    - e. The costs claimed were actually incurred [A.R.S. § 49-1054(C)].
  3. A cost is reasonable if it does not exceed a corresponding cost or costs in the schedule of corrective action costs. For costs that are not in the schedule of corrective action costs, a cost is reasonable as determined by the Department using the standard described in R18-12-607 [A.R.S. §§ 49-1054(C) and 49-1014(A)].

The rationale for R18-12-608(C)(1)(h) is more fully explained in Section B, Question 5. However, in short, experience has taught the Department that when costs that are related to one another are billed separately over multiple applications or direct payment requests; errors, confusion and unnecessary appeals result. The Department does however acknowledge that including all costs associated with a particular task may not be feasible in each and every situation. Therefore, the rule provides flexibility to accommodate these situations.

**RESPONSE:** No change

**16. The words “performed, supervised, or managed by the corrective action service provider in accordance with the requirements of the Arizona Board of Technical Registration, as applicable” should be changed to “performed in accordance with the requirements of the Arizona Board of Technical Registration, as applicable”. The words “supervised and managed” are not well defined with the Board of Technical Registration, and therefore ADEQ would be required to create its own interpretations of rules of another agency.**

**ANALYSIS:** The Department wants to ensure that all corrective actions are conducted in a manner that is consistent with all applicable federal, state and local regulations and requirements, including the Arizona Board of Technical Registration. The Department concurs that the terms “supervised” and “managed” are not well defined with the Board of Technical Registration, and confusion could be created by the use of those terms. Therefore, the Department will delete those terms from R18-12-603(B)(10)(b).

**RESPONSE:** R18-12-603(B)(10)(b) has been edited to be consistent with the language found at R18-12-603(B)(10)(c) and now reads, “For consultants, the corrective actions were performed in accordance with the requirements of the Arizona Board of Technical Registration, as applicable;”.

**17. If ADEQ requires a corrective action plan, the cost of developing the corrective action plan, including such**

activities as a pilot test, should be eligible to be placed on a preapproval application and included in the list found at R18-12-605(A).

**ANALYSIS:** R18-12-605(A)(4) provides that a preapproval application can include a request for a remedial response according to the requirements and conditions at R18-12-263. A.R.S. § 49-1054(C) reads, in relevant part, “The department shall pay only for those reports that are required in rules adopted pursuant to this chapter and only on the department’s receipt and approval of the report.” This provision applies to all reports, including corrective action plans and site characterization reports. R18-12-263(D) establishes the conditions under which remedial responses will require a corrective action plan (CAP).

Therefore, if a CAP is required under R18-12-263(D) or requested by the Department under R18-12-263(C), the Department intends the language found at R18-12-605(A)(4) to include the activities and costs associated with the development of the required or requested CAP. It is important to keep in mind, however, that while the costs associated with performing preapproved corrective action activities to be reported in the required or requested CAP, as established under R18-12-263.02(B), can be submitted on direct payment requests anytime after approval of the preapproval application and the costs for individual activities have been incurred, the cost for the CAP document itself cannot be included on a direct payment request until after the Department receives and approves the CAP. It is very important that an eligible person does not submit the cost for any report until after that report has been approved by the Department.

**RESPONSE:** No change

**18. R18-12-608(F)(1) is requiring a document to be sealed even if the statutes or rules of the Board of Technical Registration may determine the document should not be sealed. The Board of Technical Registration does have prohibitions from sealing documents that are not within the profession of the registrant. This rule may create a conflict between the rules and the statutes of the Board of Technical Registration, and the interpretation of those rules and statutes by ADEQ.**

**Additionally, R18-12-608(F)(1) states that even if a site is fully characterized or remediated, all costs can be denied if a registrant of the Arizona Board of Technical Registration does not seal the final report. This is an expansion of the scope of the registrants seal. The proposed rule is essentially stating that all actions from report preparation to constructing the remedial system must be performed by a registrant because these actions are “corrective actions underlying the document”.**

**ANALYSIS:** The Department believes these two comments have merit. It has never been the intention of the Department to create real or perceived conflicts with any regulatory agency (federal, state, or local). Therefore, the Department has taken the language from R18-12-608(F)(1)(e), and modified it for inclusion into the stem of R18-12-608(F)(1). Also, the Department has deleted the phrase “corrective actions underlying the document” from R18-12-608(F)(1). The Department believes these changes remain consistent with its original intent while addressing the issues raised by this comment.

**RESPONSE:** R18-12-608(F)(1) has been amended to read “Costs associated with a document identified on the following list unless the document identified is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed, provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration and consistent with the registrant’s authority[.]”

**19. R18-12-605(C)(1) incorporates guidance documents into the rule and is essentially making guidance documents rule without subjecting the guidance document to the rule making process.**

**ANALYSIS:** It is incorrect to read R18-12-605(C)(1) as incorporating the guidance document into the rule. R18-12-605(C)(1) reads, “The work objectives of the proposed work plan and brief description of proposed work, including contingencies, and **references** to relevant rules made under A.R.S. § 49-1005 and relevant written Department guidance[.]” Emphasis added

The conditions of A.R.S. § 49-1054(C)(1) and (C)(2) place tremendous emphasis on the work objectives of a preapproved work plan. Experience has taught the Department that generally stated work objectives often result in misunderstandings and confusion, which ultimately leads to informal and formal appeals.

The rule does not require that the proposed work be conducted “in accordance with” written departmental guidance. Instead, the rule asks that reference be made to the rule provision that the proposed work is intended to satisfy and any relevant departmental guidance. The Department acknowledges that the procedures outlined in the various guidance documents are not automatically the best approach in all situations.

If the eligible person believes that the approach presented in a guidance document will be appropriate, given the particular site conditions, then referencing that guidance can only serve to better communicate the thoughts of the eligible person to the Department and any member of the public that may review that document. If the written departmental guidance is not appropriate or selected, the eligible person need only communicate that the Department’s guidance will not be followed and present their alternative choice in the work plan.

The Department firmly believes that if the intentions of the eligible person are more clearly communicated (i.e. clearly referencing relevant rules and written guidance or presenting their alternative choice), then most of the historical misunderstandings and confusion will be alleviated. The Department does not intend the language at R18-12-605(C)(1) to mean that failure to comply with written departmental guidance can be or will be the basis for denying a work plan.

Pursuant to A.R.S. § 41-1028(A), “[a]n agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.” Clearly, guidance documents are not codes, standards, rules or regulations of an agency of the United States or of this state and therefore need not be incorporated by reference.

**RESPONSE:** No change

**20. The definition of “work objectives of the preapproved work plan” is defined as the “purpose, as stated in the preapproval application, of the proposed corrective actions to be performed ...” The preapproval application, in its current form, does not include a statement of purpose. Therefore, there is no defined “work objectives of the preapproved work plan” and use of the form is inconsistent with the proposed rule.**

**ANALYSIS:** The conditions of A.R.S. § 49-1054(C)(1) and (C)(2) place tremendous emphasis on the work objectives of a preapproved work plan. As stated above, generally stated work objectives often result in misunderstandings and confusion, which ultimately leads to informal and formal appeals. To compensate for generally stated work objectives, the Department has relied on compliance with the existing R18-12-607.01(H)(7) and R18-12-607.01(I)(1)(a) as being detailed explanations of the purpose of the work plan.

R18-12-607.01(H)(7) requires that the work plan include “[a] proposed work schedule for initiating, monitoring, and completing the corrective action activities under the work plan and for permit acquisition. The schedule shall identify the major activity increments of the work plan, including interim and final reporting to the Department, and include for each increment an estimate of the time for completion, following the Department approval of the work plan.” The corrective action activities identified in this schedule must meet the requirements of A.R.S. § 49-1005, and when applicable, the Release Reporting and Corrective Action rules (R18-12-250 through R18-12-264.01). Additionally, if the schedule includes the advancement of soil borings or the installation of monitoring wells, R18-12-607.01(I)(1)(a) requires that the work plan contain “[t]he number of proposed samples, borings, probe points, and monitoring wells, and a **rationale** for the total number, locations, and proposed depths. Emphasis added. Therefore, if the purpose of the work plan was not clearly stated, the Department relied on the major corrective action activities identified in the schedule, and the rationale for boring and well placements, as being detailed explanations of the work plan.

The Department does not agree that use of the form is inconsistent with the proposed rule. Clearly, the schedule in a preapproved work plan approved prior to the effective date of the new rules, as well as the direct payment requests under the new R18-12-606, the phases of corrective actions, and the tasks and incremental costs established within the cost schedule under the new R18-12-607, are all directly based on the corrective action statutes as well as the Release Reporting and Corrective Action rules. Therefore, if the claimed activities are consistent with the preapproved work plan, the eligible person will be able to comply with the direct payment requests established under these rules. The Department will work with the UST Policy Commission and interested stakeholders in the event there is still concern regarding use of the existing preapproval application after the new rules become effective.

Lastly, the Department believes that defining “work objectives of the preapproved work plan” as being the “purpose, as stated in the preapproval application, of the proposed corrective actions to be performed ...” will alleviate a significant amount of the past misunderstandings and ultimately reduce the number of informal and formal appeals filed.

**RESPONSE:** No change

**21. The proposed SAF Rule also is contrary to A.R.S. §49-1052(M) which states “[i]f the claim is submitted in a timely manner, the claimant may correct or supplement the claim within a reasonable time as specified by the department without loss of coverage.” A claim is submitted in a timely manner so long as it is submitted within one year after the claimant receives a closure letter. The statute clearly allows a claim to be corrected or supplemented. The proposed SAF Rule regarding denial of incorrect applications is contrary to statute and, therefore, inappropriate.**

**ANALYSIS:** The language found at A.R.S. § 49-1052(M) allows a claim to be corrected or supplemented and the Department has codified this requirement at R18-12-608(D). However, it is inappropriate to link A.R.S. § 49-1052(M) with the conditions listed at R18-12-601(C). The conditions listed at R18-12-601(C), represents those conditions that cannot be corrected, or, in the case of delinquent fees and taxes, have not been cured in order to gain eligibility for coverage from the SAF. It is also unlikely that supplemental information could be submitted which would mitigate an eligibility issue; however, if that is the case, then that supplemental information could be submitted as an attachment to the eligible person’s formal appeal or presented during the informal settlement conference, if one is requested.

For issues not related to the eligibility conditions listed at R18-12-601(C), such as the need to supply additional information to support a claimed cost, an eligible person is able to supplement or correct an application or direct payment

request, as applicable, under the provisions of and in compliance with R18-12-608(D), as established by A.R.S. § 49-1052(M). Additionally, R18-12-610(D), as authorized by A.R.S. § 49-1091(E), allows the Department to request additional information after a notice of disagreement (i.e. an informal appeal) is filed, if the information is necessary for the Department to make a final determination on an application or direct payment request; and provides an eligible person with another opportunity to submit additional information to assist the Department in making a final determination, independent of a request from the Department.

**RESPONSE:** No change

**22. The language that exists at R18-12-603(B)(8)(g) should be added to this overall section (i.e. R18-12-603(B)(8)) so that the eligible person is certifying and notarizing “to their best information and belief.”**

**ANALYSIS:** The stem of R18-12-603(B)(8) reads, “[a] signed and notarized statement of the eligible person, with the eligible person’s original signature, certifying that[,]” and is followed by a list of seven items to which the eligible person is attesting. The seventh item, found at R18-12-603(B)(8)(g), reads, “[t]he application or direct payment request and its contents are true, accurate, and complete to the eligible person’s best information and belief.” Therefore, the existing language accomplishes the objective of this comment.

**RESPONSE:** No change

**23. Part 12 on page 3033 states that there are no items incorporated by reference in the rule. This statement is inaccurate since clearly the schedule of corrective action costs and the preapproval application form have been incorporated into the definitions.**

**ANALYSIS:** The schedule of corrective action costs are statutorily mandated under A.R.S. § 49-1054(C) and therefore it is not necessary to incorporate by reference the schedule into this rule. Similarly, the preapproval application form is required by R18-12-605(B), eliminating the need to incorporate by reference the application form into the rule.

Notwithstanding the above, pursuant to A.R.S. § 41-1028(A), “[a]n agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.” Clearly, neither the schedule of corrective action costs nor the preapproval application form are codes, standards, rules or regulations of an agency of the United States or of this state and therefore need not be incorporated by reference.

**RESPONSE:** No change

**24. How will the Department handle an application where it is not possible for the applicant to get a certification from the corrective action service provider?**

**ANALYSIS:** A.R.S. § 49-1054(C) reads, in relevant part, “[t]he department shall pay eligible costs that are reasonable and were actually incurred for corrective actions that were actually performed.” Any rule drafted to implement this statutory provision must comply with this statutory provision. The corrective action service provider performing the work is the only person truly capable of attesting to the actual performance of a corrective action activity or that a cost was actually incurred. If an application or direct payment request does not contain the appropriate certification, the Department must honor its fiduciary responsibility and deny the claim. The eligible person then has the opportunity to invoke their due process rights and request informal and formal appeals, as necessary, to attempt to reach a settlement agreement. During an appeal, the Department has authority to compromise claims in order to provide fair compensation to the eligible person if that person presents evidence that the work in question was completed and costs incurred. If settlement is not reached, they still have the opportunity to have a formal hearing at the Office of Administrative Hearings, or if need be, escalate their issue to superior court.

**RESPONSE:** No change

**25. The language at R18-12-608(C)(1) appears to give the Department the ability to decide a remedial strategy was not the most cost effective strategy, even if the Department had pre-approved that method. This is in conflict with the statutes (i.e. A.R.S. §49-1054(C)) that state that preapproved work is by definition reasonable and necessary. Additionally, will the Department subject claimed costs that have been preapproved to the same standard of review as costs claimed under a reimbursement application?**

**ANALYSIS:** It is incorrect to read R18-12-608(C) as establishing a second level of review. The Department has been questioned by the regulated community during UST Policy Commission meetings, UST Program conferences, informal discussions, and numerous appeal meetings on how the Department determines a cost to be reasonable and necessary. The Department has answered this question by placing its standard of review in rule.

It is neither the Department’s intention nor is it a legal possibility for the rules to circumvent or supersede their governing statutes. When the Department approves a preapproval work plan and application, the Department, in essence, has determined that the eligible person has met the standard of review established under R18-12-608(C). When a direct payment request is submitted against the work plan, the Department will review the direct payment request in accordance with R18-12-606.

A separate review for compliance with R18-12-608(C) is not directly performed on the direct payment request unless the request includes substitutions or waivers under A.R.S. § 49-1054(C)(1) or (C)(2). While R18-12-608(C) estab-

lishes the standard of review; R18-12-608(B) establishes the method for applying those standards to the reimbursement application, preapproval application and direct payment request. In R18-12-608(B)(3), a direct payment request must be reviewed, but only to determine if the corrective action: 1) was performed as set forth in the preapproval (R18-12-608(B)(3)(a)); 2) was substituted for a preapproved corrective action, and accomplished the same objective of the preapproved corrective action using a different methodology and satisfied the other criteria for substitutions required for payment as established in A.R.S. § 49-1054(C)(1) (R18-12-608(B)(3)(b)); and/or 3) was not preapproved and is not a substitution, but is within the work objectives of the preapproved work plan and meets the other criteria required for payment as established in A.R.S. § 49-1054(C)(2) (R18-12-608(B)(3)(c)).

Therefore, if the direct payment request includes work items specifically preapproved, the conditions at R18-12-608(C) are presumed to be satisfied by virtue of the review that was conducted during the review and approval process of the preapproval application. Only when the direct payment request includes work items that are not performed as specifically preapproved is further review required. The standards for payment of substituted work items in A.R.S. § 49-1054(C)(1) must be verified as must the payment standards for the non preapproved, non substituted work items in A.R.S. § 49-1054(C)(2).

**RESPONSE:** No change

**26. How does the Department intend to rectify the requirements of R18-12-608(C)(1)(c),(d), and (e) with the fact that “phases” and “tasks” do not appear in cost schedules previous to July 2005?**

**ANALYSIS:** All corrective actions must satisfy the requirements of A.R.S. § 49-1005, and when applicable, the Release Reporting and Corrective Action rules (R18-12-250 through R18-12-264.01). The direct payment requests, the phases of corrective actions, and the tasks and incremental costs established within the cost schedule, are all directly based on the corrective action statutes as well as the Release Reporting and Corrective Action rules. As long as the claimed activity can be demonstrated to be in compliance with the requirements of A.R.S. § 49-1005, and when applicable, the Release Reporting and Corrective Action rules, the fact that previous cost schedules did not include “phases” and “tasks” will not be problematic.

**RESPONSE:** No change

**27. Will the Department put the “withdrawal” practice in rule or, at a minimum, propose it as a policy to be approved by the UST Policy Commission so that the regulated community can be aware of this option and have some faith that it will be available to them in the future?**

**ANALYSIS:** The “withdrawal” practice, as it is referred to in this comment, means the eligible person or designated representative of an owner or operator can withdraw part or all of the costs in an application in order to submit at a subsequent time. During the application review and informal appeal process, if the eligible person has elected to withdraw a claimed activity or cost, for whatever reason, the Department has honored that request, usually because it resulted in faster payments being made to the eligible person. Additionally, a claimed activity or cost can be “withdrawn” after the issuance of a final determination, during the formal appeal process, but before the commencement of an administrative hearing before an Administrative Law Judge at the Office of Administrative Hearings, and only in the context of a settlement agreement. In drafting R18-12-608(D), the Department remained consistent with its authorizing statutes and since this practice is not affected by the rule, the Department believes neither a rule nor a policy is necessary.

**RESPONSE:** No change

**28. How does the Department intend to deal with work plans where costs must be added in order to protect human health and the environment?**

**ANALYSIS:** Pursuant to A.R.S. § 49-1054(C)(2), the cost associated with reasonable and necessary work that is not specified within a preapproved work plan, and is not a substituted work item is eligible for payment from the SAF if the work: is within the work objectives of the preapproved work plan; does not result in payments under the preapproved work plan to exceed the total preapproved amount; and does not exceed the cost schedule for that work item. Therefore, through the use of A.R.S. § 49-1054 (C)(2), the eligible person or designated representative of the owner or operator has flexibility to deal immediately with threats to human health and the environment which are within the work objectives of the preapproval. If such threats are not within the work objectives, the immediate response must be undertaken and the reimbursement process used.

A.R.S. § 49-1054(C)(2) also provides additional flexibility to the person making the direct payment request. In the event all of the provisions for payment in A.R.S. § 49-1054(C)(2) are met, except for the prohibiting of payment in excess of the preapproved amount, full payment may still be made. The subsection allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as specifically provided in A.R.S. § 49-1054(C)(2). In the event prioritization of SAF payments (ranking) becomes necessary, only the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2). It is important to understand that, pursuant to A.R.S. § 49-1054(C)(2), all of the preapproved amount must be exhausted through approved costs of specifically preapproved activities, substituted activities, or non-preapproved activities that are reasonable, necessary and within the work objectives of the preapproved work plan before the amount subject to ranking can be determined.

**RESPONSE:** No change

**29. The Legislature has clearly indicated at §49-1052(Q) that applicants should be able to file claims whenever their accumulated costs exceed \$5,000.00. Does the Department believe that the requirements of R18-12-608(C)(1)(h) take precedence over §49-1052(Q)? Does the Department anticipate reviewing and potentially rejecting rationales provided by applicants in response to R18-12-608(C)(1)(h)? If so, how will the Department make an applicant aware of the rationale rejection in a timely manner prior to the submittal of follow-on applications?**

**ANALYSIS:** It is impossible for a rule to take precedence over a statutory provision, therefore, clearly, the Department does not intend R18-12-608(C)(1)(h) to take precedence over A.R.S. § 49-1052(Q). R18-12-608(C)(1)(h) reads in relevant part, “**To the extent practicable**, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work.” Emphasis added.

If some costs, for whatever reason, cannot be included in the application or direct payment request, then the eligible person need only provide that information in the summary of work along with a rationale for its exclusion. The Department intends this provision to simplify the process for both the eligible person and the Department by keeping costs for a particular task together in one application or direct payment request, to the extent practicable.

Experience has taught the Department that when costs that are related to one another are billed separately over multiple applications and direct payment requests; errors, confusion and unnecessary appeals result. The Department does, however, acknowledge that including all costs associated with a particular task may not be feasible in each and every situation. Therefore, the rule provides flexibility to accommodate these situations.

The Department will review the rationale for informational purposes, but will not be evaluating and issuing determinations on the rationales themselves. If a rationale is not provided, one will be requested, but the Department has not nor does the Department intend to develop standards for evaluating the rationales. The purpose of the rationale is to communicate to the Department what outstanding costs associated with a particular task still exists, and to facilitate the Department’s ability to make a reasonable, necessary, and cost-effective determination on the existing claim.

**RESPONSE:** No change

**30. Did the Department include tracking of the application fee credit in the design of the new database? If not, why not? What does the Department intend to do with the co-pay credits that applicants have accumulated under the current system? Does the Department believe that the change in the handling of the application fee credit will have no economic impact on applicants?**

**ANALYSIS:** A.R.S. § 49-1052(A)(7) provides that the Department shall provide coverage from the SAF for “[c]osts incurred for professional fees **directly related** to the preparation of an assurance account application. The Department shall credit these fees toward the applicant’s copayment obligation.” Emphasis added. The preparation fees are incurred for one application and the credit is to the copayment obligation for that application. As a result, the new database was not designed to track application preparation fees for the purpose of carrying credits forward to cover future applications or direct payment requests. Any “accumulated balance” will have to be abolished, in order to remain consistent with the plain language of A.R.S. § 49-1052(A)(7).

A.R.S. § 49-1052(A)(7) does not permit carry forward of professional fees associated with the preparation of an application to other applications, and this practice may result in some eligible persons not paying any portion of the required ten percent copayment obligation. This ten percent copayment obligation is intended to keep the eligible person involved with the corrective actions and keep costs down. Adherence to the plain language of A.R.S. § 49-1052(A)(7), along with implementation of A.R.S. § 49-1052(Q), added to the statutes by S.B. 1306 in 2004, should eliminate a common practice of separating costs into multiple applications with the intent of accumulating copayment credits to offset the eligible person’s statutorily imposed copayment obligation on future applications or direct payment requests. As reflected in the Committee On Appropriations’, Minutes of Meeting, dated Tuesday, April 13, 2004, S.B. 1306 was intended, in part, to ensure that volunteers, as well as owners and operators, “will have to bear part of the expense to hold down the cost of cleanup.” The Department has drafted these rules consistent with the legislative intent behind S.B. 1306.

**RESPONSE:** No change

**31. The rules will not rein in the few unscrupulous consultants.**

**ANALYSIS:** In drafting the rule, the Department focused primarily on developing procedures that would effectively and efficiently implement the statutory provisions of A.R.S. Title 49, Chapter 6, Article 3 (i.e. the Assurance Account). In doing so however, the Department also remained cognizant of the potential for fraud and abuse that ultimately impacted the legislative intent behind the passing of S.B. 1306 (Laws 2004, Chapter 273). As reflected in the Committee On Appropriations’, Minutes of Meeting, dated Tuesday, April 13, 2004, S.B. 1306 was intended, in part, to prevent money from taxpayers to “flow freely” into the pockets of consultants and to ensure that volunteers, as well as owners and operators, “will have to bear part of the expense to hold down the cost of cleanup.”

Notices of Final Rulemaking

As a result of a potential for fraud and abuse, S.B. 1306 added A.R.S. § 49-1052(Q), which imposed a \$5,000.00 minimum amount on applications, unless one of three specific conditions exists; added the requirement that volunteers must comply with the preapproval process “for any claims made for costs incurred in excess of one hundred thousand dollars at a single facility” to A.R.S. § 49-1053; added the requirement that volunteers (at A.R.S. § 49-1052(I)) and owners and operators (at A.R.S. § 49-1054(A)) submit certification that they have paid the copayment obligation or have agreed to pay the copayment obligation as demonstrated in an existing agreement; and added a ten percent copayment obligation for volunteers at A.R.S. § 49-1052(I), with the ability to have the copayment obligation waived if certain conditions are satisfied. The copayment obligation is consistent with the copayment obligation that has been in place for owners and operators.

The Department believes that the above statutory changes, along with the rules, for the first time, clearly identifying statutory conditions of eligibility at R18-12-601(C), and assembling, in one rule, all the statutory requirements for obtaining payment at R18-12-608, will significantly reduce the potential for fraud and abuse that has existed within the program in the past.

**RESPONSE:** No change

**32. Can applicants just show a copy of the copayment agreement to the agency rather than providing one? The key word from the statute is “demonstrate.” Does the Department intend to rule on the validity of such agreements?**

**ANALYSIS:** The requirement that the eligible person certify that they have paid the copayment obligation or demonstrate, through an existing agreement, that they will pay the copayment obligation was added to the SAF statutes in 2004 with the passage of S.B. 1306. To lessen the burden on both the eligible person and ADEQ, the rule provides for submission of these agreements (i.e. the demonstration) upon request of ADEQ instead of a blanket requirement that the demonstration be made with each certification. The Department has exercised its discretion in implementing this statute, and believes it has remained consistent with the spirit of the legislation. The Department does not believe that simply requiring that the agreement be shown to the Department meets the spirit of the legislation.

The Department will not be evaluating the agreement for validity. However, if the Department has reason to believe that an agreement contains provisions that may be illegal, the Department is obligated to follow up.

**RESPONSE:** No change

**33. Does termination take effect immediately or after the appeals process is finalized? How will consultants get paid to remove remedial systems from a site if the work plan is terminated and the client is a volunteer who must have a work plan?**

**ANALYSIS:** The rule provides a procedure under which the Department may terminate an antiquated work plan, after granting the eligible person both informal and formal appeal rights under R18-12-610 and R18-12-611. The Department may only terminate under seven enumerated instances. Termination of the work plan does not become final (i.e. take effect) until after completion of the appeals process. However, an eligible person should be aware that any cost incurred after notification of the Department’s decision to terminate the work plan that directly relates to the Department’s rationale for pursuing termination, may not be eligible for coverage, once the appeals process has concluded.

For example and with respect to this particular comment, if the Department exercises its discretion and makes the decision to terminate a work plan that was approved for active remediation (which should also include preapproval of activities and costs associated with remedial system decommissioning), any costs incurred for continuing the operation of the remedial system during the appeals process may not be eligible for coverage from the SAF, depending on the outcome of the appeal.

If during the appeals process the eligible person decides to decommission the remedial system under the existing work plan, then the eligible person may pursue a settlement agreement with the Department whereby system decommissioning can be implemented and completed prior to the Department’s decision to terminate the work plan becoming final. If the Department’s decision to terminate the work plan becomes final without a settlement agreement being reached, then the volunteer, as referenced in this comment, may submit a new work plan, under R18-12-605(A)(5), for system decommissioning.

**RESPONSE:** No change

**34. What does the Department really gain from the trivial change of requiring that any request for credit for preapproval application preparation be included in the eligible person’s first direct payment request against the preapproval application?**

**ANALYSIS:** A.R.S. § 49-1052(A)(7) provides that the Department shall provide coverage from the SAF for “[c]osts incurred for professional fees **directly related** to the preparation of **an** assurance account application. The Department shall credit these fees toward the applicant’s copayment obligation.” Emphasis added. The application preparation fees are incurred for one application and the credit is to the copayment obligation for that application. As there are no costs associated with a preapproval application itself, there are no costs against which to apply the professional fees incurred for the preparation of the preapproval application. To remain consistent with the spirit of A.R.S. § 49-1052(A)(7) and to provide an equitable means of compensating the costs incurred for the preparation of the pre-

approval application, the Department, at R18-12-606(B)(3), is providing the eligible person with the opportunity to credit the fees incurred for the professional preparation of a preapproval application.

**RESPONSE:** No change

**35. Why is the Department ranking direct pays? Shouldn't the preapproval ranking apply?**

**ANALYSIS:** The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. This opinion is based in part on the fact that no new releases will be eligible for coverage after June 30, 2006 and the Department will continue to close existing releases, thereby reducing the universe of releases applying for coverage.

If, however, the Director determines it necessary to rank applications or direct payment requests for payment, then the only appropriate time to rank applications and direct payment requests would be during that period of time that ranking is necessary. R18-12-612(B) establishes that ranking period.

With respect to ranking a direct payment request, A.R.S. § 49-1054(C)(2) allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as specifically provided in A.R.S. § 49-1054(C)(2). In the event prioritization of SAF payments (ranking) becomes necessary, only the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2).

**RESPONSE:** No change

**36. Why on earth would the Department assign a risk score of 0 to a site where a form was not properly supplied? Isn't it the Department's job to evaluate risk and protect human health and the environment? Does the Department truly believe that regulating the money is more important than protecting human health and the environment?**

**ANALYSIS:** The UST Release Reporting and Corrective Action rules (R18-12-250 through R18-12-264.01) prescribe the actions to be taken, following a release from a regulated UST system, to protect human health and the environment. The form referenced in this comment is the LUST Site Classification form found at R18-12-261.01(D). The LUST Site Classification scheme found at R18-12-261.01 is an integral part of risk based corrective actions (RBCA) and is based on the relative risk of a release impacting a receptor. Simply put, the scheme is based on known site-specific information available at the time the determination is made, and R18-12-261.01(B) establishes the factors to be considered when developing the appropriate site classification.

A completed LUST Site Classification form is required to be submitted to the Department as a component of the Initial Response, Abatement, and Site Characterization, 90 day report required under R18-12-261(D); as a component of the LUST site characterization report required under R18-12-262(D); and when LUST site conditions indicate the classification has changed, or if contamination has migrated, or is anticipated to migrate, to a property where the owner or operator does not have access, as set forth at R18-12-261.01(D). Clearly, the LUST Site Classification form is a vital element in the communication to the Department and the public as to the risk determined to be associated with a release from an underground storage tank.

Failing to "properly supply" this form is not only a violation of law, but also deprives the Department of making informed decisions regarding the true risk posed by a release from an UST, and denies the public essential risk information as well. This comment suggests a desire for the Department to develop rules that reward eligible persons for violating the UST Release Reporting and Corrective Action rules and for the Department to arbitrarily assign risk points, thereby expediting the disbursement of tax dollars, on the basis of no information. The Department believes this approach is irresponsible.

The SAF is neither a federally nor state mandated program. The SAF was added to the UST statutes by the Arizona Legislature as a means of providing financial assistance to eligible persons conducting corrective actions in response to releases from regulated underground storage tanks. The SAF is an option available to eligible persons, which is in addition to the other financial assurance mechanisms available to owners and operators under A.R.S. § 49-1006, A.A.C. Title 18, Chapter 12, Article 3, and Title 40, Code of Federal Regulations, Part 280, Subpart H. In short, the SAF rules prescribe the manner in which corrective action activities will be paid, using tax dollars.

**RESPONSE:** No change

**37. Please define "reason to believe." This provision is ripe for abuse.**

**ANALYSIS:** The Department intends the term "reason to believe," as that term is used at R18-12-608(F)(15), to mean that the Department has some factual basis to believe that supporting documentation provided to substantiate a claimed activity or cost has been altered or falsified.

**RESPONSE:** No change

**38. The language at R18-12-609(A) allows ADEQ to request submittal of confidential business contract agreements that an eligible person may have with their service provider. However, it is unclear that ADEQ has the statutory authority to protect the proprietary information if public requests for this information are made.**

**ANALYSIS:** The Department is confident that the provisions of A.R.S. § 49-1012 are sufficient for maintaining the confidentiality of the copayment agreements submitted in response to a request made by the Department under R18-12-609(A). A.R.S. § 49-1012(A) reads, in relevant part, "...any records and information which relate to the trade secrets, processes, operations, style of work or apparatus or confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the administration of this chapter unless the owner or operator expressly agrees to their publication or availability to the public." Based on this provision, the Department believes that the copayment agreements can be maintained as confidential documents.

**RESPONSE:** No change

**B. Comments on Economic Impact of Rules**

- 1. The Proposed Rule provides that ADEQ shall deny either an entire application if it contains resubmitted costs, or those parts that contain resubmitted costs. Resubmitted costs are those costs that were previously denied and the applicant exhausted the administrative remedies through the appeal process, or failed to appeal the previous determinations. Currently, there are no restrictions on resubmittal of previously denied costs. The economic impact arising from the inability to resubmit costs will be tremendous.**

**ANALYSIS:** The administrative appeals process can be a resource intensive endeavor for both the Department and the appellant. Therefore, to repeat the administrative appeals process two or more times over the same issue is not prudent. The basic intent of an appeal is to provide the opportunity to review a decision and, if resolution cannot be otherwise attained, adjudicate an issue. Once the appeal process has run and consistent with the legal principle of res judicata, the decision is validated or revised. Continued submittal of costs that have been deemed ineligible for coverage from the SAF through the appeals process will not cause the ineligible costs to gain eligibility.

Secondly, if the eligible person elects not to or forgets to file an appeal, that decision or error does not justify a second bite at the apple. The Department has limited resources and a finite time-frame for reviewing and rendering decisions on applications and direct payment requests. These rules, consistent with the statutes, clearly lay out informal and formal appeal processes for situations where the eligible person disagrees with the Department's decision, and time-frames for filing those appeals. Promulgating rules that would circumvent those appeal processes or render them moot is inappropriate. The economic impacts inferred by this comment are not created by complying with these rules, but by violating these rules and the governing statutes.

The Department has used its judgment and experience in dealing with ineligible costs that are commonly submitted for coverage from the SAF to establish the list that appears at R18-12-608(F). The establishment of this list is designed to clearly communicate the costs the Department has deemed ineligible. By adhering to this list, eligible persons avoid all appeal costs associated with the listed items.

The requirements of rule R18-12-608(F) are listed below with the accompanying statutory authority cited at the end of each requirement:

1. Costs associated with a document identified on the following list unless the document identified is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed, provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration: [A.R.S. § 49-1052(D)]
  - a. The LUST site classification form under R18-12-261.01;
  - b. The LUST site characterization report under R18-12-262(D);
  - c. A corrective action plan under R18-12-263(D) and R18-12-263.02;
  - d. A corrective action completion report under R18-12-263.03(D);
  - e. Periodic site status reporting under R18-12-263(G).
2. Costs for eligible activities if the corrective action service provider who is a contractor did not hold a valid license from the Arizona Registrar of Contractors and, if required, a valid certification under Article 8 at the time of performance of the eligible activity. [A.R.S. § 49-1052(D)]
3. Under A.R.S. § 49-1052(A)(1), costs for collecting, analyzing and reporting samples pursuant solely to a site check or to investigate a suspected release, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirms a release requiring corrective action and the report required under R18-12-260(C) shall be eligible for assurance account coverage. [A.R.S. § 49-1052(A)(1)]
4. Under A.R.S. § 49-1052(A)(2), costs for collecting, analyzing and reporting samples associated solely with an UST system permanent closure, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirm a release and the report required under R18-12-271(D) shall be eligible for assurance account coverage. [A.R.S. § 49-1052(A)(2)]
5. Subject to subsection (G), costs for other than the most cost effective risk based corrective action in accordance with A.R.S. § 49-1005 and implementing rules. [A.R.S. § 49-1052(N)]
6. Unless the tier evaluation meets the requirements of R18-12-263.01(A), costs for performing a risk-based tier II or tier III risk assessment. [A.R.S. § 49-1052(N)]:
7. Costs for installing engineering controls, unless the installation of the engineering controls meets the require-

- ments of A.R.S. § 49-1052(D), A.R.S. § 49-1005 and implementing rules, as necessary to achieve risk-based corrective action standards in accordance with R18-12-263.01. [A.R.S. § 49-1052(N)]
8. Costs for maintaining engineering controls. [A.R.S. § 49-1052(A)(5)]
  9. Costs for preparing a preapproval application or work plan that was not submitted to the Department, approved by the Department, and implemented by the eligible person. [A.R.S. § 49-1054(C) and A.R.S. § 49-1014(A)]
  10. Costs for remodeling, renovating, replacing or reconstructing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning or similar item at the facility. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
  11. Costs for demolishing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning or similar item at the facility unless the demolition is reasonable and necessary and meets the requirements under A.R.S. § 49-1052(D) to complete the corrective action. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
  12. Costs for resurfacing with new materials of a kind and quality exceeding those in place before corrective action. Any eligible resurfacing shall be limited to the same area of surfacing required to be removed or destroyed during the corrective action. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
  13. Attorney fees, consultant fees and costs for appeals that do not meet the requirements under A.R.S. § 49-1091.01, unless fees and costs are awarded under A.R.S. § 41-1007. [A.R.S. § 49-1091.01]
  14. Costs for activities that are not eligible for coverage under A.R.S. § 49-1052(A) or that do not contribute to corrective action to the release that is the subject of the application or direct payment request. [A.R.S. § 49-1052(A) and A.R.S. § 49-1014(A)]
  15. Costs related to documentation in an application or direct payment request if the Department has reason to believe the documentation has been altered or falsified. [A.R.S. § 13-2311]
  16. Costs for professional services to prepare the application or direct payment request if the application or direct payment request is incomplete, incorrect, or if zero claimed costs are approved. [A.R.S. § 49-1052(A)(7), A.R.S. § 49-1014(A) and A.R.S. § 49-1052(D)]
  17. Costs for repair, restoration or replacement of property due to damage, theft, pilferage, vandalism or malicious mischief. [A.R.S. § 49-1052(D) and A.R.S. § 49-1005]
  18. Except for interest payable under A.R.S. § 49-1052(K), costs for loss of time or market. [A.R.S. § 49-1052(K)]

The Department therefore disagrees that the economic impact arising from the inability to resubmit costs will be tremendous. Continued submittal of costs that have been deemed ineligible for coverage from the SAF through the appeals process will not cause the ineligible costs to gain eligibility. If the costs are not eligible for coverage from the SAF, establishing rules that clearly prohibit the resubmittal of these costs cannot create an economic burden. In fact, the Department considers the opposite to be true. By clearly identifying in rule those costs that are not eligible for coverage, an eligible person will not have to incur an expense for filing a claim for ineligible costs, possibly multiple times, and any subsequent appeal costs to find out that those costs are not eligible for coverage.

**RESPONSE:** No change

**2. The denial of “incorrect” applications that results in a final determination rather than an interim determination will cause applicants to incur unnecessary formal appeal costs to respond to potential administrative or clerical errors. The Proposed Rule will also result in costs other than resubmittals being subject to a final determination without an interim determination and informal appeal rights where an application is denied because a portion of it contains costs that were previously submitted.**

**ANALYSIS:** The conditions listed at R18-12-601(C), represents those conditions that cannot be corrected, or, in the case of delinquent fees and taxes, have not been cured in order to gain eligibility for coverage from the SAF. If the eligible party has documentation that refutes the Department’s position, the formal appeal process, which includes the ability to request and hold an immediate informal settlement conference, is available to the eligible person.

If the situation exists where the application or direct payment request is determined to be incorrect, based on administrative or clerical errors, then the eligible person can simply correct the error(s), and prepare and submit a new application or direct payment request. Incurring attorney’s fees and other appeal costs to correct the error(s) is not necessary.

It is important to note that it is more likely that administrative and clerical errors would cause an application or direct payment request to be incomplete, as set forth at A.R.S. § 49-1052(B). A.R.S. § 49-1052(B) provides the time-frame for the Department to identify and notify an owner or operator that a reimbursement application or direct payment request is incomplete and provides a time-frame for the owner or operator to provide the additional information. Furthermore, if the owner or operator needs additional time to submit the missing information, A.R.S. § 49-1052(B) gives the owner or operator the ability to request and requires the Department to grant an additional 60 days.

If the Department determines that an application or direct payment request is incorrect under R18-12-601(C), no other determinations regarding individual costs will be made. Therefore, once all ineligibility issues have been resolved, a new application or direct payment request can be submitted and the Department will review the application and direct payment request in accordance with the rules. By submitting only eligible applications and direct payment requests, and curing delinquent fees and taxes prior to submitting an application or direct payment request to the Department, determinations under R18-12-601(C) can be avoided.

**RESPONSE:** No change

- 3. R18-12-603(B)(9) limits the applicants who can directly assign SAF payments to owners and operators. Current practice allows for the volunteers to assign their payments to a third party to secure the necessary funding.**

**ANALYSIS:** The Department concurs with this comment. Eliminating the ability for volunteers to make direct assignments was an unintended provision. It has always been the Department's intention to continue the long-standing practice of volunteers being able to make direct assignments.

**RESPONSE:** R18-12-603(B)(9) has been corrected to read, in relevant part, "A signed and notarized statement, with original signature of the eligible person or the designated representative of the owner or operator identifying by name, address, daytime telephone number, fax number, and federal employer identification (tax) number or social security number, the person that is to appear on the payment warrant. A completed Internal Revenue Service form W-9 for the person that is to appear on the payment warrant shall be included with the reimbursement application or direct payment request, unless the applicable internal revenue service form W-9 has been on file with the Department for less than one year."

- 4. The rule provides that credits for professional fees for application preparation or credits for the UST upgrade are limited in applicability only to the copayment amount calculated from the particular application where the professional fees or upgrade costs are claimed. This may result in corrective actions becoming cost prohibitive, thereby slowing or halting cleanup actions altogether.**

**ANALYSIS:** This comment does not accurately reflect the plain language of the rule, nor the governing statutes. A.R.S. § 49-1052(A)(7) provides that the Department shall provide coverage from the SAF for "[c]osts incurred for professional fees **directly related** to the preparation of an assurance account application. The Department shall credit these fees toward the applicant's copayment obligation." Emphasis added. The preparation fees are incurred for one application and the credit is to the copayment obligation for that application. Therefore, R18-12-609(D) clearly reflects the intentions of A.R.S. § 49-1052(A)(7).

In contrast, A.R.S. § 49-1054(D) requires the Department to allow upgrade and replacement costs incurred at the time of corrective actions "to be applied on a dollar for dollar basis not to exceed ten percent of the reasonable and necessary costs for corrective actions ..." A.R.S. § 49-1054(D) clearly limits the amount of credit to ten percent of the amount of coverage. Therefore, R18-12-609(E) clearly reflects the intentions of A.R.S. § 49-1054(D). The provision for such a "rollover" of costs is lacking in A.R.S. § 49-1052(A)(7).

**RESPONSE:** No change

- 5. R18-12-608(C)(1)(h) requires all costs for a particular "task" to be included in the same application. By preventing applicants from submitting costs for reimbursement prior to the completion of a "task," the proposed rule will force applicants to carry large amounts of costs for extended periods of time.**

**ANALYSIS:** It is incorrect to read R18-12-608(C)(1)(h) as preventing applicants from submitting costs for reimbursement prior to the completion of a "task," forcing applicants to carry large amounts of costs for extended periods of time, or causing eligible persons to forecast future costs and/or include future costs with current costs on an application or direct payment request. R18-12-608(C)(1)(h) reads in relevant part, "**To the extent practicable**, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work." Emphasis added.

If some costs, for whatever reason, cannot be included in the application or direct payment request, then the eligible person need only provide that information in the summary of work along with a rationale for its exclusion. The Department intends this provision to simplify the process for both the eligible person and the Department by keeping costs for a particular task together in one application or direct payment request, to the extent practicable.

Experience has taught the Department that when costs that are related to one another are billed separately over multiple applications and direct payment requests; errors, confusion and unnecessary appeals result. The Department does, however, acknowledge that including all costs associated with a particular task may not be feasible in each and every situation. Therefore, the rule provides flexibility to accommodate these situations.

The 2005 cost schedules include task-based costs for application preparation that allow from \$933 to \$1,368, depending on type and amount of invoices submitted, to be claimed as a credit against the copayment amount for preparation of an application or direct payment request. The Department wants to encourage eligible persons and the professionals preparing applications and direct payment requests to exercise care and caution when preparing an application or direct payment request for submittal to the Department.

**RESPONSE:** No change

- 6. The rule states that where the Schedule of Corrective Action Costs identifies a task as being payable on a time and materials basis ADEQ will determine the reasonableness of that cost. The Schedule of Corrective Action Costs only identifies one task, the Corrective Action Completion Report, as payable as time and**

**materials. There are many other items that may not be identified in the Schedule of Corrective Action Costs that contribute to the corrective action and are available under statute for reimbursement as reasonable, necessary, cost effective, and technically feasible. This will result in unnecessary and costly appeals regarding the items not included in the schedule of corrective action costs.**

**ANALYSIS:** The comment is incorrect. The referenced report was initially included in the July 1, 2005 cost schedule as having an associated lump sum amount. This item was changed to “time and materials” in response to public comment after the cost schedule was released. The item retained a cost code item number to avoid renumbering of the remaining items on the cost code list. The schedule of corrective action costs includes several dozen tasks and incremental costs linked to phases (identified on the Table of Phase Codes) as being payable on a time and materials basis. The Department will work with the UST Policy Commission and interested stakeholders in the event there is still concern regarding the need to add specific costs to the Schedule of Corrective Action Costs. Costs not included in the Schedule of Corrective Action Costs will be reviewed under R18-12-608(C)(3) using the time and materials criteria found at R18-12-607(C); because the Schedule of Corrective Action Costs cannot consider every conceivable cost.

**RESPONSE:** No change

- 7. R18-12-602 states that it will apply to all direct payment requests submitted regarding work plans approved under the current rules. There may be many instances where the previously submitted work plans will not comply with the rule and, as a result, direct payment requests may be denied. This will lead to significant economic impacts because it will increase the amount of appeals, potentially render currently eligible costs ineligible, or result in an applicant being forced to revise a work plan.**

**ANALYSIS:** It is incorrect to read R18-12-602 to mean that if a previously submitted and approved work plan does not comply with the new rule, that direct payment requests submitted against that work plan may be denied on that basis; that eligible costs will somehow become ineligible; or that an eligible person will have to revise a work plan.

Pursuant to R18-12-602(A), the Department will pay direct payment requests submitted against a preapproval work plan approved by the Department prior to the effective date of the rules in accordance with R18-12-606 and the Department’s preapproval.

The Department is confident that requiring direct payment requests submitted after the effective date of these rules to be in compliance with these rules, even if the preapproval application against which the direct payment request is submitted is not subject to these rules, will not be burdensome. The basis for this assertion is that the corrective actions that are the subject of the preapproved work plan, no matter when that work plan was approved, must satisfy the requirements of A.R.S. § 49-1005, and when applicable, the Release Reporting and Corrective Action rules (R18-12-250 through R18-12-264.01). The direct payment requests, the phases of corrective actions, and the tasks and incremental costs established within the cost schedule, are all directly based on the corrective action statutes as well as the Release Reporting and Corrective Action rules. Therefore, if the claimed activities are consistent with the pre-approved work plan, complying with the direct payment requests established under these rules will not create the stated concerns.

**RESPONSE:** No change

- 8. R18-12-603(B)(9) requires the submission of a W-9 with every application. Current practice requires a submission of the W-9 every two years. This will increase the costs and burdens associated with the SAF application preparation for all eligible parties.**

**ANALYSIS:** The Department acknowledges the additional burden that this requirement places on both the person submitting the reimbursement application or direct payment request and the Department. It is essential, however, for the Department to have a current IRS form W-9, correctly completed with the information on the person to be the payee on the payment warrant, on file. The state’s General Accounting Office’s payment system can process payment provided the W-9 information is less than one year old. Therefore, the Department can lessen the burden on both the person submitting the reimbursement application or direct payment request and the Department by requiring the submittal of a new W-9 form only when the information on file is greater than a year old.

**RESPONSE:** R18-12-603(B)(9) has been modified to read, “A completed Internal Revenue Service form W-9 for the person that is to appear on the payment warrant shall be included with the reimbursement application or direct payment request, unless the applicable Internal Revenue Service form W-9 has been on file with the Department for less than one year.”

- 9. R18-12-605(C) requires that a preapproval application must include a work plan in a form proposed by ADEQ. ADEQ has not, at this time, issued a work plan form. Further, proposed Rule R18-12-605(C) could result in the work plan being considered a mere administrative function of preparing the preapproval application and therefore, the work plan would only be eligible for a credit against the copayment obligation.**

**ANALYSIS:** The Department intends the work plan submitted as part of a preapproval application to satisfy the format established at R18-12-605(C). A work plan form will not be created by the Department. The rule language will be changed to alleviate the confusion.

The Department does not intend the language found at R18-12-605(C) to mean that the work plan to be submitted as part of a preapproval application is simply an administrative function. The technical information contained within the work plan is extremely vital, which accounts for the requirement that the work plan be sealed by a registrant holding a valid registration with the Arizona Board of Technical Registration, as applicable. This rule will not eliminate the establishment of a separate cost schedule for the preparation of a work plan.

**RESPONSE:** R18-12-605(C) has been corrected to read, in relevant part, “[t]he preapproval application shall include a preapproval work plan in a format prescribed by the Department...”

**10. R18-12-605(I) allows for volunteers to proceed with corrective actions without a preapproval in place for a period of 90 days where there is a new release that requires corrective action or free product is discovered after corrective action costs exceed \$100,000. Currently, the rule allows for the initiation of corrective actions where ADEQ fails to respond to a preapproval application so long as the applicant provides notice to ADEQ of the applicant’s intent to proceed with the corrective action. A.A.C. R18-607.01. First, the proposed rule may result in hazardous site conditions or slowed progress where ADEQ fails to timely respond to a preapproval application and work plan. Second, the proposed rule limits the automatic preapproval only to a period of 90 days. The 90-day time period is inadequate and completely unrealistic to complete a preapproval application and have ADEQ review that application and work plan.**

**ANALYSIS:** A.R.S. § 49-1091(I) provides recourse to an eligible person if the Department fails to respond to a preapproval application within 90 days of receipt, by creating the ability to file an informal appeal. In addition, promulgating rules that would allow a volunteer to proceed with all forms of corrective actions after more than \$100,000.00 of corrective action costs were incurred at a facility would be in direct conflict with A.R.S. § 49-1053(A). A.R.S. § 49-1053(A) reads, in relevant part, “Beginning on July 1, 2005, a person taking corrective action pursuant to section 49-1052, subsection I [i.e. volunteers] shall proceed only in accordance with the preapproval process described in rule for any claims made for costs incurred in excess of one hundred thousand dollars at a single facility.”

The Department realized that following the discovery of a new release or free product, there may be corrective action activities that need to be initiated immediately or as soon as practicable, to minimize or prevent the spread of contamination or to provide adequate protection to public health and welfare and the environment. Therefore, the Department identified several crucial eligible activities and deemed them preapproved for a period of 90 days. It should be noted that under the current rule, these activities are deemed preapproved for only the first 45 days after discovery (R18-12-607.01(D)(5)). The provisions of the current rule were codified in response to a statutory requirement mandating preapproval for all claimed corrective action work performed from August 15, 1996 to May 28, 1998. Despite the demonstrated workability of the 45 day allowance in the current rule, this rule doubles the allotted time.

Since the activities contemplated after the discovery of a new release are consistent with the initial response, abatement, and site characterization requirements of R18-12-261, the Department continues to believe that the 90-day time-frame for performing the necessary activities and submitting an initial site characterization under R18-12-261 is quite appropriate for the deemed preapproved provisions at R18-12-605(I).

Additionally, the Department had originally intended the free product investigation and removal activities to be consistent with the requirements of R18-12-261.02, and therefore, had deemed these activities preapproved for a period of 45 days. However, the Department, after receiving informal comments submitted by interested stakeholders during the informal comment period, elected to extend this time period to 90 days to keep all time-frames under R18-12-605(I) consistent.

The provisions at R18-12-605(I) should not be read to mean that the volunteer must wait until the 90-day time period has lapsed before preparing and submitting a preapproval application to the Department. With effective project management and advanced planning, a preapproval application can be prepared and submitted prior to the expiration of the 90-day period.

**RESPONSE:** No change

**11. R18-12-612(B) dramatically changes the way in which direct pay reimbursements will be ranked. Currently pre-approval work plans would be ranked based on the date that the pre-approval work plan is approved by ADEQ.**

**ANALYSIS:** The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. This opinion is based in part on the fact that no new releases will be eligible for coverage after June 30, 2006 and the Department will continue to close existing releases, thereby reducing the universe of sites applying for coverage.

If, however, the Director determines it necessary to rank applications or direct payment requests for payment, then the only appropriate time to rank applications and direct payment requests would be during that period of time that ranking is necessary. R18-12-612(B) establishes that ranking period.

With respect to ranking a direct payment request, A.R.S. § 49-1054(C)(2) allows for payment of the amount by which the preapproved amount is exceeded and the Department has treated this amount as specifically provided in A.R.S. § 49-1054(C)(2). In the event prioritization of SAF payments (ranking) becomes necessary, only the amount in excess of the preapproved amount will be subject to the ranking process. The method of calculation of the number of priority

ranking points assigned to this amount (the amount by which the preapproved amount is exceeded) is established at R18-12-612(C)(2).

**RESPONSE:** No change

**12. R18-12-612(C) and R18-12-615 deal with risk priority ranking points. This directly penalizes owner/operators who are conducting corrective actions at the site. For example, if you have free product or need to do vapor abatement during the characterization of the site and you complete these activities before the site characterization is complete, you will receive a lower ranking later after expending the moneys to mitigate the free product or vapors.**

**ANALYSIS:** The Department does not anticipate having to rank SAF applications for payment prior to the expiration of the program. However, should ranking be necessary, the Department stands firm that the LUST Site Classification form contained within the approved LUST site characterization report submitted under R18-12-262(D), or in the event the Department has not approved the LUST site characterization report, the LUST Site Classification form on file when the ADEQ Director determines ranking is necessary in accordance with R18-12-612(A), is appropriate for determining priority ranking points. The information available following full characterization of a site allows the Department to make an informed decision as to the true risk a LUST site poses to human health and the environment. Using the risk score at the time the site characterization report is approved is consistent with the process that the Department has been following for the past several years under A.R.S. § 49-1052(G).

Concern has been expressed that ranking each application will slow down payments and ranking sites lower because they are close to being cleaned up seems punitive. Again, the Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. This opinion is based in part on the fact that no new releases will be eligible for coverage after June 30, 2006 and the Department will continue to close existing releases, thereby reducing the universe of releases applying for coverage. Therefore, the Department does not anticipate that the ranking process established at R18-12-612 will slow down the disbursement of SAF monies. Additionally, since the priority points are based on the risk posed at the time site characterization is completed, moving sites towards closure will not have a punitive affect on ranking points, in the event ranking is ever instituted.

**RESPONSE:** No change

**13. Costs associated with getting an independent accountant to prepare the balance sheet (R18-12-614(B)(4)) will be economically burdensome for small owner/operators and most likely will require a CPA, due to the liabilities associated with the document preparation. Due to the added expense this requirement places on small owner/operators they may decide it's too expensive to show that they have financial need and face further financial hardship.**

**ANALYSIS:** The provisions of R18-12-614 are applicable if and only if the Director determines that it is necessary to rank applications and direct payment requests for payment. The Department has not had to rank SAF applications for payment since May 21, 2003, nor does the Department anticipate having to rank SAF applications for payment prior to the expiration of the program. Additionally, should the Director make the determination that ranking is necessary, the requirements of R18-12-614 is only applicable to those eligible persons that did not waive financial priority points, but instead requested direct written notice of ranking, pursuant to R18-12-603(B)(7).

Furthermore, the Department reviewed invoices from a CPA that has developed financial statements for UST owners and operators on behalf of the Department. The cost associated with complying with R18-12-614(B)(4) was found to be less than \$500.00. Since this cost is directly related to the preparation of an application or direct payment request, the cost incurred for this service can be applied against the eligible person's copayment obligation by being claimed as an increment to the task-based cost for application preparation. Given the unlikelihood that ranking will be required in the future, the minimal cost associated with the preparation of a balance sheet, and the fact that the cost incurred for the preparation of the balance sheet can be applied against the eligible person's copayment obligation; the Department does not agree that this requirement will cause small owners and operators to decide that it's too expensive to show that they have financial need and therefore cause them to face further financial hardship.

**RESPONSE:** No change

**14. The changes and provisions of the proposed rule will only add to the administrative costs and will ultimately result in fewer costs for cleanups paid from the tax collected for that purpose.**

**ANALYSIS:** A.R.S. § 49-1051(B) establishes an administrative cap on the Department of 5.7 million dollars or twenty-one percent of the monies received by the assurance account in the previous fiscal year, whichever is greater. Therefore, the Department is prohibited from increasing its administrative costs as a result of these rules.

**RESPONSE:** No change

**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:**

None

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

No.

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

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY  
UNDERGROUND STORAGE TANKS**

**ARTICLE 1. DEFINITIONS; APPLICABILITY**

Section

R18-12-101. Definitions

**ARTICLE 6. UNDERGROUND STORAGE TANK ASSURANCE ~~FUND~~ ACCOUNT**

Section

R18-12-601. ~~Qualification Standards for Performing Corrective Action Services~~ Eligibility  
R18-12-602. ~~Prequalification Status~~ Applicability  
R18-12-603. ~~Retention of Prequalification Status~~ General Application and Direct Payment Request Requirements  
R18-12-604. ~~Individual Applicant: Application Requirements~~ Reimbursement Application Process  
R18-12-605. ~~Determination of Reasonableness of Cost~~ Preapproval Application Process  
R18-12-605.01 ~~Soil Clean-up Standards~~ Repealed  
R18-12-606. ~~Determination of Priority of Payment: Ranking Process~~ Direct Payment Request Process  
R18-12-607. ~~Direct Pay and Preapproval of Funds~~ Schedule of Corrective Action Costs  
R18-12-607.01 ~~Pre-approval~~ Repealed  
R18-12-608. ~~Reduction in Reimbursement~~ Scope and Standard of Review  
Appendix A. ~~SAF Reduction in Reimbursement – Violation Checklist~~ Repealed  
R18-12-609. ~~Payment Determinations; Disagreements~~ Copayments: Applicability, Waivers, and Credits  
R18-12-610. ~~Appeals~~ Interim Determinations, Informal Appeals, and Requests for Information  
R18-12-611. Final Determinations and Formal Appeals  
R18-12-612. Priority of Assurance Account Payments  
R18-12-613. Determining Financial Need Priority Ranking Points  
R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points  
R18-12-615. Risk Priority Ranking Points

**ARTICLE 1. DEFINITIONS; APPLICABILITY**

**R18-12-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-1001 and 49-1001.01, the terms used in this Chapter have the following meanings:

“Accidental release” means, with respect to Article 3 only, any release of petroleum from an UST system that is neither expected nor intended by the UST system owner or operator, that results in a need for one or more of the following:

- Corrective action,
- Compensation for bodily injury, or
- Compensation for property damage.

“Ancillary equipment” means any device used to distribute, dispense, meter, monitor, or control the flow of regulated substances to and from an UST system.

“Annual” means, with respect to R18-12-240 through R18-12-245 only, a calendar period of 12 consecutive months.

“Applicant,” for purposes of Article 7 only, means an owner or operator who applies for a grant from the UST grant account.

“Application,” for purposes of Article 6 only, means a written claim for reimbursement or preapproval from the assurance account on a form provided by the Department.

“Assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

“Aviation fuel,” for the purpose of Article 4 only, has the definition at A.R.S. § 28-101.

“Bodily injury” means injury to the body, sickness, or disease sustained by any person, including death resulting from any of these at any time.

“CAP” means corrective action plan.

“Cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

“Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such a person shall have education and experience in soil receptivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

“CERCLA” means the federal Comprehensive Environmental Response, Compensation, and Liability Act as defined in A.R.S. § 49-201.

“CFR” means the Code of Federal Regulations, with standard references in this Chapter by Title and Part, so that “40 CFR 280” means Title 40 of the Code of Federal Regulations, Part 280.

“Change-in-service” means changing the use of an UST system from the storage of a regulated substance to the storage of a non-regulated substance.

“Chemical of concern” means any regulated substance detected in contamination from the LUST site that is evaluated for potential impacts to public health and the environment.

“Chief financial officer” means, with respect to local government owners and operators, the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

“Clean Water Act” has the definition at A.R.S. § 49-201.

“Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another under conditions likely to be encountered in the UST during the operational life of the UST system.

“Conceptual site model” means a description of the complete current and potential exposure pathways, based on existing and reasonably anticipated future use.

“Connected piping” means all underground piping including valves, elbows, joints, flanges, and flexible connectors that are attached to a tank system and through which regulated substances flow. For the purpose of determining how much piping is connected to an individual UST system, the piping that joins multiple tanks shall be divided equally between the tanks.

“Consultant” means a person who performs environmental services in an advisory, investigative, or remedial capacity.

“Contamination” means the analytically determined existence of a regulated substance within environmental media outside the confines of an UST system, that originated from the UST system.

“Contractor” means a person who is required to obtain and hold a valid license from the Arizona Registrar of Contractors which permits bidding and performance of removal, excavation, repair, or construction services associated with an UST system.

“Controlling interest” means direct ownership of at least 50 percent of a firm, through voting stock, or otherwise.

“Copayment” means the percentage of Department-approved costs of eligible activities that are not paid by the Department from the assurance account under §§ 49-1052(I) or 49-1054(A).

“Corrective action rules” means, for purposes of Article 6 only, R18-12-250 through R18-12-264.01.

“Corrective action service provider” means a person acting as a licensed contractor or consultant that performs services to fulfill the statutory requirements of A.R.S. § 49-1005 and the corrective action rules.

“Corrective action services” means any service that is provided to fulfill the statutory requirements of A.R.S. § 49-1005 and the rules made under § 49-1005.

“Corrective action standard” means the concentration of the chemical of concern in the medium of concern that is protective of public health and welfare and the environment based on either pre-established non-site-specific assumptions or site-specific data, including any applied environmental use restriction.

“Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. The person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered profes-

sional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

~~“Cost ceiling amount” as described in R18-12-605 means the maximum amount determined by the Department to be reasonable for a corrective action service.~~

“Cost work sheet” means a form provided by the Department that includes all claimed or proposed tasks and increments to those tasks and associated costs in accordance with the schedule of corrective action costs for any of the following:

A phase of corrective action for a specified time period.

A tank or UST closure or tank upgrade, or

The preparation of an application or direct payment request.

“Current assets” means assets which can be converted to cash within one year and are available to finance current operations or to pay current liabilities.

“Current liabilities” means those liabilities which are payable within one year.

“Decommissioning” means, with respect to Article 8 only, activities described in R18-12-271(C)(1) through R18-12-271(C)(4).

“De minimis” means that quantity of regulated substance which is described by one of the following:

When mixed with another regulated substance, is of such low concentration that the toxicity, detectability, or corrective action requirements of the mixture are the same as for the host substance.

When mixed with a non-regulated substance, is of such low concentration that a release of the mixture does not pose a threat to public health or the environment greater than that of the host substance.

“Department” means the Arizona Department of Environmental Quality.

“Derived waste” means any excavated soil, soil cuttings, and other soil waste; fluids from well drilling, aquifer testing, well purging, sampling, and other fluid wastes; or disposable decontamination, sampling, or personal protection equipment generated as a result of release confirmation, LUST site investigation, or other corrective action activities.

“Dielectric material” means a material that does not conduct electrical current and that is used to electrically isolate UST systems or UST system parts from surrounding soils or portions of UST systems from each other.

“Diesel” means, with respect to Article 4 only, a liquid petroleum product that meets the specifications in American Society for Testing and Materials Standard D-975-94, “Standard Specification for Diesel Fuel Oils” amended April 15, 1994 (and no future amendments or editions), which is incorporated by reference and on file with the Department and the Office of the Secretary of State.

“Director” means the Director of the Arizona Department of Environmental Quality.

“Direct payment” means a payment from the assurance account for approved corrective actions associated with a Department-approved preapproval work plan.

“Direct payment request” means a claim for direct payment on a form provided by the Department.

“Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

“Eligible activities” means those activities described in R18-12-601(B).

~~“Eligible person” means, with respect to Article 6 only, a member of the class of persons regulated by A.R.S. Title 49, Chapter 6, and the rules promulgated under A.R.S. Title 49, Chapter 6, not otherwise excluded under A.R.S. § 49-1052, and including all of the following:~~

~~Any owner, operator, or designated representative of an owner or operator.~~

~~A political subdivision under A.R.S. § 49-1052(H).~~

~~A person described by A.R.S. § 49-1052(I).~~

an owner, operator, volunteer, or a political subdivision taking corrective action under A.R.S. § 49-1052(H).

“Emergency power generator” means a power generator which is used only when the primary source of power is interrupted. The interruption of the primary source of power shall not be due to any action or failure to take any action by the owner or operator of either the emergency generator or of the UST system which stores fuel for the emergency generator.

“Engineering Control” for soil, surface water and groundwater contamination has the definition at R18-7-201.

“Excavation zone” means the volume that contains or contained the tank system and backfill material and is bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

“Excess lifetime cancer risk level” for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

“Existing tank system” means a tank system used to contain an accumulation of regulated substances on or before December 22, 1988, or for which installation has commenced on or before December 22, 1988.

“Exposure” for soil, surface water, and groundwater contamination, has the meaning defined in R18-7-201.

“Exposure assessment” means the qualitative or quantitative determination or estimation of the magnitude, frequency, duration, and route of exposure or potential for exposure of a receptor to chemicals of concern from a release.

“Exposure pathway” for soil, surface water, and groundwater contamination, has the meaning defined in R18-7-201.

“Exposure route” for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

“Facility” means a single parcel of property and any contiguous or adjacent property on which one or more UST systems are located.

“Facility identification number” means the unique number assigned to a facility by the Department either after the initial notification requirements of A.R.S. § 49-1002 are satisfied, or after a refund claim is submitted and approved under R18-12-409.

“Facility location,” for the purpose of Article 4 only, means the street address or a description of the location of a storage facility.

“Facility name” means the business or operational name associated with a storage facility.

“Farm tank” means a tank system located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. The term “farm” includes fish hatcheries, rangeland, and nurseries with growing operations.

“Financial reporting year” means the latest consecutive 12-month period, either fiscal or calendar, for which financial statements used to support the financial test of self-insurance under R18-12-305 are prepared, including the following, if applicable:

A 10-K report submitted to the Securities and Exchange Commission.

An annual report of tangible net worth submitted to Dun and Bradstreet.

Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

“Firm” means any for-profit entity, nonprofit or not-for-profit entity, or local government. An individual doing business as a sole proprietor is a firm for purposes of this Chapter.

“Flow-through process tank” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. The term “flow-through process tank” does not include a tank used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

“Free product” means a mobile regulated substance that is present as a nonaqueous phase liquid (e.g. liquid not dissolved in water).

“Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

“Grant request” means the total amount requested on the application for a grant from the UST grant account, plus any cost to the Department for conducting a feasibility determination under R18-12-710, in conjunction with the application

“Groundwater” means water in an aquifer as defined at A.R.S. § 49-201.

“Hazard Index” for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

“Hazard quotient” for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

“Hazardous substance UST system” means an UST system that contains a hazardous substance as defined in A.R.S. § 49-1001(14)(b) or any mixture of such substance and petroleum, which is not a petroleum UST system.

“Heating oil” means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, or No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils for heating purposes.

“Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

“IFCI” means the International Fire Code Institute.

“Implementing agency” means, with respect to Article 3 only, the Arizona Department of Environmental Quality for UST systems subject to the jurisdiction of the state of Arizona, or the EPA for other jurisdictions or, in the case of a state with a program approved under 42 U.S.C. 6991 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

“Incremental cost” means a supplement to a task, established in the schedule of corrective action costs, that is necessary,

based on site-specific conditions, to complete the task.

“Incurred” for purposes of Article 6 only, means a cost of eligible activities owed by an eligible person to a corrective action service provider or a person who prepares applications or direct payment requests, as applicable, as demonstrated in an invoice received by the eligible person.

“Indian country” means, under 18 U.S.C. 1151, all of the following:

All land within the limits of an Indian reservation under the jurisdiction of the United States government which is also located within the borders of this state, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

All dependent Indian communities within the borders of the state whether within the original or subsequently acquired territory of the state.

All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

“Induration” means the consolidation of a rock or rock material by the action of heat, pressure, or the introduction of some cementing material not commonly contained in the original mass. Induration also means the hardening of a soil horizon by chemical action to form hardpan (caliche).

“Installation” means the placement and preparation for placement of any UST system or UST system part into an excavation zone. Installation is considered to have commenced if both of the following exist:

The owner and operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system.

The owner and operator has begun a continuous onsite physical construction or installation program or has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the UST system to be completed within a reasonable time.

“Institutional control” for soil, surface water, and groundwater contamination, has the definition at R18-7-201.

“Legal defense cost” means, with respect to Article 3 only, any expense that an owner or operator, or provider of financial assurance incurs in defending against claims or actions brought under any of the following circumstances:

By EPA or a state to require corrective action or to recover the costs of corrective action;

By or on behalf of a 3rd party for bodily injury or property damage caused by an accidental release; or

By any person to enforce the terms of a financial assurance mechanism.

“Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

“Local government” means a county, city, town, school district, water and aqueduct management district, irrigation district, power district, electrical district, agricultural improvement district, drainage and flood control district, tax levying public improvement district, local government public transportation system, and any political subdivision defined in A.R.S. § 49-1001.

“LUST” means leaking UST.

“LUST case” means all of the documentation related to a specific LUST number, which is maintained on file by the Department.

“LUST number” means the unique number assigned to a release by the Department after the notification requirements of A.R.S. § 49-1004(A) are met.

“LUST site” means the UST facility from which a release has occurred.

“Maintenance” means those actions necessary to ensure the proper working condition of an UST system or equipment used in corrective actions.

“Motor vehicle fuel,” for the purpose of Article 4 only, has the definition at A.R.S. § 28-101.

“Nature of the regulated substance” means the chemical and physical properties of the regulated substance stored in the UST, and any changes to the chemical and physical properties upon or after release.

“Nature of the release” means the known or estimated means by which the contents of the UST was dispersed from the UST system into the surrounding media, and the conditions of the UST system and media at the time of release.

“New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

“Noncommercial purposes” means, with respect to motor fuel, not for resale.

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“On-site control” means, for the purpose of Article 8 only, being at the location where tank service is being performed while tank service is performed.

“On the premises where stored” means, with respect to A.R.S. § 49-1001(18)(b) only, a single parcel of property or any contiguous or adjacent parcels of property.

“Operational life” means the period beginning when installation of the tank system has begun and ending when the tank system is properly closed under R18-12-271 through R18-12-274.

“Overfill” means a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of a regulated substance to the environment.

“Owner identification number” means the unique number assigned to the owner of an UST by the Department after the initial notification requirements of A.R.S. § 49-1002 are satisfied, or after a refund claim is submitted and approved pursuant to R18-12-409.

“Petroleum marketing facility” means a facility at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

“Petroleum marketing firm” means a firm owning a petroleum marketing facility. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

“Petroleum UST system” means an UST system that contains or contained petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. These systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

“Phase of corrective action” means a major step in corrective action as described in rules made under A.R.S. § 49-1005, and the schedule of corrective action costs.

“Pipe” or “Piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

“Pipeline facility” means new or existing pipe rights-of-way and any associated equipment, gathering lines, facilities, or buildings.

“Point of compliance” means the geographic location at which the concentration of the chemical of concern is to be at or below the risk-based corrective action standard determined to be protective of public health and the environment.

“Point of exposure” for soil, surface water, and groundwater contamination, has the definition at R18-7-201 for “exposure point.”

“Property damage” means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible.

“Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of an UST through one of the mechanisms listed in R18-12-306 through R18-12-312 or R18-12-316, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.

“RCRA” means the Resource Conservation and Recovery Act

“Receptor” means persons, enclosed structures, subsurface utilities, waters of the state, or water supply wells and well-head protection areas.

“Release confirmation” means free product discovery, or reported laboratory analytical results of samples collected and analyzed in accordance with the sampling requirements of R18-12-280 and A.A.C. Title 9, Chapter 14, Article 6 which indicates a release of a regulated substance from the UST system.

“Release confirmation date” means the date that an owner or operator first confirms the release, or the date that the owner or operator is informed of a release confirmation made by another person.

“Release detection” means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

“Remediation” for soil, surface water, and groundwater contamination, has the definition at A.R.S. § 49-151.

“Repair” means to restore a tank or UST system component that has caused or may cause a release of regulated substance from the UST system.

“Report of work” means a written summary of corrective action services performed.

“Reserved and designated funds” means those funds of a nonprofit, not-for profit, or local government entity which, by action of the governing authority of the entity, by the direction of the donor, or by statutory or constitutional limitations, may not be used for conducting UST upgrades, replacements, or removals, or for installing UST leak detection systems, or conducting corrective actions, including payment for expedited review of related documents by the Department, on releases of regulated substances.

“Residential tank” means an UST system located on property used primarily for dwelling purposes.

“Retrofit” means to add to an UST system, equipment or parts that were not originally included or installed as part of the UST system.

“Risk characterization” means the qualitative and quantitative determination of combined risks to receptors from individual chemicals of concern and exposure pathways, and the associated uncertainties.

“Routinely contains product” or “routinely contains regulated substance” means the part of an UST system which is designed to contain regulated substances and includes all internal areas of the tank and all internal areas of the piping, excluding only the vent piping.

“SARA” means the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499.

“Septic tank” means a water-tight, covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

“Site location map” means a representation by means of signs and symbols on a planar surface, at an established scale, of the streets, wells, and general use of the land for properties within at least one-quarter mile of the facility boundaries, with the direction of orientation indicated.

“Site plan” means a representation by means of signs and symbols on a planar surface, at an established scale, of the physical features (natural, artificial, or both) of the facility and surrounding area necessary to meet the requirements under which the site plan is prepared, with the direction of orientation indicated.

“Site Vicinity Map” means a representation by means of signs and symbols on a planar surface, at an established scale, of the natural and artificial physical features, used in the exposure assessment, that occur within at least 500 feet of the facility boundaries, with the direction of orientation indicated.

“Solid Waste Disposal Act” for the purposes of this Chapter means the “federal act” as defined by A.R.S. § 49-921.

“Source area” means either the location of the release from an UST, the location of free product, the location of the highest soil and groundwater concentration of chemicals of concern, or the location of a soil concentration of chemicals of concern which may continue to impact groundwater or surface water.

“Spill” means the loss of regulated substance during the transfer of a regulated substance to an UST system.

“Storage facility” means, for the purpose of Article 4 only, the common, identifiable, location at which deliveries of regulated substances are made to an UST, an above ground storage tank, or to a group of underground and above ground storage tanks, and to which the Department has assigned a single facility identification number.

“Storm-water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or of domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

“Submitted” means received by the Department on the earliest of the date of the Department’s date-stamp on the application, direct payment request, or component, or the date on the return receipt, if the application, direct payment request, or component is sent to the Department by certified mail.

“Substantial business relationship” means the extent of a business relationship necessary under Arizona law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

“Substantial governmental relationship” means the extent of a governmental relationship necessary under Arizona law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract under R18-12-316 is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

“Substituted work item” means a work item that is included in a direct payment request, in place of a preapproved work item, that accomplishes the work objectives of the preapproved work item using a different methodology and meets the requirements of A.R.S. § 49-1054(C)(1).

“Summary of work” means a brief written description, on a form provided by the Department, of the corrective actions and a rationale for the performance of the corrective actions that are the subject of the application or direct payment request, and that allows the Department to evaluate or determine whether the claimed activities are eligible activities.

“Supplier” means, for the purpose of Article 4 only, with respect to collection of the UST excise tax, a person who is described by either A.R.S. § 28-6001(A) or (B). The term “supplier” includes a distributor, as defined in A.R.S. § 28-5601, who is required to be licensed by A.R.S. Title 28, Chapter 16, Article 1.

“Supplier identification number” means, for the purpose of Article 4 only, the unique number assigned to the supplier by the Department of Transportation for the purpose of administering the motor vehicle fuel tax under A.R.S. Title 28, Chapter 16, Article 1.

“Surface impoundment” means a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, but which may be lined with artificial materials, that is not an injection well.

“Surface water” has the definition at R18-11-101.

“Surficial soil” means any soil occurring between the current surface elevation and extending to that depth for which reasonably foreseeable construction activities may excavate and relocate soils to surface elevation, and any stockpiles generated from soils of any depth.

“Suspected release discovery date” means the day an owner or operator first has reason to believe, through direct discovery or being informed by another person, that a suspected release exists.

“Suspected release notification date” means the day the Department informs an owner or operator, as evidenced by the return receipt, that a UST may be the source of a release.

“Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties.

“Task” means an action, including any and all personnel and project management, necessary to satisfy the technical requirements associated with a phase of corrective action, as established in the schedule of corrective action costs.

“Tax” means, for the purpose of Article 4 only, the excise tax on the operation of USTs levied by A.R.S. Title 49, Chapter 6, Article 2.

“Taxpayer” means, for the purpose of Article 4 only, the owner or operator of an UST who pays the tax.

“Tester” means a person who performs tightness tests on UST systems, or on any portion of an UST system including tanks, piping, or leak detection systems.

“Underground area” means an underground room, such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of the tank, situated on or above the surface of the floor.

“Underground storage tank” has the definition at A.R.S. § 49-1001.

“Under review” means an application or direct payment request is submitted and the Department has not made an interim determination under R18-12-610 or, for incorrect applications or direct payment requests under R18-12-601(C) only, the Department has not made a final determination under R18-12-611.

“Unreserved and undesignated funds” means those funds that are not reserved or designated funds and can be transferred at will by the governing authority to other funds.

“Upgrade” means the addition to or retrofit of an UST system or UST system parts, under R18-12-221, to improve the ability to prevent release of a regulated substance.

“UST” means an underground storage tank as defined at A.R.S. § 49-1001.

“UST grant account” or “grant account” means the account designated under A.R.S. § 49-1071.

“UST regulatory program” means the program established by and described in A.R.S. Title 49, Chapter 6 and the rules promulgated under that program.

“UST system” or “tank system” means an UST, connected underground piping, impact valve and connected underground ancillary equipment and containment system, if any.

“Vadose zone” has the definition at A.R.S. § 49-201.

“Volatile regulated substance” means any regulated substance that generally has the following chemical characteristics: a vapor pressure of greater than 0.5 mmHg at 20° C, a Henry’s Law Constant of greater than  $1 \times 10^{-5}$  atm-m<sup>3</sup>/mol, and which has a boiling point of less than 250° - 300° C.

“Volunteer” means a person described under A.R.S. § 49-1052(I).

“Wastewater treatment tank” means a tank system that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

“Work item” means a line item or group of line items on a direct payment request for claimed costs for a task or increment in accordance with the schedule of corrective action costs under A.R.S. § 49-1054(C).

“Work objectives of the preapproved work plan” means the purpose, as stated in a preapproval application, of the proposed corrective actions to be performed, within a phase of corrective action, on the release or releases specified in the preapproval application preapproved by the Department.

ARTICLE 6. UNDERGROUND STORAGE TANK ASSURANCE ~~FUND~~ ACCOUNT

**R18-12-601. Qualification Standards for Performing Corrective Action Services Eligibility**

- ~~A.~~ Except as otherwise provided in subsection (B), an individual who performs or directly supervises or manages the rendering of corrective action services shall meet the qualification standards described in this Section. Compliance with applicable qualification standards is required for Departmental payment. Except as otherwise provided in R18-12-602, Departmental qualification review shall take place at the time application for reimbursement is made.
- ~~B.~~ Subsection (A) shall not apply to persons for corrective action services performed after September 15, 1989, and prior to the effective date of this Section, and for corrective action services in progress on the effective date of this Section. The Department shall reimburse for the corrective action services described in this subsection if the services have been accepted by the Department as complying with the UST regulatory program, and if the documentation of costs of the corrective action meets the requirements of R18-12-605. For purposes of this subsection, corrective action services are considered to be in progress if work is actually being performed on the effective date of this Section or if a contract describing work to be performed has been entered into by the owner and operator of the UST system and the person performing the corrective action services as of the effective date of this Section.
- ~~C.~~ An individual, by satisfying the appropriate standards set forth in this Section, and providing verifiable documentation in accordance with subsection (H), shall be considered qualified for any one or more of the following categories of corrective action services: consultant, contractor, or tester.
- ~~D.~~ An individual shall be considered to be qualified as a consultant for purposes of this Section if the individual meets both of the following conditions:
- ~~1.~~ Possession of, pursuant to subsection (G), approved experience of either a supervisory or managerial nature, in three UST corrective actions within the past five years relating to the category for which qualification is sought.
  - ~~2.~~ Possession of one of the following:
    - ~~a.~~ A valid Arizona registration where such is required by the Board of Technical Registration pursuant to A.R.S. §§ 32-101 through 32-145.
    - ~~b.~~ Where registration is not required under subsection (D)(2)(a) above, a bachelor's degree from an accredited college or university in the physical sciences or a related field.
- ~~E.~~ An individual is qualified as a contractor for purposes of this Section if both of the following conditions are met:
- ~~1.~~ The individual possesses a valid Arizona license where such license is required by the Registrar of Contractors pursuant to §§ 32-1121 through 32-1129.01.
  - ~~2.~~ The individual meets either of the following requirements:
    - ~~a.~~ Possession of certification by the Department as a tank service provider in accordance with Article 8 of this Chapter for the activities for which qualification is sought under this subsection.
    - ~~b.~~ Possession of, pursuant to subsection (G), approved experience in the completion of three UST corrective action tasks within the past five years relating to the category for which qualification is sought.
- ~~F.~~ An individual who conducts tank testing, piping testing, or UST system testing shall be considered to be qualified as a tester for purposes of this Section if the individual has obtained the tightness testing certification described under R18-12-803(2) in accordance with Article 8 of this Chapter.
- ~~G.~~ Experience is approved if that approval is obtained in one of the following ways:
- ~~1.~~ For an Arizona project, project approval by the Department.
  - ~~2.~~ For a project outside Arizona, project approval from the governing entity responsible for administering the UST program in that state, where such approval is based upon corrective action standards pursuant to 40 CFR 280.60 through 280.67. 40 CFR 280.60 through 280.67, as amended as of July 1, 1991 (and no future editions), is incorporated herein by reference and is on file with the Department of Environmental Quality the with the Office of the Secretary of State.
  - ~~3.~~ For a project outside Arizona, where no approval standards exist or where approval standards are not equivalent to the corrective action standards described in paragraph (2), approval by the Department which is based upon a submitted report of work evaluated by the Department in accordance with R18-12-605(F).
- ~~H.~~ Verifiable documentation of the experience described in subsections (D), (E), or (F) shall consist of all of the following information:
- ~~1.~~ The title and site location of the corrective action service.
  - ~~2.~~ The name, telephone number, and address of the owner and operator for whom the corrective action service was conducted.
  - ~~3.~~ Where the firm served as a subcontractor for an UST corrective action service, the name and address of the prime contractor.
  - ~~4.~~ A brief narrative summary of the corrective action service.
  - ~~5.~~ The start date and the completion date of the corrective action service.
- ~~I.~~ Even though an individual meets the qualification standards described in subsection (D), (E), or (F), a Departmental finding of any of the following shall result in a failure to meet qualification standards:
- ~~1.~~ A failure to provide adequate documentation of the work performed.
  - ~~2.~~ A failure to perform the work described in the documentation.

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3. ~~The work fails to meet generally accepted industry standards.~~
  4. ~~A failure to perform work in a timely manner.~~
  5. ~~A failure to otherwise meet the UST regulatory program standards.~~
  6. ~~A falsification of documents.~~
- J.** ~~The purpose of the qualification requirements imposed by this Section is to foster quality in the performance of the corrective action services for which reimbursement from the assurance fund is sought. Neither the state of Arizona nor the Department of Environmental Quality nor their officers, agents or employees guarantee the performance of a qualified consultant, contractor or tester selected by an owner or operator to perform corrective action services.~~
- A.** Coverage. The Department shall provide coverage in accordance with the statutory maximum amounts described at A.R.S. §§ 49-1052(I) and 49-1054(A). The extent of coverage available to an eligible person is 90 percent of the reasonable and necessary costs of eligible corrective actions, except:
1. The extent of coverage for owners and operators is 50 percent of the reasonable and necessary costs of eligible corrective actions for releases reported after June 30, 2000 from USTs that were not permanently or temporarily closed or upgraded in accordance with R18-12-221.
  2. The extent of coverage for a volunteer who the Department has determined to be eligible for a copayment waiver in accordance with R18-12-609(C) is 100 percent of the reasonable and necessary costs of eligible corrective actions.
  3. The extent of coverage for an owner or operator taking corrective action above the owner's or operator's liability allocated under A.R.S. § 49-1019(D), is 100 percent of the reasonable and necessary costs of the performed eligible corrective actions that exceed that allocated liability.
- B.** Eligible Activities. The activities eligible for coverage are those described in A.R.S. § 49-1052(A) for releases reported to the Department before July 1, 2006. The eligible activities shall meet the requirements of R18-12-608, and comply with applicable requirements of A.R.S. Title 49, Chapter 6 and rules made thereunder.
- C.** Incorrect Applications or Direct Payment Requests. The Department shall not provide coverage for incorrect applications or direct payment requests. The Department shall deny incorrect applications or direct payment requests under R18-12-611. The Department shall not make an interim determination or decision related to an incorrect application or direct payment request. An application or direct payment request is incorrect if any of the following conditions exist:
1. The coverage limits at A.R.S. § 49-1054(A) are exhausted.
  2. The application or direct payment request includes a resubmittal under R18-12-608(E).
  3. The owner or operator, after notice and opportunity from the Department to become current, remains delinquent on applicable annual tank fees in accordance with A.R.S. § 49-1020 or excise tax returns in accordance with A.R.S. Title 49, Chapter 6, Article 2 and rules made thereunder.
  4. The person seeking assurance account coverage is convicted of fraud related to the performance of eligible activities or an assurance account application or direct payment request.
  5. The person seeking assurance account coverage is not an eligible person.
  6. The coverage requested in the application or direct payment request is not related to an eligible release under A.R.S. Title 49, Chapter 6.
  7. The owner or operator is the subject of an enforcement proceeding under A.R.S. § 49-1013, unless the owner or operator is otherwise eligible under A.R.S. § 49-1052(F)(3).
  8. The application is a reimbursement application for corrective actions in a work plan preapproved by the Department.
  9. The direct payment request does not pertain to a preapproval application approved by the Department, or is a direct payment request that pertains to that part of a preapproval work plan that is terminated under R18-12-605(G).
  10. The application or direct payment request for eligible activities associated with a release, except for appeal costs, is submitted more than one year after the eligible person receives a closure letter for that release, in accordance with A.R.S. § 49-1052(M).
  11. The application is a reimbursement application by a volunteer for costs incurred in excess of \$100,000 at a single facility, unless the reimbursement application is submitted in accordance with R18-12-604(A)(2).
  12. On and after December 31, 2005, the application or direct payment request is for an amount less than \$5,000 under A.R.S. § 49-1052(Q).
  13. The application is a preapproval application that pertains to a site that is the subject of a consent order or compliance order issued under the authority of A.R.S. § 49-1013.
- D.** General Deadlines. An application for preapproval of corrective actions shall be submitted no later than 5:00 p.m. on June 30, 2009. An application for preapproval shall not be accepted after 5:00 p.m. on June 30, 2009. Any reimbursement application or direct payment request shall be submitted no later than 5:00 p.m. on June 30, 2010. A reimbursement application or direct payment request to the assurance account shall not be submitted to or accepted by the Department after 5:00 p.m. June 30, 2010.

**R18-12-602. Prequalification Status Applicability**

- A.** ~~A firm may become prequalified for future corrective action services by demonstrating to the Department that it meets the conditions of this Section, in addition to R18-12-601. A firm achieving prequalification status under R18-12-602 shall have its name included on a Departmental list which is made available to the public.~~

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- ~~B. Where a firm seeks qualification for more than one category, application shall be made separately for each qualification category sought.~~
- ~~C. The Department may grant prequalification status to a firm which has in its employ at least one employee, who meets the qualifications described in R18-12-601(D), (E), or (F) for the category in which the firm seeks qualification and who will directly perform, supervise or manage corrective action services.~~
- ~~D. A firm seeking prequalification status shall provide the Department all of the following information on a form prescribed by the Department:
  - 1. The name of any owner, officer, or public official who has authority to sign reports of corrective action services.
  - 2. The name, title, and telephone number of the firm's contact person.
  - 3. The name and qualifications of each individual who will directly supervise or manage a corrective action activity and a demonstration that each individual is qualified as described in R18-12-601(D), (E), or (F) for the category of activity that will be supervised or managed.~~
- ~~E. Neither the state of Arizona nor the Department of Environmental Quality nor their officers, directors, agents or employees guarantee the performance of a firm selected by an owner or operator from the Department's list of firms prequalified to perform corrective action services.~~
- ~~F. As a condition precedent to obtaining prequalification status, a firm shall agree to indemnify and hold harmless the state of Arizona, the Department of Environmental Quality, and their officers, directors, agents or employees from and against all claims, damages, losses, attorneys' fees and expenses arising out of Departmental designation of the firm as one prequalified to perform corrective action services eligible for reimbursement under the underground storage tank financial assurance fund, including, but not limited to, bodily injury, sickness, disease or injury to or destruction of tangible property including the loss of use resulting therefrom, caused in whole or in part by any negligent act or omission of the firm, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder.~~
- A. Effective Date. This Article applies to applications and direct payment requests submitted after the effective date of these rules. Notwithstanding this effective date, the Department shall evaluate the costs associated with a direct payment request under R18-12-606 related to a preapproval work plan approved before the effective date of these rules in accordance with the Department's preapproval, and the Department may terminate an approved preapproval application and the associated work plan under R18-12-605(G).
- B. Exception. These rules do not supersede any provisions governing applications or direct payment requests in an order of the Director or a court of competent jurisdiction.

**R18-12-603. ~~Retention of Prequalification Status~~ General Application and Direct Payment Request Requirements**

- ~~A. A firm which holds prequalification status pursuant to R18-12-602 has a continuing duty to provide, on a timely basis, information or material to the Department which may affect the firm's prequalification status. This information includes, but is not limited to, the addition to or deletion from the firm's employee roster those individuals meeting the qualifications set forth in R18-12-601(D), (E), or (F).~~
- ~~B. Prequalification status for a firm shall remain valid until the occurrence of either of the following:
  - 1. The firm informs the Department that it no longer wishes prequalification status.
  - 2. The Department revokes prequalification status as described in subsections (C) and (D).~~
- ~~C. If the Director has reason to believe that the work of any prequalified firm fails to meet the UST regulatory program standards or fails to meet any of the requirements described in this Section, the Department may issue a written notice of performance review. Such notice of performance review shall identify specific areas of Departmental concern and provide notification of ongoing Departmental oversight in the areas specified. The Department may revoke prequalification status on the basis of any one of the following findings:
  - 1. A failure to demonstrate or maintain compliance with the prequalification standards set forth in R18-12-602.
  - 2. A failure to provide notice to the Department as provided in subsection (A) of this Section.
  - 3. A failure to provide adequate documentation of work performed.
  - 4. A failure to perform work described in the documentation of work performed.
  - 5. Work which fails to meet generally accepted industry standards.
  - 6. A failure to otherwise meet the UST regulatory program standards.~~
- ~~D. In every case, falsification of documents will result in Departmental revocation of prequalification status.~~
- ~~E. Within 90 days after notification of performance review, the Department shall advise the firm of one of the following determinations:
  - 1. The Department has determined that performance review is no longer warranted.
  - 2. The performance review is extended for a period of 90 days.
  - 3. The Department revokes the prequalification status of the firm and states the basis for such revocation.~~
- A. Department Form. An eligible person or the designated representative of an owner or operator shall submit a reimbursement and preapproval application and direct payment request on a form provided by the Department.
- B. Application and Direct Payment Request Contents. An application or direct payment request shall include the following:
  - 1. Information on the eligible person, as follows:

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- a. Name and any contact person with a description of the relationship of the contact person to the eligible person, and address, daytime telephone number, fax number, if any, and e-mail address, if any, for both the eligible person and the contact person;
- b. Status as an owner of an UST system that is a subject of the application, an operator of an UST system that is a subject of the application, a political subdivision described at A.R.S. § 49-1052(H), or a volunteer; and
- c. The Department-assigned identification number of the eligible person;
2. For a designated representative of an owner or operator, a copy of the written assignment to the designated representative of any rights, title, and interest the owner or operator may have in the proceeds of a reimbursement from the assurance account;
3. Information on the facility that is the subject of the application or direct payment request, as follows:
  - a. The facility name; address; daytime telephone number; fax number, if any; and e-mail address, if any;
  - b. The Department-assigned facility identification number; and
  - c. The Department-assigned LUST file number for each release that is the subject of the application or direct payment request;
4. Identification of the phase or phases of corrective action that are the subject of the application or direct payment request;
5. Information on the corrective action service provider performing eligible activities that are the subject of the application or direct payment request, as follows:
  - a. Name and contact person, address, daytime telephone number, fax number, and e-mail address of the corrective action service provider and the contact person;
  - b. Identification of the corrective action service provider as a licensed contractor or consultant;
  - c. As applicable, the seal number assigned to the registrant by the Board of Technical Registration; and
  - d. As applicable, the license number issued by the Registrar of Contractors;
6. For owners and operators, all of the following on a separate form provided by the Department:
  - a. For claims that when combined with all other approved costs associated with a release exceed \$500,000 for a release, documentation demonstrating that any insurance or alternative financial assurance mechanism required for coverage under A.R.S. § 49-1052(F)(5) has been utilized to the maximum extent possible. Failure to provide documentation that meets the requirements of this subsection shall result in denial of the portion of the application or direct payment request that exceeds \$500,000 for a release;
  - b. A statement of the amount of any benefits received from any insurance coverage or alternative financial assurance mechanism relating to the costs of the corrective action that is a subject of the application or direct payment request and any claims against insurance or alternative financial assurance mechanism relating to corrective action costs associated with the UST that is the source of any release that is the subject of the application or direct payment request;
7. A statement that, in the event ranking is required under R18-12-612, either the eligible person waives financial need priority points or the eligible person requests direct written notice of ranking under R18-12-612(A);
8. A signed and notarized statement of the eligible person, with the eligible person's original signature, certifying that:
  - a. The eligible person has paid or has agreed to pay the copayment;
  - b. For a reimbursement application or direct payment request, the eligible person has incurred the claimed costs and is seeking payment for work actually performed;
  - c. For the eligible person who is an owner or operator, the eligible person's consultant, representative, or agent has not and will not receive payment from insurance or any alternative financial assurance mechanism for the claimed costs of the corrective actions;
  - d. Naptha-type jet fuel or kerosene-type jet fuel were not placed in the UST system that is the subject of the application;
  - e. A substance described under A.R.S. § 49-1001(14)(b) was not placed in the UST system on or after July 1, 1997, unless the owner or operator paid the excise tax before July 1, 1997, elected to continue to pay the excise tax, and is not delinquent in paying the excise tax;
  - f. The eligible person has not been convicted of fraud relating to performance of eligible activities or any claim to the assurance account; and
  - g. The application or direct payment request and its contents are true, accurate, and complete to the eligible person's best information and belief;
9. A signed and notarized statement, with original signature of the eligible person or the designated representative of the owner or operator identifying by name, address, daytime telephone number, fax number, and federal employer identification (tax) number or social security number of the person that is to appear on the payment warrant. A completed Internal Revenue Service form W-9 for the person that is to appear on the payment warrant shall be included with the reimbursement application or direct payment request, unless the applicable Internal Revenue Service form W-9 has been on file with the Department for less than one year. If the eligible person is the person identified to appear on the payment warrant, the reimbursement application or direct payment request shall include proof, consisting of copies of

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cancelled checks or financial institution statements, that the eligible person paid the costs. If neither copies of cancelled checks nor financial institution statements are available, a sworn statement, by individual invoice, from the corrective action service provider.

10. A signed and notarized statement of the corrective action service provider supervising, managing, or performing the eligible activities that are the subject of the application or direct payment request, with the original signature of the corrective action service provider, certifying that:
  - a. The corrective action service provider supervised, managed, or performed the corrective actions, or in a preapproval application, prepared the work plan, in accordance with R18-12-605;
  - b. For consultants, the corrective actions were performed in accordance with the requirements of the Arizona Board of Technical Registration, as applicable;
  - c. For licensed contractors, the eligible activities were performed in accordance with the requirements of the Registrar of Contractors;
  - d. The corrective action service provider or the individual registrant have not been convicted of fraud relating to performance of any eligible activities or any claim to the assurance account; and
  - e. The invoices submitted with the reimbursement application or direct payment request include only costs for actual work performed;
11. Other documentation as necessary to demonstrate that any claimed costs are eligible; and
12. If applicable, a statement notifying the Department of any agreement demonstrating the eligible person has agreed to pay the copayment, and a copy of the agreement, if a copy is requested by the Department pursuant to R18-12-609(A).

**R18-12-604. Individual Applicant: Application Requirements Reimbursement Application Process**

- A:** An eligible person seeking partial reimbursement of corrective action costs shall make application in a format prescribed by the Department.
- B:** An applicant shall provide the Department with all of the following information regarding the applicant:
  1. The name, telephone number, and mailing address of the applicant.
  2. The name or names that are to appear on the payment warrant, and the appropriate federal employer identification (tax) number or social security number.
  3. A description of the applicant's status as an entity eligible for partial coverage of costs.
  4. Where a direct payment to a designated representative is requested pursuant to R18-12-607(A), an authorization to the Department to make a direct payment to the person designated.
  5. Where preapproval of funds is requested pursuant to R18-12-607(B), the applicant shall furnish the information set forth in that subsection.
  6. The name and telephone number of a person the Department may contact in the event there are questions regarding the application.
- C:** An applicant shall provide the Director with all of the following information regarding the corrective action site:
  1. The leaking underground storage tank file number.
  2. The facility name and site address.
- D:** An applicant shall provide the Department, in a format prescribed by the Department, all of the following information regarding the corrective action service for which reimbursement is sought:
  1. The identification of the time period covered by the application.
  2. The identification of a report of work performed which is on file with the Department, for the corrective action covered by the application.
  3. A statement as to whether the application is the first request for reimbursement of corrective action expenses incurred in response to the release.
  4. The number of previous requests for reimbursement that have been submitted relative to the Leaking Underground Storage Tank file number.
  5. The total amount of all corrective action expenses, indicating which were previously reimbursed or previously submitted for reimbursement for this release.
  6. The total amount of all costs for which reimbursement is requested and supporting documentation for all of the following categories of costs:
    - a. Personnel.
    - b. Excavation.
    - c. Drilling.
    - d. Field analysis.
    - e. Laboratory analysis.
    - f. Soil or aquifer tests.
    - g. Tank, piping, or UST system tests.
    - h. Vehicles.
    - i. Direct purchases, including, but not limited to, equipment purchases.

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- ~~j. Lease or rental.~~
- ~~k. Purging, removal, transport, or disposal of UST systems.~~
- ~~l. Indirect costs for administrative or general expenses.~~
- ~~m. Professional services costs directly related to any required permit application.~~
- ~~n. Other expenses, directly related to the required corrective actions, except those described in subsection (D)(7).~~
- ~~o. Any required permit fees.~~
- ~~7. The total amount of costs incurred for professional services directly related to the preparation of the assurance fund application.~~
- ~~8. Documentation of the amount of the assurance fund deductible chosen and documentation of costs incurred for purposes of determining whether the deductible has been met.~~
- ~~9. The name and address of the person who performed, or who will perform, reimbursable services, including all of the following information:~~
  - ~~a. Identification of the service provider as a consultant, contractor, or tester.~~
  - ~~b. A statement as to whether the firm employed by the owner to perform corrective action holds prequalification status pursuant to R18-12-602.~~
  - ~~c. The name and telephone number of the project contact person.~~
- ~~10. An estimate of the total cost of the project where either of the following occur:~~
  - ~~a. The claim for reimbursement represents a phase of work.~~
  - ~~b. The claim for reimbursement represents a request pursuant to R18-12-607(B).~~
- ~~11. Where an estimate of the total cost is submitted under subsection (D)(10) above, a statement certifying that the estimate is accurate and complete to the applicant's best information and belief.~~
- ~~E. In addition to complying with subsections (A) through (D) and subsections (F) and (I), an applicant applying on behalf of a for-profit firm shall provide the Department with a copy of all of the following:~~
  - ~~1. The most recent year federal and state income tax returns identified by firm name and address.~~
  - ~~2. The most recent year-end financial statements for the firm, including profit and loss statement, balance sheet, and all prepared notes and schedules to the financial statements, including all of the following:~~
    - ~~a. Total revenues and total expenses.~~
    - ~~b. Profit after tax, if applicable.~~
    - ~~c. Total assets and total liabilities.~~
    - ~~d. Intangible assets.~~
    - ~~e. Current year-end and prior year-end net worth.~~
  - ~~3. For sole proprietorships, a personal financial statement of the owner.~~
  - ~~4. For partnerships and S corporations, the personal financial statement and tax returns of owners of 20% or more of the firm.~~
  - ~~5. Additional financial information determined by the Department as necessary to establish financial need.~~
- ~~F. Where the applicant firm is a wholly owned subsidiary, the Department shall determine financial need based upon the financial statements of the parent corporation.~~
- ~~G. In addition to complying with subsections (A) through (D) and subsection (I), an applicant applying on behalf of a political subdivision shall provide the Department with the most recent year end copy of the following: Certified financial report with all prepared notes and schedules to the certified financial report.~~
- ~~H. In addition to complying with subsections (A) through (D) and subsection (I), an applicant applying on behalf of a non-profit entity shall provide the Department with a copy of all of the following:~~
  - ~~1. The most recent year-end statement of revenues and expenses, balance sheet, and all prepared notes and schedules to the financial statements, including all of the following:~~
    - ~~a. Total revenues and total expenses.~~
    - ~~b. Total net operating excess or loss.~~
    - ~~c. Current year-end and prior year-end restricted fund balances.~~
    - ~~d. Current year-end and prior year-end unrestricted fund balance.~~
  - ~~2. The most recent year federal and state income tax returns.~~
- ~~I. The application shall include a certification statement which includes all of the following:~~
  - ~~1. Where the applicant is not the owner, or is not the sole owner, an authorization by the owner(s) that the applicant is the designated representative of the owner(s). The authorization must be sufficient to bind the owner(s) to decisions made on his or her behalf by the designated representative.~~
  - ~~2. A statement that to the applicant's best information and belief, all information provided on the application and attachments is true and complete.~~
- ~~J. Costs incurred for professional fees directly related to preparation of the assurance fund application shall be credited toward the deductible amount and shall not be reimbursed.~~
- A. Scope of Reimbursement Application. A reimbursement application shall include only a request for reimbursement of incurred costs for one or more of the following:

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1. Non-preapproved corrective action costs for the following activities:
    - a. Sampling, analysis, and the report associated with confirmation of a release under R18-12-260(C) that requires corrective action;
    - b. Sampling, analysis, and the report associated with UST closure under R18-12-271(D) that confirms a release that requires corrective action;
    - c. Initial response, abatement, and site characterization performed according to the requirements and conditions at R18-12-261;
    - d. Free product investigation and removal according to the requirements and conditions at R18-12-261.02;
    - e. LUST site investigation performed according to the requirements and conditions at R18-12-262;
    - f. Risk assessment performed according to the requirements and conditions at R18-12-263.01;
    - g. Remedial response performed according to the requirements and conditions at R18-12-263;
    - h. LUST case closure performed according to the requirements and conditions at R18-12-263.03; or
    - i. Permanent closure of a tank or UST if the requirements at A.R.S. §§ 49-1052(A)(3), 49-1052(A)(4), or 49-1052(A)(6), as applicable, and R18-12-271 through R18-12-274 are satisfied;
  2. Corrective action costs described in subsections (1)(a) through (1)(d) and deemed preapproved under R18-12-605(I);
  3. The Department credit, toward the copayment amount, the costs of professional services to prepare the reimbursement application; or
  4. For an owner or operator, the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the reimbursement application, according to A.R.S. §§ 49-1054(D) and 40 CFR 280.21.
- B. Reimbursement Application Requirements.** An eligible person or a designated representative of an owner or operator shall submit a reimbursement application on a form provided by the Department and comply with the general application requirements of R18-12-603. The original and one copy of the application shall be submitted. A reimbursement application shall also contain the following:
1. Information on the completed eligible activities that are the subject of the application, as follows:
    - a. A summary of work;
    - b. Reference, by title, date, and location within the document, to any written report or other written information included with the application or already on file with the Department, related to the corrective actions that are the subject of the application;
    - c. Copies of unaltered invoices documenting total incurred costs for each of the eligible activities that was performed, including an invoice checklist overview prepared in a format provided by the Department;
    - d. Subcontractor costs documented as required in subsection (c); and
    - e. A completed cost work sheet;
  2. If the application requests that the Department credit, toward the copayment amount, the costs of professional services directly related to preparation of the reimbursement application, an invoice of the incurred costs for professional services directly related to preparation of the application;
  3. If the application requests that the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the application, all of the following, unless previously submitted:
    - a. A demonstration that the upgrade or replacement costs were incurred at the time of the corrective actions to the release that is a subject of the application;
    - b. Proof that the Department was notified of the upgrade or replacement in accordance with R18-12-222(F)(2);
    - c. Proof that the eligible person paid the upgrade or replacement costs, consisting of the invoices of the costs, copies of the cancelled checks, or financial institution statements; and
    - d. A statement by the eligible person that the upgrade or replacement costs for which credit is being requested were not already paid from the UST grant account or by another entity and are not the subject of an approved UST grant application.
  4. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.
- C. Conditions for Approving Reimbursement.** The Department shall approve reimbursement if all of the following conditions are satisfied:
1. The application contains all of the required application components as described in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the reimbursement. Failure to submit the statements as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
  2. The eligible activities and associated costs that are the subject of the application are described in subsection (A)(1) and were actually performed and incurred, respectively, and are in accordance with R18-12-608 and A.R.S. §§ 49-1052(A) and (D) and A.R.S. § 49-1054; and

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3. The eligible person is eligible to receive the requested assurance account coverage under A.R.S. §§ 49-1052 and 49-1054.
- D.** Reports. Notwithstanding this Section, the Department shall pay in accordance with R18-12-608 an application for the costs of a report only if one or more of the following are met:
  1. The report is required by R18-12-260 through 264.01;
  2. The report is prepared at the written request or written instruction of the Department;
  3. The report is required by other regulatory programs;
  4. The report, if approval is required under R18-12-260 through R18-12-263.03, as applicable, is approved by the Department; or
  5. The UST closure report required under R18-12-271 is eligible under A.R.S. § 49-1052(A)(2).
- E.** Notice of Reimbursement Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the reimbursement application in accordance with R18-12-601(C), R18-12-610, or R18-12-611, as applicable.
- F.** Severability. The Department may approve reimbursement of a part of the costs that are the subject of the reimbursement application, provided the conditions at subsections (A), (B), (C) and (D) are satisfied for that part, and deny the remaining costs in the application.
- G.** Reimbursement. The Department shall reimburse approved costs less any copayment amount determined under R18-12-609 using assurance account monies and, if necessary, in the order of priority determined according to R18-12-612.

**R18-12-605. Determination of Reasonableness of Cost Preapproval Application Process**

- A.** ~~On at least an annual basis the Director shall establish a list of corrective action services and respective cost ceiling amounts from which payment will be made. A Departmental list shall be compiled from one or more of the following sources:-~~
  1. ~~Annual cost survey responses, including services and costs, completed by persons who perform corrective action services.~~
  2. ~~A determination by the Department of services and costs which should be added to a Departmental list pursuant to subsection (D) below.~~
  3. ~~Such other information as is typically considered in the state procurement process in determining reasonable costs.~~
- B.** ~~Eligible costs are those costs which are all of the following:-~~
  1. ~~For work determined by the Department to be required under the UST regulatory program.~~
  2. ~~Included on the Departmental list or added pursuant to subsection (D).~~
  3. ~~Supported by adequate documentation as defined in subsection (E).~~
  4. ~~For actual work performed, as described in the documentation, and the case file.~~
  5. ~~For work which meets generally accepted industry standards.~~
  6. ~~For work which meets the UST regulatory program standards.~~
- C.** ~~A corrective action cost is considered reasonable if it does not exceed the cost ceiling amount established in the Departmental list. That portion of the costs which exceed the ceiling is not considered reasonable and shall not be paid. Eligible costs which fall at or below the ceiling amount shall be presumed to be reasonable and shall be paid. The Department shall pay the invoice amount for eligible costs where that invoice amount is lower than the cost ceiling amount.~~
- D.** ~~Where a submitted category of cost is not on the Departmental list, the Department will evaluate the cost for possible payment. Where the submitted category of cost is evaluated and the Department determines that inclusion on the Departmental list is appropriate, the submitted category of cost will be added to the Departmental list. The Department will refer to one or more of the following in evaluating a submitted category of cost:-~~
  1. ~~Estimated figures contained in current national reference volumes as are typically used by procurement professionals and estimators.~~
  2. ~~Historical data.~~
  3. ~~Limited survey data.~~
- E.** ~~In determining the reasonable cost of a given corrective action service, and for purposes of meeting the deductible and evaluating claims for reimbursement, the Director shall consider both financial reasonableness and technical reasonableness. Documentation of financial reasonableness shall be considered adequate if it includes all of the following:-~~
  1. ~~Hourly labor rate, time, and cost for each labor classification utilized in the corrective action service.~~
  2. ~~Equipment rate, time, and cost for each equipment classification utilized in the corrective action service.~~
  3. ~~Itemized material costs expended in the corrective action service.~~
  4. ~~Subcontractor services itemized and documented as in subsections (E)(1) through (3).~~
  5. ~~The applicant shall identify all amounts referenced in subsections (E)(1) through (4) of this subsection to a report of work performed on file with the Department.~~
  6. ~~The invoice amount supported by copies of cancelled checks, if available, or financial institution statements. If neither copies of cancelled checks nor financial institution statements are available, a certification statement, by invoice, from the vendor.~~
- F.** ~~A Departmental determination of technical reasonableness shall consider facts available to the claimant at the time techni-~~

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real decisions were made. The determination by the Department of technical reasonableness shall be based on the appropriateness of the utilized technology in view of the site-specific conditions and the adequacy of the corrective action in addressing the contamination at the site. In addition, technical reasonableness consists of a determination by the Department that the corrective action service met the requirements of A.R.S. § 49-1005 in effect when the corrective action was performed.

- ~~G.~~ For corrective action costs including the deductible amount referenced in R18-12-604(D)(7), all the requirements of this Article shall be satisfied in order to be considered eligible for reimbursement.
- A.** Scope of Preapproval Application. A preapproval application shall include only a request for preapproval for one or more of the following:
  - 1. Free product investigation and removal according to the requirements and conditions at R18-12-261.02;
  - 2. LUST site investigation according to the requirements and conditions at R18-12-262;
  - 3. Risk assessment according to the requirements and conditions at R18-12-263.01;
  - 4. Remedial response according to the requirements and conditions at R18-12-263; or
  - 5. LUST case closure according to the requirements and conditions at R18-12-263.03.
- B.** Preapproval Application Requirements. An eligible person or the designated representative of an owner or operator shall submit a preapproval application on a form provided by the Department and comply with the general application requirements of R18-12-603 and the work plan requirements of subsection (C). The original and one copy of the application, each including the work plan, shall be submitted.
- C.** Work Plan Requirements. The eligible person or the designated representative of an owner or operator shall submit a preapproval work plan with the application prepared in a format provided by the Department. If required, the work plan shall be sealed by a registrant who holds a valid registration from the Arizona Board of Technical Registration at the time the work plan is sealed. The work plan shall contain all of the following information, as applicable to the planned corrective actions:
  - 1. The work objectives of the proposed work plan and brief description of proposed work, including contingencies, and references to relevant rules in Article 2 and relevant written Department guidance;
  - 2. Identification of the phase or phases of corrective action;
  - 3. A brief history of the facility and LUST site;
  - 4. Depth to groundwater to the extent known, including the date and source of depth information, and the location of surface water and other receptors within 1/4 mile of the site;
  - 5. A brief lithologic and geologic description of the site;
  - 6. A detailed site plan that includes pertinent information. Pertinent information includes but is not necessarily limited to:
    - a. The location of former and existing UST systems and dispensers;
    - b. The location of any former and existing soil excavation or stock-piled soil;
    - c. Existing and proposed soil boring and contingency soil boring locations;
    - d. Existing and proposed monitor well and contingency monitor well locations;
    - e. The location of any buildings or other structures;
    - f. The location of any underground piping and utilities and other subsurface installations, to the extent known;
    - g. The location of existing and proposed remediation systems or components; and
    - h. The location of streets and other rights-of-way;
  - 7. A site location map;
  - 8. A site vicinity map;
  - 9. A rationale for proposed and contingency soil borings, proposed and contingency monitor wells, and existing and proposed remediation systems;
  - 10. If necessary, a proposed plan to obtain access to property if the eligible person does not own or have access to property where proposed soil borings, monitor wells, or other investigative or remedial activities are or may be required;
  - 11. A detailed time schedule to implement the corrective actions and complete the proposed and any contingency work objectives;
  - 12. A cost estimate for the proposed corrective actions, including contingencies, according to tasks and incremental costs described in the schedule of corrective action costs established under R18-12-607; and
  - 13. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.
- D.** Conditions for Approving Preapproval Application. The Department shall approve an application for preapproval if all of the following conditions are satisfied:
  - 1. The preapproval application contains all of the required application components identified in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the preapproval application. Failure to submit the statements as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
  - 2. The activities that are the subject of the application are described in subsection (A), the activities are in accordance

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- with R18-12-608, and the activities meet the requirements of A.R.S. § 49-1052(A) and (D) and A.R.S. § 49-1054;
3. The costs meet the requirements of R18-12-608 and A.R.S. § 49-1054(C); and
  4. The eligible person or designated representative of an owner or operator is eligible to receive all or part of the approved assurance account coverage under A.R.S. §§ 49-1052 and 49-1054.
- E.** Notice of Preapproval Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the preapproval application in accordance with R18-12-601(C), R18-12-610, and R18-12-611, as applicable.
- F.** Severability. The Department may but is not required to approve a part of a preapproval application for corrective actions and corresponding costs that are the subject of the preapproval application, provided the applicable conditions in this Section are satisfied for that part, and deny the remaining corrective actions and associated costs in the application.
- G.** Work Plan Termination. Upon notice to the eligible person, the Department may terminate a Department-approved preapproval application and associated work plan. The Department may terminate under this subsection a preapproved work plan approved by the Department before the effective date of this rule. The Department shall notify the eligible person of the termination action in accordance with R18-12-610. The Department may terminate a preapproved work plan based on consideration of one or more of the following conditions:
1. The eligible person at the time of the approval of the preapproval application is no longer an eligible person;
  2. The work objectives of the preapproved work plan have been accomplished or the release has been closed by the Department under R18-12-263.03 for more than one year;
  3. The eligible person has made no request for coverage related to corrective actions in the preapproved work plan within two years of the Department's final determination, approving the preapproved work plan, or within two years of the submission of the last direct payment request against the preapproved work plan;
  4. Information available to the Department indicates site conditions have changed to the extent that the provisions for payment of non-preapproved work at A.R.S. §§ 49-1054(C)(1) and (C)(2) cannot be applied to meet the work objectives of the preapproved work plan;
  5. Information available to the Department indicates that site conditions have changed to the extent that the work preapproved in the work plan is no longer reasonable, necessary, cost-effective, or technically feasible;
  6. The total approved amount on all direct payment requests equal or exceed the preapproved amount. The termination is effective upon approval of the first direct payment request that includes approved costs that when added to all other approved costs on all other direct payment requests equals or exceeds the preapproved amount; or
  7. The corrective actions in the preapproved work plan will no longer provide protection to human health and the environment.
- H.** Direct Payment Request. Upon the Department's written approval of a preapproved work plan and completion of some or all of the preapproved corrective actions, the eligible person or the designated representative of an owner or operator may submit a direct payment request in accordance with R18-12-606. A direct payment request is the only method available to an eligible person or a designated representative of an owner or operator for coverage of preapproved corrective actions. The Department shall not approve a reimbursement application for preapproved corrective actions.
- I.** Volunteer Deemed Preapproved. A volunteer that confirms a new release that requires corrective action or discovers free product after corrective action costs at a single facility exceeds \$100,000 shall be deemed to be preapproved under this subsection. The volunteer is deemed preapproved for the eligible activities, but not the costs, described at A.R.S. § 49-1052(A)(1) and (A)(2), for initial response, abatement, and site characterization performed according to the requirements and conditions at R18-12-261, or for free product investigation and removal according to the requirements and conditions at R18-12-261.02, if all of the following, as applicable, are met:
1. The sampling, analysis, and reporting of the new release are limited to that described in R18-12-604(A)(2);
  2. The initial response, abatement, and site characterization of the new release are performed in accordance with the requirements and conditions of R18-12-261 and the period of time during which the activities are deemed preapproved is limited to the first 90 days after the date the new release is discovered;
  3. The free product investigation and removal activities are performed in accordance with the requirements and conditions of R18-12-261.02 and the period of time during which the activities are deemed preapproved is limited to the first 90 days after discovery of the free product; and
  4. Before the expiration of the time periods described in subsections (2) and (3), the volunteer shall, as applicable, either submit a LUST case closure report in accordance with R18-12-263.03 or, if further corrective action is required, a preapproval application that meets the applicable requirements of subsections (A) and (B).

**R18-12-605.01. Soil Clean-up Standards Repealed**

- A.** ~~The payment provisions of this Section shall apply to all costs of corrective action services conducted on or after November 15, 1996, for that portion of a release which is confined to soil, as defined under A.A.C. R18-7-201(25).~~
- B.** ~~Subject to the provisions of subsections (C) through (G) of this Section, no payment from the assurance fund shall be made for corrective action expenses incurred to remediate the release of a regulated substance to a standard more stringent than either of the following:~~
1. ~~The background concentration for any component of the released regulated substance determined in accordance with~~

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A.A.C. R18-7-204,

2. The greatest allowable remaining concentration for any component of the released regulated substance permitted under A.A.C. R18-7-205.
- C. If the concentration of any component of the released regulated substance is greater than the remediation standards described in subsection (B) of this Section, the assurance fund shall pay, subject to the provisions of A.R.S. §§ 49-1052, 49-1054 and this Article, corrective action expenses incurred in accordance with the following, as elected by the eligible person:
1. Reducing the concentration of any component of the released regulated substance to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7-204 or permitted under A.A.C. R18-7-205.
  2. Reducing the concentration of any component of the released regulated substance, including the cost of the site specific risk assessment, to the following:
    - a. For properties described in A.A.C. R18-7-206(C)(1) through (3), to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7-206(C).
    - b. For properties not described in A.A.C. R18-7-206(C)(1) through (3), to the greatest allowable remaining concentration in accordance with A.A.C. R18-7-206(D)(2) or A.A.C. R18-7-206(E). The cost of engineering controls determined under A.A.C. R18-7-206(E) shall be paid as follows:
      - i. Corrective action expense for a site specific risk assessment determined in accordance with A.A.C. R18-7-206(E), shall include the cost of installing engineering controls if the eligible person can demonstrate the cost effectiveness in accordance with A.R.S. § 49-1052(B) and the rules promulgated thereunder.
      - ii. Corrective action expense for a site specific risk assessment determined in accordance with A.A.C. R18-7-206(E), shall not include the cost of maintaining engineering controls required under A.A.C. R18-7-206(E).
- D. For the period ending August 15, 2001 only, the assurance fund shall pay, subject to the provisions of A.R.S. § 49-1052, § 49-1054, and this Article, corrective action expenses, including the cost of the site specific risk assessment, incurred for reducing the concentration of any component of the released regulated substance to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7-206(D)(1) under the following circumstances:
1. If a written contract, entered into prior to April 1, 1996, and not renewed after April 1, 1996, between the property owner and an owner or operator of the UST system, sets forth in express terms a requirement to remediate to the Department's Suggested Soil Cleanup Levels or "SSCLs". The eligible person shall submit a true and correct copy of the contract to the Department for review and acceptance. The submitted contract shall be entitled to confidentiality protection under A.R.S. § 49-1012.
  2. If a written contract was entered into prior to April 1, 1996, and is not renewed after April 1, 1996, between the property owner and an owner or operator of the UST system, relating to the ownership or operation of the UST system, and the property owner, who is not the operator of the UST system or an owner, as defined in A.R.S. § 49-1001.01, refuses to sign a Voluntary Environmental Mitigation Use Restriction ("VEMUR") for a site which has been remediated or determined to be at or below non-residential concentrations. The owner or operator of the UST system shall provide written notice to the Department that the property owner refuses to sign a VEMUR.
- E. In all cases, the assurance fund shall pay, subject to the provisions of A.R.S. § 49-1052, A.R.S. § 49-1054, and this Article, corrective action expenses incurred for reducing the concentration of any component of the released regulated substance to a remediation standard established prior to the effective date of this Section by any of the following:
1. An Order of a court of competent jurisdiction;
  2. An Order of the Director in accordance with A.R.S. § 49-1013;
  3. A work plan pre approved by the Department under R18-12-607 or R18-12-607.01;
  4. A corrective action plan in accordance with 40 CFR 280.66 approved by the Department. 40 CFR 280.66, as amended on July 1, 1994 (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
- F. The assurance fund shall pay, subject to the provisions of A.R.S. §§ 49-1052, 49-1054, and this Article, for either of the following:
1. Reducing the concentration of any component of the released regulated substance below the standards of this Section where it was not feasible to control the cleanup technology to limit corrective actions to the standards of this subsection.
  2. Demobilizing and abandoning of corrective action equipment at or from the facility.
- G. Nothing in this Section shall be used to deny payment for corrective action expenses directly related to the remediation of groundwater, regardless of the concentration of regulated substance reached in the soil.

**R18-12-606. Determination of Priority of Payment: Ranking Process Direct Payment Request Process**

- A. The Department shall allow monthly revenues to accumulate in the assurance account to an amount sufficient to make a fund distribution to eligible applications. If the Department determines sufficient funds are available, applications shall be considered for payment in regular rounds in the order received by the Department. The Department shall utilize a ranking system made up of points described in subsection (D) to apply the priority of payment criteria prescribed in A.R.S. § 49-1052(F).

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- ~~B. On a periodic basis no less often than once a year and as often as sufficient funds are available, the Department shall determine the priority of payment of approved claims from funds available. The Department shall obtain information necessary to assign points from all the following sources:-~~
- ~~1. Information submitted by the applicant in the application-~~
  - ~~2. Other information submitted by the applicant which forms the site specific file-~~
  - ~~3. Information obtained from Departmental review or analysis with regard to the site-~~
- ~~C. The Department shall rank claims for payment in a descending numerical order. Each claim will be assigned a numerical ranking and all claims will be paid in consecutive rank order from the highest to lowest rank. Payments shall be made from the assurance account until either all ranked claims have been paid or until assurance account monies are temporarily depleted, whichever occurs first. Claims which remain unpaid at the time the assurance account monies are temporarily depleted shall be deferred for payment until the next round, pursuant subsection (H)-~~
- ~~D. The point system shall consist of a composite numerical score comprised of individual scores for the various statutory criteria. For a given period of time, which comprises a regular periodic round, an application score is ranked for payment against other application scores assigned during the same time period-~~
- ~~E. The Department shall rank claims for payment on a scale of 100 possible points. Of these points, financial need criterion can be assigned a maximum of 45, and the risk to human health and the environment criterion can be assigned a maximum of 45, for a total of 90 possible points. If the partial coverage is provided as a preapproved amount to a person performing a corrective action, five points are assigned. Where there is no preapproved amount, no points shall be assigned. If a delay in providing coverage will affect a corrective action in progress, five points are assigned. Where a delay in providing coverage will not affect a corrective action in progress, no points shall be assigned-~~
- ~~F. The Department shall determine a numerical score using the formula described in this subsection. The total numerical score assigned to an application is calculated using the following factors:-~~
- ~~1. Financial need (FN)-~~
  - ~~2. Risk to human health or the environment (R)-~~
  - ~~3. Preapproved amount (PA)-~~
  - ~~4. Delay (D)-~~
- ~~Expressed mathematically, the total numerical score shall be calculated as follows: (FN)+(R)+(D)+(PA)-~~
- ~~G. For applications of equal score, the earlier date of application for coverage shall receive the higher rank. For applications of equal rank and the same date of application for coverage, the earlier date on which a corrective action for which coverage is sought is to be or was taken shall receive the higher rank-~~
- ~~H. A ranked claim, which remains unpaid at the time assurance account monies are depleted shall be held by the Department until such time as additional monies become available. A deferred claim shall receive two points for each deferral-~~
- A. Scope of Direct Payment Request. A direct payment request shall include only a request for direct payment of incurred costs for one or more of the following:
1. Preapproved corrective action costs incurred performing corrective actions preapproved by the Department in a pre-approval application;
  2. Non-preapproved corrective action costs that meet the requirements of subsection (D);
  3. The Department credit, toward the copayment amount, the costs of professional services to prepare the preapproval application and the direct payment request; or
  4. For an owner or operator, the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system, that is a subject of the direct payment request, according to A.R.S. § 49-1054(D) and 40 CFR 280.21.
- B. Direct Payment Request Requirements. An eligible person or a designated representative of an owner or operator shall submit a direct payment request on a form provided by the Department and comply with the general application requirements of R18-12-603. The original and one copy of the direct payment request shall be submitted. The direct payment request shall also include the following:
1. The application number assigned by the Department to the preapproval application against which the direct payment request is made;
  2. Information on the completed corrective actions that are the subject of the direct payment request, as follows:
    - a. A summary of work;
    - b. Reference, by title, date, and location within the document, to any written report or other written information included with the direct payment request or already on file with the Department and related to the corrective actions that are the subject of the direct payment request;
    - c. If the direct payment request includes payment of non-preapproved corrective action costs, the information required at subsection (D), as applicable;
    - d. Copies of unaltered invoices documenting total incurred costs for each of the eligible activities that was performed, including an invoice checklist overview prepared in a format provided by the Department;
    - e. Subcontractor incurred costs documented as required in subsection (d); and
    - f. A completed cost work sheet;
  3. Any request that the Department credit, toward the copayment amount, the costs of professional services directly

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related to preparation of the preapproval application and the direct payment request. A request for credit for preapproval application preparation shall only be included in the eligible person's first direct payment request against the preapproval application and shall include the invoices for costs of professional services directly related to preparation of the application. The request shall also include an invoice of the incurred costs for professional services directly related to preparation of the direct payment request, if applicable;

4. If the direct payment request includes a request that the Department credit, toward the copayment amount, the costs of upgrading or replacing an UST system that is a subject of the direct payment request, the information as described in R18-12-604(B)(3);
  5. A statement by the eligible person that meets the requirements of R18-12-603(B)(8) and a statement by the corrective action service provider that meets the requirements of R18-12-603(B)(10);
  6. Information related to issuance of the payment warrant that meets the requirements of R18-12-603(B)(9); and
  7. If applicable, details on time and materials for those eligible activities identified as being payable on a time and materials basis in the schedule of corrective action costs.
- C.** Conditions for Approving Direct Payment. The Department shall approve a direct payment request if all of the following conditions are satisfied:
1. The direct payment request contains all of the required components as described in this Section, or the Department has determined in a final determination under R18-12-611 that it has enough information to make an informed decision to approve the direct payment request. Failure to make the certifications as described in R18-12-603(B)(8) and (10) shall result in denial under R18-12-610;
  2. The corrective actions and associated costs that are a subject of the direct payment request are described in subsection (A) and were actually performed and incurred, respectively, as provided in the preapproved work plan or, if not preapproved, meet the requirements of subsections (A), (B), and (D);
  3. The eligible person is eligible to receive the requested assurance account coverage under A.R.S. §§ 49-1052 and 49-1054; and
  4. The invoices submitted are consistent with subsection (C)(2). The Department shall not approve for payment invoices that exceed the cost estimate under R18-12-605(C)(12) or, for direct payment requests against preapproval applications approved before the effective date of this rule, the detailed cost estimate approved by the Department.
- D.** Non-preapproved Corrective Actions and Associated Costs. A direct payment request may include non-preapproved costs of corrective actions that meet the requirements of A.R.S. § 49-1054(C)(1) and (C)(2), as applicable. If the direct payment request includes non-preapproved corrective actions and costs, the direct payment request shall include the following, as applicable, on a form provided by the Department:
1. For each substituted work item subject to the requirements of A.R.S. § 49-1054(C)(1), the preapproved and substituted work item, the line number and the amount of the preapproved work item from the approved preapproval application, the amount of the substituted work item, and the unit rate and number of units for the substituted work item from the schedule of corrective action costs;
  2. For each non-preapproved, non-substituted work item subject to the requirements of A.R.S. § 49-1054(C)(2), the work item, the amount of the work item, and the unit rate and number of units for the work item from the schedule of corrective action costs; and
  3. A waiver with the original signature of the eligible person, waiving any current or future claim for the cost of the preapproved work item subject to subsections (D)(1) and (D)(2), as applicable.
- E.** Reports. Notwithstanding this Section, the Department shall pay, in accordance with R18-12-608, a direct payment request for the costs of a report if one or more of the following apply:
1. The report is required by R18-12-260 through 264.01;
  2. The report is submitted at the written request or written instruction of the Department;
  3. The report is required by other regulatory programs; or
  4. The report, if approval is required under R18-12-260 through R18-12-263.03, as applicable, is approved by the Department.
- F.** Notice of Direct Payment Request Determination. The Department shall notify the eligible person or the designated representative of an owner or operator of its determination on the direct payment request in accordance with R18-12-601(C), R18-12-610, and R18-12-611, as applicable.
- G.** Severability. The Department shall approve direct payment for a part of the corrective action costs that are a subject of the direct payment request, provided the conditions at subsections (A) through (D) are satisfied for that part, and deny the remaining costs in the direct payment request.
- H.** Direct Payment. Using assurance account monies, the Department shall make direct payment of approved costs, less any copayment amount determined under R18-12-609 and, if necessary, make payment in the order of priority determined according to R18-12-612.

**R18-12-607. Direct Pay and Preapproval of Funds Schedule of Corrective Action Costs**

- A.** For completed work, the Department may make a direct payment where the applicant assigns payment to a designated representative. An applicant who seeks direct payment under this subsection shall authorize the Department to make pay-

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ments to the designated representative.

- ~~B.~~ For corrective action services not yet begun, the Department may preapprove funds where, in the Department's judgment, such preapproval of funds is necessary to begin or to continue corrective action. In addition, all of the following shall be met for Departmental preapproval of funds:
  - ~~1. Submission of a detailed estimate performed by a qualified person as set forth in Section R18-12-601.~~
  - ~~2. Establishment, prior to work being performed, of compliance with the UST regulatory program.~~
  - ~~3. Demonstration that the appropriate deductible amount has been met pursuant to A.R.S. § 49-1054(A) and the rules promulgated thereunder.~~
- A. Establishment of Cost Schedule. The Department shall establish a schedule of costs in accordance with A.R.S. § 49-1054(C). When establishing the costs in the cost schedule, the Department shall base its determination of fairness and reasonableness on cost and price information received by the Department, including invoices submitted by corrective action service providers under contract with the Department pursuant to A.R.S. § 49-1017. The Department may consider the costs of eligible activities in other states.
- B. Contents. The schedule of corrective action costs shall include phases of corrective action, task-based and incremental corrective action costs, and costs for eligible activities invoiced on a time and materials basis that the Department considers fair and reasonable and established under subsection (A). The schedule of corrective action costs shall contain descriptions of each phase of corrective action, and descriptions and allowable costs for each task, increment, and eligible activity included in the schedule.
- C. Time and Materials—Reasonableness of Cost. If an eligible activity is identified in the schedule of corrective actions as being payable only on a time and materials basis, the Department shall evaluate the reasonableness of the claimed costs under subsection (A), based on the following required information which is obtained from the eligible person:
  - 1. Hourly labor rate, time, and cost for each labor classification utilized in the eligible activity;
  - 2. Equipment rate, time, and cost for each equipment classification utilized in the eligible activity;
  - 3. Itemized material costs expended in the eligible activity;
  - 4. Subcontractor services itemized and documented as in subsections (C)(1) through (3); and
  - 5. All amounts identified in subsections (C)(1) through (4) with cross-references to a summary of work or any written report already on file with the Department.

**R18-12-607.01. Pre-approval Repealed**

- ~~A.~~ The Department shall not make payment from the assurance account for the costs of corrective action performed during a phase of corrective action that is initiated after the effective date of this Section unless the eligible person meets the requirements of this Section. A phase of corrective action is initiated with the first corrective action activity performed following the submission to the Department of a report of work evidencing the completion of any activity performed in compliance with the requirements of A.R.S. § 49-1005(D). An application for pre approval may include multiple phases of corrective action, provided applications that include work plans described under subsections (F), (I), or (K) of this Section are limited to phases described in one of those subsections.
- ~~B.~~ An eligible person who elects to begin a phase of corrective action without awaiting approval of a work plan by the Department shall be subject to all of the following pre-approval procedures:
  - ~~1. Prior to beginning the phase of corrective action the eligible person shall notify the Department, in writing;~~
  - ~~2. The technical and financial reasonableness of the corrective action shall be reviewed and approved in accordance with R18-12-605;~~
  - ~~3. The eligible person who makes such an election shall:
    - ~~a. Not accrue five points for pre approval under R18-12-606(E);~~
    - ~~b. Have 15 points subtracted from the composite numerical score determined in accordance with R18-12-606(D);~~~~
  - ~~4. An application for payment of corrective action cost of any phase subject to the election described under subsection (B) shall be ranked for payment in the regular round based on the date the reimbursement application is received by the Department.~~
- ~~C.~~ The pre-approval procedures of this Section shall not apply to corrective action expenses incurred under any of the following:
  - ~~1. A work plan submitted prior to the effective date of this Section and subsequently approved, in writing, by the Department.~~
  - ~~2. A corrective action plan in accordance with 40 CFR 280.66 submitted prior to the effective date of this Section and subsequently approved by the Department. 40 CFR 280.66, as amended on July 1, 1994 (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.~~
  - ~~3. An Order of a court of competent jurisdiction.~~
  - ~~4. An Order of the Director in accordance with A.R.S. § 49-1013.~~
- ~~D.~~ An eligible person shall be deemed to be in compliance with pre-approval requirements for initial corrective action activities described in this subsection from the date of the report to the Department of the release or of the subsequent discovery of the existence of free product or fire, explosion or vapor hazards, if all of the following are met:
  - ~~1. Discovery of the release or subsequent discovery of free product or fire, explosion or vapor hazards is reported to the~~

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2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
  3. Compliance with one or more of the following:
    - a. Initial response activities under A.R.S. § 49-1005(D)(1), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.61. 40 CFR 280.61 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
    - b. Initial abatement measures and site check activities under A.R.S. § 49-1005(D)(2) and (3), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.62. 40 CFR 280.62 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
    - c. Free product removal under A.R.S. § 49-1005(D)(5), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.64. 40 CFR 280.64 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
  4. Confirmation of compliance with the requirements of subsection (D) is demonstrated in the submission to the Department of one of the following:
    - a. A request for LUST file closure;
    - b. An application for pre-approval of site characterization in accordance with subsections (G) through (I);
    - c. An application for pre-approval of response to contaminated soil, surface water or groundwater in accordance with subsections (G), (H), and (K).
  5. If the initial corrective action activities are expected to extend beyond 45 days from the date of initiation, the eligible person may continue the initial corrective action activities only if the eligible person submits an application, in accordance with subsections (G), (H) and (K), which includes the continuing initial corrective action activities, for pre-approval to the Department prior to the 45th day.
- E.** An eligible person shall be deemed to be in compliance with pre-approval requirements for the costs of removing an UST system from the ground if documented contamination exists, corrective action is required under A.R.S. § 49-1005, and all of the following are met:
1. Discovery of the release is reported to the Department.
  2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
  3. Work is in compliance with the requirements of R18-12-271.
  4. Excavation costs are limited to the costs necessary to excavate the volume of soil required to remove the tank and piping from the ground and meet the sampling requirements of R18-12-272.
  5. Confirmation of compliance with the requirements of subsection (E) is demonstrated in the submission to the Department of one of the items under subsection (D)(4)(a) through (c).
- F.** An eligible person shall be deemed to be in compliance with pre-approval requirements for initial site characterization under A.R.S. § 49-1005(D)(4) that are performed, subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.63, if the person meets the requirements of subsections (F)(1) through (6) or the requirements of subsection (F)(7). 40 CFR 280.63 as amended on July 1, 1994, (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
1. Discovery of the release is reported to the Department.
  2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
  3. Non-intrusive site information described in subsections (H)(4)(a), (d), and (e) of this Section, is collected.
  4. A single vertical boring is drilled as close as physically possible to each confirmed release point, but not further than five feet (1.5 meters) from the release point. Borings shall not be drilled deeper than any of the following:
    - a. The depth at which groundwater is encountered;
    - b. 10 feet deeper than the last field detectable evidence of contamination;
    - c. The depth at which bedrock is encountered.
  5. A soil sample for laboratory analysis is taken at least every 10 vertical feet but no more than every five vertical feet during a boring described in subsection (F)(4). All sampling shall meet the requirements of R18-12-280.
  6. Confirmation of compliance with the requirements of subsection (F) is demonstrated in the submission to the Department of one of the items under subsections (D)(4)(a) through (c).
  7. An eligible person shall submit an application for pre-approval if either of the following exist:
    - a. A request for pre-approval of site characterization in accordance with subsections (G) through (I) shall be made if site specific conditions prevent compliance with the provisions of subsection (F)(4)(a) through (c) or (F)(5), or if the full horizontal and vertical extent of contamination is not determined under the provisions of subsections (F)(1) through (6).
    - b. A request for pre-approval of initial site characterization is elected by the eligible person. The request shall be included with the application described under R18-12-604 and shall include the cost estimates described under

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subsection (G)(2) of this Section. In addition, a work plan that shall be limited to the information described under subsections (H)(1)(a), (H)(2)(a), (H)(2)(e), (H)(3), (H)(4)(a), (H)(4)(d), and (H)(4)(e) of this Section, and a statement that the initial site characterization activities shall be performed, subject to the provisions of A.R.S. § 49-1005(F), in accordance with 40 CFR 280.63 and subsection (F)(4) and (5) of this Section.

- ~~G.~~ A request for pre approval for conducting investigations for soil, waters of the United States and groundwater cleanups under A.R.S. § 49-1005(D)(6) or responses to contaminated soil, waters of the United States and groundwater under A.R.S. § 49-1005(D)(7), with the exception of subsection (F)(7)(a), shall be made after the initial site characterization under A.R.S. § 49-1005(D)(4) is completed and included with the application described under R18-12-604. An application for pre approval shall include both of the following:
  - 1. A work plan which contains the information set forth under subsections (H) and (I) or (K);
  - 2. A detailed estimate of cost, by category of cost in accordance with R18-12-604(D)(6) and R18-12-605(E), to implement the work plan. Each contingency described in the work plan shall be identified in the estimate and include a separate cost estimate for the contingency.
- ~~H.~~ Except as provided under subsection (F)(7)(b) of this Section, any work plan submitted to the Department shall contain all of the following:
  - 1. Facility identification and location information which shall include both of the following:
    - a. UST facility information including: facility name, facility identification number, street address including city and zip code, county, and the legal description of the property.
    - b. Description of the current occupancy of the facility, current property use as either residential or non-residential, the zoning classification assigned to the facility and under any pending application for a change in zoning classification, and, where applicable, the master plan designation of the facility as residential or non-residential including identification of the master plan.
  - 2. Name, complete address, daytime telephone and FAX number of each of the following:
    - a. Eligible person;
    - b. UST owner;
    - c. Property owner, if different than the UST owner;
    - d. UST operator;
    - e. Person at the facility serving as a contact person to the Department.
  - 3. Name of the environmental consulting firm, name of the firm contact, complete address, daytime telephone and FAX number.
  - 4. UST history and potential contaminant sources, pathways and receptors, including all of the following:
    - a. Information on the release that is the subject of the pre-approval application including that information required under A.R.S. § 49-1004(C), the LUST number assigned to the release, and all currently known or available LUST numbers for other releases reported at the facility.
    - b. UST excavation information including: dimensions of the height, width, and depth, of the excavation and a description of the material used to backfill the excavation as either clean fill, contaminated soil, presently not backfilled, or another type of backfill. Demonstration of compliance with the requirements of subsection (E) of this Section shall be included in this section of the work plan.
    - c. A description of all corrective action activities initiated prior to the submittal of the work plan and documentation of any notice submitted to the Department for self-initiated corrective actions.
    - d. The known or estimated depth to groundwater along with the date and source of this information.
    - e. Available site specific lithologic and geologic information. If no site specific information is available, information from known LUST releases, identified by LUST number, located within 500 feet of the facility shall be included. If no LUST release exists within 500 feet of the facility, other information shall be reported. The source and date of the information shall be included.
    - f. Volume and location of excavated soil located at the facility.
    - g. A list of all waters of the United States located within 1/4 mile of the facility, as listed in 18 A.A.C. 11.
    - h. Unless the vertical extent of contamination is limited to the vadose zone, a list of all wells registered with the Arizona Department of Water Resources (ADWR), and any other known or observed wells located within mile of the facility. For ADWR registered wells, the list shall include the Arizona Department of Water Resources registration number, water use category, reported water level, and drill date, if recorded.
    - i. A list of all schools, hospitals, nursing homes, and residential areas as described under A.R.S. § 49-151(3), located within 500 feet of the facility.
  - 5. Maps and diagrams, in accordance with all of the following:
    - a. Site location map, drawn to scale, which shall include the local area within a mile of the facility and all of the following information:
      - i. A north arrow;
      - ii. The map scale;
      - iii. The facility, prominently marked.

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- iv. Streets, roads, alleys or other thoroughfares with labels;
  - v. The general locations of all items listed in accordance with subsection (H)(4)(i);
  - vi. The location of other LUST sites listed in accordance with subsection (H)(4)(e) identified by LUST file number;
  - vii. The location of all wells listed in accordance with subsection (H)(4)(h);
  - viii. The locations of waters of the United States listed in accordance with subsection (H)(4)(g).
- b. All site plans produced in accordance with subsections (H)(5)(e) through (e) of this Section shall be drawn to scale and include all of the following:
- i. A north arrow;
  - ii. The map scale;
  - iii. The property boundaries;
  - iv. Adjacent land uses and general locations, as known, of structures surrounding the facility which could affect or be affected by the release including utility corridors, sewer systems, irrigation canals, drainage channels, transportation avenues, wells with any monitor well identification numbers, and waters of the United States;
  - v. Any buildings, on site structures, or above ground storage tanks;
  - vi. The type and extent of on-site ground surface cover described as asphalt, concrete, soil, or another specific type of cover;
  - vii. The present and former tank locations including all piping and above ground ancillary equipment with labels giving the size and contents of each tank. If any of this information is not known, estimated information shall be provided;
  - viii. Location of the release listed in accordance with subsection (H)(4)(a);
  - ix. Extent of any existing excavations resulting from UST corrective actions and the location of any excavated soil stockpiles;
  - x. Any structures, such as overhead power lines, that may interfere with drilling access.
- e. A site plan which shows previous soil investigations, including all of the following:
- i. Boring locations and identification numbers.
  - ii. Other soil sample collection locations, and identification numbers.
  - iii. Direct push probe point locations and identification numbers.
- d. A site plan showing the results of previous groundwater investigations including all of the following:
- i. Surveyed monitor well locations and identification numbers.
  - ii. Direct push probe points location and identification numbers.
  - iii. An arrow denoting groundwater flow direction of each aquifer being monitored.
- e. A site plan showing the results of previous waters of the United States investigations which shall include both of the following:
- i. Waters of the United States sample collection locations and identification number for each location.
  - ii. An arrow denoting flow direction of the waters of the United States, if applicable.
- f. Construction diagrams of existing monitor wells showing well identification numbers and, if available:
- i. Total depth and diameter of hole.
  - ii. Casing material, diameter, screened interval, groundwater elevation, wellhead and surface completion, and intervals for the annular fill materials described as sand, grout, or another specified material.
6. Tabulations of laboratory analytical results and water level data previously acquired to investigate the release which is the subject of the pre approval application. If the laboratory analytical data have not been previously submitted to the Department, all laboratory analytical reports and chain of custody forms shall be included. Tabulation of laboratory analytical results is not required, nor will be accepted, where no laboratory analytical reports or chain of custody forms exist. The tabulations shall include the following:
- a. Soil sampling analytical results including at least the sample identification number, the depth at which each sample was collected, and the date each sample was taken.
  - b. Groundwater sampling analytical results including at least the sample identification number and the date each sample was taken.
  - e. Waters of the United States sampling analytical results including the sample identification number and date each sample was taken.
  - d. Monitor well water level measurement data that shall include, for each measurement, at least the monitor well identification number, date of measurement, elevation of top of casing, screened interval, depth to water, and the water level elevation. If free product is present, include depth to free product and the elevation of the free product level.
7. A proposed work schedule for initiating, monitoring, and completing the corrective action activities under the work plan and for permit acquisition. The schedule shall identify the major activity increments of the work plan, including interim and final reporting to the Department, and include for each increment an estimate of the time for completion, following the Department approval of the work plan.

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- ~~I.~~ Any work plan submitted to the Department for investigations for soil, waters of the United States, and groundwater cleanups under A.R.S. § 49-1005(D)(6) shall meet the requirements of subsection (H) and all of the following:
  - ~~1.~~ All work plans submitted under subsection (I) shall contain all of the following:
    - ~~a.~~ The number of proposed samples, borings, probe points, and monitoring wells, and a rationale for the total number, locations, and proposed depths.
    - ~~b.~~ The locations of proposed samples, borings, probe points, and wells shown on the map described in subsection (H)(5)(b).
    - ~~c.~~ A description, including standard operating procedures, of the field equipment such as drill rig, field vapor detectors, and direct push equipment that will be used to obtain samples and to drill or install borings, wells, and probe points.
    - ~~d.~~ A list of all applicable permits and off-site access agreements that have been obtained or may be required.
  - ~~2.~~ If groundwater contamination has been found or if contaminated soils may be in contact with groundwater, all of the following shall be included:
    - ~~a.~~ A description of the local known or estimated hydrologic conditions such as the depth to groundwater, gradient, flow direction, confining layers, multiple aquifers or water table fluctuation (seasonal or historic) that may affect the construction or location of monitor wells. Known or estimated groundwater flow direction shall be shown on the site plan described in subsection (H)(5)(b).
    - ~~b.~~ Diagrams showing the construction of proposed wells including:
      - ~~i.~~ Total depth and diameter of hole.
      - ~~ii.~~ Casing material, diameter, screened interval, groundwater elevation, wellhead and surface completion, and intervals for the annular fill materials described as sand, grout, or another specified material.
    - ~~c.~~ A description of proposed well construction materials, and installation and development procedures.
  - ~~3.~~ If contamination of waters of the United States has been found, all of the following shall be included:
    - ~~a.~~ The uses of the waters of the United States or any unique waters designation pursuant to 18 A.A.C. 11 and a description of the known or estimated local gradient, flow direction, and average monthly discharge.
    - ~~b.~~ Nature of the waters of the United States identified as perennial or ephemeral.
  - ~~4.~~ A contingency plan shall be included that provides for additional soil, waters of the United States, or groundwater investigations, in the event that the investigations conducted under subsections (I)(1) through (3) do not adequately determine the full extent of contamination, or a rationale shall be provided as to why a contingency plan is not required. The contingency plans shall meet the requirements of (I)(1) through (3). The contingency plan shall contain conditions under which the additional investigations shall be performed.
- ~~J.~~ A work plan for investigations for soil, waters of the United States, and groundwater cleanups that meets the requirements of subsections (H) and (I) shall be approved by the Department if the eligible person demonstrates through the work plan that the full extent and location of soils contaminated by the release and presence and concentrations of dissolved product contamination in groundwater and waters of the United States will be determined.
- ~~K.~~ Any work plan submitted to the Department for responding to contaminated soil, groundwater, and waters of the United States under A.R.S. § 49-1005(D)(7) shall meet the requirements of subsection (H) and all of the following:
  - ~~1.~~ A report of investigations for soil, waters of the United States, and groundwater cleanups, approved by the Department, that demonstrates characterization of the full horizontal and vertical extent of contamination has been achieved. At a minimum, the report shall contain all of the information requested in subsection (H) and a description of the outcome of any investigations conducted under an approved work plan pursuant to subsection (I). If this report was previously submitted and approved, the date of the report and the date of submittal to the Department shall be submitted and shall be deemed sufficient to meet the requirements of subsection (K);
  - ~~2.~~ A description of corrective action goals, including numerical cleanup goals for each contaminant released to soil, groundwater, or waters of the United States. A rationale for each goal shall be provided for each contaminant released to soil, groundwater, or waters of the United States. Each rationale shall demonstrate that the cleanup goal is not more stringent than one of the following:
    - ~~a.~~ The Aquifer Water Quality Standards pursuant to R18-11-405 and R18-11-406 at a designated point of compliance.
    - ~~b.~~ The Water Quality Standards under Title 18, Chapter 11, Article 1.
    - ~~c.~~ Soil Cleanup provisions pursuant to R18-12-605.01.
  - ~~3.~~ Narratives, figures, diagrams, and maps necessary to describe the proposed design and operation of each system used to perform corrective actions. This Section of the work plan shall provide a rationale, including supporting documentation, for the selection and design of each system, including criteria for evaluation of the effectiveness in achieving corrective action goals;
  - ~~4.~~ The locations and methods to be utilized to verify that corrective action goals have been met;
  - ~~5.~~ A plan for abandoning or decommissioning corrective action systems after verification that corrective action goals have been met;
  - ~~6.~~ Copies of all permits that have been obtained and a list of all other permits that may be required;

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7. Additional information that the eligible person or the corrective action service provider preparing the work plan determines is necessary for the Department to approve the work plan.
- L.** A work plan for responding to contaminated soil, groundwater, and waters of the United States that meets the requirements of subsections (H) and (K) shall be approved by the Department if the eligible person demonstrates, pursuant to subsection (K)(1), that the full horizontal and vertical extent of contamination has been characterized and, through the work plan, that its implementation will protect human health, safety, and the environment. In making this determination, the Department shall consider the following:
  1. The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
  2. The hydrogeologic characteristics of the facility and surrounding area;
  3. The proximity, quality, and current and future uses of nearby waters of the United States and groundwater;
  4. The potential effects of residual contamination on nearby waters of the United States and groundwater;
  5. An exposure assessment;
  6. Any information assembled in compliance with A.R.S. § 49-1005.
- M.** The review and approval or denial of an application for pre approval shall be in accordance with the following:
  1. The Department shall determine on a site by site basis, if the work plan submitted for pre approval is the most cost effective corrective action for that site taking into consideration the risk to human health and the environment.
  2. The Department shall approve or deny an application for pre approval within 90 days. The 90 day period shall begin on the date the Department receives the application and shall end on the date the approval or denial is mailed:
    - a. If the Department sends a statement of technical deficiencies, the period of days taken to deliver the statement and for the eligible person to submit a revised application shall not accrue to the 90 day period.
    - b. If the Department sends a determination of assurance account ineligibility in accordance with A.R.S. Title 49, Chapter 6, Article 3, the period of days taken to deliver the statement and for the ineligible person to establish eligibility shall not accrue to the 90 day period.
  3. Before the Department makes a final determination of approval or denial of the pre approval application, the eligible person may elect any of the following options:
    - a. Notwithstanding subsection (B), if the Department has not made a determination of technical deficiencies within 60 days of the date the Department receives the application, or if the Department has not made a final determination approving or denying an application within 90 days, computed in accordance with subsection (M)(2), of the date the Department receives the application, the eligible person may begin corrective action activities which are the subject of the pre approval application by providing notice to the Department in accordance with subsection (B), but shall not incur the 15 point penalty provided under that subsection. The eligible person shall receive five points for pre approval in accordance with R18-12-606(E) and shall be ranked for payment in a regular round in accordance with either of the following:
      - i. To the extent that work set forth in the pre approval application reflects work that is subsequently approved, the regular round for such approved work shall be based on the date the Department receives the preapproval application;
      - ii. To the extent that work set forth in the pre approval application reflects work that is subsequently denied, the regular round for such denied work shall be based on the date the Department receives the application for reimbursement of corrective action costs for such work. The application for reimbursement for such work shall be subject to all provisions of this Article except this Section.
    - b. If the eligible person proceeds with corrective action before day 61, none of the five priority points for pre approval shall accrue under R18-12-606(E) and the eligible person may elect to do either of the following:
      - i. Comply with the provisions of subsection (B) of this Section.
      - ii. Not comply with the provisions of subsection (B) of this Section and receive no payment under this Article for corrective action activities which are the subject of the pre approval application.
  4. If the Department determines that the pre approval application is complete and the application demonstrates that the requirements of this Section have been met, the Department will inform the eligible person, by certified mail, that the request for pre approval, including any specific requirements determined by the Department, is approved.
  5. If the Department determines that the application for pre approval fails to meet the requirements of this Section, the Department shall send the eligible person, by certified mail, a statement of technical deficiencies. The Department may include with the statement, any part of the application found to be deficient. The eligible person shall have 30 days from the date of receipt, as evidenced by the date on the return receipt, to correct all technical deficiencies and submit a revised pre approval application to the Department. The Department shall consider the date of submission of the revised pre approval application to be the postmarked date or date a hand-delivered application is date stamped by the Department.
  6. If, after the Department receives the revised application, and the Department determines that the application meets the requirements of this Section, the Department shall inform the eligible person, by certified mail, that the request for pre approval, including any specific requirements determined by the Department, is approved.

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7. The Department shall deny, in writing by certified mail, a pre-approval application that is not revised and returned to the Department within 30 days from the date of delivery of the deficiency statement to the eligible person.
  8. The Department shall deny, in writing by certified mail, a pre-approval application that is revised and returned to the Department within 30 days, but which remains deficient.
  9. The Department shall not make more than one finding of technical deficiencies before it denies a pre-approval application. All technical deficiencies not included in the statement of technical deficiencies shall be deemed acceptable if such technical deficiencies are not directly related to or a consequence of the deficiencies set forth in the statement of technical deficiencies. In no case shall technical deficiencies which violate A.R.S. § 49-104 be deemed acceptable.
- N.** Before payment will be made in accordance with A.R.S. Title 49, Chapter 6, Article 3 for work associated with an approved work plan the Department shall review both of the following:
1. Information submitted to ADEQ detailing the work completed for consistency with the approved work plan. Work and its associated costs which are not consistent with the approved work plan will be paid only if the work meets the requirements of subsections (O) through (Q) of this Section.
  2. Invoices and bills submitted for consistency with subsection (N)(1) of this Section, and the approved work plan. The Department shall not make payment from the assurance account for invoices and bills which are in excess of the detailed estimate of costs in accordance with subsection (G)(2) pre-approved by the Department.
- O.** Work conducted outside the scope of the pre-approved work plan shall be reviewed by the Department and paid by the assurance account as follows:
1. If the Department determines that the completed work and associated invoices and bills are reasonable and necessary in accordance with subsection (P) of this Section, and the total of all inconsistent and consistent invoices and bills are within the total pre-approved cost, the Department shall pay the inconsistent costs in accordance with the pre-approved work plan.
  2. If the Department determines that the completed work and associated invoices and bills are reasonable and necessary in accordance with subsection (P) of this Section, and the total of all inconsistent and consistent invoices and bills exceeds the total pre-approved cost, the Department shall pay the amount in excess in accordance with R18-12-606 using the date the invoices and bills are submitted to the Department and the priority points allocated to the pre-approved application.
- P.** For the costs of all corrective action work conducted outside the scope of the pre-approved work plan the Department shall determine if those costs were reasonable and necessary, taking into consideration all of the following:
1. In accordance with R18-12-605, the technical and financial reasonableness of the work.
  2. The objectives and contingencies of the pre-approved work plan.
  3. Documentation submitted by the eligible person setting forth either of the following:
    - a. That the costs of the deviation associated with the inconsistent invoices and bills were the direct result of the occurrence of an act of war, an act of God, a legal constraint, or an act or omission of a 3rd party other than an employee or agent of the eligible person.
    - b. That the costs of the deviation associated with the inconsistent invoices and bills were less than or equal to the costs of the applicable line item in the approved work plan.
- Q.** The Department shall make payment from the assurance account as follows:
1. All costs incurred by the eligible person in complying with the submission requirements of this Section which meet the financial and technical reasonableness requirements of R18-12-605 shall be paid.
  2. For eligible persons who incur costs in accordance with subsections (D), (E), or (F) all costs shall be reviewed, in accordance with Title 49, Chapter 6, Article 3 and R18-12-605, at the time of submission of the reimbursement application to the Department for payment. Eligible persons in compliance with subsections (D), (E), or (F) shall receive the five points for pre-approval under R18-12-606(E).
  3. For eligible persons who elect to notify the Department in accordance with subsections (B) or (M)(3)(a) of this Section, all costs shall be reviewed, in accordance with Title 49, Chapter 6, Article 3 and R18-12-605, at the time of submission of the reimbursement application to the Department for payment.

**R18-12-608. Reduction in Reimbursement Scope and Standard of Review**

- A.** Pursuant to A.R.S. § 49-1053, the Department shall determine whether a reduction in reimbursement is justified. The Department shall determine the amount of reduction by employing a reduction calculation. Any reduction determined under this Section shall be applied to the claim after any adjustments are made in accordance with R18-12-601 through R18-12-607.
- B.** The Department shall determine whether any reduction is necessary by calculating a final numerical score for each claim submitted for reimbursement. The final numerical score is the sum of violation points assigned in accordance with subsections (C), (D), and (E). The final numerical score shall determine the total percentage reduction applied to a given claim.
- C.** The Department shall identify and calculate points for each violation of the UST regulatory program. The Department shall take into consideration the likely impact of the violation on human health and the environment, and the lack of due care as evidenced by the violation. To calculate the violation points identified with a specific violation, the Department shall assign one to three points per violation for the relative likely impact and one to three points per violation for relative

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lack of due care. Appendix A lists UST regulatory program violations and the corresponding violation points.

- D.** The Department shall assign additional points per violation for the following determinations: Two points where noncompliance is determined to be negligent, or five points where the noncompliance is determined to have been done knowingly, or six points where noncompliance is determined to have been done wilfully. For the purposes of A.R.S. Title 49, Chapter 6, negligent, knowingly, and wilful have the same meaning as A.R.S. §§ 1-215(20), 1-215(12), and 1-215(36), respectively.
- E.** The Department shall evaluate whether there is full cooperation with the Department in response to a release by assessing whether each element of corrective action is accompanied by full cooperation. "Cooperation" means written communication with the Department regarding compliance with the UST regulatory program which is both timely and responsive, accompanied by a good faith effort to come into compliance with the requirements of the UST regulatory program. "Timely" means accomplished within a specific statutory or regulatory deadline or a specific deadline imposed by the Department in writing. Any deadline extension which is granted by the Department before the original deadline is passed, and which is met, is timely for the purposes of the extension. The Department shall assign points for failure to fully cooperate. Failure to fully cooperate in a given element will result in the assignment of ten points for that element. Failure to cooperate in all five elements of corrective action will result in the assignment of 50 points. For purposes of this subsection, the following are identified as the elements of corrective action:
  - 1. Initial response and site check.
  - 2. Initial abatement measures and initial site characterization.
  - 3. Removal of free product.
  - 4. Investigations for soil, surface water, and groundwater contamination.
  - 5. Responses to contaminated soil, surface water, and groundwater.
- F.** The Department shall determine the reduction in reimbursement, if any, based upon the total numerical score calculated in accordance with this Section. The percentage of reduction is identified as follows: a claim assigned a score of ten points or less will result in no reduction in reimbursement. A claim assigned 11 points will result in a 1% reduction. Each additional point assigned will result in an additional 1% reduction. Claims which are assigned 110 or more points will result in a 100% reduction in reimbursement.
- A.** Scope of Review. The Department shall base its determination to approve or deny, in whole or part, an application or direct payment request on the information provided in the application or direct payment request and the supporting documentation submitted in accordance with this Article. The Department also may review other available information related to the application or direct payment request.
- B.** A.R.S. § 49-1052(D). In accordance with A.R.S. § 49-1052(D), the Department shall evaluate whether an eligible activity is reasonable and necessary and has met, or when completed will meet, the applicable requirements of A.R.S. §§ 49-1004 or 49-1005 as follows:
  - 1. For a reimbursement application under R18-12-604, the eligible person shall demonstrate that the completed eligible activities were performed in accordance with the law in effect at the time the relevant technical decision was made, and the facts available to the eligible person when the technical decision was made.
  - 2. For a preapproval application under R18-12-605, the eligible person shall demonstrate that the planned eligible activities and corresponding costs are in accordance with the law in effect at the time the preapproval application is submitted, and the facts available to the eligible person when the preapproval application is submitted.
  - 3. For a direct payment request under R18-12-606, the eligible person shall demonstrate all of the following, as applicable:
    - a. The corrective action was actually performed as set forth in the preapproved work plan;
    - b. For a work item that is actually performed and requested by the eligible person to be substituted for a preapproved work item, the substituted work item accomplishes the same objective as the preapproved work item using a different methodology, the cost of the substituted work item does not exceed the applicable cost in the schedule of corrective action costs governed by R18-12-607 or the approved cost of the preapproved work item for which the substitution is made;
    - c. For a non-preapproved, non-substituted work item that is actually performed, the work item meets the requirements of subsection (C), is within the work objectives of the preapproved work plan, and the cost of the work item does not exceed the cost of the work item in the schedule of corrective action costs in accordance with A.R.S. § 49-1054(C); and
    - d. The eligible person has waived any current or future claim to preapproved costs as described in R18-12-606(D)(3).
- C.** Standard of Review. The Department shall approve an application or direct payment request if the Department determines the eligible person has demonstrated that the eligible person, the corrective action service provider, the UST that is the source of the release, the release and all eligible activities and associated costs that are a subject of the application or direct payment request meet the requirements of A.R.S. Title 49, Chapter 6, and this Chapter, and the following standard of review:

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1. A corrective action is reasonable and necessary if the standard of subsection (B) is met and if all of the following are true:
    - a. For soil remediation, the corrective action employed is the most cost effective alternative to remediate soil under the risk based corrective action rules at R18-12-263 through R18-12-263.02 to health based levels that allow either restricted or unrestricted use of the property that is the subject of the corrective actions;
    - b. For groundwater or surface water remediation, the corrective action employed is the most cost effective alternative to remediate groundwater or surface water under the risk-based corrective action rules at R18-12-263 through R18-12-263.02;
    - c. The corrective action is an eligible activity associated with a phase of corrective action and the phase or phases of corrective action that are the subject of the application or direct payment request are identified by the eligible person;
    - d. The phase or phases of corrective action, task, and any incremental cost is included in the schedule of corrective action costs;
    - e. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs;
    - f. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed;
    - g. The eligible activities were actually performed in accordance with the applicable description in the schedule of corrective action costs;
    - h. To the extent practicable, all costs for a task and all incremental costs associated with the task, as described in the schedule of corrective action costs, are included in the same reimbursement application or direct payment request. If an incremental cost associated with a task cannot be included in the reimbursement application or direct payment request, a rationale for its exclusion shall be provided in the summary of work. The Department shall not approve incremental costs associated with a task if the task and other incremental costs associated with the task have been submitted in a separate reimbursement application or direct payment request, unless it includes a reference to the previously submitted summary of work that documents the rationale required by this subsection. The separate reimbursement application or direct payment request under this subsection is subject to all applicable standards of this Section;
    - i. The corrective action is technically feasible; and
    - j. For reimbursement applications and direct payment requests, the costs claimed were actually incurred.
  2. A permanent closure is reasonable and necessary if all of the following are true:
    - a. The permanent closure meets the requirements of A.R.S. § 49-1008 and this Chapter;
    - b. The permanent closure is eligible for coverage under A.R.S. § 49-1052(A);
    - c. The costs claimed do not exceed the amount for the task and any incremental cost in the schedule of corrective action costs;
    - d. For time and materials review, the schedule of corrective action costs describes the task or incremental costs as payable on a time and materials basis and the Department shall evaluate the claimed cost based on the law and facts available to the eligible person at the time the technical decision was made and the costs were incurred or proposed; and
    - e. The costs claimed were actually incurred.
  3. A cost is reasonable if it does not exceed a corresponding cost or costs in the schedule of corrective action costs. For costs that are not in the schedule of corrective action costs, a cost is reasonable as determined by the Department using the standards described in R18-12-607(C).
- D.** Supplements and Corrections. An application or direct payment request under review may be supplemented and corrected by the eligible person, but only as requested by the Department or as necessary to support the costs claimed in the application or direct payment request. No costs may be added to the amount originally claimed in the application or direct payment request. No supplement, correction, modification, or alteration of a work plan for preapproval may be made after the Department's approval of the preapproval application.
- E.** Resubmittal. The Department shall deny any application or direct payment request if any component of the application or direct payment request is being resubmitted after the eligible person has exhausted the administrative remedies as described under R18-12-610 and R18-12-611, as applicable, or has failed to timely file a notice of disagreement or appeal, as applicable, for the application or direct payment request or component.
- F.** Limits on Payment of Costs. In addition to any determination by the Department under this Article that costs are not eligible for coverage or credit, and notwithstanding any other provision of this Article, the following costs are not eligible for coverage or credit, as applicable, from the assurance account:
1. Costs associated with a document identified on the following list unless the document identified is sealed by a registrant holding a valid registration from the Arizona Board of Technical Registration at the time the document is sealed,

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provided the document contains information that is subject to the requirements of the Arizona Board of Technical Registration:

- a. The LUST site classification form under R18-12-261.01;
  - b. The LUST site characterization report under R18-12-262(D);
  - c. A corrective action plan under R18-12-263(D) and R18-12-263.02;
  - d. A corrective action completion report under R18-12-263.03(D);
  - e. Periodic site status reporting under R18-12-263(G);
2. Costs for eligible activities if the corrective action service provider who is a contractor did not hold a valid license from the Arizona Registrar of Contractors and, if required, a valid certification under Article 8 at the time of performance of the eligible activity;
  3. Under A.R.S. § 49-1052(A)(1), costs for collecting, analyzing, and reporting samples pursuant solely to a site check or to investigate a suspected release, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirms a release requiring corrective action and the report required under R18-12-260(C) shall be eligible for assurance account coverage;
  4. Under A.R.S. § 49-1052(A)(2), costs for collecting, analyzing, and reporting samples associated solely with an UST system permanent closure, unless samples taken from native soils confirm the presence of a release requiring corrective action. Only the single soil boring or sample collected from native soils that confirm a release and the report required under R18-12-271(D) shall be eligible for assurance account coverage;
  5. Subject to subsection (G), costs for other than the most cost effective risk based corrective action in accordance with A.R.S. § 49-1005 and this Chapter;
  6. Unless the tier evaluation meets the requirements of R18-12-263.01(A), costs for performing a risk-based tier II or tier III risk assessment;
  7. Costs for installing engineering controls, unless the installation of the engineering controls meets the requirements of A.R.S. § 49-1052(D), A.R.S. § 49-1005 and this Chapter, as necessary to achieve risk-based corrective action standards in accordance with R18-12-263.01;
  8. Costs for maintaining engineering controls;
  9. Costs for preparing a preapproval application or work plan that was not submitted to the Department, approved by the Department, and implemented by the eligible person;
  10. Costs for remodeling, renovating, replacing, or reconstructing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning, or similar item at the facility;
  11. Costs for demolishing a building or other appurtenant structure, a dispenser island, dispenser, canopy, awning, or similar item at the facility unless the demolition is reasonable and necessary and meets the requirements under A.R.S. § 49-1052(D) to complete the corrective action;
  12. Costs for resurfacing with new materials of a kind and quality exceeding those in place before corrective action. Any eligible resurfacing shall be limited to the same area of surfacing required to be removed or destroyed during the corrective action;
  13. Attorney fees, consultant fees, and costs for appeals that do not meet the requirements under A.R.S. § 49-1091.01, unless fees and costs are awarded under A.R.S. § 41-1007;
  14. Costs for activities that are not eligible for coverage under A.R.S. § 49-1052(A) or that do not contribute to corrective action to the release that is the subject of the application or direct payment request;
  15. Costs related to documentation in an application or direct payment request if the Department has reason to believe the documentation has been altered or falsified;
  16. Costs for professional services to prepare the application or direct payment request if the application or direct payment request is incomplete, incorrect, or if zero claimed costs are approved;
  17. Costs for repair, restoration, or replacement of property due to damage, theft, pilferage, vandalism, or malicious mischief; and
  18. Except for interest payable under A.R.S. § 49-1052(K), costs for loss of time or market.
- G.** Not Feasible to Control Cleanup Technology. The Department shall approve coverage under this Article, subject to the provisions of A.R.S. §§ 49-1052 and 49-1054 and this Article, for corrective action costs incurred for reducing the concentration of a chemical of concern to a level below the applicable corrective action standard, if the eligible person demonstrates that the eligible person was unable to control the technology to prevent reduction in concentration of chemicals of concern to the level below the applicable corrective action standard.

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**Appendix A. Repealed**

<b>SAF REDUCTION IN REIMBURSEMENT Violation Checklist: Page 1</b>			
<b>REGULATORY CITATION</b>	<b>VIOLATIONS</b>	<b>LIKELY IMPACT POINTS</b>	<b>LACK OF DUE CARE POINTS</b>
<b>NOTIFICATION REQUIREMENTS</b>			
A.R.S. 49-1002 (40 CFR 280.22)	Failure to notify the Department of the existence of all known UST systems or to provide complete certification of all required information on Notification forms.	3	3
<b>TASK PERFORMANCE STANDARDS/GENERAL OPERATING REQUIREMENTS</b>			
A.R.S. 49-1009 (40 CFR 280.20)	Installation of an UST system which is not designed to prevent releases due to corrosion or structural failure for the operational life of the system; installation after December 22, 1988, of an UST system that fails to meet accepted industry codes and standards for design and construction, or improper installation of an UST system.	3	3
A.R.S. 49-1009 (40 CFR 280.32)	Installation or use of an UST system which is made of or lined with materials which are not compatible with the regulated substance stored in or dispensed from the UST system.	3	3
(40 CFR 280.21)	Failure to meet all standards for upgrading an UST system after December 22, 1998.	3	3
(40 CFR 280.30)	Failure to take actions to prevent spills or overfills, or to report, investigate, and clean up any spill or overfill.	3	3
(40 CFR 280.31)	Failure to properly operate, maintain, test, or inspect a cathodic protection system, or to maintain every record of cathodic protection system inspections.	2	2
(40 CFR 280.33)	Failure to repair and/or replace an UST system or parts of an UST system in accordance with accepted codes and standards and/or manufacturer's specifications.	2	3
(40 CFR 280.33)	Failure to ensure that repaired UST systems are tightness tested within 30 days of completion of repair.	2	3
(40 CFR 280.33)	Failure to test cathodic protection system within six months of repair of a steel UST system.	2	2
(40 CFR 280.33)	Failure to maintain records of each repair to an UST system.	1	1
A.R.S. 49-1009	Failure to perform or cause to be performed a tightness test to determine compliance, as required by the Department.	2	3

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<b>SAF REDUCTION IN REIMBURSEMENT</b>			
<b>Violation Checklist- Page 2</b>			
<b>REGULATORY CITATION</b>	<b>VIOLATIONS</b>	<b>LIKELY IMPACT POINTS</b>	<b>LACK OF DUE CARE POINTS</b>
<b>RELEASE DETECTION &amp; RECORDKEEPING REQUIREMENTS</b>			
A.R.S. 49-1003 (40 CFR 280.40)	Failure to provide release detection which can detect a release from any portion of the tank that routinely contains product, or to close any UST system that cannot meet release detection requirements, by the required phase in date.	3	3
A.R.S. 49-1003 (40 CFR 280.40)	Failure to install, calibrate, or maintain a release detection method in accordance with manufacturer's instructions.	3	3
A.R.S. 49-1003 (40 CFR 280.41)	Failure to apply a method of release detection as required for a petroleum UST system.	3	3
A.R.S. 49-1003 (40 CFR 280.42)	Failure to install double-walled tanks and secondary containment as required for hazardous substance USTs installed after December 22, 1988; failure to apply a method of release detection as required for a hazardous substance UST system.	3	3
A.R.S. 49-1003 (40 CFR 280.45)	Failure to maintain any records of release detection monitoring, including results of sampling, testing, or monitoring for release detection for at least one year.	2	3
A.R.S. 49-1003 (40 CFR 280.45)	Failure to maintain every record of release detection for at least one year; failure to retain results of tightness testing until next test is conducted.	1	1
A.R.S. 49-1003 (40 CFR 280.45)	Failure to document all release detection performance claims for five years after installation, where applicable.	1	1
A.R.S. 49-1003 (40 CFR 280.45)	Failure to document any or every calibration, maintenance, and repair of release detection for at least one year.	1	2
A.R.S. 49-1003 (40 CFR 280.45)	Failure to maintain manufacturer's schedule of required calibration and maintenance for five years.	1	2
<b>FINANCIAL RESPONSIBILITY</b>			
A.R.S. 49-1006 (40 CFR 280.93)	Failure to maintain any financial responsibility assurance coverage; failure to meet the financial responsibility requirements for per occurrence and annual aggregate coverage in full; failure to establish evidence of financial responsibility consistent with the requirements of 40 CFR 280.90 through 40 CFR 280.111.	3	3
<b>FEES &amp; TAXES</b>			
A.R.S. 49-1020	Failure to pay the annual tank fee.	1	2
A.R.S. 49-1032	Failure to file the annual tax return; failure to pay the tax.	1	2

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<b>SAF REDUCTION IN REIMBURSEMENT</b>			
<b>Violation Checklist- Page 3</b>			
<b>REGULATORY CITATION</b>	<b>VIOLATIONS</b>	<b>LIKELY-IMPACT-POINTS</b>	<b>LACK-OF-DUE-CARE-POINTS</b>
<b>INSPECTION</b>			
A.R.S. 49-1011	Failure to furnish to the Department information relating to a UST-system, as required by the Department.	2	3
A.R.S. 49-1011	Failure to permit the Department to conduct monitoring and testing of a UST system or the surrounding soils, air, surface water or groundwater, as required by the Department.	3	3
<b>CLOSURE</b>			
A.R.S. 49-1008 (40 CFR 280.70)	Failure to continue operation and maintenance of cathodic protection system in a temporarily closed UST system.	2	3
A.R.S. 49-1008 (40 CFR 280.70)	Failure to continue operation and maintenance of release detection in a temporarily closed UST system which contains a regulated substance.	3	3
A.R.S. 49-1008 (40 CFR 280.70)	Failure to permanently close or upgrade a temporarily closed UST system after 12 months of temporary closure.	1	2
A.R.S. 49-1008 (40 CFR 280.71)	Failure to notify the Department of a temporary or permanent closure, or change in service, 30 days in advance.	2	3
A.R.S. 49-1008 (40 CFR 280.71)	Failure to temporarily or permanently close an UST system, or accomplish a change in service, in a safe and secure manner which prevents the release of regulated substances; failure to remove an UST system from the ground or fill it with an inert material.	2	3
A.R.S. 49-1008 (40 CFR 280.72)	Failure to measure for the presence of a release where contamination is most likely to be present, before closure of an UST system, or change in service.	3	2
A.R.S. 49-1008 (40 CFR 280.73)	Failure to assess the excavation zone and close in accordance with 40-CFR 280.70-74, as required by the Department, an UST system which was permanently closed before December 22, 1988.	3	2
A.R.S. 49-1008 (40 CFR 280.74)	Failure to maintain closure records or change in service records for at least three years.	2	2
<b>RELEASE REPORTING AND INVESTIGATION REQUIREMENTS</b>			
A.R.S. 49-1004 (40 CFR 280.50)	Failure to report to the Department a suspected or confirmed release (including spills and overfills) within 24 hours of discovery of the release.	3	3
A.R.S. 49-1004 (40 CFR 280.52)	Failure to report to the Department in writing, within 14 days of the 24 hour report, the required information regarding a suspected release, including the nature of the release and corrective actions taken and planned.	3	3
A.R.S. 49-1004 (40 CFR 280.52)	Failure to investigate and confirm a release using accepted procedures; failure to perform or cause to perform a tank test to confirm a release, as requested by the Department.	3	3

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<b>SAF REDUCTION IN REIMBURSEMENT Violation Checklist- Page 4</b>			
<b>REGULATORY- CITATION</b>	<b>VIOLATIONS</b>	<b>LIKELY- IMPACT- POINTS</b>	<b>LACK-OF- DUE-CARE- POINTS</b>
<b>CORRECTIVE ACTION</b>			
A.R.S. 49-1005 (40 CFR 280.60)	Failure to take corrective actions in response to soil, surface water and groundwater, as required by the Department.	3	3
A.R.S. 49-1005 (40 CFR 280.61)	Failure to take immediate action to stop the release and identify hazards (within 24 hours).	3	3
A.R.S. 49-1005 (40 CFR 280.53)	Failure to contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons.	2	3
A.R.S. 49-1005 (40 CFR 280.53)	Failure to contain and immediately clean up a spill or overfill of a hazardous substance that is less than the reportable quantity.	2	3
A.R.S. 49-1005 (40 CFR 280.62)	Failure to initiate free product removal as soon as practicable.	3	3
A.R.S. 49-1005 (40 CFR 280.64)	Failure to submit a report on free product removal with 45 days of confirmation of release (or other time specified by the Department).	2	3
A.R.S. 49-1005 (40 CFR 280.64)	Failure to submit a plan for automatic continuous free product removal within the time period specified by the Department.	2	3
A.R.S. 49-1005 (40 CFR 280.63)	Failure to submit a site characterization report within the time period specified by the Department.	2	3
A.R.S. 49-1005 (40 CFR 280.65)	Failure to determine the full extent of contamination, and characterize the contamination by constituents and concentrations.	3	3
A.R.S. 49-1005 (40 CFR 280.65 & 40 CFR 280.66)	Failure to submit any or every quarterly monitoring report subsequent to installation of groundwater monitoring wells, as specified by the Department.	2	3
A.R.S. 49-1005 (40 CFR 280.66)	Failure to submit a corrective action plan as required by the Department.	2	3
A.R.S. 49-1005 (40 CFR 280.66)	Failure to implement a corrective action plan as required by the Department.	3	3

**R18-12-609. Payment Determinations; Disagreements Copayments: Applicability, Waivers, and Credits**

- A.** When a payment determination is made under this Article, the Department shall inform the applicant in writing of all the following:
1. The original amount of the applicant's claim.
  2. Any and all reductions or adjustments which reduce or change the original claim amount.
  3. A summary of the determinations which were made to arrive at the final payment amount.
- B.** If an applicant receiving a payment determination under subsection (A) disagrees with that determination, the applicant shall notify the Department in writing of those specific parts of the determination with which the applicant disagrees. The notification of disagreement shall be returned to the Department within ten days after the date of the issuance of the payment determination. The Department shall reconsider the payment determination in light of the notice of disagreement made by the applicant and may change the payment amount if appropriate.
- C.** Within 15 days after making a payment determination under subsection (A), or within 15 days after receiving a notification of disagreement if one is filed, the Department shall issue a warrant for the payment determination amount, with an explanation of any difference between the warrant amount and the original payment determination amount. The warrant and any explanation made under this subsection, subsection (B), or both shall be considered the Department's final determination.

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- ~~D.~~ Any final determination shall advise the applicant of the appeal procedures described in R18-12-610.
- A.** General. An eligible person shall certify to the Department that the eligible person has met or will meet the copayment requirements of A.R.S. §§ 49-1052(I) and 49-1054(A) by providing written certification on a form provided by the Department. An eligible person may make such certification if the eligible person has entered a written agreement with a corrective action service provider to pay the copayment. At the request of the Department, the eligible person shall provide a copy of the agreement. The Department shall keep any agreement received under this subsection confidential to the extent allowed by law. The Department shall withhold the applicable amount of copayment determined under this Section from payment to the eligible person or designated representative of the owner or operator. The copayment on a reimbursement application is defined by the percentage of the approved amount on the reimbursement application, less any allowable credits under this Section. The copayment on a direct payment request is defined by the percentage of the approved amount on the direct payment request, less any allowable credits under this Section, and not the percentage of the total amount approved in the preapproval application. There is no copayment on a preapproval application.
- B.** Owners and Operators. Owners and operators are responsible for a 10 percent or 50 percent copayment, as applicable, as described in subsection (A) and R18-12-601(A)(1) or not responsible for a copayment as described in R18-12-601(A)(3).
- C.** Volunteers. A volunteer is responsible for a 10 percent copayment as described in subsection (A) unless the 10 percent copayment is waived by the Department. The Department may waive the 10 percent copayment obligation for a volunteer upon a demonstration by the volunteer that the 10 percent of approved costs in an application or direct payment request to be withheld under subsection (A) exceeds the assessed valuation of the real property that is the subject of the corrective actions in the application or direct payment request and that the real property is owned or under the principal control of the volunteer. The volunteer shall demonstrate eligibility for the copayment waiver only upon presentation to the Department of a copy of the unaltered official record of the county, indicating the tax assessed full cash value of the property.
- D.** Application Preparation Credit. Subject to R18-12-608(F)(16), the Department shall credit to the copayment amount the professional fees for preparation of an application or direct payment request in accordance with the schedule of corrective action costs. The total credit under this Section shall not exceed the copayment obligation for the reimbursement application or direct payment request and any excess fee amount shall not be credited on any other reimbursement application or direct payment request. For a direct payment request, the Department shall apply the credit to the copayment amount in accordance with R18-12-606(B)(3).
- E.** UST Upgrade Credit. For a reimbursement application or direct payment request, the Department may credit, to the copayment amount of an owner or operator, the costs of upgrading or replacing the UST that is a source of a release that is a subject of the reimbursement application or direct payment request. The Department shall ensure that UST upgrade or replacement costs credited to the copayment are:
1. Incurred by an owner or operator of the UST. Political subdivisions and volunteers are not eligible for a UST upgrade credit.
  2. Incurred at the time of corrective action on the release from the UST that is the subject of the reimbursement application or direct payment request.
  3. Incurred for compliance with 40 CFR § 280.21 regarding corrosion protection and spill and overfill prevention or 40 CFR § 280.20 regarding replacement, provided the upgrade or replacement and associated costs meet the applicable requirements of R18-12-608.
  4. Subject to the following limitations:
    - a. Total credit under this subsection shall not exceed 10 percent of the coverage provided the owner or operator under A.R.S. § 49-1054(A) for the release.
    - b. Total credit under this Section shall not exceed the copayment obligation for the reimbursement application or direct payment request.
  5. Credited to more than one reimbursement application or direct payment request.

**R18-12-610. Appeals Interim Determinations, Informal Appeals, and Requests for Information**

- A.** Any applicant aggrieved by a final determination of the Department under R18-12-609 may appeal the determination by filing a request for a hearing within 30 days after the receipt of the final determination. The request for hearing shall specify which portions of the final determination are being disputed and the nature of the appellant's dispute.
- B.** Within 30 days after receipt of a request for a hearing, the Department shall appoint or, if permitted by law, request that the Department of Administration appoint a hearing officer and otherwise conduct a contested case hearing in accordance with the procedures established in A.R.S. §§ 41-1061 through 41-1066 and R18-1-201 through R18-1-219.
- C.** The hearing officer shall issue a recommended decision in writing within 30 days after the close of evidence in the contested case hearing. The recommended decision shall contain proposed findings of fact and conclusions of law and a proposed order for the Director's signature. Within 15 days after receipt of the recommended decision, any party to the hearing shall be entitled to submit written comments on the recommended decision for consideration by the Director. Within 60 days of the issuance of the recommended decision, the Director shall issue a final decision, which shall adopt, modify, or reverse the recommended decision of the hearing officer.
- D.** During the pendency of an appeal under this Section, any amount in dispute shall be placed in a separate reserved account until the final determination of the appeal.

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- A.** Interim Determinations. Except for incorrect applications or direct payment requests under R18-12-601(C), the Department shall issue a written interim determination on an application or direct payment request in accordance with A.R.S. § 49-1091. The Department shall include in the interim determination information related to filing a notice of disagreement. The 90-day time period under A.R.S. § 49-1091(I) may be suspended in accordance with A.R.S. § 49-1052(B).
- B.** Notice of Disagreement. In response to the written interim determination on an application or direct payment request, or the Department's failure to issue a written determination within 90 days, an owner, operator, or volunteer may submit a notice of disagreement. The notice of disagreement shall:

  - 1. Be in writing and include the original signature of the owner, operator, or volunteer;
  - 2. Be submitted within 30 days of receipt of the interim determination by the owner, operator, or volunteer;
  - 3. Identify and describe the specific portions of the written interim determination with which the owner, operator, or volunteer disagrees; and
  - 4. If the owner, operator, or volunteer elects, include a request for an informal appeal meeting with the Department.
- C.** Informal Appeal Meeting. If requested, the Department shall schedule an informal appeal meeting regarding a notice of disagreement within 30 days of receiving the request. An informal appeal meeting shall be held at the Department at a date and time as mutually agreed among the Department and the owner, operator, or volunteer. The owner, operator, or volunteer shall attend, by person or telephone, the informal appeal meeting, unless the owner, operator, or volunteer designates, in writing, a person to represent the owner, operator, or volunteer at the informal appeal meeting. The owner, operator, or volunteer shall notify the Department if the owner, operator, or volunteer intends to bring an attorney to the informal appeal meeting.
- D.** Additional Information. The Department may request additional information from an owner, operator, or volunteer who files a notice of disagreement if the information is necessary for the Department to make a final determination on an application or direct payment request. The requested information shall be submitted within 15 days of the request by the Department or the information may not be considered in the Department's final determination. The owner, operator, or volunteer may request an additional 60 days to submit the requested information, but only if the request for additional time is made before the day the requested information is originally due to the Department. Before the final determination under R18-12-611, the owner, operator or volunteer may submit additional information to assist the Department in making a final determination. The period of time allowed the Department to make a final determination shall, if necessary, be extended to allow the Department at least 15 days to review the additional information.
- E.** Payment Warrant. If assurance account monies are available, the Department shall issue with the interim determination, or within 15 days of the date of the written interim determination, a payment warrant of approved costs, less any applicable copayment amount to the eligible person or the designated representative to whom the owner or operator has assigned payment under R18-12-603(B)(9).

**R18-12-611. Final Determinations and Formal Appeals**

- A.** Final Determinations. The Department shall issue a written final determination to an eligible person regarding an application or direct payment request as required under A.R.S. § 49-1091(E) or under R18-12-601(C). The Department shall ensure that this written final determination complies with A.R.S. Title 41, Chapter 6, Article 10.
- B.** Notice of Appeal or Request for Hearing. An eligible person may appeal a written final determination. To appeal the written final determination, the eligible person shall submit a notice of appeal or request for hearing with an original signature, in accordance with A.R.S. § 41-1092.03 and A.A.C. R2-19-108. The Department shall forward to the Office of Administrative Hearings notices of appeal and requests for hearing submitted in accordance with A.R.S. § 41-1092.03. The Department shall forward to the Office of Administrative Hearings any notice of appeal or request for hearing submitted by the eligible person or an Arizona-licensed attorney representing the eligible person.
- C.** Interim Determination Becomes Final. In the absence of a written final determination issued in accordance with subsection (A), the written interim determination becomes the final determination, as provided in A.R.S. § 49-1091(E). A notice of appeal or request for hearing relating to a written interim determination that becomes final under this Section shall be submitted in accordance with subsection (B). The notice of appeal or request for hearing is timely submitted if it is submitted within 30 days of the date on which the written final determination was due in accordance with subsection (A).

**R18-12-612. Priority of Assurance Account Payments**

- A.** Notice of Ranking. The Director shall determine whether it is necessary for the Department to rank applications and direct payment requests if the assurance account balance may not be sufficient to pay all approved amounts for applications and direct payment requests that are in process or anticipated to be submitted. Upon such a determination, the Department shall establish a ranking period under subsection (B). The Department shall give general notice of the ranking period and direct written notice to each eligible person or designated representative of an owner or operator with an application or direct payment request under review that has not waived financial need priority points. The general notice shall be issued within 15 days of the Director's establishment of a ranking period under this subsection. The individual direct written notice shall be issued no less than 45 days before the first ranking period following the Director's establishment of a ranking period under this subsection. The direct written notice shall include for each application or direct payment request under review, the following:

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1. Eligible person name;
  2. Department-assigned number for the application or direct payment request;
  3. Facility name, address, and Department-assigned facility identification number;
  4. Department-assigned LUST and release number;
  5. A statement that assignment of priority ranking points and ranking may be necessary because the Director has determined that monies in the assurance account may not be immediately available to pay approved amounts on the reimbursement application or direct payment request;
  6. For those eligible person's that have requested a financial need evaluation on the application or direct payment request under review, a statement that to receive financial need priority ranking points the eligible person shall submit the information required under R18-12-614 no less than 15 days before the ranking period; and
  7. Estimated date for the first ranking period under subsection (B).
- B.** Ranking Periods. If the Director determines under subsection (A) that it is necessary for the Department to rank applications or direct payment requests, the Department shall establish a ranking period during which the Department assigns priority ranking points and makes payments in accordance with subsections (C), (D), and (E). The ranking period shall begin on the date the Director determines assurance account monies will be insufficient to pay, upon approval, all approved costs on reimbursement applications and direct payment requests in process and terminates when the Department is able to pay, upon approval, all approved costs on reimbursement applications and direct payment requests in process. The Department shall hold a ranking period when accumulated available monies in the assurance account, or a portion of the assurance account, are not sufficient to pay all approved amounts for applications and direct payment requests that are in process. The assignment of priority ranking points and the ranking process shall be in accordance with the requirements of subsections (C) through (F).
- C.** Scoring. During a ranking period, the Department shall assign priority ranking points to score affected applications and direct payment requests as follows:
1. The Department shall assign the sum of the following scores to each application or direct payment request under review:
    - a. A maximum of 50 points for financial need of the eligible person, determined according to R18-12-613;
    - b. A maximum of 45 points for risk the contamination poses to human health and the environment, determined according to R18-12-615; plus
    - c. Five points if a delay in assurance account coverage would adversely affect a corrective action in process. Delay priority ranking points shall be awarded if the eligible person is conducting corrective action on all releases that are the subject of the application or direct payment request that meets the requirements of A.R.S. § 49-1005 and Article 2, and accrues any priority ranking points for financial need in accordance with R18-12-613.
  2. If the direct payment request includes costs approved under R18-12-608(B)(3)(c) that, when combined with all approved costs on all direct payment requests submitted against the approved preapproval application, exceed the total preapproved amount for that application, the Department shall assign to the direct payment request a score that is equal to the score assigned to the preapproval application, excluding deferral points accrued according to subsection (3).
  3. The Department shall add an additional two points to an application or direct payment request score each time the Department defers the application or direct payment request according to subsection (F).
- D.** Ranking. During the ranking period, the Department shall rank affected applications and direct payment requests consecutively from the highest to the lowest total numerical score pursuant to subsection (C) or, for applications and direct payment requests of equal score, the Department shall assign the higher priority to the application or direct payment request submitted earlier.
- E.** Payment of Monies During Ranking Period. The Department shall pay available assurance account monies to each scored application and direct payment request in consecutive descending numerical order of priority in accordance with subsection (D), until all ranked applications and direct payment requests have been paid, or until remaining available assurance account monies are insufficient to make payment equal to the approved amount of the next consecutively ranked application or direct payment request.
- F.** Deferred Applications and Direct Payment Requests. The Department shall defer ranked applications and direct payment requests for which assurance account monies have not been paid in accordance with subsection (E).
- G.** Exceptions. Notwithstanding this Section, the Department shall pay for eligible activities performed in compliance with A.R.S. § 49-1053 in accordance with A.R.S. § 49-1053(J). Notwithstanding this Section, the Department shall pay eligible attorney fees, consultant fees and costs as provided in A.R.S. § 49-1091.01 in accordance with A.R.S. § 49-1054(F).
- R18-12-613. Determining Financial Need Priority Ranking Points**
- A.** Waivers. If an eligible person expressly waives financial need priority ranking points or if the eligible person does not submit the balance sheet and form that meets the requirements of R18-12-614 within 15 calendar days before a ranking period, the Department shall assign 0 financial need priority ranking points.
- B.** Non-profits. If an eligible person is a nonprofit or not-for-profit entity organized under A.R.S. Title 10, the total tangible net worth, current assets, and current liabilities used to determine the number of priority ranking points under subsection

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(C) may be reduced by any reserved and designated fund balances. All reserved and designated fund balances to be deducted shall appear on the balance sheet and form submitted in accordance with R18-12-614.

**C. Scoring For Eligible Persons That Are Not Local Governments.** If an eligible person is an individual or a firm other than a local government, then the Department shall assign financial need priority ranking points on a scale of 0 to 50 points, as follows:

1. A maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the amount requested in the application divided by the eligible person's tangible net worth, as follows:

<u>Tangible net worth is negative:</u>	<u>25 points</u>
<u>Ratio = 20% or more:</u>	<u>25 points</u>
<u>Ratio = 16% up to but not including 20%:</u>	<u>20 points</u>
<u>Ratio = 12% up to but not including 16%:</u>	<u>15 points</u>
<u>Ratio = 8% up to but not including 12%:</u>	<u>10 points</u>
<u>Ratio = 4% up to but not including 8%:</u>	<u>5 points</u>
<u>Ratio = less than 4%:</u>	<u>0 points; and</u>

2. A maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the eligible person's current assets divided by the eligible person's current liabilities, as follows:

<u>Ratio = less than 100%:</u>	<u>25 points</u>
<u>Ratio = 100% up to but not including 125%:</u>	<u>20 points</u>
<u>Ratio = 125% up to but not including 150%:</u>	<u>15 points</u>
<u>Ratio = 150% up to but not including 175%:</u>	<u>10 points</u>
<u>Ratio = 175% up to but not including 200%:</u>	<u>5 points</u>
<u>Ratio = 200% or more:</u>	<u>0 points</u>

**D. Scoring For Eligible Persons That Are Local Governments.** If an eligible person is a local government, then the Department shall assign financial need priority ranking points on a scale of 0 to 50 points, as follows:

1. The Department shall assign a maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the amount requested in the application divided by the eligible person's total year-end unreserved and undesignated fund balance. The local government's total year-end unreserved and undesignated fund balance shall appear on the balance sheet and form required under R18-12-614. If the total year-end unreserved and undesignated fund balance is negative, 25 points shall be assigned. If the eligible person's total year-end unreserved and undesignated fund balance is positive, the resulting percentage shall be applied to the table of ratios in subsection (C)(1) to determine the priority ranking points assigned.

2. The Department shall assign a maximum of 25 financial need priority ranking points based on the ratio, expressed as a percentage, of the eligible person's current assets divided by the eligible person's current liabilities. Current assets and current liabilities may be reduced by reserved and designated fund balance. Priority ranking points shall be allocated in accordance with subsection (C)(2).

**R18-12-614. Financial Documents for Determining Financial Need Priority Ranking Points**

**A. Request For Financial Need Evaluation.** An eligible person may request scoring and priority ranking on the basis of financial need. If the eligible person requests priority ranking points for financial need, the eligible person shall submit a balance sheet that meets the requirements of subsection (B). The balance sheet shall be attached to a form provided by the Department. The form shall include all of the following:

1. Identification of the name, address, and contact person of the eligible person requesting the financial need evaluation;
2. Department-assigned LUST, application, and direct payment request numbers for all of the eligible person's applications and direct payment requests that are under review;
3. Total current assets of the eligible person;
4. Total current liabilities of the eligible person;
5. Tangible net worth of the eligible person;
6. If the eligible person is a non profit or not-for-profit entity recognized in accordance with A.R.S. Title 10, or a local government, total year end reserved and designated fund balance and unreserved and undesignated fund balance; and

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7. A notarized statement with the original signature of the eligible person certifying that the information included in and attached to the form is true and correct to the eligible person's best knowledge and belief.
- B.** Balance Sheet. The eligible person shall attach to the form described in subsection (A), a balance sheet of the eligible person that meets the requirements of this subsection. The balance sheet, including all prepared notes and schedules to the balance sheet, shall be prepared using the accrual method of accounting and meet all of the following requirements:
  1. The balance sheet shall be dated no earlier than 18 months before the date of the ranking period under R18-12-612(B);
  2. The balance sheet shall indicate current assets, total assets, current liabilities, total liabilities, total intangible assets, current year-end net worth and, if the eligible person is a non profit or not-for-profit entity recognized in accordance with A.R.S. Title 10, or a local government, total year-end reserved and designated fund balances and unreserved and undesignated fund balances;
  3. For owners and operators, the balance sheet shall include the owner's or operator's corrective action liabilities at all of the owner's or operator's underground storage tank sites subject to regulation by the Department. Corrective action costs incurred and approved for payment from the assurance account, but not paid as of the date of preparation of the balance sheet shall not be included in the owner's or operator's current liabilities; and
  4. The balance sheet shall be prepared by an independent public accountant that is not affiliated with the eligible person, unless the eligible person is a local government submitting the latest Comprehensive Annual Financial Report.

**R18-12-615. Risk Priority Ranking Points**

- A.** Scoring Risk. The Department shall assign priority ranking points for risk to human health and the environment, ranging from 10 to 45 points, based on the LUST classification provided by the eligible person under R18-12-261.01. If the LUST site classification form has not been received by the Department, the Department shall assign 0 risk priority ranking points. The Department shall assign no more than 45 priority ranking points under this Section.
- B.** Priority Ranking Point Scale. The Department shall assign risk priority ranking points ranging from 10 to 45 points according to the LUST Site Classification form in the LUST site characterization report approved by the Department, or if the LUST site characterization report has not been approved, upon the LUST Site Classification form on file when the Director determines under R18-12-612(A) that it is necessary for the Department to rank applications, as follows:

1.	<u>Classification 1, under R18-12-261.01(C)(1):</u>	<u>45 points</u>
2.	<u>Classification 2, under R18-12-261.01(C)(2):</u>	<u>30 points</u>
3.	<u>Classification 3, under R18-12-261.01(C)(3):</u>	<u>20 points</u>
4.	<u>Classification 4, under R18-12-261.01(C)(4):</u>	<u>10 points</u>