

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 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

[R08-342]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R3-4-233 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 3-107
Implementing statute: A.R.S. § 3-201.01
 - 3. The effective date of the rule:**
December 6, 2008
 - 4. A list of all previous notices appearing in the Register addressing the rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 2376, June 13, 2008
Notice of Proposed Rulemaking: 14 A.A.R. 2292, June 13, 2008
 - 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Carlos Ramírez, Rules Analyst
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0962
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 - 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Department of Agriculture is amending R3-4-233 to exempt breeder seed trials from the permitting process; to define breeder seed and breeder trial; to redefine "mosaic-indexed" to require laboratories that index lettuce seed for shipment to Arizona be certified by the agricultural department of the laboratory's state of origin or by the Department, as provided by A.R.S. § 3-145, or be accredited by the National Seed Health System; and to broaden the area under quarantine to include territories of the United States. Under subsection (D)(2), the Department is also amending the rule to require that the labels attached to a container or sub-container of mosaic-indexed lettuce seed include the name of the certified or accredited lab that tested the seed. The rulemaking also broadens the permit Section to allow a person to ship unindexed lettuce seed to Arizona to be mosaic-indexed.
 - 7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:**
Not applicable

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

Not applicable

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

The rulemaking requires laboratories that index lettuce seed for commercial propagation in Arizona to apply for certification from the agricultural department of their state of origin or the Department's state agricultural laboratory, or to apply for accreditation through the National Seed Health System. Fees prescribed in R3-5-104 are \$200 for initial certification and \$100 for certification renewal. Under R3-5-111, initial certification is valid for 12 months. Fees that other states may charge to certify a laboratory are unknown. There are no fees associated with the National Seed Health System. Additional costs to the producer may result from the requirement to include the name of the laboratory that performs a mosaic index test on the label for containers or sub-containers of lettuce seeds. The Department has determined that the benefits of achieving the objective of the rulemaking outweigh the costs.

10. A description of the changes between the proposed rule, including the supplemental notices, and final rule:

The Department is adding to the seven day time-frame in subsection (F)(1)(d) with an amount of time to be specified on the permit. The Department's reason is to provide a person who imports unindexed lettuce seed for temporary storage under a permit with a reasonable amount of time to reshipe the seed out of the state. This allows the individual who applies for the permit and the Department to arrange for a suitable means for the unindexed seed to be exported if seven days proves unmanageable. This does not substantially affect the impact of the rulemaking. Style and format changes were made as well as additional minor amendments as a result of public comment and at the request of G.R.R.C. staff.

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

The Department received two written comments that were nearly identical and a third before the end of the comment period. The Department responded as follows:

Written Comment (2): The Department should amend the rule as follows:

- The definition of "breeder trial" should also reference trials conducted by researchers.
- Subsection (E)(4)(d) should state that an individual performing a breeder trial under subsection (E)(4) should be required to "remove and destroy all plants exhibiting pest symptoms from the breeder trial plot and place them in a sealed container for disposal in a landfill.
- Amend subsection (E)(4)(e) to substitute the word "TRIALS" for "TRAILS."
- Amend subsection (E)(4)(f) to reduce confusion as to who is responsible for destroying plants remaining in the field, the farmer/cooperator or the breeder/researcher. The subsection should state that an individual performing a breeder trial should "destroy lettuce plants remaining in the breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.

Agency Response: The Department does not believe the suggested revisions will substantially affect the impact of the rule and has no argument with including them, except the third comment regarding "trials." To accept the suggestion would make the rule grammatically incorrect.

Written Comment: One company imports unindexed lettuce seed under ADA Plant Services Division No. 08-28. The seed is inventoried at its facility in Somerton where it is sold and shipped to various companies throughout the world. The majority of unindexed seed is exported and none of it is sold in Arizona under the company's licensing agreement. Under the rulemaking, imported unindexed seed would have to be shipped back out within seven days. This would make the company's sale of unindexed seed too difficult to continue. "However, this only represents a small amount of the business conducted and would not present a problem if the company did not continue doing it. This would also eliminate the risk of any commingling of indexed and unindexed seed or labeling by mistake unindexed as indexed."

Agency Response: The Department understands the difficulty the seven-day export requirement in subsection (F)(1)(d) presents and does not believe that allowing a more flexible time-frame would substantially affect the objective of the rulemaking. Therefore, the Department will amend the rule accordingly.

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

Not applicable

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

Not applicable

14. Whether the rule was previously made as an emergency rule and if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable

15. The full text of the rule follows:

Notices of Final Rulemaking

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-233. Lettuce Mosaic Virus

ARTICLE 2. QUARANTINE

R3-4-233. Lettuce Mosaic Virus

A. Definitions. In addition to the definitions provided in ~~R3-4-201~~ R3-4-101, the following terms apply to this Section:

- ~~1.~~ "Integrity" means the planting location is free from the pest.
- ~~1.~~ "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
- ~~2.~~ "Breeder trial" means breeder seed grown to develop a new variety of lettuce.
- ~~2-3.~~ "Mosaic-indexed" means lettuce seed that has been tested by a laboratory approved by a state in which the laboratory is located. The testing sample shall contain at least 30,000 seeds and no seeds shall be found infected with the pest. that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus.
- ~~3-4.~~ "Pest" means ~~the virus,~~ lettuce mosaic virus.
- ~~5.~~ "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.

B. Area Under Quarantine: All states, ~~and~~ districts, and territories of the United States.

C. Regulated Commodities Covered: Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

D. Restrictions.

- ~~1.~~ Any lettuce seed imported into, transported within, planted, or sold in Arizona shall be mosaic-indexed unless authorized by a permit established in subsection (F).
- ~~1.~~ A person shall not import into, transport within, plant, or sell in Arizona unindexed lettuce seed unless the unindexed lettuce seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (G).
- ~~2.~~ Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" or shall be accompanied by an official certificate from the state of origin attesting that the seed is mosaic-indexed as well as the name of the certified or accredited laboratory that tested the seed under subsection (D)(5).
- ~~3.~~ Lettuce transplants imported into, transported within, planted, or sold in Arizona shall be accompanied by an official certificate from the origin state that includes:
- ~~3.~~ A person shall not import into, transport within, plant, or sell in Arizona lettuce transplants unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state, accompanies the shipment. The certificate shall declare:
 - a. The name of the exporter,
 - b. The variety name and lot number of the seed from which the transplants were grown, and
 - c. Verification that the seeds from which the transplants were grown ~~meet the requirement in subsection (E)(1)~~ were mosaic-indexed.
- ~~4.~~ A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.
- ~~5.~~ Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.

~~4-E.~~ Exemptions. The requirements of subsection (D) do not apply to:

- ~~a-1.~~ Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting, or
- ~~b-2.~~ Any shipment Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,
- ~~3.~~ Breeder trials for a plot of 1/20 of an acre or less, or
- ~~4.~~ Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:
 - a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot;
 - b. Provides the following written information to the Department within 10 business days of planting breeder seed:

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- i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees;
- ii. A detailed map showing the location of each breeder trial plot;
- iii. An identification number for each breeder trial plot; and
- iv. The name, address, telephone number, and e-mail address for the breeder or researcher;
- c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms;
- d. Removes and destroys all plants exhibiting pest symptoms from the breeder trial plot and places them in a sealed container for disposal in a landfill;
- e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY"; and
- f. Destroys lettuce plants remaining in a breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.

F. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E)(3) and (4).

E.G. Permits.

- 1. A lettuce breeder or researcher may apply for a permit for lettuce seed or transplants that have not been mosaic-indexed, provided:
 - a. Each permit is for a 1/20 acre plot or less;
 - b. The applicant monitors the lettuce for pest symptoms;
 - e. The applicant verifies the integrity of the fields;
 - d. All plants exhibiting pest symptoms are destroyed, and
 - e. The following statement appears on the bill of lading or invoice accompanying each shipment: "This shipment meets Arizona lettuce mosaic permit requirements. Permit number _____."
- 2. A seed dealer may apply for a permit to import non-mosaic indexed lettuce seed for temporary storage in Arizona, provided:
 - a. Non-mosaic indexed lettuce seed is shipped out-of-state and not distributed for use in Arizona;
 - b. The seed dealer maintains and makes available for Department inspection during regular business hours an inventory record on all non-mosaic indexed lettuce seed which includes:
 - i. The quantity and lot number of non-mosaic indexed lettuce seed;
 - ii. The date and lot number of non-mosaic indexed lettuce seed received by the seed dealer;
 - iii. The date and lot number of non-mosaic indexed lettuce seed shipped out-of-state by the seed dealer; and
 - iv. The destination of each shipment.
 - e. The permit does not preclude inspection of non-mosaic indexed lettuce seed upon entering Arizona.
- 1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
 - a. Maintains the identity of the seed while in Arizona;
 - b. Does not sell or distribute the seed for use in the state;
 - c. Does not transfer the seed to any other facility in the state; and
 - d. Reships the seed from the state within seven days or the period of time specified on the permit, whichever is longer.
- 2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.

F. ~~A grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or documented circumstances beyond the control of the grower, or in the case of a permittee, as soon as the purpose of the crop is completed.~~

G.H. Disposition of Violation.

- 1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
- 2. Any ~~untested~~ shipment of unindexed lettuce seed or transplants arriving in or found within the state; in violation of this Section, shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
- 3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
- 4. Violation of any provision of ~~the~~ a permit issued under subsection (G) may result in suspension or revocation of the permit.

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

The purpose of this rulemaking is to amend the staffing requirements for a Level 1 Specialized Transitional Agency. Previously, the Level 1 Specialized Transitional Agency at the Arizona State Hospital was required to have a registered nurse present at the facility at all times. The rule revision will require that if a nurse is not present at the facility between the hours of 11:00 p.m. and 7:00 a.m., the agency must specify a nurse who may be available to come to the agency when requested by the licensee. Consistent with the Department's and the state of Arizona's personnel policies a registered nurse will not be required to respond to a call from the Level 1 Specialized Transitional Agency. The Department anticipates that the Arizona State Hospital will maintain a list of possible responders, contact the registered nurses on that list, and if no registered nurse is able to respond, the agency will take alternative action to protect the health and safety of clients at the Level 1 Specialized Transitional Agency, such as calling 911.

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

The Department did not review or rely on any study related to this rulemaking.

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:

Annual costs/revenue changes are designated as minimal when less than \$10,000, moderate when between \$10,000 and \$100,000, and substantial when \$100,000 or greater in additional costs or revenue.

Cost bearers

The rulemaking will have a minimal effect on the employment of registered nurses at the Level 1 Specialized Transitional Agency. Although, registered nurse positions will be eliminated at the Level 1 Specialized Transitional Agency, these positions will most likely be reallocated to other units at the Arizona State Hospital.

Beneficiaries

There is only one licensed Level 1 Specialized Transitional Agency in the state. It is located on the Arizona State Hospital grounds. The Arizona State Hospital will experience a substantial benefit due to reduced staffing costs.

10. A description of changes between the proposed rule, including supplemental notices, and final rule:

The proposed rule required a registered nurse to be on-call during the hours of 11:00 p.m. and 7:00 a.m. and required the nurse to come to the Level 1 Specialized Transitional Agency when requested by the agency. For compliance with Department personnel policies, the Department filed a Notice of Supplemental Proposed Rulemaking. The Supplemental Proposed Rulemaking required that if a nurse is not present at the facility between the hours of 11:00 p.m. and 7:00 a.m., the agency must specify a nurse who is available to come to the agency when requested by the licensee. The final rulemaking clarifies the expectations of the registered nurse identified by the agency. That registered nurse is not required to respond in person to the agency. Typographical errors in the rule were corrected in the final rulemaking. No substantive changes were made between the supplemental proposed rule and the final rule.

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

The agency did not receive any comments regarding 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:

Not applicable

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

Not applicable

14. Whether the rule was previously made as an emergency rule and if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 20. DEPARTMENT OF HEALTH SERVICES
BEHAVIORAL HEALTH SERVICE AGENCIES: LICENSURE**

ARTICLE 7. LEVEL 1 SPECIALIZED TRANSITIONAL AGENCY

Section

R9-20-701. Supplemental Requirements for a Level 1 Specialized Transitional Agency

ARTICLE 7. LEVEL 1 SPECIALIZED TRANSITIONAL AGENCY

R9-20-701. Supplemental Requirements for a Level 1 Specialized Transitional Agency

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- C. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - i. No change
 - ii. No change
 - iii. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - c. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - a. No change
 - b. No change
 - 10. No change
 - 11. No change
 - 12. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 13. No change
 - 14. To control the client's own finances except as provided by A.R.S. § ~~36-507(5)(a)~~ 36-507(5);
 - 15. No change
 - 16. No change
 - 17. No change
 - 18. No change
 - 19. No change
 - 20. No change
 - 21. No change
 - 22. No change

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23. No change
24. No change
25. No change
 - a. No change
 - b. No change
 - c. No change
26. No change
 - a. No change
 - b. No change
 - c. No change
27. No change
 - a. No change
 - b. No change
 - c. No change
28. No change
 - a. No change
 - b. No change
 - c. No change
29. No change
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
- D. No change
 1. No change
 2. No change
 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 4. No change
 5. No change
 6. No change
- E. A licensee of a Level 1 specialized transitional agency shall ensure that, in addition to the staffing requirements contained in R9-20-207, staffing is provided as follows:
 1. A medical practitioner is present at the facility at least ~~ten~~ 10 hours a week;
 2. A psychiatrist is present at the facility at least ~~ten~~ 10 hours a week;
 - ~~3. A registered nurse is present at the facility at all times;~~
 - ~~4.3.~~ Each of the following staff members is present at the facility full time:
 - a. A psychologist;
 - b. A social worker;
 - c. A registered nurse with overall responsibility for the provision of nursing services; and
 - d. An individual who provides educational activities and social, recreational, or rehabilitative activities;
 - ~~5. Between 7:00 a.m. and 11:00 p.m., at least one behavioral health paraprofessional is present at the facility for every 15 clients;~~
 - ~~6. Between 11:00 p.m. and 7:00 a.m., at least one behavioral health paraprofessional is present at the facility for every 30 clients;~~
 4. In addition to the staff members listed in (E)(3), between 7:00 a.m. and 11:00 p.m.:
 - a. At least one behavioral health paraprofessional is present at the facility for every 15 clients, and
 - b. A registered nurse is present at the facility;
 5. In addition to the staff members listed in (E)(3), between 11:00 p.m. and 7:00 a.m.:
 - a. At least one behavioral health paraprofessional is present at the facility for every 30 clients; and
 - b. A registered nurse;

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- i. Is present at the facility; or
- ii. If not present at the facility, is identified by the licensee on the daily staffing schedule and may be contacted by the licensee to determine the registered nurse's availability to come to the facility when requested by the licensee; and

7-6. At least two employees responsible for maintaining a safe and secure facility are located outside the facility at all times; and

8-7. At least one employee for every 30 clients is responsible for maintaining a safe and secure facility and is located inside the facility at all times.

F. No change

- 1. No change
 - a. No change
 - b. No change
 - c. No change
- 2. No change
- 3. No change
- 4. No change
 - a. No change
 - b. No change

G. No change

- 1. No change
- 2. A client's rights are denied only if necessary to protect the safety of the client or others as determined according to A.R.S. § ~~36-507(E)~~ 36-507(5); and
- 3. No change
 - a. No change
 - b. No change

H. No change

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

I. No change

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change

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

The Motor Carrier Safety Improvement Act of 1999 requires each state to obtain the ten-year driver history for all individuals applying for a commercial driver license, maintain the driver history for each person who holds a commercial driver license, or who was convicted of certain violations while operating a commercial motor vehicle. The Division engages in this rulemaking to promulgate rules prescribing the procedures, actions resulting from a driver history request that contains a conviction for certain violations, reporting, and records maintenance requirements in an effort to comply with the requirements prescribed under 49 CFR 384.206, 384.210, 384.225, 384.31, and 384.32.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

The Division anticipates incurring moderate to substantial costs associated with system programming and establishing and training the new driver history review process.

The Division anticipates the commercial driver license applicant will incur minimal to substantial costs depending on the person's earning potential and the length of the withdrawal action. However, since the rule is designed to enhance the safety of the general public by ensuring that only safe drivers are authorized to operate commercial motor vehicles the Division believes that the benefits to the public outweigh the possible costs to any affected persons.

Failure to promulgate this rule may result in a substantial loss to the state in federal funding, grant monies, and the Division's ability to issue a commercial driver license that is valid for operating a commercial motor vehicle outside of Arizona.

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

Minor grammatical and style corrections were made at the request of Governor's Regulatory Review Council staff.

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

Not applicable

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

Not applicable

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

Not applicable

14. Whether the rule was previously made as an emergency rule and if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

Section

R17-4-414. ~~Recodified~~ Commercial Driver License Applicant Driver History Check; Required Action; Hearing

ARTICLE 4. DRIVER LICENSES

R17-4-414. ~~Recodified~~ Commercial Driver License Applicant Driver History Check; Required Action; Hearing

A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.

B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384-232:

1. The Department shall require each applicant for a commercial driver license to supply the names of all states where

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- the applicant has previously been licensed to operate a motor vehicle.
2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
 - a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
 - b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
 3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.
- C. Required Action. In compliance with 49 CFR 384.210 and 384.231:**
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
 2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
 3. The Department shall send written notification of the action to the person describing the action taken by the Department.
- D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.**
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
 2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
 3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
 4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
 5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
 - a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
 - b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
 6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES**

[R08-345]

PREAMBLE

- | | |
|-----------------------------|---------------------------------|
| 1. Sections Affected | <u>Rulemaking Action</u> |
| Article 2 | New Article |
| R18-14-201 | New Section |
| R18-14-202 | New Section |
| Table 1 | New Table |
- 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. §§ 49-203, 49-351, 49-353
- Implementing statutes: A.R.S. § 49-353(A)(2)(b)

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3. The effective date of the rules:

December 6, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2690, August 3, 2007

Notice of Proposed Rulemaking: 14 A.A.R. 2328, June 13, 2008

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

Name: Anna M. Ochoa, J.D.
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4589
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

A. General Explanation of Rulemaking

The purpose of this rulemaking is to adopt rules establishing fees for the Department's engineering design review services for public water systems. The Department has specific authority for the fees pursuant to A.R.S. § 49-353(A)(2)(b), which directs the Department to deposit the monies collected into the Water Quality Fee Fund established by A.R.S. § 49-210. The fees deposited will help fund the Water Quality Fee Fund staff positions that were approved by the Legislature in 2007.

In developing these rules, the Department prepared estimates of the direct and indirect costs associated with the public water system engineering design review program, including the receipt, processing, and review of design review applications; engineering, managerial, and administrative salaries; and overhead, travel expenses, and revenue projections. The Department anticipates that the fees will recoup a significant portion of the costs related to the technical review services provided by the Department, thereby helping to ensure that engineering reviews will continue to occur in a thorough, timely, and professional manner.

The Department is charged by A.R.S. § 49-353(A)(2) with performing pre- and post-construction plan reviews of public water systems' design facilities and issuing Approvals to Construct (ATCs) and Approvals of Construction (AOCs). Facilities requiring reviews range from simple projects such as water line extensions and storage tanks to complex water treatment plants serving towns and cities. Issuance of these approvals involves a variety of tasks, including:

- Preliminary meetings, telephone calls, and electronic mail correspondence with owners, engineers, and applicants to provide information;
- Reviewing applications for completeness and adequacy;
- Reviewing applications for substantive compliance with the state's design regulations, including review of technical drawings, conducting pertinent calculations, and other engineering review work to ensure that system components and final water quality will meet all applicable state and federal regulatory requirements;
- Verifying the compliance status of the water system to determine if there are outstanding issues that need to be addressed prior to approving any additions to the system;
- Site visits, as needed;
- Drafting approval conditions and preparing approvals to construct, approvals of construction and approvals of sanitary facilities for subdivisions; and
- Data and file management.

Applications for ATC certificates generally include detailed construction plans and specifications, a design report, and any other data necessary to understand the plans. A Department engineer reviews the plans and determines whether they provide for the use of appropriate materials, the development of adequate water volume capacities, and the appropriate levels of water quality. If the engineer finds the plans to be technically sound, the Department will issue the applicant an ATC certificate, approve the plans, and authorize construction on the project. Upon receiving an ATC, an applicant has one year to begin construction of the facility. If construction has not begun within one year of ATC issuance, construction has been halted for longer than one year, or construction cannot be completed within three years from date of issuance, the ATC will be void unless the applicant applies for and receives a time extension from the Department.

Once the facility has been constructed, the applicant must request an Approval of Construction (AOC) certificate from the Department. Similar to the ATC process, the applicant submits an application to the Department, this time

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including a professional engineer’s Certificate of Completion, “as-built plans,” inspection and testing data, and an operations and maintenance manual. A Department engineer verifies that the project was built in accordance with the approved plans, and only then can an AOC certificate be issued.

The Department estimates that it spends, on average, 25 hours reviewing each ATC application. Table 1 provides the total number of applications reviewed and approved by the Department in 2005 through 2007.

Table 1.

	2005	2006	2007
Approvals to Construct	613	774	553

Although the Department has been responsible for reviewing the design and construction of public water systems for a number of years, it has never charged a fee for this service. However, the counties to whom the Department has delegated authority to perform public water system design reviews under A.R.S. § 49-107 (Maricopa, Pima, Yavapai, and Yuma Counties) have charged fees for performing design review services for a number of years. As noted above, implementing the program involves a variety of activities.

After careful consideration of both hourly and flat fee approaches, the Department is establishing a flat fee for engineering design review of public water systems. The flat fees are comparable to those of the delegated entities, and will generate sufficient revenue to recoup most of the expenses of the technical review portions of the program, while ensuring predictability for applicants.

B. Specific Section-by-Section Explanation of Rulemaking

R18-14-201, Definitions. This rule refers to the statutory language at A.R.S. § 49-352(B) which defines a public water system as including distributors, sellers, and those with at least 15 service connections or that serve at least 25 persons for at least 60 days a year. Other regulatory definitions used in this rule include: “licensing time-frames” as defined in 18 A.A.C. 1, Article 5; “design review” as defined in A.A.C. R18-5-505(B); and “water treatment plant” as defined in A.A.C. R18-5-101. A new term is “design review service” which outlines the types of applications that qualify under this rule.

This rule also introduces the term “priority review,” which is a design review service where the Department will review an application within 50% of the overall time-frame for an approval to construct license application. To qualify for priority review, the application must be determined to be administratively complete, and the applicant must agree to pay twice the standard fee that would otherwise be applicable.

R18-14-202, Flat Fee Rates. This rule establishes that the Department will assess flat fees for public water systems design review services. The applicant must include an administratively complete plan with the appropriate fees when submitting for review. These fees and corresponding services are set forth in Table 1 following this rule. The fees are charged per design review service and are cumulative. The rule also provides that the Department retains a portion of the fee when an applicant fails to respond to a request for additional information within a specified time period during the administrative review period. When an applicant fails to respond in a timely manner, under A.A.C. R18-1-507, the Department can deny the application, or the applicant can withdraw the application. If the Department denies the application after the completion of the administrative review period, the entire fee is retained.

Table 1, Public Water System Design Review Service Fees. This Section of the rulemaking describes the design review services and the attendant fees in a tabular format. As set forth, each design review service results in a separate charge and fees are cumulative. For example, a plan incorporating a water treatment plant of less than 0.1 mgd and a booster pump would cost the applicant \$1,500 plus \$800, for a total fee of \$2,300.

C. Methodology

The methodology for developing a fee schedule for the review of applications for Approvals to Construct (ATCs) for drinking water distribution systems and infrastructure, was based primarily on a comparison of the fee schedules developed and in use by agencies in the state that have been delegated design review functions from ADEQ. Once the fee schedule was developed, ADEQ estimated the number of applications expected to be reviewed and issued by the public water system design review program in a given year. The revenue to be generated from implementing this fee schedule each year is anticipated to fund the salaries, employee-related costs, and indirect costs of the engineering review staff in the program, which represent approximately 70% of the program costs.

Number of Applications

Table 1 provided the total number of ATC project applications reviewed by the drinking water design review program over the past three years. Here, Table 2 shows the breakdown of the components of the infrastructure that were examined as part of the design review for the ATC projects referenced in Table 1.

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Table 2.

ATC and Infrastructure Components	2005	2006	2007
Water Line Extensions	613	774	553
Storage Tanks	26	47	27
Booster Pumps	13	27	15
Wells	40	45	26
Water Treatment Systems	24	28	16
Project Time Extensions	12	12	7

Fees Charged by Delegated Programs and Proposed Fee Schedule

The Department surveyed the design review programs and fees currently being charged by those Arizona counties that are currently delegated portions of the public water system design review program. Currently, Maricopa and Pima have delegations covering all aspects of public water system design review while Yavapai and Yuma counties are delegated approvals to construct for water line extensions only. All other design review services in the latter two counties are handled by the Department’s main office in Phoenix.

The Department also reviewed the fees being charged by several of the Arizona delegated entities. The Department developed the following table to provide a comparison of fees and fee structures for four Arizona delegated counties for reviews of the different components of water infrastructure. While the various programs are not structured identically, Table 3 presents an overview of the current charges for these services in comparison to ADEQ proposed fees for the various services. Several of the counties charge only flat fees, similar to the Department’s proposal. Others charge hourly fees and some, such as Maricopa County use both funding methods. For example, Maricopa County will charge an initial, flat fee based on the type of project and then will charge an hourly rate not to exceed a maximum allowable fee as shown in the comparison table.

ADEQ considered an hourly fee approach, but after researching design review fees assessed by local governments in Arizona and other states in the region, the Department decided to propose a flat fee schedule. In order to decide on the amount of the various flat fees being proposed, the Department reviewed historical project review times for various types of projects, and ultimately decided to propose a flat fee schedule that incorporates break points for water service connections similar to those employed by Maricopa County’s Environmental Services Division. Instead of charging hourly fees, ADEQ is proposing to charge fees for review of water treatment facilities based on the size and complexity of the project being reviewed. While there will be relatively few very large facilities (e.g., greater than 5 mgd water treatment facilities), the larger, more complex projects require additional staff time and effort that warrant the assessment of higher fees.

Table 3. Comparison Table of Public Water System Engineering Review Fees

Component Types	ADEQ (Draft)	Maricopa County¹		Pima County	Yavapai County	Yuma County
Approval to Construct (ATC) Public Water Supply Distribution System:						
150 or fewer service connections	\$900	\$600		\$500	\$237.50 + \$0.10 per sheet	\$250
151 to 300 service connections	\$1,400	\$1,200				
301 to 450 service connections	\$1,900	\$1,800				
451 to 600 service connections	\$2,400	\$2,400				
601 to 750 service connections	\$2,900	\$3,000				
Each additional 150 service connections	<i>Add \$500</i>	Add \$600				
Water Treatment Plants:		Initial Fee ²	Maximum Fee ²	\$1,000	Not delegated	Not delegated
< 0.1 mgd	\$1,500	\$1,000	\$10,000			
≥ 0.1 mgd and < 1.0 mgd	\$2,000	\$1,500	\$15,000			
≥ 1.0 mgd and < 5.0 mgd	\$3,000	\$3,000	\$24,000			
≥ 5.0 mgd	\$5,000	n/a	n/a			
Blending Plans	<i>n/a</i>	\$150	\$7,500	n/a	n/a	n/a
Other Plans	<i>n/a</i>	\$150	\$1,500	n/a	n/a	n/a
Well ³	\$1,250	\$675		\$1,000	Not delegated	Not delegated
New Source Approval ³	<i>n/a</i>	\$425		Not delegated	Not delegated	Not delegated
Storage Tank ⁴	\$800	\$675		\$1,000	Not delegated	Not delegated
Booster Station/Pump ⁴	\$800	\$675		\$1,000	Not delegated	Not delegated

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Component Types	ADEQ (Draft)	Maricopa County¹	Pima County	Yavapai County	Yuma County
Main Line Extension ⁵	\$250	n/a	Not delegated	Not delegated	Not delegated
Chlorinator and/or Disinfectant System ⁵	\$250	\$150	Not delegated	Not delegated	Not delegated
ATC Time-frame Extension	<i>One-half initial fee, up to \$500</i>	One-half initial fee	Not delegated	Not delegated	Not delegated
Priority Review	<i>Double the Fee</i>	Double the Fee	Not delegated	Not delegated	Not delegated

1. Maricopa County only has three fee categories for water treatment plant reviews; its third tier includes all drinking water plants that treat over 1 mgd.
2. Initial fee is a flat fee. The county also has an hourly fee that is assessed if it exceeds the initial flat fee, up to a maximum fee.
3. Wells and new source approvals. ADEQ includes new source approvals with well approvals; Maricopa County charges separately, but does onsite inspections prior to approval. Maricopa County charges \$425 for new source approval and \$150 for a blending plan if it is submitted for review separately from another plan submittal.
4. Storage tanks and booster pumps. Maricopa County has one fee for storage tanks, whether atmospheric (gravity feed) or pressurized (booster pump.) ADEQ plans to have separate fees for the two items, since the draft rule does not include an hourly rate to cover the additional time involved in reviewing more complicated plan submittals.
5. Maricopa County does not have a specific fee for disinfection units or main line extensions; presumably, if these items are part of a larger plan review submittal for a water treatment plant, there would not be a separate per unit review fee; the review costs would be covered by the county's hourly rate.

Note: Maricopa County also has separate charges for other types of plan reviews, and an annual fee for various types of operating permits.

Workload Assumptions

The salaries of the Department's current design review engineers range from \$48,500 to \$69,408. In a review of the program workload for years 2002 through 2006, based on an average review time of 25 hours per application, the Department estimated it needs at least seven design review engineers to handle the work load of the public water system design review unit. In addition to the technical review staff, the workload review shows the need for one manager for the public water system design unit and two administrative support staff. These numbers correspond to the assumptions that the engineering staff handles 70% of the review work; administrative staff handles 20% of the workload and management is responsible for 10% of the workload per application. Assuming the current average annual salaries of the staff, the Department estimates the total cost for the design review program at \$1,150,000. Using an average current engineering salary of \$56,000, the Department estimates the total costs for the seven design review engineering staff positions, including employee-related expenses, and indirect costs, at approximately \$784,000, which corresponds to approximately 70% of the total program costs. Four of the seven engineer positions are filled, resulting in an actual cost of \$419,006 for employee salaries and related expenses, and indirect costs. The additional three engineering positions that are the Department's goal of a fully staffed unit are awaiting passage of this rule.

As the program has not historically been charging fees for services nor has it been tracking time spent on projects, these projections are estimates. The program recently initiated tracking time per project and/or activity. This will allow the program to obtain more refined estimates of actual time to review specific types of plan submittals.

Projected Revenues

Based on the Department's proposed fee schedule (*see* Table 3 above and Table 1 in proposed rule text) and the types of projects in Table 2, the table below presents the estimated revenues that would have been realized had the cost schedule been in place during years 2005 – 2007.

Table 4.

Revenues from Components	2005	2006	2007
Water Line Extensions	\$704,950	\$890,100	\$635,950
Storage Tanks	\$20,800	\$37,600	\$21,600
Booster Pumps	\$10,400	\$21,600	\$12,000
Wells	\$50,000	\$56,250	\$32,500
Water Treatment Systems	\$36,000	\$42,000	\$24,000
Project Time Extensions	\$3,000	\$3,000	\$1,750
Total Revenue	\$825,150	\$1,050,550	\$727,800

Based on the fee schedule in this rulemaking, the projected fees will be sufficient to cover the needed technical engineering staff. Administrative and managerial positions, approximately 25-30% of the program costs, will continue to be subsidized through current funding.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:**

Not applicable

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 the state:

Not applicable

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

Overview

The proposed fees are specifically authorized pursuant to A.R.S. § 49-353. Moreover, local governments to whom the Department has delegated authority for conducting engineering design reviews on behalf of the Department – Yavapai, Yuma, Maricopa, and Pima counties – presently charge engineering review fees consistent with the fees proposed in this rulemaking. While additional project costs are not necessarily welcomed, water systems will not be unduly burdened concerning the issuance of fee rules compatible with Arizona law and that are on par with fees already being charged by currently delegated entities.

Further, smaller water systems may qualify for the exemption under A.R.S. § 49-353(A)(1)(d) which provides for simplified administrative procedures for approving structural revisions for small water systems, or in the alternative have less costly projects commensurate with their size. As such, these small water systems are shielded from expenses because of their size. Finally, the rulemaking serves the interest of smaller public water system owners or stakeholders whose needs are less weighty components because the flat-fee schedule itself is based on project size. Overall, Arizona stakeholders in safe drinking water from professionally designed reliable public water systems gain without undue costs to all the providers of these services.

I. Identification of Rule

General Explanation of Rulemaking

The purpose of this rulemaking is to adopt rules establishing fees for the Department's engineering design review services for public water systems, in accordance with A.R.S. § 49-353(A)(2)(b). This statutory provision directs the Department to charge fees for this service. Accordingly, the adoption of the fee will decrease reliance on the State General Fund. The statute also states that the Department shall not set a fee at more than the Department's cost of providing the service for which the fee is charged.

II. Identification of Persons Affected by the Rule, Persons who will Bear Costs of Rule, and Persons who will Benefit from the Rule

A. Persons Directly Affected by the Rule

Engineering and consulting firms submitting plans on behalf of privately- and publicly-owned public water systems will be affected by having to actually pay the fees when plans are submitted to the Department for review; however, their clients will bear the actual costs.

B. Persons Who Will Bear Costs of the Rule

The persons most likely to bear the costs of this rule are the customers of public water systems, who will pay for any additional costs attributable to the fees through their water bills.

C. Persons Who Will Directly Benefit From the Rule

The persons most likely to benefit from the rule are the customers of public water systems. Although customers of public water systems will not see any increased benefits directly attributable to this rule, the purpose of the public water system design review service provided by the Department is to protect public health and the environment, so the customers benefit from this service. This rulemaking will fund additional positions for review engineers, thereby ensuring that this important public health service is performed. An indirect public benefit resulting from this rulemaking is that a large portion of the program costs will be funded by people who directly benefit from the program, rather than through general revenue monies. In sum, the fee requirement will also likely garner the most serious-minded public water system program developers paying their money first in order to obtain an approval to construct.

III. Cost Benefit Analysis

A. Probable Costs and Benefits to the Department and Other Agencies

Arizona Department of Environmental Quality. The Department is charged by A.R.S. § 49-353(A)(2) with performing pre- and post-construction plan reviews of public water systems design facilities and issue Approvals to Construct (ATCs) and Approvals of Construction (AOCs). Facilities requiring reviews range from simple projects such as water line extensions and storage tanks to complex water treatment plants serving major metropolitan cities. The fees generated by this rule will recoup the Department's costs related to the design review services it performs.

Arizona Department of Administration, Governor's Regulatory Review Council. The Governor's Regulatory Review Council staff provides guidance regarding the rulemaking responsibilities of the Council and various state agencies, and makes recommendations to the Council regarding individual rule packages; therefore, there are administrative costs associated with all rulemakings subject to Council review.

Secretary of State, Public Services Division. The Public Services Division is responsible for, among other things, the filing and publication of the rules of the state agencies quarterly in the *Arizona Administrative Code*, and weekly in the *Arizona Administrative Register*; therefore, all rulemakings have an economic cost for the agency.

B. Cost Benefit Analysis: Probable Costs and Benefits to the Businesses

Businesses impacted by the proposed fee rules are those entities that submit public water system design review applications to the Department; specifically, applicants located in counties that have not been delegated design review responsibilities. Applicants are typically developers of subdivisions or other construction projects that include new public water systems or expansions of existing public water systems. Engineering and consulting firms may be applicants, but this EIS presumes that design review fees will be passed through to public water system customers. Also, state agencies are exempted from paying the fees contained in this rule under A.R.S. § 49-353(A)(2)(b).

Applicants of ATCs bear the costs of these fees. However, the fees proposed by the Department are a minimal part of the cost of doing business on a public water system project, which includes constructing a new public water system or expanding or updating an inadequate infrastructure on an existing public water system. Project costs can be substantial and include design fees for engineers or consultants, purchasing of major components of a water system, and construction.

Currently, Maricopa and Pima counties have delegation agreements covering all aspects of public water system design review; Yavapai and Yuma counties are delegated approvals to construct for water line extensions only. Public water systems in these four counties already have been paying fees for government review and approval of public water system designs; the fees in this rulemaking will make ADEQ's review program consistent with the fee-based review programs currently administered by these delegated counties.

Although not necessarily a benefit, the Department sought to make the fees as fair as possible for the amount of review work by creating a flat fee schedule. In order to decide on the amount of the various flat fees being proposed, the Department reviewed historical project review times for various types of projects, and ultimately decided to propose a flat fee schedule that incorporates break points for water service connections similar to those employed by Maricopa County's Environmental Services Division. Instead of charging hourly fees, the Department is proposing to charge fees for review of water treatment facilities based on the size and complexity of the project being reviewed. While there will be relatively few very large facilities (e.g., greater than 5 mgd water treatment facilities), the larger, more complex projects require additional staff time and effort that warrant the assessment of higher fees. This rule also introduces the term "priority review," which is a design review service where the Department agrees to review an application within 50% of the overall time-frame for an approval to construct license application. To qualify for priority review, the application must be found to be administratively complete and the applicant is charged twice the standard fee that would otherwise be applicable to the review. The rule also provides that the Department retains 50% of the fee when, during the administrative completeness review process: 1) an applicant fails to respond to a request for additional information within a specified time period; 2) the Department elects to deny the application under A.A.C. R18-1-507; or 3) the applicant withdraws the application. The Department retains the entire fee if the application is denied under A.A.C. R18-1-507 after the end of the administration completeness review time-frame.

C. Private and Public Employment Impact

The Department expects no measurable effect on private and public employment.

IV. Impact on Small Businesses

A. Identification of Small Businesses

Small businesses affected will be public water systems (private and government owned) serving less than 3,300 people.

B. Administrative and Other Costs Related to Compliance

There are no hidden or administrative costs to comply. The cost is the fee and applies to all applicants.

C. Description of Methods the Agency Could Utilize to Reduce the Economic Impact to Small Businesses – including:

As a practical matter, a small public water system will have smaller projects to construct and would likely come under the following statutory exception both to the ATC and its fees. A.R.S. § 49-353(A)(2)(e) provides a statutory exemption for approval to construct, and thereby any associated fees, if:

- “(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.
- (ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.”

This exemption is implemented through R18-5-505(B)(3).

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D. Probable Costs and Benefits to Private Persons and Consumers

A public water system likely will pass on its design and construction costs onto its customers, but fees charged for design review are minimal compared to the total costs of the entire project. Proper design review of public water systems, including continued funding for the review, ensures minimum standards for bacteriological, physical, and chemical quality of water distributed through a public water system.

V. Probable Effect on State Revenues

This rulemaking will directly affect state revenues by increasing funds in the Water Quality Fee Fund and decreasing reliance on the State General Fund. The Water Quality Fee Fund is established by A.R.S. § 49-210, and receives various fees. Funds are available for legislative appropriation to the Department for water quality programs. Also, A.R.S. § 49-210(D) specifies that water quality fee funds shall be used for five specific programs that are fee-based, including technical review fee procedures under A.R.S. § 49-353.

As part of the licensing time-frame requirements, if the Department is unable to comply with the licensing time-frames for Title 18, Chapter 1, Table 5 (Safe Drinking Water Construction Licenses), it will refund to the applicant all fees charged. See A.R.S. § 41-1077(A). Also, the Department would be required to pay a penalty to the State General Fund of one percent of the total fees for any applications it has failed to grant or deny for each month after the expired time-frame. See A.R.S. § 41-1077(B).

VI. Description of Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Rulemaking

This rule complies with A.R.S. § 49-353(A)(2)(b), which mandates the Department to adopt the fees for the Department's engineering design review services for public water systems. The Department did not identify any alternative methods.

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

In R18-14-201, Definitions, the definition of priority review was changed. The proposed version defined priority review as "... a design review service where a license application, meeting specific criteria, is reviewed using not more than 50% of the substantive review time-frame for an 'approval to construct' license application." The final version defines priority review as "... a design review service where a license application is reviewed using not more than 50% of the total review time-frame for an Approval to Construct license application." This change is not deemed to be substantive, since the change results in a shorter time period in which the Department must complete its review. The change will not have an effect on the public safety because all priority review must be approved before the Department commits to a shorter review time.

A related change is the additional detail added to R18-14-202(G), which was amended by adding criteria under which the Department would grant approval of priority review status: "When determining whether to approve a priority review request, the Department will consider the complexity of the project and the Department's current work load." These criteria were discussed in stakeholder outreach meetings early in the rule development process.

In addition, minor technical and grammatical changes were made in order to improve the rules' clarity, conciseness, and understandability, and to conform to the formatting style required by the Secretary of State.

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

Prior to publishing the notice of proposed rulemaking, the Department conducted preliminary stakeholder outreach via public meetings and a mailing to potentially affected entities. The Department used the constructive comments and suggestions of stakeholders to revise the draft rule prior to filing the notice of proposed rulemaking for publication in the *Arizona Administrative Register*.

The proposed rule was published on June 13, 2008. The Department held an oral proceeding on July 15, 2008, as specified in the notice of proposed rulemaking, for affected parties to make oral comments on the rule; however, no persons appeared to make a formal oral comment on the record, and no written comments concerning the notice of proposed rulemaking were received by the Department. The record was closed, pursuant to the notice of proposed rulemaking, on July 15, 2008.

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. Whether the rule was previously made as an emergency rule and if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable

15. The full text of the rules follows:

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TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES**

ARTICLE 2. PUBLIC WATER SYSTEM DESIGN REVIEW FEES

Section

- R18-14-201. Definitions
- R18-14-202. Flat Rate Fees
- Table 1. Service Fees

ARTICLE 2. PUBLIC WATER SYSTEM DESIGN REVIEW FEES

R18-14-201. Definitions

In addition to the definitions in A.A.C. R18-1-501, and 18 A.A.C. 4, the following terms apply to this Article:

“Design review” means the process for reviewing an application for an Approval to Construct as prescribed in A.A.C. R18-5-505(B).

“Design review service” means all activities related to processing an application for an Approval to Construct, including reviewing, approving, or denying an application, conducting a pre-application meeting or site visit, or other activity required to review an Approval to Construct application.

“Distribution system” has the same meaning prescribed in A.A.C. R18-5-101.

“Priority Review” means a design review service where a license application is reviewed using not more than 50% of the total review time-frame for an Approval to Construct license application.

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

“Licensing time-frame” means a period of time described and defined in A.R.S. Title 41, Chapter 6, Article 7.1, and 18 A.A.C. 1, Article 5.

“Water treatment plant” has the same meaning prescribed in A.A.C. R18-5-101.

R18-14-202. Flat Rate Fees

- A.** The Department shall assess and collect a flat rate fee for design review services for public water systems.
- B.** Design criteria for public water systems are specified in 18 A.A.C. 4 and 18 A.A.C. 5.
- C.** An applicant shall submit public water system design review fees with an application for an Approval to Construct, as specified in 18 A.A.C. 5, Article 5.
- D.** The flat rate fees for a design review service:
 - 1.** Are established in Table 1, are assessed on a per-unit basis where applicable, and are cumulative unless otherwise specified in this Article;
 - 2.** Shall be paid by cash, check, cashier’s check, money order, or any other method acceptable to the Department; and
 - 3.** Shall be paid in full before the Department issues approval of an application.
- E.** The Department shall refund 50% of the application fee paid by an applicant if, during the administrative completeness review time-frame period, the applicant:
 - 1.** Fails to respond in a reasonably timely manner, as set forth in A.A.C. R18-1-507, to a notice of administrative deficiencies requesting additional information under A.A.C. R18-1-503, and the Department denies the application; or
 - 2.** Withdraws the application.
- F.** If an application is denied under A.A.C. R18-1-507 after the end of the administrative completeness review time-frame, the Department shall retain the flat fee paid by the applicant.
- G.** If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department’s current work load. If priority review is approved by the Department, the applicant shall pay the priority review fee specified in Table 1.
- H.** State agencies are exempt from all fees imposed under this Article pursuant to A.R.S. § 49-353(A)(2)(b).

Table 1. Design Review Service Fees

Public Water System Design Review Application Types	Fees^{1,2}
Approval to Construct Public Water Supply Distribution System:	
• 150 or fewer service connections	\$900
• 151 to 300 service connections	\$1,400

Notices of Final Rulemaking

Public Water System Design Review Application Types	Fees^{1,2}
<ul style="list-style-type: none"> • <u>301 to 450 service connections</u> • <u>451 to 600 service connections</u> • <u>601 to 750 service connections</u> • <u>Each additional 150 service connections</u> 	<p><u>\$1,900</u></p> <p><u>\$2,400</u></p> <p><u>\$2,900</u></p> <p><u>Add \$500</u></p>
<u>Water Treatment Plants and Blending Plans (including new source approval if applicable):</u> <ul style="list-style-type: none"> • <u>< 0.1 mgd</u> • <u>≥ 0.1 mgd and < 1 mgd</u> • <u>≥ 1 mgd and < 5 mgd</u> • <u>≥ 5 mgd</u> 	<p><u>\$1,500</u></p> <p><u>\$2,000</u></p> <p><u>\$3,000</u></p> <p><u>\$5,000</u></p>
<u>Well (including new source approval if applicable)</u>	<u>\$1,250</u>
<u>Storage Tank</u>	<u>\$800</u>
<u>Booster Pump</u>	<u>\$800</u>
<u>Main Line Extension</u>	<u>\$250</u>
<u>Chlorinators/Disinfection Devices</u>	<u>\$250</u>
<u>Extension of Time to Construct³</u>	<u>50% of the application fee, not to exceed \$500</u>
<u>Priority Review Fee⁴</u>	<u>Double the Standard Fee</u>

¹ Fees are calculated on a per-unit basis; i.e., a separate fee is assessed for each separate storage tank, booster pump, disinfection device, or main line extension.

² Fees for each application type are cumulative; an applicant must pay the total of all pertinent fees.

³ Extensions of time to construct are issued pursuant to A.A.C. R18-5-505(E); the Section states that an Approval to Construct becomes void if construction is not commenced or completed within a specified time period, unless the Department grants an extension of time.

⁴ Priority Review Projects require Department authorization prior to filing.