

NOTICES OF FINAL RULEMAKING

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

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TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R2-5-304 Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 41-763
Implementing statute: A.R.S. § 41-763(6)

3. **The effective date of the rules:**
November 2, 1999

4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Docket Opening: 5 A.A.R. 2179, July 9, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 2144, July 9, 1999.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Tom Michael, Human Resources Generalist
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6. **An explanation of the rule, including the agency's reason for initiating the rule:**
The rulemaking amends section R2-5-304. The rule contains requirements for performance increases, subject to legislative appropriation, for all employees who meet the performance increase guidelines issued by the Director. The amended section also provides for special performance awards for employees at the maximum salary of their pay grade as a lump sum payment or other payment method.

7. **A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
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 this state:**
Not applicable.

9. **The summary of the economic, small business, and consumer impact:**
The rule directly affects state service employees through procedures that increase salaries paid by the state. The result would have an economic impact by increasing discretionary income and could impact consumers based upon the

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quality of services that are provided. The extent of the impact as measured in financial terms cannot be projected due to the unknown amount of funds that could be allocated.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Minor grammatical changes were made to clarify the rule.
11. **A summary of the principal comments and the agency response to them:**
No comments were received.
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 adopted as an emergency rule?**
No.
15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION**

ARTICLE 3. CLASSIFICATION AND COMPENSATION

Section

R2-5-304. Performance Adjustments

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-304. Performance Based Salary Adjustments

- A.** Performance based salary adjustment limits. Subject to legislative appropriation, the Director shall determine employee eligibility for and the minimum and maximum performance based salary adjustment percentage for a performance based salary adjustment.
- AB.** Performance ~~increases~~ based salary adjustments.
 1. All employees ~~except seasonal, temporary, emergency and clerical pool employees~~ who are in the state service on ~~August 31 of any year~~ the date listed in the performance based salary adjustment guidelines issued by the Director and who meet the criteria listed in the guidelines are eligible for a performance based ~~increase salary adjustment~~ up to ~~7.5% the percentage limit set in the guidelines~~, effective on the ~~following January 1~~ date set in the guidelines.
 2. All employees, ~~except seasonal, temporary, emergency, and clerical pool employees~~, who enter the state service between September 1 and the last day of February are eligible for a performance increase in salary of up to 7.5%, effective on the following July 1, and thereafter on each subsequent January 1.
 3. ~~The provisions of subsection (A), paragraph (1) above apply to seasonal and temporary employees provided they have worked a minimum of 520 hours between July 1 and December 31 during their first year of state service and work a minimum of 1,040 hours per year in subsequent calendar years.~~
 4. ~~The provisions of subsection (A), paragraph (2) above apply to seasonal and temporary employees provided they have worked a minimum of 520 hours between September 1 and the last day of February and work a minimum of 1,040 hours per year in subsequent calendar years.~~
 5. ~~2.~~ A performance ~~increase~~ based salary adjustment may not raise the salary of an employee beyond the maximum salary of the pay grade.
 6. ~~3.~~ An employee may not receive ~~more than a 7.5% performance increase~~ based salary adjustment greater than the percentage increase limit set by the Director in any fiscal year.
- B.** Performance decreases. The salary of an employee may be reduced by up to 2.5% based on substandard performance, effective on January 1, but shall not be reduced below the entrance salary for that class.
- C.** Special performance awards. An ~~employees~~ employee at the maximum salary of ~~their~~ the employee's pay grade, or who ~~receive~~ is eligible for a performance increase based salary adjustment which that place places them the employee at the maximum salary of the pay grade, ~~are~~ is eligible for a special performance award. The special performance award:
 1. May be a lump sum or other payment method;

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2. ~~Shall not exceed of up to 5.0%~~ the percentage limit outlined in the performance based salary adjustment guidelines issued by the Director; and
 3. ~~The special performance award shall~~ Shall be paid over the term established by the Director in the performance based salary adjustment guidelines, effective January 1. Employees retain the award until the following December 31.
- D. Combination of increases. An employee ~~may~~ shall not receive a combination of a performance based salary adjustment and a special performance award exceeding ~~7.5%~~ the limit set in the performance based salary adjustment guidelines issued by the Director in any fiscal year.

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TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-3-701	Repeal
R3-3-701	New Section
R3-3-801	New Section
R3-3-702	New Section
R3-3-703	New Section
R3-3-704	New Section
R3-3-801	Repeal
R3-3-801	New Section
R3-3-802	Repeal
R3-3-802	New Section
R3-3-803	New Section
R3-3-804	New Section
R3-3-805	Repeal
R3-3-806	Repeal
R3-3-807	Repeal
R3-3-808	Repeal
R3-3-809	Repeal
R3-3-810	Repeal
R3-3-811	Repeal
R3-3-901	Amend
R3-3-902	Repeal
R3-3-902	New Section
R3-3-903	Repeal
R3-3-903	New Section
R3-3-904	Repeal
R3-3-904	New Section
R3-3-905	Amend
R3-3-906	Amend
R3-3-909	Repeal
R3-3-910	Amend
R3-3-911	Repeal
R3-3-912.	Repeal
R3-3-913.	Amend
R3-3-914	Repeal
R3-3-915	Repeal
R3-3-916	Repeal

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

Authorizing statute: A.R.S. §§ 3-264, 3-343, 3-2603, 3-2605, 3-2609.

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Implementing statute: A.R.S. §§ 3-268, 3-272, 3-273, 3-274, 3-275, 3-276, 3-2605, 3-2606, 3-2609, 3-2611, 3-2612, 3-2613, 3-2616.

3. The effective date of the rules:

November 3, 1999

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 2127, July 31, 1998.
Notice of Proposed Rulemaking: 5 A.A.R. 1044, April 16, 1999.

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

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

Articles 7, 8, and 9 have been edited to remove unnecessary and duplicative information, and any information contained in the "Act," (the Federal Insecticide, Fungicide and Rodenticide Act of 1972) which is incorporated by reference in Article 1; and to provide stakeholders with clear and understandable requirements.

R3-3-701, Definitions. The current definition for "pesticide" is different from the statute definition in A.R.S. § 3-341(21) and has been deleted. The terms "discontinuation period" and "official sample" have been defined, and the statute definition of "pest" has been expanded pursuant to A.R.S. § 3-341(20)(b).

R3-3-702, Pesticide Registration and Cancellation; Fees. The information required on the registration form, and the fee, expiration date and multiple year requirements specified in A.R.S. § 3-272(B) and (C) have been added to this Section for the convenience of the applicant.

R3-3-703, General Provisions. This Section changes the 1 year maximum requirement to dispose of pesticides canceled by the manufacturer to 3 years and voids the manufacturer's responsibility for a pesticide if the pesticide has not been sold or used 3 years after the manufacturer's registration cancellation as long as any person selling or disposing of the pesticide has been informed of the cancellation; lists the allowed deviations for active ingredients in pesticide formulations when analyzing a sample; and updates the prohibited acts.

Three years ago the Department expressed concern regarding swimming pool pesticides being sold that didn't meet label guarantees. A meeting was held with the pool chlorine industry. At that time they were not a cohesive group. The pool chlorine industry said that they didn't want a rule or law regulating this issue and wanted to police their own people and products. Because that didn't happen, the Department proposed the statement "Not for sale or use after (date)" be placed on the label of all liquid sodium hypochlorite products with a label claim on 5.25% - 12.5% active ingredient. Because heat and light affects the active ingredient, the seller must practice good stewardship when storing the product. The industry came together and developed a product stewardship and education plan, therefore we are not requiring an expiration date.

R3-3-704, Labels. This Section makes certain that all labels, whether new or revised, are on file with the Department. It assures the Department that the label provided for a registered pesticide is accurate and current.

R3-3-801, Definitions. This Section defines the term "Official Publication" and encompasses not only definitions found in this publication, but the definitions in A.R.S. § 3-262.

R3-3-802, Licensure; Specialty Fertilizer Registration; Fees. This Section contains information required on the license and specialty fertilizer registration forms, and includes the fee, expiration date, and multiple year requirements specified in A.R.S. § 3-272.

R3-3-803, Tonnage Reports; Fee. This Section changes the annual tonnage report and inspection fee submittal date; specifies criteria for estimating annual distribution; and provides the licensee an option of reporting quarterly or annually, if the annual tonnage is 400 tons or less.

R3-3-804, General Provisions. This Section combines the information currently found in R3-3-801, R3-3-802, R3-3-806, R3-3-807, R3-3-809, and R3-3-810.

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R3-3-901, Definitions. This Section defines "Official Publication" and includes definitions previously found in R3-3-913(A).

R3-3-902, Licensure; Fee; Ammoniation. This Section lists information required to obtain a license; offers multi-year licensing; establishes the license fee and per ton inspection fee of commercial feed offered for sale or distributed in Arizona; and contains the information previously found in R3-3-916.

R3-3-903, Tonnage Reports; Inspection Fee. This Section contains the information previously found in R3-3-912, provides the licensee an option of reporting quarterly or annually if the annual tonnage is 400 tons or less, and lowers the tonnage fee from 25¢ to 20¢ per ton.

R3-3-904, Milk and Milk Products Decharacterized for Use as Commercial Feed. This new Section establishes that the appearance and labeling of a milk or milk product sold as animal feed must be changed to alert the public that the product is not for human consumption, and provides a color requirement for these animal feed products.

R3-3-905, Labeling; Precautionary Statements. This Section contains information previously contained in R3-3-902, R3-3-903, R3-3-904, and R3-3-909.

R3-3-906, Non-protein Nitrogen. This Section has been updated for clarity and understanding.

R3-3-910, Drug and Feed Additives. The incorporated reference in this Section has been updated.

R3-3-913, Sampling Methods. This Section has been updated for clarity and understanding, and the incorporated reference has been updated.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

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

Changing the date for submitting the feed and fertilizer licenses from February to June 30th, will benefit the division in overall time management by providing a more uniform work flow. The Department will realize expenses for software updates which must be completed to allow for multiple year licensing. Whether multiple year licensing will create additional processing time for tracking is unknown.

Offering the licensee the opportunity to estimate annually for 400 tons or less, rather than quarterly, could offer the Department a financial benefit in clerical time for handling and processing checks.

FY 97/98 Type of License	Total #	# Qualified to Estimate	# Actually Estimating	# Additionally Qualified
Feed License	418	284	209	91
Fertilizer License	218	91	89	63

If all qualified licensees estimated annually, the Department would process approximately 600 fewer checks per year and save \$1,000 in clerical salaries. (10 minutes processing per check at a \$10 per hour average salary.)

Requiring milk and milk products to be decharacterized will assist the Department in regulating any milk or milk product intended as pet food. Products not clearly labeled as pet food as required by rule and easily apparent as pet food to the public through this labeling, or products that have the same appearance as those for human consumption, violate the rule.

Other changes will have no impact upon the Department, other than consolidating information and creating clear and understandable Articles. The Department does not anticipate additional costs associated with this rulemaking.

B. Estimated Costs and Benefits to Political Subdivisions.

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

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C. Businesses Directly Affected By the Rulemaking.

This rulemaking provides businesses with the information required on licensing and registration documents before they fill out an application. Any business dealing with milk or milk products used as animal feed will be required to decharacterize the product. The Department estimates that the decharacterization, consisting of using food coloring approved by the FDA, will be a minimal cost for businesses and the actual cost depends upon their production.

Providing more licensees the opportunity to estimate tonnage fees will save them time and money expended for dealing with paperwork.

The reduction in the tonnage fee will provide a monetary benefit to the licensee and begin to reduce that fund to a more realistic level. The following information provides an analysis of the fund and the fee reduction:

Fiscal Year	Actual Tonnage	Appropriated Budget	Expended Budget	Current Fiscal Balance
1995	786,229	180,800	165,342	
1996	824,505	173,400	163,411	
1997	863,104	166,700	153,571	
1998	974,699	171,200	154,694	

Average Tons	Inspection Fees	Funds Collected	1998 Budget	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	-84,987	6 yrs
862,134	15¢	129,320	171,200	-41,880	11 yrs
862,134	20¢	172,427	171,200	1,227	-----

The Department anticipates that additional monies will be expended from the fund for increased State Agricultural Laboratory fees, sampling costs, and equipment. The following chart allows for an additional \$25,000 and \$50,000.

Average Tons	Inspection Fee	Total Fees	1998 Budget	Additional 25K	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	196,200	-109,987	5 yrs
862,134	15¢	129,320	171,200	196,200	-66,879.9	7 yrs
862,134	20¢	172,427	171,200	196,200	-23,773.2	18 yrs
High Tons						
974,699	10¢	97,470	171,200	196,200	-73,730	5 yrs
974,699	15¢	146,205	171,200	196,200	-24,995	9 yrs
974,699	20¢	194,940	171,200	196,200	23,740	50+ yrs

Average Tons	Inspection Fee	Total Fees	1998 Budget	Additional 50K	Reduction Per Year	Fund Depleted
862,134	10¢	86,213	171,200	221,200	-134,987	4 yrs
862,134	15¢	129,320	171,200	221,200	-91,880	5 yrs
862,134	20¢	172,427	171,200	221,200	-48,773	9 yrs
High Tons						
974,699	10¢	97,470	171,200	221,200	-73,730	4 yrs
974,699	15¢	146,205	171,200	221,200	-24,995	6 yrs
974,699	20¢	194,940	171,200	221,200	23,740	15 yrs

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If existing pesticide stock for which registrations have been canceled have not been sold or distributed within 3 years, the manufacturer's responsibility is shifted to the person who distributes or offers the pesticide for sale. This rulemaking allows 3 years, instead of 1 year, for the pesticide to move through normal channels of trade. The rule-making removes the assumption that the manufacturer is responsible for the pesticide regardless of existence and places the responsibility of the pesticide on any person not selling or disposing of the pesticide after 3 years, as long as the person has been informed of the cancellation.

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

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

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

Consumers and the public are affected by the decharacterization requirement for milk and milk products. R3-3-904 ensures that a product destined for animal feed is not purchased for human consumption by mistake. It is unlawful for any person to sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for human consumption that does not meet the health and sanitation standards of the Federal Milk Ordinance, A.R.S. Title 3, and the Department's rules. Milk products not subject to inspection have no quality controls, no testing for bacteria and other potentially harmful things such as drugs, and is not an acceptable or safe product for human consumption.

The Department estimates that the pass-on costs to the consumer may range from 1¢ to 2¢ per container.

F. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state revenues.

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

R3-3-702(C) was edited to read: "Any additional pesticide registered during the 2-year registration option shall have the same registration end-date as other pesticides currently registered," making clear the registration requirement.

Representatives of the Swimming Pool Chemical Manufacturers' Association (SPCMA) met with the Department to discuss the pool chlorine expiration date requirement in R3-3-703(A). SPCMA proposed that the industry take a proactive position to address the degradation of sodium hypochlorite solutions in Arizona and suggested a "Product Stewardship/Responsible Care Program." The program includes:

1. Regular meetings sponsored by SPCMA to review responsible care programs within the industry,
2. An educational program for distributors and dealers including consumer point-of-purchase signs for dealers and distributors,
 - a. Signs will include warnings about product degradation and product warranty information with a money-back guarantee;
 - b. A consumer pamphlet will be provided to retailers stating the particular qualities of the product, the need to rotate stock, warnings not to over-order, and proper storage away from heat and sunlight;
 - c. Educational meetings will be held with store managers to educate them about product degradation; and
 - d. Sales personnel will continually educate store managers through direct contact.
3. Regular visits by sales personnel to ensure stock is being rotated, and
4. Periodic Department updates.

Because of this meeting with SPCMA, the Department agreed to remove the expiration date requirement from R3-3-703(A) and allow SPCMA the opportunity to work with the industry to help solve this problem. The Department reserves the right to implement the expiration date should industry fail to carry through with its plan or if products continue to fail quality analysis.

Subsection R3-3-703(B) requires that all pesticides will be inspected and analyzed if they are distributed within the state. Only those pesticides not in compliance with the Article and pesticide laws, pesticides randomly sampled, or pesticides mentioned in a complaint will be inspected and analyzed. The rule has been changed to reflect this.

The pesticide formulations referenced in R3-3-703(B)(2) are not included in a "Table 1" but in R3-3-704(B). The citation has been corrected.

The Department originally required that an expiration date be indicated on a pesticide label. After further consideration and discussions with stakeholders, this requirement was withdrawn. This requirement was inadvertently left in R3-3-704(C)(2) and has been removed.

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When the proposed rulemaking was submitted to the Office of the Secretary of State, the last line of the chart established in R3-3-704(B) did not print on the submitted copy. Upon review of the computer file, the reveal codes indicated that the missing information was "hidden." This "hidden" information resulted when the rulemaking document was double-spaced and the chart became too large to print on 1 page. The number of lines in this rulemaking permits the entire chart to be seen.

The Department reevaluated the necessity for requiring a copy of a label for each fertilizer intended for distribution within the state (R3-3-802(A)) and removed this requirement.

R3-3-802 and R3-3-902 both referenced license renewals and specified parameters for "renewing" a license. The Department does not handle commercial fertilizer licenses or commercial feed licenses as renewals. Each year, the applicant must apply as a new licensee and, except for product labels already on file, or product labels over 3 years old, provide the Department with all information and documents necessary for licensure. The reference to renewal has been removed in both Sections.

R3-3-802(B) provides the amount of the inspection fees for commercial fertilizers. It does not however, indicate when the fee will be paid. This subsection has been moved to R3-3-803(A).

R3-3-803(A) has been rewritten to provide a clearer understanding of the tonnage fee requirements.

The license expiration information in R3-3-802(B) also pertains to specialty fertilizer registrations. This information has been added to subsection (C)(2).

The definitions and terms mentioned in the opening sentence in R3-3-901 refer to "feed ingredient" definitions and feed terms. The rule has been changed accordingly.

To remove the requirement of obtaining an exemption for lots larger than 100 tons, and obtaining scientific data proving samples are representative of a quantity over 100 tons, the last portion of the definition of "lot" has been removed. Any quantity over 100 tons must be divided in lots.

R3-3-902(A)(1) indicates that the inspection fee for commercial feed is required at the time of licensure. This is only true if the licensee estimates the annual distribution. This fee requirement has been moved to R3-3-903(A) and the subsection rewritten to provide a clearer understanding of the tonnage fee requirements.

R3-3-903. Tonnage Reports; Inspection Fee. The commercial feed and fertilizer statutes contain the same reporting requirement. The following information was inadvertently left out of this Section and has been added in subsection (A)(4). "Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the current quarter. Any commercial feed distributed in the final 2-weeks of the initial quarter shall be included on the next full quarterly report. Any person who distributed commercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees before a license is issued."

The incorporation by reference date cited in R3-3-913(A) for the 16th edition of the "Official Methods of Analysis" was incorrectly stated as 1995 instead of 1997 and has been corrected.

To help the consumer be more aware that the milk or milk product is not for human consumption (R3-3-904(B)), the phrase must also be printed in capital letters on the principle display panel of the label. This subsection has been further clarified to specify the size of container requiring that "letters shall be at least ¼ inch on containers of 8 oz. or less and at least ½ inch on all other containers."

Obtaining Associate Director approval for a name of an ingredient or a collective term for the grouping of ingredients required R3-3-905(A) has been eliminated. If an ingredient or collective term is not listed in the Official Publication the use of a common name will clearly define the product.

Although whole cottonseed or cottonseed products may not be commingled, the Department has no way of making this determination through documentation specified in R3-3-905(B)(3)(c)(i). This subsection has been removed.

Some of the information specified in subsections (B)(3)(c) and (B)(3)(f) was duplicative and has been removed.

Minor grammatical and technical changes were made at the request of the G.R.R.C. staff.

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

COMMENTS: Public hearing testimony and testimony at a subsequent public meeting centered on the decharacterization of milk and milk products required in R3-3-904. Without exception, attendees opposed milk coloring because it is unappealing to the customer.

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The dairy operator is opposed to adding any type of coloring into the milk that is determined by a government agency. The operator is not opposed, however, to adding a coloring that is organic or natural.

Testimony revealed that “hundreds” of people request raw milk because of its healthful benefits and the government has pushed dairies to label their products “for pets only” when they are not really selling the products for pets, but are providing a service to the people who want to consume raw milk. The dairy operator is opposed to labeling his raw milk products “for pet food only” so that the consumer knows that the products have not been inspected and do not meet the standards for human consumption. The dairy operator feels that the government is trying to make his product unappealing so that the consumer won’t want to drink it. The government is taking away all of his rights and choices. Raw milk should be appealing and remain white like Grade A milk.

RESPONSE: The Department understands that raw milk may be beneficial to many people for various reasons, such as lactose intolerance, or allergic reactions. The fact remains that any dairy that is not Grade A licensed, and consequently subject to inspection, must label its products as pet food and hold a commercial feed license.

Consumers need to know that purchasing raw milk not classified as Grade A means that there are no quality controls in place to verify that the milk is safe for human consumption. Coloring the milk or milk product with a color that is unappealing will alert the purchaser that the product is not meant for human consumption. The producer can easily attain the required color by mixing any variety of food colors together to produce the gray represented on the Color Requirement Card.

Federal law requires that raw milk or raw milk products for human consumption meet the same bacteriological standards as milk that has been pasteurized. Facilities producing raw milk must meet the health and sanitation standards of the Federal Milk Ordinance and A.R.S. Title 3, and the Department’s administrative rules.

The Department has the responsibility (and the legislative mandate) to ensure safe milk for human consumption. The Department inspects these facilities, runs sample tests for bacteria and other potentially harmful things such as drugs, requires that animals are found free of brucellosis and tuberculosis, and oversees product labeling.

Milk products that do not meet the Grade A standards may be sold as pet food as long as the producer obtains a \$10 commercial feed license. One of the Department’s responsibilities is to confirm animal feed labeling claims.

Federal law prohibits marketing products labeled as pet food for human consumption. Milk distributed as pet food is not tested for human consumption. Pet food milk may contain harmful bacteria, such as e. coli or fecal coliform.

The experience of the movie and TV star, Gillian Anderson, emphasizes that labeling these products as pet food is simply not enough. Ms. Anderson announced on national television that she purchased a container of yogurt in Sedona and realized only after she finished eating the product that it was labeled “for pet food only.”

R3-3-904, Milk and Milk Products for Use As Commercial Feed, follows the same concept as the current meat and poultry rule, R3-2-207, which requires meat used as animal food be decharacterized. Although meat decharacterization may be accomplished using coloring agents, it is usually done with powdered or liquid charcoal. This makes the product unappetizing for human consumption.

R3-3-904 does not require that milk or milk products be made unfit to consume. It attempts, however, to erase any potential confusion about the milk’s intended use as pet food. If the public does not read the labeling, the food coloring alerts them that they have a milk product manufactured specifically for pet food, that it has not been pasteurized, and may contain harmful bacteria. The Department cannot presume that everyone reads the label. If the carton looks like a Grade A product, appears to be the right size, and the right color, some people assume the product is for human consumption.

The Department’s goal is to protect human health by curtailing the marketing of pet food as a human consumable. Stating that raw milk or raw milk product isn’t Grade A, but as good and wholesome as a Grade A product, is not true.

The Department has the responsibility to make absolutely certain that any raw milk or raw milk product manufactured as pet food is not mistakenly purchased for human consumption. If the public knowingly purchases and consumes pet food, that’s their choice.

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

None.

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

- R3-3-801(A) Terms and definitions found in the Official Publication of the Association of American Plant Food Control Officials, amended 1999.
- R3-3-803(E) Investigational allowances as prescribed in the Official Publication of the Association of American Plant Food Control Officials, amended 1999.
- R3-3-901 Feed ingredient definitions and feed terms found in the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.
- R3-3-904 Color Requirement card.
- R3-3-905(B)(1) The feed labeling guide, the medicated feed labeling, and expression of guarantees requirements prescribed in the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.
- R3-3-910(B)(1) "Food Additives Permitted in Feed and Drinking" in the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.
- R3-3-910(B)(2) "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999.
- R3-3-913(A) Methods of sampling commercial feed prescribed in the "Official Methods of Analysis" found in the publication the Association of Official Analytical Chemists, 16th Edition, 1997.

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

No.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION**

ARTICLE 7. PESTICIDE

Sections

- ~~R3-3-701. General provisions of technical rules and regulations Repealed~~
~~R3-3-701. Definitions~~
~~R3-3-702. Pesticide Registration; Fee~~
~~R3-3-703. General Provisions~~
~~R3-3-704. Labels~~

ARTICLE 8. FERTILIZER MATERIALS

Sections

- ~~R3-3-801. Labeling Repealed~~
~~R3-3-801. Definitions~~
~~R3-3-802. Chemical analysis Repealed~~
~~R3-3-802. Licensure; Specialty Fertilizer Registration; Fees~~
~~R3-3-803. Tonnage Reports; Inspection Fee~~
~~R3-3-804. General Provisions~~
~~R3-3-805. Annual tonnage report and inspection fee Repealed~~
~~R3-3-806. Value of deficiency Repealed~~
~~R3-3-807. Investigational allowances Repealed~~
~~R3-3-808. Definitions Repealed~~
~~R3-3-809. Claims and misleading statements Repealed~~
~~R3-3-810. Leased containers Repealed~~
~~R3-3-811. Amount of inspection fee Repealed~~

ARTICLE 9. COMMERCIAL FEED

Sections

- ~~R3-3-901. Definitions and terms~~

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- R3-3-902. ~~Brand names~~ Repealed
- R3-3-902. ~~Licensure; Fee; Ammoniation~~
- R3-3-903. ~~Expression of guarantees~~ Repealed
- R3-3-903. ~~Tonnage Reports; Inspection Fee~~
- R3-3-904. ~~Ingredient statement~~ Repealed
- R3-3-904. ~~Milk and Milk Products Decharacterized for Use as Commercial Feed~~
- R3-3-905. ~~Label format~~ Labeling; Precautionary Statements
- R3-3-906. ~~Non-protein nitrogen~~ Nitrogen
- R3-3-909. ~~Directions for use and precautionary statements~~ Repealed
- R3-3-910. ~~Drug and feed additives~~ Feed Additives
- R3-3-911. ~~Good manufacturing practices~~ Repealed
- R3-3-912. ~~Annual tonnage report and inspection fee~~ Repealed
- R3-3-913. ~~Methods of sampling commercial feed~~ Sampling Methods
- R3-3-914. ~~Methods of analyzing commercial feed~~ Repealed
- R3-3-915. ~~Amount of inspection fee~~ Repealed
- R3-3-916. ~~License required to ammoniate~~ Repealed

ARTICLE 7. PESTICIDE

R3-3-701. General provisions of technical rules and regulations Repealed

A. Definitions

1. ~~“Pesticide”. A substance or preparation is or is not a pesticide depending upon the purpose for which it is intended and the determination of this intent is very important and for all general purposes it will be the deciding factor in declaring a product a pesticide. Intent for use as a pesticide may be established by:~~
 - a. ~~Claims for usefulness or directions for pesticide uses on any of the labeling accompanying an article.~~
 - b. ~~Claims or recommendations for pesticide uses through any public advertising.~~
 - c. ~~Claims for pesticide uses either oral or written by a representative of the manufacturer, wholesaler, or distributor of an article.~~

B. Prohibited acts

1. ~~The delivery of a pesticide to the property of each user, as required by A.R.S. § 3-352(A)(2), shall be in unbroken containers not exceeding 55 gallons (210 liters) each for liquid pesticides, or 110 pounds (50 kilograms) each for non-liquid pesticides. This requirement shall not apply in those instances where:~~
 - a. ~~Pesticides are used by structural pest control applicators pursuant to R3-3-701(B)(2) of this Article, or~~
 - b. ~~Pesticides are containerized in amounts greater than 55 gallons or 110 pounds for distribution in bulk to a licensed applicator of agricultural pesticides for use on the property of more than one user.~~
2. ~~Persons when acting as structural pest control applicators, that is, persons dealing in services which include the application of pesticides, are exempt from provisions of R3-3-701(B)(1) above.~~
3. ~~No person shall purchase pesticides for the purpose of repackaging the pesticide for distribution and sale without relabeling the containers so packaged and further complying with the provisions of the Act.~~
4. ~~All pesticides shall be prominently labeled and in a manner that can be easily read and understood and must include all the information required by the Act as it applies to that particular pesticide.~~

C. Declaration of pests. ~~The State Chemist declares the following to be pests: All birds, mammals, reptiles, amphibians, fishes, slugs, snails, crayfish, roots and plant parts.~~

D. Cancellation of registration to protect the public. ~~If a registrant voluntarily cancels the registration of a pesticide to protect the public, unless otherwise prohibited by law, existing stocks of material may be distributed, but in no instance may the pesticide be distributed beyond one year following voluntary cancellation.~~

R3-3-701. Definitions

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

1. “Discontinuation” means when the registrant is no longer distributing a pesticide into Arizona.
2. “Pest” means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots and plant parts.
3. “Official sample” means any sample of pesticide taken by the Associate Director, or the Associate Director’s agent, and designated as official.

R3-3-702. Pesticide Registration; Fee

A. Registration. Any person registering a pesticide shall provide the following documents and information on a form provided by the Department with a nonrefundable \$100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;
2. The name and address of the company appearing on the label;
3. The social security number or tax identification number;

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4. The date of the application;
 5. The brand and name of the pesticide being registered;
 6. The EPA registration number of the pesticide if applicable;
 7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, if requested by the Department;
 8. The toxicological and safety data, if requested by the Department;
 9. The name and telephone number of the person providing the toxicological and safety data;
 10. Two pesticide labels for any pesticide not previously registered;
 11. The material safety data sheet for each pesticide; and
 12. The license time-period option.
- B.** A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for 1 or 2 years.
- C.** If an applicant elects a 2-year pesticide registration, any additional pesticide registered during that 2-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.

R3-3-703. General Provisions

- A.** Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. § 3-351(K), any person holding a pesticide found in the channels of trade following the 3-year discontinuation period shall be responsible to register or dispose of the pesticide.
- B.** Sampling.
1. The Associate Director, or the Associate Director's agent, may sample, inspect, and analyze any pesticide distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article, or if a complaint has been filed with the Department.
 2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).
 3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.
- C.** Prohibited acts. No person shall purchase a pesticide to repackage the pesticide for distribution and sale without relabeling the repackaged container and complying with the provisions of the Act.

R3-3-704. Labels

- A.** Within 2 weeks of a pesticide label revision, a registrant shall provide the Department with 2 pesticide labels that have been revised since the pesticide was originally registered.
- B.** The Associate Director may request a copy of a pesticide label if the label on file is older than 3 years.

ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS
FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS

Claim %	HCV(1) %	HSD(2)	Allowed Deviations for "uniform"(3) samples		Allowed Deviations for "non-uniform"(4) samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation = $2 (1 - 0.5 \log (\text{claim \%}/100))$

(2) HSD = Horwitz Standard Deviation = $(\text{Claim \%}) \text{HCV \%}/100$

(3) "Uniform" samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

(4) "Non-uniform" samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the "non-uniform" guidelines may be used for allowed deviations. States may use judgment in placing a sample into the "uniform" or "non-uniform" category.

ARTICLE 8. FERTILIZER MATERIALS

R3-3-801. Labeling Repealed

- A.** The grade numerals which accompany the brand name of a commercial fertilizer shall be in the order of total nitrogen, available phosphoric acid and soluble potash. Numerals representing other guaranteed constituents in the commercial fertilizer shall not be included with the grade numerals unless they follow the grade numerals and are immediately preceded with the name of the substance to which they refer in the guaranteed analysis, and said name to be printed in such manner to be as prominent as the numerals used.
- B.** The materials from which claimed nutrients are derived must be listed on the label. All labels must meet this requirement by no later than December 31, 1978.
- C.** A grade is not required for fertilizer materials which claim no primary nutrient (i.e. 0-0-0 not required). No grade is required for fertilizer materials which claim only one primary nutrient derived from a single compound. In all cases, the claim of a nutrient requires a guarantee.

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R3-3-801. Definitions

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not include any later amendments, and the definitions in A.R.S. § 3-262, the following term applies to this Article:

“Official Publication” means the Official Publication of the Association of American Plant Food Control Officials, amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.

R3-3-802. Chemical analysis Repealed

All nutrients with the exception of phosphoric acid and potash, if guaranteed, shall be stated in terms of the elements.

R3-3-802. Licensure; Specialty Fertilizer Registration; Fees

A. Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of \$125 for each year of the license:

1. The following information on the license application provided by the Department:
2. The name, title, and signature of the applicant;
3. The date of the application;
4. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
5. The social security number or tax identification number;
6. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(4);
7. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(4); and
8. The license time-period option.

B. A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 or 2 years.

C. Specialty fertilizer registration.

1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of \$50 per brand and grade of specialty fertilizer for each year of the registration:
 - a. The name, address, telephone number, and signature of the applicant;
 - b. The name and address of the company on the label;
 - c. The date of the application;
 - d. The grade, brand, and name of the specialty fertilizer;
 - e. The current specialty fertilizer label; and
 - f. The registration time-period option.
2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 or 2 years.
3. If an applicant elects a 2-year specialty fertilizer registration, any additional fertilizer registered during that 2-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.

R3-3-803. Tonnage Reports; Inspection Fee

A. Quarterly tonnage reports and inspection fee.

1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final 2 weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. § 3-2009 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
 - a. If the inspection fee is being passed on to the purchaser:
 - i. The assigned number and name of the currently licensed company;
 - ii. The commercial fertilizer by code or grade;
 - iii. The amount of commercial fertilizer in whole tons;
 - iv. The name, title, telephone number, and signature of the licensee or the licensee’s authorized representative;
and

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- v. The date of the report.
- b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:
 - i. The grade;
 - ii. The amount of commercial fertilizer distribution by county;
 - iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
 - iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
 - v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative;
and
 - vi. The date of the report.
- B.** Estimated tonnage report. A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
 - 1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
 - a. The estimated tonnage of commercial fertilizer to be distributed;
 - b. The grade;
 - c. The amount of distribution by county;
 - d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
 - e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
 - f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
 - g. The date of the report.
 - 2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31st of each year.
 - 3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31st of each year.
 - 4. Overestimation of tonnage.
 - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
 - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

R3-3-804. General Provisions

A. Labeling.

- 1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:
 - a. The guaranteed nutrient value follows the grade number;
 - b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and
 - c. The name printed on the label is as prominent as the numbers.
- 2. The materials from which claimed nutrients are derived shall be listed on the label.
- 3. No grade is required for fertilizer materials that claim no primary plant nutrient (that is, 0-0-0).
- 4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.
- 5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.
- 6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.

B. Claims and misleading statements.

- 1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
- 2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.
- 3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.
- 4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.

C. Deficiencies.

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1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.
 2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.
- D.** All investigational allowances shall be conducted as prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.
- E.** Leased fertilizer material storage containers shall be clearly labeled with the following:
1. Grade numbers;
 2. Brand name, if applicable; and
 3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."

R3-3-805. Annual tonnage report and inspection fee Repealed

The person responsible for reporting distribution of fertilizer materials and paying the fee may estimate the annual distribution and submit, no later than the last day of February, a report of the estimated tonnage for the calendar year together with the inspection fee based upon the estimated tonnage. In subsequent years, adjustments may be made for overestimates or underestimates.

R3-3-806. Value of deficiency Repealed

The value of a deficiency in a fertilizer material shall take into account total value of all constituents at their guaranteed level and the price of the fertilizer material at the time of sale.

R3-3-807. Investigational allowances Repealed

For the purpose of enforcement of Section 3-276 of the Act, the investigational allowances shall be those published by the Association of American Plant Food Control Officials, "(official publication, Association of American Plant Food Control Officials, 1976. Copies available from: W. L. Baker, University of Missouri, Columbia, Missouri 65201)".

R3-3-808. Definitions Repealed

The definitions of terms of the Association of American Plant Food Control Officials (1976-77 Official Publication) apply to all terms used in labels or claims for fertilizer materials.

R3-3-809. Claims and misleading statements Repealed

- A.** Any constituent claimed in a fertilizer material must be accompanied by a minimum guarantee for such constituent. In no case may a constituent be claimed unless there exists for such constituent a laboratory method of analysis approved by the State Chemist.
- B.** Where claims of improved efficacy or increased productivity are made for fertilizer materials, sound scientific data supporting such claims must be made available to the State Chemist upon request.

R3-3-810. Leased containers Repealed

Where fertilizer material storage containers are leased, such containers shall be clearly stenciled: "Leased by Enter name and address of lessor to Enter name and address of lessee)".

R3-3-811. Amount of inspection fee Repealed

On and after January 1, 1980, inspection fee paid for all commercial fertilizers offered for sale, or otherwise distributed in Arizona, as provided for in A.R.S. § 3-268 shall be at the rate of 25¢ per ton.

ARTICLE 9. COMMERCIAL FEED

R3-3-901. Definitions and terms General Provisions

- A.** The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the Association of American Feed Control Officials and contained in the current official publication Association of American Feed Control Officials except as the State Chemist designates otherwise in specific cases.
- B.** The terms used in reference to commercial feeds shall be the official feed terms adopted by the Association of American Feed Control Officials and contained in the current official publication Association of American Feed Control Officials except as the State Chemist designates otherwise in specific cases.
- C.** The following commodities are hereby declared exempt from the definitions of commercial feed, under the provisions of Section 24-903 of the Act: Hay and straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials, provided that these commodities are not adulterated within the meaning of Section 24-913 of the Act.
- D.** A copy of the current official publication of the Association of American Feed Control Officials shall be filed by the State Chemist with the Office of the Secretary of State.

In addition to the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and the definitions in A.R.S. § 3-2601, the following terms apply to this Article:

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1. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611. A.R.S. § 3-2601(2)
2. "Lot" means any distinct, describable, and measurable quantity that contains no more than 100 tons.
3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.

R3-3-902. Brand-names Repealed

The brand or product name must be appropriate for the intended use of the feed and must not be misleading.

R3-3-902. Licensure; Fee; Ammoniation

- A.** Any person applying for a commercial feed license, under A.R.S. § 3-2609, to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of \$10 for each year of the license:
1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and
 2. The following information on the license application provided by the Department:
 - a. The name, title, and signature of the applicant;
 - b. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
 - c. The social security number or tax identification number;
 - d. The date of the application;
 - e. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(2)(b);
 - f. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and
 - g. The license time-period option.
- B.** A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for 1 or 2 years.
- C.** Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

R3-3-903. Expression of guarantees Repealed

The expression of guarantees shall be the official expression of guarantees adopted by the Association of American Feed Control Officials and contained in the official publication Association of American Feed Control Officials except as the State Chemist designates otherwise in specific cases.

R3-3-903. Tonnage Reports; Inspection Fee

- A.** Quarterly tonnage report and inspection fee.
1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.
 2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial feed distributed in the final 2 weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees and late penalties before a license is issued.
 3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
 - a. If the inspection fee is being passed on to the purchaser:
 - i. The assigned number and name of the currently licensed company;
 - ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
 - iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
 - iv. The date of the report.
 - b. If the licensee pays a tonnage fee for the distribution of a commercial feed:
 - i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
 - ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative;

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- and
iii. The date of the report.
- B.** Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
 - a. The estimated tonnage of commercial feed to be distributed;
 - b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
 - c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
 - d. The date of the report.
 2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31st of each year.
 3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31st of each year.
 4. Overestimation of tonnage.
 - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
 - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

R3-3-904. Ingredient statement Repealed

- A.** ~~The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the 1984 Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the State Chemist.~~
- B.** ~~All commercial feed and customer formula feed containing cottonseed or cottonseed products shall list such ingredients in the ingredient statement. Such required listing must be in addition to collective terms already present on the label.~~

R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed

- A.** A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:
1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;
 2. Is produced as prescribed in A.A.C. R3-2-805; or
 3. Is decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization:
 - a. Does not affect nutritive value; and
 - b. Matches the color on the Color Requirement card, incorporated by reference and on file with the Office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the Environmental Services Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.
- B.** Labeling. All milk or milk product commercial feed labels shall be approved by the Associate Director before use.
1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state "WARNING - NOT FOR HUMAN CONSUMPTION" in capital letters. The letters shall be at least ¼ inch on containers of 8 oz. or less and at least ½ inch on all other containers.
 2. The container label shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria," in letters at least 1/8 inch in height.
- C.** Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and clearly identified "Not for Human Consumption."

R3-3-905. Label format Labeling; Precautionary Statements

- A.** Ingredient statement.
1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.
 2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.
- B.** ~~The label format shall conform to the official label format adopted by the Association of American Feed Control Officials and contained in the 1984. Labeling and expression of guarantees.~~
1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official Publication, which is incorpo-

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rated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

2. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.
3. Directions for use and precautionary statements.
 - a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.
 - b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.
 - c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:
 - i. “This feed contains 20 or less ppb aflatoxin and may be fed to any animal;” or
 - ii. “WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption.”
 - d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:
 - i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and
 - ii. The documentation prescribed in subsection (B)(3)(c) is not required.
 - e. The distributor shall maintain the documentation for 1 year.
 - f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: “WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws.”

R3-3-906. Non-protein nitrogen Nitrogen

- A. ~~Urea and other non-protein nitrogen products, as defined in the 1984 Official Publication of the Association of American Feed Control Officials, are acceptable ingredients in commercial feeds for ruminant animals as a source of equivalent crude protein.~~
 1. ~~If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, or if the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third 1/3 of the total crude protein, the label shall bear adequate include directions for the safe use of the feeds and a the following precautionary statement: “Caution: Use as Directed”~~
 2. ~~The directions for use and the caution precautionary statement shall be in type of such size and so printed and placed on the label so that they will be read and understood by an ordinary persons under customary conditions of purchase and use can read and understand the directions.~~
- B. ~~Non-protein nitrogen products, as defined in the 1984 Official Publication of the Association of American Feed Control Officials, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.~~
- C. ~~On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements as required by all applicable regulations contained in the Code of Federal Regulations, Title 21, the presence of added non protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non protein nitrogen. A medicated feed label shall contain feeding directions or precautionary statements, or both, with sufficient information to ensure that the feed is properly used.~~

R3-3-909. Directions for use and precautionary statements Repealed

- A. ~~Directions for use and precautionary statements on the labeling of all whole cottonseed, commercial feeds and customer formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:~~
 1. ~~Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and~~
 2. ~~Include, but not be limited to, all information prescribed by all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983.~~
- B. ~~Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in R3-3-906.~~
- C. ~~Adequate directions for use and precautionary statements necessary for safe and effective use, as prescribed by all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983, are required on commer-~~

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cial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

- ~~D.~~ All whole cottonseed or cottonseed product which is delivered to an ultimate consumer must be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the State Chemist. Such documentation must be left with the consumer and must contain one of the following statements:
1. This feed contains 20 or less ppb aflatoxin and may be fed to any animal.
 2. **WARNING:** This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption.
- ~~E.~~ Any person taking possession of a lot of cottonseed or cottonseed product which is intended for further processing, for planting seed or for other special purposes approved by the State Chemist and which is not intended for use as animal feed until tested and brought into full compliance with all state rules and regulations may certify in writing that he does not require the documentation set forth in subsection (D) above. Such certification must be kept on file for a period of one year by the distributor and shall be submitted to the State Chemist or his representative upon request. Such material must, however, be labeled with the following statement:
WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state rules and regulations.
- ~~F.~~ All commercial feed or customer formula feed delivered to a consumer must be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the State Chemist. Such documentation must be left with the consumer and must contain the following statement if it contains more than 20 ppb aflatoxin:
WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption. All commercial feed or customer formula feed not so labeled must contain 20 or less ppb aflatoxin.

R3-3-910. Drug and ~~feed additives~~ Feed Additives

- A. ~~Prior to approval of Drug and feed additive approval.~~
1. ~~Before a label is approved by the Associate Director for commercial feed which contains~~ containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence ~~to prove~~ demonstrating the safety and efficacy of the commercial feed when used according to the label directions furnished on the label if the material is not recognized as a commercial feed.
 2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.
- B. ~~Satisfactory evidence~~ Evidence of safety and efficacy of a commercial feed may be:
1. ~~When If the commercial feed contains such~~ containing additives, ~~the use of which conforms to the requirements of all applicable regulations contained in the Code of Federal Regulations, Title 21, revised April 1, 1983 "Food Additives Permitted in Feed and Drinking" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions;~~ or
 2. When If the commercial feed is itself a drug and is a substance generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 512, as amended January 1980 and is defined in the Official Publication or listed as a "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

R3-3-911. ~~Good manufacturing practices~~ Repealed

~~For the purposes of enforcement of Section 24-913 of the Act, the State Chemist adopts the following as current good manufacturing practices:~~

1. ~~The regulations prescribing good manufacturing practices for medicated feeds as published in 21 CFR 225, as revised April 1, 1983.~~
2. ~~The regulations prescribing good manufacturing practices for medicated premixes as published in 21 CFR 226, as revised April 1, 1983.~~

R3-3-912. ~~Annual tonnage report and inspection fee~~ Repealed

~~The person responsible for reporting distribution of commercial feed and paying the fee may estimate the annual distribution and submit, no later than the last day of February, a report of the estimated tonnage for the calendar year together with the inspection fee based upon the estimated tonnage. In subsequent years, adjustment may be made for overestimates or underestimates.~~

R3-3-913. ~~Methods of sampling commercial feed~~ Sampling Methods

~~A.~~ Definitions

1. ~~"Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, which are distributed for use as feed or for mixing in feed. "Commercial feed" includes raw agricultural commodities~~

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distributed for use as feed or for mixing, in feed when such commodities are adulterated within the meaning of Section 24-913 of the Commercial Feed Law.

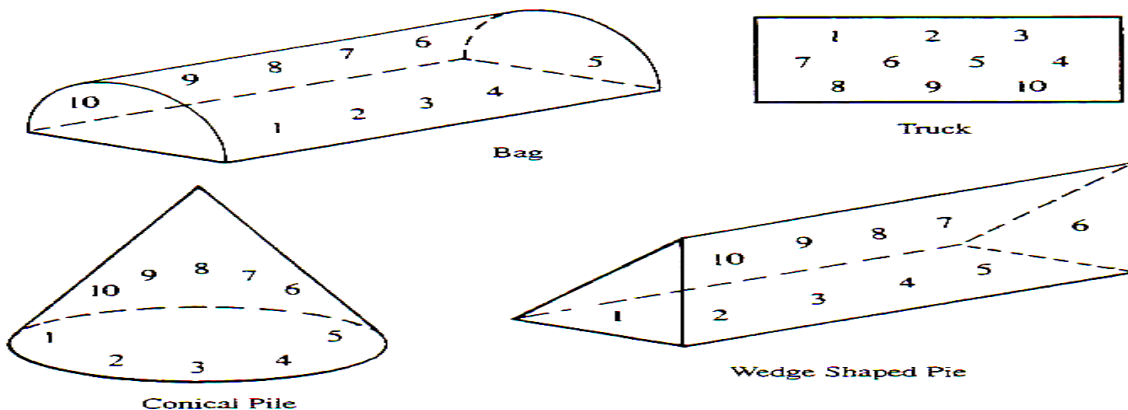
2. "Lot" means any distinct, describable and measurable configuration which contains no more than 100 tons. The State Chemist may, after review of sufficient scientific data documenting that samples can be obtained which are representative of the lot, issue specific exemptions to allow a lot size of more than 100 tons.

B.A. Method of sampling Sampling commercial feed. Methods The methods of sampling commercial feed shall be those methods adopted by the State Chemist and which are in accordance with procedures outlined in the publication entitled "Official Methods of Analysis of the Association of Official Analytical Chemists", 13th Edition, 1980, a copy of which is on file with the Secretary of State. comply with the procedures established in 4.1.01. Official Method 965.16 Sampling of Animal Feed, in the "Official Methods of Analysis of AOAC International," 16th Edition, 1997, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter. Copies may be purchased from AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.

C.B. Method of sampling Sampling whole cottonseed.

1. Sample size - A gross sample of not less than 30 pounds shall be taken from a lot. ~~A~~ The gross sample shall consist of not less than ten 10 probes evenly spaced or ten 10 stream sample passes taken following the procedure outlined prescribed in subsection (C)(4)(b) of this regulation (B)(4)(b).
2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. All samples must The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and all analyses the results of the analysis performed and reported by a certified laboratory within five 5 working days from receipt of sample.
3. Sampling equipment. Sampling equipment includes:
 - a. Scale, graduated in ½ pound increments, and any of the following
 - b. ~~Trier~~ Corkscrew trier, approximately 50 inches in length and capable of taking at least a 3-pound sample.
 - c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic ~~swupper~~ sampler.
 - d. Stream sampler similar to the following: A container approximately at least 8 inches x 5 inches x 5 ½ inches attached to a pole long enough to that enables the sampler to pass the container through falling streams of cottonseed.
 - e. Automatic stream samplers or other sampling equipment provided sufficient if scientific data documenting their its ability to obtain a representative sample is made available and found acceptable approved by the State Chemist Associate Director.
 - f. Shop-vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of ¾ in PVC pipe.
4. Sampling procedure.
 - a. All lots will be sampled by taking at least ten equally spaced probes. If a corkscrew trier or Probe-a-Vac sampler is used, at least 10 evenly spaced probes shall be taken per lot. All The probed samples will shall be taken according to the following patterns:

SAMPLING PROCEDURES



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All ~~The~~ probes ~~must shall~~ penetrate to a minimum depth of at least 50 inches. ~~Not less than two and at least 2~~ of the ~~ten 10~~ probes per sample ~~must shall~~ reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

- b. ~~If a shop-vac system is used at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.~~
- ~~b.c.~~ Stream samples shall be taken while the ~~material~~ cottonseed is being discharged, ~~provided if~~ there is a uniform discharge flow over a set period of time. The sample shall ~~take not less than ten~~ consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the ~~proper~~ sample size specified in subsection (B)(1).
- ~~e.d.~~ The ~~entire~~ gross sample shall be weighed to the nearest ½ pound. ~~In no case shall the gross sample, but shall not~~ be reduced in size. If any gross sample does not meet the minimum 30 pound weight that gross sample ~~must shall~~ be discarded and the sampling procedure repeated from the beginning. ~~If the shop-vac gross sample is not at least 10 pounds, the sample shall be discarded and the sampling procedure repeated from the beginning.~~
- ~~d.e.~~ Modifications to the sampling procedure above may be made provided sufficient scientific data documenting that a representative sample will be obtained by such a change is made available and found acceptable by the State Chemist. ~~The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.~~

R3-3-914. Methods of analyzing commercial feed Repealed

~~A.~~ Definitions

- ~~1.~~ "Aflatoxin" is defined as the sum of concentrations of all specific aflatoxins identified in the testing.
- ~~2.~~ "AOAC" is defined as Association of Official Analytical Chemists.
- ~~3.~~ "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, which are distributed for use as feed or for mixing in feed. "Commercial feed" includes raw agricultural commodities distributed for use as feed or for mixing, in feed when such commodities are adulterated within the meaning of Section 24-913 of the Commercial Feed Law.
- ~~4.~~ "JAOAC" is defined as the Journal of the Association of Official Analytical Chemists.

~~B.~~ Methods of analysis. Methods of analyzing commercial feeds shall be in accordance with procedures outlined in the publications entitled "Official Methods of Analysis of the Association of Official Analytical Chemists", 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983, copies of which are on file with the Secretary of State.

~~C.~~ Methods of analysis for whole cottonseed

~~1.~~ Sample preparation

- ~~a.~~ High moisture ammoniated or other wet samples shall be dried within 24 hours of receipt by the laboratory at a temperature not more than 1405 F. until it has dried sufficiently to be dehulled. If the sample cannot be dried within 24 hours, it must be maintained at 165 C. or less until it can be dried according to the procedure above.
- ~~b.~~ Dehull the entire sample by passing through a mill or decorticator to crack at least 99% of the hulls.
- ~~c.~~ Separate the meats from the hulls by sieve, shaker, scalper or beater.
- ~~d.~~ The entire sample of meats are to be ground to pass a 20-mesh screen.
- ~~e.~~ The ground meats are to be blended in a double-cone or twin-shell blender or small drum type mixer for a minimum of 15 minutes.
- ~~f.~~ The laboratory sample of approximately 500 grams is drawn by passing ground meats through a divider system such as a boemer or riffler.
- ~~g.~~ Draw an analytical sample of approximately 50 grams by dividing the laboratory sample with a riffler.
- ~~h.~~ The retained portion (approximately 450 grams) of the sample is to be kept refrigerated at a temperature of 165 C. or less for not less than 60 days.
- ~~i.~~ Other equipment may be employed in place of the requirements in subparagraphs (b) thru (h) above provided sufficient scientific data documenting that it is capable of performing equal or better than existing approved equipment is made available and found acceptable by the State Chemist.

~~2.~~ Sample analysis

- ~~a.~~ Determination of aflatoxin in cottonseed is to be done according to Sections 26.052-26.060, AOAC, 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983. Modifications allowed are:
 - ~~i.~~ Liquid partitioning of the aflatoxin into chloroform.
 - ~~ii.~~ For thin layer chromatography, the use of a tank solvent of formic acid, ethyl acetate and toluene (1+3+6).
- ~~b.~~ Confirmation procedures are to be done by Sections 26.076-26.082, or 26.083 of AOAC, 13th Edition, 1980, and the JAOAC, Vol. 63, No. 2, 1980, Vol. 64, No. 2, 1981, Vol. 65, No. 2, 1982, and Vol. 66, No. 2, 1983.

~~3.~~ Method of reporting

- ~~a.~~ To calculate the amount of aflatoxin in the dried whole seed use the following formula: $.5 \times \text{total ppb found} = \text{ppb in dried whole seed}$. For Pima variety or delinted seed the total ppb found = ppb in dried whole seed.

- b. Determination of pass/fail samples
 - i. An initial single sample will be run and if the results are 20 ppb or less on a 20 ppb level, or 300 ppb or less on a 300 ppb level, it shall be considered a passed sample.
 - ii. If the results of a single sample are greater than 20 ppb or 300 ppb on a 20 ppb or 300 ppb level respectively, the sample shall be rerun in duplicate. If the average of all three samples is over 20 ppb on a 20 ppb level or 300 ppb on a 300 ppb level, it shall be considered to not pass.

R3-3-915. Amount of inspection fee Repealed

On and after January 1, 1980, the inspection fee paid for all commercial feeds offered for sale or otherwise distributed in Arizona, as provided for in A.R.S. § 24-907(B) shall be at the rate of 25¢ per ton.

R3-3-916. License required to ammoniate Repealed

Pursuant to the licensing requirements in A.R.S. § 24-911, any person who ammoniates feed or feed material is required to obtain a commercial feed license and is responsible for all testing, labeling or other state rules or regulations pertaining to commercial feeds. The inspection fee, as required in A.R.S. § 24-907, must be paid unless the feed is ammoniated on the premises of the consumer.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

**CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS**

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R3-9-301 Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-1083
Implementing statute: A.R.S. § 3-1086(B)
3. **The effective date of the rules:**
November 3, 1999
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2010, June 18, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 2778, August 20, 1999.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: shirley.conard@agric.state.az.us
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking establishes the reporting requirements for gin operators; brings the rule up-to-date with the 1996 legislation (A.R.S. § 3-1086) by changing the location for submitting the reports and fees from the Arizona Department of Agriculture to the Arizona Cotton Research and Protection Council; requires the gin number, the name of county where the reporting gin is located, and the FSA farm number; and makes clear that the gin operator must report the estimated number of ginned bales on the February 15th report and the actual number of ginned bales on the March 15th report.

7. **A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None.
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
9. **The summary of the economic, small business, and consumer impact:**
This rulemaking affects each gin operator who has ginned for Arizona cotton producers during the current crop year.
 - A. *Estimated Costs and Benefits to the Arizona Cotton Research and Protection Council.*
The rulemaking changes brings the rule in line with 1996 legislation and updates information required on the reporting forms. The Council is not economically affected by the implementation and enforcement of this rulemaking.
 - B. *Estimated Costs and Benefits to Political Subdivisions.*
Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.
 - C. *Businesses Directly Affected By the Rulemaking. (Gin Operators)*
Gin operators are not economically impacted by this rulemaking.
 - D. *Estimated Costs and Benefits to Private and Public Employment.*
Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.
 - E. *Estimated Costs and Benefits to Consumers and the Public.*
Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.
 - F. *Estimated Costs and Benefits to State Revenues.*
This rulemaking will have no impact on state revenues.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Minor grammatical changes were made at the request of the G.R.R.C. staff.
11. **A summary of the principal comments and the agency response to them:**
None.
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 material and their location in the rules:**
None.
14. **Was this rule previously adopted as an emergency rule?**
No.
15. **The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS

Sections
R3-9-301. Fees—Ginning and Remittance Forms

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ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

R3-9-301. Fees—Ginning and Remittance Forms

- A.** Each September the Arizona Cotton Research and Protection Council shall send the ginning and remittance report forms and a fee schedule to the operator of each gin for which a report was made during the previous year. A gin operator who has not submitted a report in the previous year may obtain the report forms and a fee schedule from the Arizona Cotton Research and Protection Council office.
- B.** ~~Report forms approved by the Arizona Cotton Research and Protection Council shall be completed by each~~ Each gin operator who has ginned gins for Arizona producers during the current crop year shall complete the following reports and submit them with the appropriate fees, and shall be submitted with fees, if applicable, to the Arizona Department of Agriculture Arizona Cotton Research and Protection Council within the times specified below: ~~Report forms requiring disclosure of specified information are as follows:~~
1. ~~On or before February 15th of each year, the gin operator shall submit a report to the Department for each bale of cotton ginned pursuant to A.R.S. § 3-1086(B). The report shall include the following:~~
 - a. ~~The name and number of the reporting gin;~~
 - b. ~~The business mailing address, and telephone number, and county of the reporting gin;~~
 - c. ~~The name of the authorized agent for the gin;~~
 - d. ~~The months reported and the crop year;~~
 - e. ~~The Agricultural Stabilization and Conservation Service farm number;~~
 - f. ~~The name and mailing address of each crop producer;~~
 - f. The Farm Service Agency (FSA) farm number;
 - g. ~~The~~ An estimate of the number of bales to be ginned by March 15 ~~from cotton grown at a location or below 2,700 feet elevation; and~~
 - h. ~~The~~ An estimate of the number of bales to be ginned by March 15 ~~from cotton grown at a location above 2,700 feet elevation;~~
 - i. ~~Whether the cotton is long or short staple.~~
 2. ~~In addition to the information set forth in subparagraphs (1)(a) through (1)(d), the gin operator shall submit a report to the Department, within 30 days from the time the cotton was ginned, indicating any ginning performed after February 15 and through June 1. On or before March 15th of each year:~~
 - a. The information in subsections (1)(a) through (1)(f).
 - b. The total number of bales actually ginned and the certification number issued by the Department for meeting the tillage deadline for cotton grown at or below 2,700 feet elevation, and
 - c. The total number of bales actually ginned from cotton grown above 2,700 feet elevation.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-23-110 | Amend |
| R4-23-403 | Amend |
| R4-23-610 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. § 32-1904(A)(1).
Implementing statutes: A.R.S. §§ 32-1904(B)(5) and (7).
- 3. The effective date of the rules:**
November 2, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 1 A.A.R. 200, March 17, 1995.
Notice of Proposed Rulemaking: 5 A.A.R. 1088, April 16, 1999.
Notice of Supplemental Proposed Rulemaking: 5 A.A.R. 2253, July 16, 1999.

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

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 N. 19th Ave., Suite 101
Phoenix, AZ 85015
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

This rule was initiated at the request of the Arizona Pharmacy Association. The Arizona Pharmacy Association represents pharmacies and pharmacists in the state of Arizona. In the fall of 1994, a committee consisting of members from the Arizona Pharmacy Association and the Board staff worked together to identify possible changes in existing rule that are formalized in these proposed rules.

The rule includes new definitions for "certified pharmacy technician", "other designated personnel", "pharmacy technician", and "support personnel". The rule amends the definition for "supervision" and deletes the definition for "supportive personnel". The rule also incorporates the use of "graduate intern". Recent statutory changes created the "graduate intern" designation and the rule incorporates the term where applicable. The rule addresses format and style changes necessary under the current administrative procedures act and other necessary language changes to provide a clear, concise, and understandable document.

The heading of R4-23-403 is changed from "Supportive personnel" to "Pharmacy technicians and certified pharmacy technicians". The rule makes changes to R4-23-403 that address the activities of pharmacy technicians and certified pharmacy technicians. Specifically, the rule adds language that:

- a. Changes the minimum requirements for working as a pharmacy technician or certified pharmacy technician including age, education, training, and documentation;
- b. Addresses off-site training and includes a grandfather clause;
- c. Addresses the current 2:1 ratio of technicians to pharmacists in the pharmacy area by allowing 3 technicians in the pharmacy area per pharmacist if at least 1 of the 3 technicians is certified;
- d. Changes the list of permissible activities of a pharmacy technician by deleting items 1, 7, and 9 (accepting a new written prescription order, counting, pouring or reconstituting medications, and filing prescription orders);
- e. Renumbers the list to items 1 through 8 and makes changes that clarify technician activities;
- f. Defines the permissible activities of certified pharmacy technicians;
- g. Removes the employment notification requirements imposed on the pharmacist-in-charge of the pharmacy;
and
- h. Requires development and implementation of written policies and procedures and a training program for pharmacy technicians and certified pharmacy technicians.

The rule makes changes to R4-23-610 that address community pharmacy personnel and security procedures. The rule expands and clarifies the duties of the pharmacy permittee and pharmacist-in-charge related to the written policies and procedures for technicians, the technician training program, the designation of personnel permitted in the pharmacy, and the security of the drugs received by the pharmacy.

The Board believes that adoption of these rules will benefit the public health and safety by establishing clear standards governing community pharmacy practice. Specifically, the duties of pharmacy technician, and certified pharmacy technician. The Board further believes that regulation and enforcement are necessary to regulate and control the rapidly evolving role of pharmacists and technicians in a dynamic healthcare system.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

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 principal impact of the rule will be on pharmacists, technicians, pharmacies, and patients. For pharmacists-in-charge, the rule provides the means to increase the quality and training of technicians.

For staff pharmacists, the rule will provide more qualified and better trained technicians. This will give the pharmacist more time to evaluate drug use, counsel patients, and ultimately provide better health care for Arizona citizens.

For technicians, the rule establishes a definite career path through certification. Technicians who become certified can look forward to increased income and prestige. All technicians will benefit from the establishment of minimum standards of education and training. Job opportunity for technicians will increase with the increase in technician to pharmacist ratio.

The majority of pharmacies in Arizona are chain pharmacies. Chain pharmacy representatives helped write the new standards. The chain pharmacies have already moved to increase the number of certified pharmacy technicians they employ. These pharmacies realize that using better trained technicians will decrease costs by lowering employee turnover rates and increasing employee efficiency. When appropriate, the use of a 3 technician to 1 pharmacist ratio will decrease payroll costs and improve efficiency and patient care. These cost savings should offset the increased cost of higher wages for certified pharmacy technicians. The rulemaking allows for the continued employment of existing technicians who may not meet the new standards, thus not unduly penalizing either employee or employer. Most independent pharmacies will not use the 3 to 1 ratio, but they will receive the other benefits of using better trained technicians. Because using certified pharmacy technicians is not mandatory, except for the 3 to 1 ratio, the rulemaking will have minimal impact on independent pharmacies.

The rulemaking indirectly benefits consumers by establishing higher minimum standards for pharmacy technicians and certified pharmacy technicians. These minimum standards will provide more qualified and better trained technicians. The use of well-trained technicians will give the pharmacist more time to evaluate drug use, counsel patients, and ultimately provide better pharmaceutical care for Arizona citizens.

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

Comments received at a public hearing on the proposed rulemaking held on May 17, 1999 prompted the Board to make the substantive changes as published in a notice of supplemental proposed rulemaking on July 16, 1999. The commenters noted that requiring a pharmacist-in-charge to develop or even cooperate in the development of policy and procedures and training programs is not feasible. Chain pharmacies (community, supermarket, deep-discount) comprise more than 85% of the pharmacies in Arizona. In actuality, the pharmacist-in-charge in these chains has no input into pharmacy policy and procedures or training programs.

The rule is changed to require that the pharmacy permittee (in this case, chain management) or the pharmacist-in-charge develop technician policy and procedures and technician training programs. These changes occur in R4-23-403(A)(3), (E), (H), and (J)(1). In subsection (A)(3), the rule requires a copy of the training guidelines in the pharmacy. The majority of the language in subsection (A)(3) is moved into a new subsection (J) and the previous subsection (J) becomes subsection (K). Subsection(A)(3) now requires the completion of a training program as specified in subsection (J). The training guidelines are actually a part of the training program and it was the intent of the Board to have a copy of the entire training program in the pharmacy for reference. Subsection (J)(1)(d) adds the words "program and" between the words "training" and "guidelines".

Other public comment questioned why a pharmacist-in-charge should be required, as in subsection (G), to notify the Board within specific time-frames of employing, terminating, or training a technician. Another commenter wanted to know what the Board did with this information. Because the Board does not license or even have authority to license technicians and does not do anything with the information in question, the Board decided to repeal the employment notification requirements in subsection (G) and renumber subsequent subsections accordingly.

While reviewing the rule for these changes, Board staff noticed and inserted a missing word in subsection (I)(7)(e). The word "and" was left out by mistake in the proposed rulemaking. This grammatical error should be caught by GRRRC staff on final review, but we have inserted it at this time.

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

Comment 1: Disagree with the requirement that technicians be at least 18 years of age and have a high school diploma. This requirement will stop the use of students from high school vocational training programs.

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Board Response: For many years, Arizona hospitals have required pharmacy technicians to be at least 18 years of age and have a high school diploma. The Board believes the same requirement should apply to technicians in community pharmacy practice. Equalizing the standards for technicians is part of the Board's statutory mandate to protect the public health and safety.

Comment 2: The term "written guideline" in R4-23-403(A)(3) does nothing to further the advancement of technology. An alternate form of record keeping for the training manual, job descriptions, and records of training is needed.

Board Response: Section R4-23-403(H) allows the use of "other methods" for storage of the policies and procedures. Under this subsection, the use of advanced technology would be allowed.

Comment 3: The rule still requires the hand-initialing of labels which again does not allow for advancements in technology that can track individuals involved in the filling process.

Board Response: This issue has been addressed many times and the Board believes that hand-initialing is necessary. Present technology does not stop one individual from using another individual's initials in the computer. Hand-initialing is a unique way to identify the accountable dispensing pharmacist in cases involving a medication error.

Comment 4: Regarding R4-23-403(G), the Board should require individual technicians to register and report employment and training status. Under these rules failure to report employment and training status is a violation, and the pharmacist-in-charge may be subject to disciplinary action.

Board Response: The Board does not register or license pharmacy technicians nor does it have that authority. Therefore the Board can not require technicians to register or report employment and training status. The Board deleted that subsection in the final rule.

Comment 5: It is unreasonable to require the pharmacist-in-charge to develop or cooperate in the development of policy and procedure and technician training when in fact that does not occur in any chain pharmacy. Chain pharmacy management outside the local pharmacy actually develops pharmacy policy and procedure. The rule should be changed to include chain pharmacy management.

Board Response: The Board agrees with the comment and the final rule reflects that change.

Comment 6: The National Association of Chain Drug Store sent a letter of written comment on the notice of supplemental proposed rulemaking. This letter was in favor of the proposed rulemaking, but requested an amendment to the rule that would add language to establish permissible duties of certified pharmacy technicians during periods when the pharmacist on duty is taking a break.

Board Response: This new idea is based on a policy implemented by the North Carolina Board of Pharmacy. Although the idea may have merit, it is a policy in North Carolina not a rule. It is not necessary to make a rule, if a policy will achieve the same purpose. In addition, the Board's mandate to protect the public health and safety is not served by making a rule that might allow a technician to work unsupervised by a pharmacist. Before such action is taken, the Board staff will investigate the North Carolina Board of Pharmacy policy to determine how the policy works, including specific technician duties allowed and possible enforcement or public safety issues. After reviewing the investigative findings, the Board will determine whether a policy or rule will best protect the Arizona public health and safety. To prevent further delay of a rule package that is now over 4 years old, the rule will proceed unchanged through the rulemaking process.

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 approved as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Sections

R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

Sections

R4-23-403. ~~Supportive Personnel~~ Pharmacy Technicians and Certified Pharmacy Technicians

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Sections

R4-23-610. Community Pharmacy Personnel and Security Procedures

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“AZPLEX” means an Arizona pharmacy law examination written and administered by the Board staff or a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means a date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board and the office of the Secretary of State.

“Certified pharmacy technician” means an individual who receives a passing grade on a certification examination for pharmacy technicians recognized by the Arizona State Board of Pharmacy and meets the requirements of a pharmacy technician as defined in A.A.C. R4-23-110.

“Class 100 environment” means an atmospheric environment in compliance with the Federal Standard 209 Clean Room and Work Station Requirements: Controlled Environment, publication FED-STD-209D, U.S. Government Services Administration 450 Golden Gate Avenue, San Francisco, CA, June 15, 1988 edition which includes January 28, 1991, changes, (and no future amendments or editions), incorporated by reference and on file with the of the Secretary of State.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

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“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“Delinquent license” means a pharmacist or intern license the Board suspends for failure to renew or pay all required fees on or before the date the renewal is due.

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug. No person shall sell, purchase, or trade or offer to sell, purchase, or trade a drug sample.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

Holds a current Board permit under A.R.S. § 32-1931;

Is located in a correctional facility; and

Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control, packaging, and distribution of a batch or lot of a drug can be determined.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

“NAPLEX” means North American Pharmacist Licensure Examination.

“Other designated personnel” means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

“Outpatient” means ~~a person~~ an individual who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical care” means the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes, related to ~~the cure~~ curing or ~~prevention~~ preventing of a disease, ~~elimination~~ eliminating or ~~reduction~~ reducing of a patient’s symptoms, or arresting or slowing of a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy technician” means an individual, qualified under R4-23-403(A)(1) and (2), who, during and after completing the training required in R4-23-403(A)(3), performs, under the supervision of a pharmacist, activities related to the preparation and distribution of prescription medications consistent with policies and procedures required in R4-23-403(J) and state and federal law.

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“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Provider pharmacist” means a pharmacist who supplies medication to a long-term care facility and maintains patient profiles.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means ~~the performance performing and interpretation of interpreting~~ appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least 1 inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Remodel” means to ~~structurally~~ alter structurally the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means a person admitted to and residing in a long-term care facility.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Sterile pharmaceutical product” means a dosage form free from living micro-organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Supervision” means ~~at the pharmacist is shall be present, assumes legal responsibility, and has direct have personal~~ oversight of activities relating to ~~the acquisition, preparation, distribution, acquiring, preparing, distributing and sale of selling~~ prescription medications by pharmacy interns, graduate interns, supportive personnel pharmacy technicians, or certified pharmacy technicians.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent 1 or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient, or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquires, and documenting 3rd-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or certified pharmacy technician.

~~“Supportive personnel” means an individual trained to perform activities related to the preparation and distribution of prescription medications, under the supervision of a pharmacist and consistent with policy and procedures as required in R4-23-403.~~

“Transfill” means a manufacturing process by which 1 or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug ~~pursuant to as~~ specified in a prescription;

Distributing a drug sample by a manufacturers' or distributors' representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

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“Wholesale distributor” means any ~~one~~ person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-403. Supportive Personnel Pharmacy Technicians and Certified Pharmacy Technicians

- A.** ~~Prior to~~ Before working as a pharmacy ~~supportive person, technician or certified pharmacy technician,~~ an individual shall:
1. Be 18 years of age or older;
 2. Have a high school diploma or equivalent;
 3. Complete a training program, as specified in subsection (J), at the pharmacy of employment.
 4. ~~Have~~ Read and discussed, with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning ~~supportive personnel pharmacy technicians or certified pharmacy technicians,~~ the supportive personnel the pharmacy technician or certified pharmacy technician job description, and the policy and procedure manual of that pharmacy; and
 5. Date and sign a statement affirming their understanding of the Board of Pharmacy rules for pharmacy technicians or certified pharmacy technicians, supportive personnel and the pharmacy's job description, and the policy and procedure manual.
- B.** ~~Procedures. Supportive personnel shall function in accordance with written procedures prepared by the pharmacist in charge. These procedures shall specify functions and supervisory controls designed to assure the quality and safety of pharmaceutical service. A function is suitable to be performed by supportive personnel if written quality control procedures are developed, and a verification procedure is documented by the pharmacist in charge to assure the quality of product and service. Supportive personnel shall wear a badge indicating his or her name and title.~~
- B.** Nothing in subsection (A) shall prevent additional off-site training of a pharmacy technician or certified pharmacy technician. Any pharmacy technician or certified pharmacy technician employed before the effective date of this rule shall be exempt from R4-23-403 (A)(1) and (2).
- C.** In accordance with the space requirement listed at R4-23-609(A), the pharmacist-in-charge shall ensure that no more than 2 technicians are in the pharmacy area per pharmacist except 3 technicians per pharmacist may be in the pharmacy area if the 3rd technician is a certified pharmacy technician.
- D.** ~~Permissible activities of a pharmacy technician. Acting in compliance with R4-23-402(A) all applicable statutes and rules and under the supervision of a pharmacist, supportive personnel a pharmacy technician may assist a graduate intern, pharmacy intern, or a pharmacist in with the following:~~
1. ~~Accepting a new written prescription order;~~
 2. Receiving requests for refilling ~~Receive a request from a patient or patient's agent to refill the patient's prescription medication by serial number;~~
 3. ~~Recording~~ Record on the front of an original prescription order the prescription serial number and date dispensed;
 4. ~~Initiate or accept accepting~~ verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent thereof and ~~recording~~ record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
 5. ~~Recording~~ Record information in the refill record or family prescription order record patient profile;
 6. ~~Typing~~ Type and ~~affixing~~ affix labels for a prescription medications; or ~~causing~~ enter information for new or refill prescription medication to be entered into a computer, provided ~~the~~ a pharmacist shall verify verifies the accuracy and personally initials in handwriting the finished label prepared by ~~supportive personnel~~ the technician before the prescription medication is dispensed to the patient;
 7. ~~Counting, pouring or reconstituting medications, provided the pharmacist checks the ingredients and procedure prior to any reconstitution and provided the original containers are beside the medication for verification by the pharmacist;~~
 6. Reconstitute prescription medications, provided a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
 7. Retrieve, count, or pour prescription medications, provided a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee; and
 8. Prepackaging Prepackage drugs in accordance with R4-23-402(A); and
 9. ~~Filing prescription orders.~~
- E.** Permissible activities of a certified pharmacy technician. Acting in compliance with all applicable statutes and rules, after completing a training program developed by the pharmacy permittee or pharmacist-in-charge under subsections (A)(3) and (J), and under the supervision of a pharmacist, a certified pharmacy technician may, in addition to the activities listed in subsection (D), assist a pharmacist, graduate intern, or pharmacy intern in compounding prescription medications in

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accordance with written policies and procedures if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing.

- ~~D.F.~~ Prohibited activities. ~~Supportive personnel are Pharmacy technicians and certified pharmacy technicians shall not authorized to perform functions reserved for a pharmacist, graduate intern, or pharmacy intern in accordance with R4-23-402.~~
- ~~E.~~ Notification. ~~The pharmacist in charge shall notify the Arizona State Board of Pharmacy within ten days of employing a supportive person. Such notice shall indicate that the individual has signed the statement prescribed in R4-23-403(A) and the statement is available for review by a Board of Pharmacy Compliance Officer. At the discretion of the Executive Director of the Arizona State Board of Pharmacy, this notification may be by written statement, telephone, or personal appearance. The Executive Director shall maintain a file of supportive personnel.~~
- ~~G.~~ A pharmacy technician or certified pharmacy technician shall wear a badge indicating name and title while on duty.
- ~~H.~~ Before employing a pharmacy technician or certified pharmacy technician, a pharmacy permittee or pharmacist-in-charge shall:
- ~~1. Develop policies and procedures specifying permissible activities a pharmacy technician or certified pharmacy technician may perform as specified in R4-23-403(D) and (E).~~
 - ~~2. Implement the policies and procedures.~~
 - ~~3. Review and revise the policies and procedures biennially.~~
 - ~~4. Assemble the policy and procedures as a written manual or by another method approved by the Board or its designee, and~~
 - ~~5. Make the policies and procedures available within the pharmacy for reference by a pharmacy technician or certified pharmacy technician and inspection by the Board or its designee.~~
- ~~I.~~ The policies and procedures shall include the following:
- ~~1. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service.~~
 - ~~2. Employment performance expectations for a pharmacy technician and certified pharmacy technician.~~
 - ~~3. Prescription dispensing procedures for:
 - ~~a. Accepting a new written prescription.~~
 - ~~b. Accepting a refill request.~~
 - ~~c. Drug product selection.~~
 - ~~d. Counting and pouring.~~
 - ~~e. Labeling, and~~
 - ~~f. Refill authorization.~~~~
 - ~~4. Computer data entry procedures for:
 - ~~a. New and refill prescriptions.~~
 - ~~b. Patient's drug allergies.~~
 - ~~c. Drug-drug interactions.~~
 - ~~d. Drug-food interactions.~~
 - ~~e. Drug-disease state contraindications.~~
 - ~~f. Refill frequency.~~
 - ~~g. Patient's disease and medical condition.~~
 - ~~h. Patient's age or date of birth and gender, and~~
 - ~~i. Patient profile maintenance.~~~~
 - ~~5. Compounding procedures for a certified pharmacy technician.~~
 - ~~6. Pharmacist and patient communication.~~
 - ~~7. Quality management procedures for:
 - ~~a. Competency review and evaluation.~~
 - ~~b. Continuing education.~~
 - ~~c. Drug recall.~~
 - ~~d. Drug storage.~~
 - ~~e. Expired and beyond-use-date drugs, and~~
 - ~~f. Medication errors.~~~~
 - ~~8. Security procedures for:
 - ~~a. Confidentiality of patient prescription records, and~~
 - ~~b. The pharmacy area.~~~~
 - ~~9. Automated medication distribution system.~~
 - ~~10. Sanitation, and~~
 - ~~11. Brief overview of state and federal pharmacy statutes and rules.~~
- ~~J.~~ Pharmacy technician and certified pharmacy technician training program.
- ~~1. A pharmacy permittee or pharmacist-in-charge shall:
 - ~~a. Develop a pharmacy technician and certified pharmacy technician training program based on the needs of the individual pharmacy;~~~~

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- b. Implement the pharmacy technician and certified pharmacy technician training program;
 - c. Include written guidelines that:
 - i. Define the specific tasks the technician is expected to perform; and
 - ii. Specify how the technician's competency will be assessed; and
 - d. Provide a copy of the training program and guidelines within the pharmacy for reference by a pharmacy technician or certified pharmacy technician and inspection by the Board or its designee.
- 2. A pharmacist-in-charge shall certify that a technician has successfully completed the training program.
 - 3. A pharmacy technician or certified pharmacy technician shall perform only those tasks, listed in subsections (D) and (E), for which training and competency has been demonstrated.
- FK.** Hospital pharmacies. Nothing in this rule shall prevent prohibits a hospital pharmacies pharmacy from utilizing supportive personnel using a pharmacy technician or certified pharmacy technician in accordance with regulations state or federal law pertaining specifically to for a hospital pharmacies pharmacy.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-610. Community Pharmacy Personnel and Security Procedures

- A. Pharmacist in charge:** Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge".
- 1. Every pharmacy shall have a pharmacist designated as the "pharmacist in charge". The pharmacist-in-charge shall see ensure the communication and compliance of that directives from the Board directives are communicated to the management, other pharmacists, and interns, and technicians of the pharmacy and that they are complied with.
 - 2. The pharmacist in charge shall prepare manual to include the job description and list of functions supportive personnel may be expected to perform. The job description and function shall conform to this Chapter. The manual shall be available within the pharmacy and available for reference by supportive personnel and for inspection by the Board or its designee. A model of the manual is available on request from the Board office. The pharmacist-in-charge shall:
 - a. Conduct a biennial review and revision of all pharmacy policies and procedures, and
 - b. Make all pharmacy policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.
 - 3. The pharmacist-in-charge shall ensure that the ratio of technicians to pharmacists working in the pharmacy, does not exceed the ratio in R4-23-403(C).
- B. Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy interns, compliance officers, drug inspectors, peace officers when acting in their official capacity, pharmacy technicians, certified pharmacy technicians and, supportive support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, certified pharmacy technicians, and supportive support personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency. No more than two supportive personnel are permitted in the pharmacy area per pharmacist.**
- 1. The pharmacist-in-charge shall comply with the minimum area requirements as described in R4-23-609 for minimum areas both of a community pharmacy and of the area for the compounding and dispensing counter area.
 - 2. All A pharmacists employed by a pharmacy shall be responsible for physical and electronic ensure that the pharmacy is physically and electronically secure security while the pharmacist is on duty.
- C. Pharmacy area and storage shall be kept locked:** In a community pharmacy, the pharmacy area, and any additional storage area for drugs that is restricted to access only by a pharmacist, except in an extreme emergency, shall be kept locked when a pharmacist is not on duty present.
- D. Only pharmacist permitted to unlock pharmacy:** The A pharmacist shall be the only person permitted to unlock the pharmacy area or any additional storage area for drugs restricted to access only by a pharmacist, except in an extreme emergency.
- E. Receiving and checking area for drugs.** The area where prescription only drugs, narcotics, other controlled substances, and drugs which are primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors thereof are opened and marked shall be under the immediate supervision of a pharmacist, or pharmacy intern and immediately thereafter be kept or moved into the secured area of the pharmacy. Prescription-only drugs and controlled substances received in an area outside the pharmacy area shall be immediately transferred unopened to the pharmacy area. Prescription-only drug and controlled substance shipments shall be opened and marked in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern.
- F. Leaving prescription orders:** A written prescription orders or prescription medication containers to be refilled may be left in the prescription area through a small opening or slot when the pharmacist is not present in attendance, providing the name, address, and telephone number (if available) are checked to see that it is legible.
- G. Prescription medication to be left in pharmacy area or delivered:** To avoid mistakes in identity, errors in directions, and lack of professional consultation, A pharmacist shall deliver prescription medication shall either be delivered to the patient or be kept locked secure prescription medication in the prescription area locked pharmacy when the a pharmacist is not present. Prescription medication shall not be left outside the prescription area to be or picked up by the patient when the pharmacist is not in attendance present.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. STATE BOARD FOR PRIVATE
POSTSECONDARY EDUCATION

PREAMBLE

1. Sections Affected

R4-39-302
R4-39-303
R4-39-304
R4-39-304
R4-39-304
R4-39-305
R4-39-305
R4-39-306
R4-39-306
R4-39-307
R4-39-307
R4-39-308
R4-39-308
R4-39-309
R4-39-309
R4-39-310

Rulemaking Action

Amend
Amend
Repeal
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Repeal

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

Authorizing Statute: A.R.S. § 32-3003(A)(3)

Implementing Statutes: A.R.S. §§ 32-3003(A)(5) and 32-3021

3. The effective date for the rules if different from the date the rules are filed with the Office:

November 3, 1999

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

Notice of Rulemaking Docket Opening: 4 A.A.R., 1510, June 26, 1998.

Notice of Proposed Rulemaking: 4 A.A.R., 4218, December 28, 1998.

Notice of Oral Proceedings: 4 A.A.R., 4219, December 28, 1998.

Notice of Public Information: 5 A.A.R., 2281, July 16, 1999.

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

Name: Teri Candelaria, Executive Director

Address: State Board for Private Postsecondary Education
1400 West Washington, Room 260
Phoenix, AZ 85007

Telephone: 602-542-5709

Fax: 602-542-1253

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

The Board is amending R4-39-302 to (1) clarify the safety and health standards the facilities and equipment must meet, (2) clarify the differences in local and state laws, (3) clarify the limits of insurance coverage, and (4) conform with rule-writing guidelines. The Board is amending R4-39-303 to (1) clarify requirements under Section A, (2) ensure that the reference to felony convictions is consistent with Title 13, and (3) to conform to rulewriting guidelines. The Board is repealing R4-39-304 because licensure of an Agent is no longer required. The Board in renumbering and amending R4-39-304 clarifying who is subject to disciplinary proceedings for engaging in false or misleading advertising. The Board is also renumbering R4-39-305, R4-39-306, R4-39-307, and R4-39-308 and amending the rules to conform to rulewriting guidelines. The Board is repealing R4-39-310 and moving it to Article 4, R4-39-401.

7. **A reference to any study that the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
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 preliminary summary of the economic, small business, and consumer Impact statement:**
It is expected that the benefits of the rules will be greater than the costs. The repeal, renumbering and amending of the rules will benefit the public by making the rules more clear, concise and understandable. The Board will incur the costs associated with rulemaking. Taxpayers are not expected to incur expenses.
10. **A description of the changes between the proposed rules, including supplemental rules, and final rules:**
The Board made technical changes suggested by the Office of the Secretary of State and the Governor's Regulatory Review Council Staff.
11. **A summary of the principal comments and the agency response to them:**
The Board received no written or oral comments.
12. **Any other matter prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:**
Not applicable.
13. **Incorporations by reference and their location in the rules:**
Not applicable.
14. **Whether the rules was previously adopted as an emergency rule, and if so, whether the text was changed between adoption as an emergency and the adoption of these rules:**
Not applicable.
15. **The text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 39. STATE BOARD FOR PRIVATE
POSTSECONDARY EDUCATION**

ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS

Sections

- R4-39-302. Facilities and Equipment
- R4-39-303. Control and Personnel
- R4-39-304. ~~Agents~~ Repealed
- ~~R4-39-305-R4-39-304~~ Advertising
- ~~R4-39-306-R4-39-305~~ Recruitment
- ~~R4-39-307-R4-39-306~~ Admission Requirements
- ~~R4-39-308-R4-39-307~~ Placement
- ~~R4-39-309-R4-39-308~~ Pricing and Refund Policy
- R4-39-310. ~~Student Records at the Institution~~ Repealed

ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS

R4-39-302. Facilities and Equipment

A non-accredited private vocational or degree-granting institution shall ensure:

- A.1.** The building, classrooms, equipment, furniture, grounds, instructional devices, ~~and other instructional physical facilities and other physical requirements of the educational program shall be~~ institution are appropriate to ~~insure that achieve the educational objectives of the institution. are achieved.~~
- B.2.** The physical ~~plant, facilities~~ facility and equipment shall meet all safety requirements and health standards of the city, county, state, or authority in which the facility is located.
- C.3.** The ~~plant, facilities~~ physical facility and equipment shall ~~be in compliance~~ comply with ~~applicable~~ local and State laws for planning, building, zoning, and fire codes.

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~~D.4.~~ Maintain in force all insurance; necessary to protect the assets of the institution in the event of damage or a finding of liability, ~~shall be maintained in force at all times.~~

~~E.5.~~ The Board ~~must be notified~~ is notified of a change of location prior to the change as specified in ~~R4-39-110-R4-39-109.~~

R4-39-303. Control and Personnel

- ~~A.~~ In order to be licensed by the board the institution's A non-accredited private vocational or degree-granting institution's administrators, directors, owners, ~~and~~ beneficial owners, ~~agents~~ and faculty shall be of good moral character and shall obey the statutes and regulations of the Board.
- ~~B.~~ No program or institution shall be licensed by the board if an owner, beneficial owner or other person having direct or indirect control over the program or institution has been convicted of a felony within two (2) years of application.—
- ~~C.B.~~ The Board ~~may~~ shall not issue a license if an owner, beneficial owner, or other person having direct or indirect control over the program or institution has been convicted of a felony or misdemeanor ~~or has been enjoined for violations~~ of any state or federal laws relating to education.
- ~~C.~~ The Board shall not issue a license if an owner, beneficial owner or other person having direct or indirect control over the program or instruction has committed any act considered grounds for disciplinary action.
- ~~D.~~ The director or manager of the institution shall be responsible for the following:
- ~~1. The development of a~~ Developing curriculum capable of preparing students for ~~educational~~ an occupational objective, an academic credential, or a specific job entry levels job.
 - ~~2. Selection of~~ Selecting faculty competent in the subject matters to be taught and possessing teaching techniques necessary to implement the applicable curriculum.
- ~~E.~~ Faculty ~~shall be qualified by education and experience and~~ shall meet the following minimum educational and experience requirements:
- ~~1. Faculty of an institution offering an associates, baccalaureate, master's or doctoral degree~~ A faculty member of a non-accredited private degree-granting institution shall possess no less than at least the degree awarded to a graduate of the program in which they are teaching. ~~Faculty~~ The degrees must have been ~~obtained from~~ awarded by an institution accredited by an accrediting agency recognized by the ~~United States~~ U.S. Department of Education ~~or Council on Postsecondary Education.~~
 - ~~2. For vocational programs, the~~ A faculty member of a non-accredited private vocational institution shall demonstrate that each faculty member has the competency through education or experience, ~~to teach in~~ in the assigned subject area. ~~Such competency shall be evidenced on~~ The faculty member shall submit a resume on a forms provided by the Board. The accuracy of information ~~provided in the resume submitted~~ shall be verified by ~~the person responsible for the operation of the institution.~~ the institution's personnel and the Board.
 - ~~3. The faculty shall be sufficient in number to assure the effectiveness of the educational program.~~
- ~~F.~~ A non-accredited private vocational or degree-granting institution shall ensure the faculty to student ratio is appropriate to meet the educational objective of the program.
- ~~FG.~~ A private non-accredited vocational or degree-granting institution shall:
- ~~1. Notify~~ The Board shall be notified in writing of any termination or change of directors, managers or faculty member within ~~thirty (30)~~ 30 days of the last day of employment.
 - ~~2. Notify~~ The board shall also be notified in writing of any new director, manager or faculty member within ~~thirty (30)~~ 30 days of hiring.

~~R4-39-304. Agents Repealed~~

- ~~A.~~ No agent shall be licensed by the board if he has been convicted of a felony within two (2) years of application.
- ~~B.~~ The board may not issue a license to an agent who has been convicted of a felony or misdemeanor or has been enjoined for violations of any state or federal laws relating to education.
- ~~C.~~ Agents shall have a clear understanding and knowledge of the courses and programs, services, tuition, student contract terms, and operating procedures of the institution. They shall also provide truthful and adequate information to persons regarding each educational institution they represent.
- ~~D.~~ Agents shall be of good moral character and shall obey the statutes and regulations of the board.
- ~~E.~~ No person acting as an agent for, or representing a non-accredited private institution operating in Arizona and not operating from the office or place of business of the institution, shall solicit or sell any course for consideration or remuneration unless that person holds an agent's license. An agent shall annually submit to the board a copy of the institution's current student application and sample copies of each brochure, bulletin, catalog, and any other document presented to potential students regarding each educational institution the agent is employed by.
- ~~F.~~ The board shall verify the accuracy of the documents produced by each agent.
- ~~G.~~ Each non-accredited educational institution not having physical facilities in Arizona shall submit to the board a surety bond in the amount of \$5,000.00 or in lieu of the surety bond, evidence of a cash deposit of \$5,000.00 with the State Treasurer for each agent it employs. A receipt for the cash deposit with the State Treasurer for each agent it employs shall suffice as evidence of the cash deposit.

~~H. Misrepresentation in any materials or testimony submitted to the board may result in disciplinary action.~~

~~R4-39-305~~**R4-39-304. Advertising**

- A. Advertising ~~must~~ shall be truthful and shall not include any false or misleading statements with respect to about the institution, its personnel, the faculty, its courses, and services, or the occupational opportunities for its graduates.
- B. The Board may institute disciplinary proceedings against a licensed agent, program, or institution, non-accredited private vocational or degree-granting institution or an institutional representative which engages in for false or misleading advertising.
- C. Advertising to A non-accredited private vocational or degree-granting institution shall not solicit students in the “help wanted” columns section of a newspapers, magazines or other similar publications. is prohibited.
- D. The use of A non-accredited private vocational or degree-granting institution shall not use the words “guarantee” and or “free” shall not be used in connection with in solicitations or advertising in any brochure, catalog, bulletin, leaflet or other publication of the institution, nor in a newspapers, magazines or any other media.
- E. All printed advertising shall include the full legal name, phone number and address of the institution.
- F. The Board may require ~~an~~ a non-accredited private vocational or degree-granting institution to submit all advertising for approval prior to use-publication.

~~R4-39-306~~**R4-39-305. Recruitment**

- A. Recruitment efforts The non-accredited private vocational or degree-granting institution shall be conducted recruit in a professional and ethical manner.
- B. The non-accredited private vocational or degree-granting institution shall be responsible for providing training for all admissions personnel. A Sales agents are prohibited from shall not portraying themselves directly or indirectly act as a guidance counselors, advisors or any other position to disguise the sales functions of their jobs. the agent.
- C. The non-accredited private vocational or degree-granting institution shall not use a Loans, grants, scholarships, discounts and other such items shall not be used as an inducement to enroll, where such use will which may result in an unfair or unethical trade practices. “Scholarship” as used in this regulation means any form of assistance extended to a prospective student which, in effect, amounts to a reduction in tuition. Tuition scholarships may be granted The non-accredited private vocational or degree-granting institution may grant a tuition scholarship if rules relating to about them the scholarship are published by the institution and available to all students and prospective students.

~~R4-39-307~~**R4-39-306. Admission Requirements**

- A. The requirements for admission to an institution must be The institution shall published and must be administered as stated and administer admission requirements.
- B. The institution may admit only those students who have demonstrated through pre-enrollment tests, if applicable, or through the initial interview, their capability of satisfactorily completing the prescribed training from beginning to completion of a course during the time specified:

If an entrance exam is required, the non-accredited private vocational or degree-granting institution shall:

- 1. Set a minimum passing score for admission;
- 2. Admit only a student who has obtained the minimum passing score on the entrance exam;
- 3. Maintain a copy of the completed entrance exam in the student’s permanent record.

- C. ~~If an entrance exam is used, the institution shall set a minimum passing score for entrance to the institution and shall maintain a copy of the exam in the student’s records.~~

If an entrance exam is not required, the non-accredited private vocational or degree-granting institution shall admit only a student who demonstrates the ability to satisfactorily complete the prescribed training through:

- 1. Initial interview;
- 2. Letter of recommendation;
- 3. High School Diploma or a General Educational Development test;
- 4. Official educational transcripts; or
- 5. Other requirements established by the institution.

~~R4-39-308~~**R4-39-307. Placement**

~~The offer of~~ If the non-accredited private vocational or degree-granting institution offers placement services to a students, is optional but, if made the following requirements shall apply:

- ~~A.1. Documented evidence of student referrals for job placement must be maintained~~ The institution shall maintain evidence of a student referral for job placement and shall include the following:
 - 1.a. The name of student referred and the corresponding name of the prospective employer.
 - b. The name of the prospective employer.
 - 2c. Result of referral.
 - 3d. Final placement or other disposition.

- ~~B2.~~ Students shall be prepared for placement through instruction in preparation of resumes, preparation for interviews, interview procedures, appropriate dress, personal grooming and conduct of the job. The non-accredited private vocational or degree-granting institution shall prepare a student for placement by:
 - a. Instructing the student in resume preparation and interviewing procedures;
 - b. Instructing the student in the appropriate dress and personal grooming;
 - c. Instructing the student in conduct on the job.
- ~~C3.~~ A list of potential employers given to a students or graduates by the institution shall not be considered a referral or offer of placement.
- ~~D4.~~ Each student application shall contain a disclaimer by the institution ~~to the effect that job placement is not guaranteed to a graduates or student.~~

R4-39-309R4-39-308. Pricing and Refund Policy

- ~~A.~~ The non-accredited private vocational or degree-granting institution shall disclose an accurate prices of a specific courses and subjects or program of study must be disclosed in any contract to be signed by the a prospective student. Prices for the same course or subject program of study shall not vary between students in the same course or subject, be the same for every student, except for group arrangements or following the a published notice of a price change.
- ~~B.~~ The non-accredited private vocational or degree-granting institution shall not require a The prospective student shall not be required to make a non-refundable payment until it has been determined that the prospective student has been accepted for enrollment.
- ~~C.~~ The non-accredited private vocational or degree-granting institution shall disclose the The refund policy of the institution must be disclosed in any contract to be signed by the a student or prospective student.
- ~~D.~~ The institution must shall fully disclose all charges and fees to a prospective student or his parent or guardian in writing, and no claims shall be made as to scholarships or fee reductions, unless they are, in fact, scholarships or fee reductions and are clearly stated and described in the written material.
- ~~E.~~ The non-accredited private vocational or degree-granting institution shall disclose all scholarships and fee reductions in writing to a student or prospective student at the time of enrollment.

R4-39-310. Student Records at the Institution Repealed

- ~~A.~~ The institution shall maintain complete and accurate records for each student currently enrolled, including:
 - 1. ~~An enrollment agreement containing, but not limited to the following information:~~
 - a. ~~Name and address of student.~~
 - b. ~~Signature of the student and an official of the institution.~~
 - c. ~~Commencement date of program.~~
 - d. ~~Title of the course or courses within the program.~~
 - e. ~~Total classroom and shop hours— quarter, trimester or semester hours.~~
 - f. ~~Payment schedule and total cost to the student.~~
 - g. ~~Refund policy of the institution.~~
 - h. ~~A statement indicating that the individual signing the agreement has read and understands all aspects of the agreement.~~
 - i. ~~The holder in due course rule as defined in A.R.S. § 47-3302.~~
 - j. ~~A disclaimer by the institution that “job placement” is not guaranteed to graduates upon completion of this training or upon graduation.~~
 - k. ~~Student grievance procedures, if not printed in catalog, bulletin or other document provided each potential student.~~
 - l. ~~A cancellation notice in accordance with Federal Trade Commission (FTC) regulations.~~
 - 2. ~~Grades received, where applicable.~~
 - 3. ~~All obligations incurred and all funds paid by the student to the institution.~~
 - 4. ~~Student attendance information.~~
 - 5. ~~Counseling records.~~
 - 6. ~~A transcript.~~
 - 7. ~~Financial aid records.~~
 - 8. ~~Copy of the entrance exam, if applicable.~~
- ~~B.~~ Student records shall be available and readily accessible for use and review by authorized officials of the institution and authorized representatives of the board.
- ~~C.~~ An institution which gives credit toward a course based upon prior job experience, training, or life experience shall record each such credit in the institution’s records relating to that student and in the student’s official transcript and list the portion of the course for which the student is given credit. A copy of the transcript reflecting courses for which a student is given credit for prior job experience, training, or life experience shall be attached to the institution’s official transcript and shall be retained as part of the student’s permanent records.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

PREAMBLE

1. **Sections Affected**

R18-4-101	<u>Rulemaking Action</u>
Article 6	Amend
R18-4-601	New Article
R18-4-602	New Section
R18-4-603	New Section
R18-4-604	New Section
R18-4-605	New Section
R18-4-606	New Section
R18-4-607	New Section
Appendix A	New Section
Appendix B	New Section
Appendix C	New Section
Appendix D	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 49-202, 49-351, and 49-353, both as amended by Laws 1999, Ch. 205

Implementing statutes: A.R.S. § 49-353 as amended by Laws 1999, Ch. 205
3. **The effective Date of the rules:**

September 23, 1999
4. **List all previous notices appearing in the register addressing the proposed rules:**

Notice of Docket Opening: 5 A.A.R. 462, February 5, 1999.

Notice of Proposed Rulemaking: 5 A.A.R. 1660, June 4, 1999.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret L. McClelland or Martha L. Seaman

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

Telephone: (602) 207-2224

Fax: (602) 207-2251
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The purpose of this rulemaking is to meet requirements of the Safe Drinking Water Act (SDWA), 42 U.S.C.A. §§ 201, 300f to 300j - 9. The Environmental Protection Agency (EPA) has mandated that each state obtain the authority to ensure that all new community water systems and all new nontransient noncommunity water systems have technical, financial, and managerial capacity to meet National Primary Drinking Water Regulations. Forty CFR 141.1 et seq. A.R.S. § 49-353 as amended by H.B. 2257 at Laws 1999, Ch. 205, mandates that the Director require that plans demonstrate that a new public water system possesses adequate technical, managerial, and financial capacity prior to beginning operation. The rulemaking includes criteria to identify public water supplies most in need of improved capacity in accordance with the statutory requirements of H.B. 2257.

A. **Background for These Proposed Rules**

To comply with the mandate of the EPA, ADEQ initiated legislation in H.B. 2257 to implement a capacity development program. The Office of the Attorney General (AGO) and the EPA determined that ADEQ had existing authority in the area of technical capacity. H.B. 2257 then added authority for managerial and financial capacity. During the

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1999 regular session, the Arizona legislature passed H.B. 2257, which amended A.R.S. § 49-353 to require that the Director require plans and specifications for a new public water system to demonstrate, before beginning operation, that the system possesses adequate managerial and financial capacity to operate. The legislation also requires that the Director accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a water system to operate in compliance with the Safe Drinking Water Act.

During January and February, 1999, ADEQ held informal educational meetings in Phoenix, Tucson, Parker, Flagstaff, Sierra Vista, and Pinetop to discuss with stakeholders the legislation and the upcoming rule to establish the standards for capacity development. Also in January, 1999, ADEQ convened a core group of stakeholders to explain the rule-making that would be necessary to implement the forthcoming capacity development legislation. At that meeting, ADEQ explained the rulemaking model used in this rulemaking. The model involved the affected stakeholders, at the very beginning of the rulemaking process, in drafting the substance of the rule text. ADEQ sought stakeholder volunteers to participate on 3 committees to draft the technical, managerial and financial requirements for the capacity development rulemaking. During March 1999, these committees met to develop the 1st draft of the text of this rule-making. Once the 1st draft was completed, ADEQ, again in May 1999, held meetings around the state to provide an opportunity for review and comment by the stakeholders. Additionally, the ADEQ Drinking Water Program has maintained close consultation with the EPA to ensure that all issues that will affect the ability of the EPA to approve this rulemaking are addressed.

In July, 1999, ADEQ held 6 oral proceedings around the state to, again, give the public an opportunity to comment on this rulemaking. A summary of comments received is found in the Concise Explanatory Statement.

The final rulemaking covers capacity development for new public drinking water systems only. ADEQ will propose a rulemaking for capacity development for existing public drinking water systems in 2001.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

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 this state:

Not applicable.

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

This rule applies to all **new** public water systems (PWSs) that are Community Water Systems (CWSs) or Nontransient, Noncommunity Water Systems (NTNCWSs). A new PWS is one that is issued its 1st unique ADEQ public water system identification number on or after October 1, 1999. A public water system is defined as a "system for the provision to the public of water for human consumption, if it has at least 15 service connections, or regularly serves at least 25 persons for at least 60 days out of the year". A.R.S. § 349-352 (B)1. A CWS is a "public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." R18-4-101. An NTNCWS is a "public water system that is not a CWS and that regularly serves at least 25 of the same persons for at least 6 months a year." R18-4-101. Generally, NTNCWSs are commercial or institutional establishments that have their own water supply and serve 25 or more of the same people on a regular basis.

Unregulated development of new PWSs creates the potential for some of these systems, especially the smallest ones, to have inadequate technical, managerial, and financial (TMF) capacity. In most states, applicants wishing to create a new PWS must submit engineering plans and specifications for review by state and local authorities, but most authorities do not review the managerial or financial capacity of these systems. Many PWSs lack business plans for long-term management, operation, and maintenance, and they generally do not have the tools that enable their owners to plan for future financial requirements. As a result, a system that lacks adequate TMF capacity may end up in persistent non-compliance with state and federal drinking water regulations.

Information from ADEQ's Safe Drinking Water (SDW) Database indicates that there are currently 1,718 PWSs in the state; almost half (48.2%) are CWS and 12.7% are NTNCWS. The remaining 39.1% are transient, non-community water systems (TNCWS) that are not covered by this rule. CWSs primarily serve residential populations, whereas NTNCWSs are mainly institutions like schools, factories, office or industrial parks, major shopping centers, and other businesses that provide water as an ancillary function of their principal business or enterprise. The vast majority (about 95.5%) of PWS in Arizona receive their water from a groundwater source such as wells, and the remainder have surface water as their source.

Capacity Development

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The Safe Drinking Water Act (SDWA) Amendments of 1996 specify that **new systems** must demonstrate technical, managerial, and financial capacity to comply with SDWA requirements. By enhancing public water system competence in these 3 areas, the amendments ensure compliance with the National Primary Drinking Water Regulations (NPDWRs) in order to achieve the public health protection objectives of the SDWA. States are given the flexibility to implement a capacity development program that is tailored to their circumstances, and at the same time avoid a reduction in their allotments of the Drinking Water State Revolving Fund (DWSRF). States must also demonstrate legal authority or other means to assure the capacity of new water systems. (Existing water systems, as distinguished from new PWSs, will be governed by a separate rule which ADEQ intends to promulgate to become effective on October 1, 2001.) This authority is implemented at **control points** in the process of new system development (for example, the issuance of a permit for construction). At each control point of the capacity development process, the state ensures that a new public water system can operate in compliance with the SDWA, and that new PWSs do, in fact, have demonstrable TMF capacity. Where capacity development authority is vested in another state agency or department, including the ACC and ADWR, ADEQ will coordinate with that agency or department to ensure that duplicative processes are eliminated and the adequate findings of the agency or department are used to the greatest possible extent.

Public water system **capacity** is the ability of a water system to operate in compliance with the SDWA Arizona drinking water regulations. PWS capacity has 3 inter-related elements:

Technical capacity refers to the physical infrastructure of the water system, and includes adequacy of the source water, infrastructure (source, treatment, storage, and distribution), and the ability of system personnel to implement the requisite technical knowledge.

Managerial capacity refers to the management structure of a public water system, including ownership accountability, staffing, organization, and effective external linkages.

Financial capacity refers to the financial resources of a public water system, including revenue sufficiency, credit worthiness, and fiscal controls.

Drinking Water State Revolving Fund (DWSRF) Monies

The SDWA specifies that unless a state has obtained the legal authority to ensure that all **new PWSs** that commence operations after October 1, 1999 can demonstrate capacity in all 3 areas mentioned above, it shall forfeit 20% of the annual amount it is entitled to receive under Section 1452 dealing with the DWSRF. The Fund consists of federal money that is administered in Arizona by the Water Infrastructure Finance Authority (WIFA). The Fund allotment for Arizona for fiscal year ending June 30, 1999 is estimated to be about \$7 million. Therefore, approximately \$1.4 million could be forfeited this year if the rules are not in place by September 30, 1999. A state's Fund allotment is generally fixed for a period of 4 years. Because Arizona's fund allotment for fiscal years 1999 and 2000 are at stake, **the state could lose approximately \$2 million if ADEQ does not implement new rules for capacity development by October 1, 1999 and 20% of the WIFA funds would continue to be withheld annually until the rules are implemented.**

Stakeholder Involvement

The rules were written with the active participation of around 30 stakeholders, in addition to ADEQ and WIFA staff. Stakeholders consisted of representatives from the Arizona Small Utilities Association, the Water System Coordinating Council, consulting companies and private PWS owners and operators as well as municipalities, water improvement districts and other political subdivisions of the State. The group consisted of 3 sub-committees, 1 for each area of capacity development. They met at ADEQ premises on March 17, 18, 19, and 25, 1999.

The sub-committees' recommendations are contained in Appendix A, Appendix B, and Appendix C which consist of information that **all new PWS owners not regulated by the Arizona Corporation Commission or the Arizona Department of Water Resources** (for Active Management Area authority) will have to supply in order to obtain approval to build and operate a new public water system.

Appendix A -- Capacity Development Review Checklist for New CWS and New NTNCWS, contains the different elements of what the stakeholders identified as an "Elementary Drinking Water System Business Plan". TMF capacity proceeds from the assumption that a PWS, whether for profit or non-profit, must treat itself like a business. Requiring new systems to provide a comprehensive business plan will generate more reliable information about costs and other issues to make sound decisions about a system's future. A key element of this is a system's ability to identify present and future needs, prepare a plan of action to satisfy those needs, and assure sustained financial viability. Appendix B -- "A General Statement of Responsibility by Owner", requires the owner's signature to show that the owner is aware of the need for accountability in complying with the requirements of the drinking water rules, and to disclose all information relevant to the operation of the water system during any transfer of ownership. The latter doc-

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ument is needed to ensure that, in the event of a particular system's failure, the takeover by another entity will occur so that the system's customers are not deprived of water delivery. Takeover of a failed system should help to guarantee that newly created systems have adequate capacity, while providing a solution if they do not meet performance expectations. Appendix C is a diagnostic tool containing the financial information worksheets and budget projections for a system financial viability test.

Applicants will be asked to supply all information concerning elements in Appendices A, B, and C. The submitted information will be reviewed by ADEQ staff and other appropriate control point authorities in the TMF capacity determination process, before an application approval or denial can be made. **Control points** are specific points in the capacity development process at which a denial can be made by an appropriate authority which prohibits an applicant from becoming a PWS. Examples of control points are Approvals to Construct (ATC) and Approvals of Construction (AOC) that are granted by ADEQ; a Certificate of Convenience and Necessity (CC&N) granted by the Arizona Corporation Commission; and a Certificate of Assured Water Supply (CAWS) granted by the Arizona Department of Water Resources. The ADEQ review process will be carried out within 90 days of receipt of a completed application.

A.R.S. § 41-1055 Requirements for an Economic Impact Statement (EIS)

B(2) Persons Directly Affected by the Rule

a) Arizona Department of Environmental Quality -- The Department is the State drinking water primacy agency, and its Safe Drinking Water Section will be charged with implementing portions of the rule pertaining to the control points under the Department's jurisdiction.

b) Other State Agencies -- Apart from ADEQ, ADWR, ACC, WIFA, and the Arizona Department of Real Estate (ADRE), the Office of the State Fire Marshall and Arizona Fire Districts are governmental agencies that have control points authority. They may intervene at various control points in the process of developing a new water system to ensure new system TMF capacity.

c) Political Subdivisions of the State -- The State has delegation agreements with Maricopa and Pima Counties who issue operating permits for their respective drinking water system. Delegated counties issue operating permits to PWS only within their jurisdictions. There are no existing delegation agreements between ADEQ and counties on TMF capacity, but these agreements may be drawn up in the future. Many municipalities and other political subdivisions of the State are also PWS owners and operators. If any of these apply to become new public water systems, they will be required to comply with these rules.

d) Private Sector Entities -- The 1996 SDWA provided for setting aside a portion of the DWSRF administered by WIFA to contract with 3rd parties for the purpose of providing technical assistance to public water systems. ADEQ anticipates this technical assistance set aside fund will be used to assist some new public water systems in obtaining TMF capacity skills.

e) Residents and Consumers of Arizona -- Residents who obtain their water from PWSs that have demonstrated capacity development will benefit from the added margin of safety that comes from an assurance that their drinking water meets the public health objectives of the national primary drinking water standards.

B(3) Cost-Benefit Analysis

I. Arizona Department of Environmental Quality -- To implement the capacity development program, ADEQ will hire 3 new FTEs consisting of an Environmental Program Specialist (Grade 20), an Administrative Services Officer I (Grade 19) and an Environmental Health Specialist II (Grade 19). The amount budgeted for these FTEs is around \$186,000, 80% of which will be funded by a federal grant through WIFA, and 20% of which will come from the State General Fund in the form of a matching fund. These FTEs will be hired as soon as these rules are approved. The Technical Review Process that currently exists within the ADEQ Safe Drinking Water Section will be modified to incorporate the requirements to ascertain managerial and financial capacity of a PWS.

According to WIFA staff, some federal funds have been set aside this fiscal year for ADEQ to administer capacity development: \$169,000 for initial capacity development program implementation; and \$133,425 for capacity assistance to small water systems. These amounts will be used by ADEQ to get the program up and running, and to assist small system owners, prioritized by need, to acquire TMF capacity.

Appendix D requires that the average annual water rates shall not be greater than 2.5% of the average (median) household income of the area to be served. The United States Department of Agriculture Rural Development (USDARD) uses 1.5% of median household income as an indicator to determine if water rates are reasonable and whether grant funds should be used to decrease the cost of projects and the burden on users. WIFA believes that 2.5% accommodates most of the water systems in this state and is a useful measure of viability (not whether grants are

required or not). The source of the information is USDARD modified by WIFA to reflect Arizona's dependency on transported surface water.

II. Other State Agencies and Political Subdivisions of the State -- Other governmental agencies involved in the capacity development process, including county authorities with which ADEQ has delegation agreements, will continue to operate as they do now, with their review and permitting processes indicated in the control points. ADEQ staff will draw up interagency agreements or Memoranda of Understanding with other State agencies to clarify and streamline the PWS application process to include requirements for TMF capacity as well as provide referral services for all potential applicants who may need assistance in developing TMF capacity. ADEQ does not anticipate that these other agencies will need to hire any new FTEs or increase their costs as a result of the capacity development program.

III. Private Sector Entities -- Consultants and PWS Applicants

WIFA has established a list of contractors through the state procurement process who possess skills that could provide assistance in areas of TMF capacity to new PWS. ADEQ has the ability to use this contract to direct assistance to applicants in some instances. It is highly probable that some applicants who intend to set up a public water system, or their staff, already have the requisite TMF skills. They will be able to fill out the ADEQ forms and checklist without any outside assistance or help. But some applicants, certainly those who have had no prior experience operating a PWS or who are unaware of the managerial and financial requirements of capacity development, will need to seek assistance of contractors, on their own or through ADEQ, before they can be granted approval to commence construction or operation. They will be able to obtain some preliminary and other information from ADEQ staff, and turn to consultants who can provide the required services.

Below is a list of skill areas that have been identified from EPA guidance documents as elements of TMF capacity. These consist of similar general topics that can be addressed in some instances by contract. It is anticipated that a PWS owner needing assistance in obtaining TMF skills could consult with a contractor to identify the specific skill gaps that need to be addressed, the level of expertise the owner needs to acquire and the specific time lines, and then develop a detailed training program.

Specific Skill Areas that may enhance a PWS's ability to acquire TMF Capacity are:

A. Managerial Capacity: Strategic Business and Policy Analysis

- A.1 Developing long-term business strategies and strategic plans, related strategic business planning and policy analysis studies, projects, or reviews.
- A.2 Preparing plans, reports, and other business documents to support effective internal and public outreach efforts.
- A.3 Developing operational performance measurements and benchmarks (for example, to measure results against similar entities).
- A.4 Developing experience and expertise in 1 or more of the following areas: policy formulation, legislative support, public finance and related research, local government, tribal issues and special districts.

B. Financial Capacity: Economic Analysis and Financial Planning

- B.1 Developing financial plans for infrastructure projects, including related analyses and identification of likely funding sources.
- B.2 Analyzing proposals submitted by qualified entities for conformity with statutory and approved program guidelines.
- B.3 Developing, reviewing and refining cost and revenue forecasts and forecasting models.
- B.4 Performing financial and related economic studies and analyses, including fiscal impact analyses and financial feasibility studies.
- B.5 Developing computerized financial reports.
- B.6 Performing project-specific financial data-collection and analyses, including financial audit services.
- B.7 Developing both short- and long-term capital financing plans.
- B.8 Developing tax analyses.
- B.9 Performing related economic analyses or financial planning studies, projects or reviews.

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B.10 Providing expertise in 1 or more of the following areas: financial planning and analysis, financial management, tax exempt finance, financial modeling and forecasting, conducting surveys and feasibility studies, local government, tribal issues and special districts.

C. Technical Capacity: Infrastructure Enhancement

- C.1 Troubleshooting water facilities to identify design, construction, or capacity weaknesses.
- C.2 Conducting feasibility studies evaluating available technologies and their suitability for water systems.
- C.3 Assisting applicants with water system project conception and development.
- C.4 Providing other related assistance and training to water systems.

The rules apply only to new PWS. It is not possible to predict how many applicants will need assistance of consultants, although the ADEQ experience shows that an average of 15 new PWSs are formed annually. It is also not possible to estimate how much those who seek consultants' help will need to spend on their services. Every applicant and application is bound to be unique in many respects, and the skill and information gaps that will need to be filled are likely to differ on a case-by-case basis. ADEQ will provide assistance in identifying these skill groups and will help direct owners to sources of assistance when requested to do so by the PWS. In some instances, ADEQ may be able to provide the necessary assistance through 3rd party contracts.

It is expected that TMF assistance will be provided by non-profit organizations whose help may be obtained at little or no cost. Some stakeholders have signified to ADEQ staff their willingness to render assistance to selected applicants. However, others may choose to use the services of consulting companies. Some idea of the hourly rates charged by consultants on contract with WIFA are indicated in Table 1. There are 15 consulting companies available for TMF services, and their hourly rates and ranges are highly variable. Generally speaking, it is understood that around 25% of the time devoted to any project will be done by supervisors, 50% will be done by professional staff and 25% will be carried out by clerical staff. This may not happen in every case, but it is a starting point for new PWS applicants to consider as they plan for their TMF needs.

The column labeled Number of Areas Proposed corresponds to the specific skill areas the consultants have identified as their areas of expertise in the itemized list A1 to C4 given above. Consultant AA below has identified only 1 area of expertise, whereas consultant AC has declared expertise in all 18 areas. Applicants whose needs are in only 1 or 2 narrow areas may choose from consultants who have either broad or narrow ranges of expertise. If the applicant is new to the business and needs assistance in all 18 areas, the applicant may choose from 1 or more consulting companies with multi-disciplinary expertise. The higher the number of skill areas an applicant will need assistance with, the higher the consulting costs are likely to be. This may discourage some unqualified applicants from moving forward with plans to become a water provider unless they have the financial and other resources to acquire and maintain TMF capacity in the long term.

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Table 1.						
ADEQ Contractors for Capacity Development						
Hourly Rates/Ranges (rounded to the nearest dollar)						
Contract Number		Number of Areas Proposed				
			Supervisory	Staff	Clerical	
98-0164	AA	1	\$140	\$140	\$50	
98-0164	AB	9	\$25 to \$75	\$25 to \$65	\$15 to \$20	
98-0164	AC	18	\$125 to \$183	\$40 to \$80	\$35 to \$40	
98-0164	AD	9	\$75 to 125	\$75 to \$125	\$26	
98-0164	AE	9	\$125	\$125	\$28	
98-0164	AF	18	\$110 to \$183	\$67 to \$125		
98-0164	AG	8	\$95 to \$110	\$55 to \$85	\$55	
98-0164	AH	15	\$110	\$80 to \$95	\$35	
98-0164	AI	13	\$200	\$175	\$50	
98-0164	AJ	3	\$75	\$60 to \$90		
98-0164	AK	6	\$95	\$65	\$30 to \$43	
98-0164	AL	14	\$100	\$63 to \$94		
98-0164	AM	8	\$75	\$65 to \$70	\$35	
98-0164	AN	7	\$40 to \$60	\$40 to \$60	\$40	
98-0164	AO	3	\$85	\$85		

IV. Residents and Consumers of the State -- People who derive their drinking water from public water systems whose owners and operators have TMF capacity will benefit from a greater margin of safety that comes from the assurance that their drinking water supply meets the public health requirements of the national primary drinking water regulations.

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Although it is generally assumed that PWS owners will pass their costs to acquire TMF capacity on to their ratepayers and customers, this may not necessarily be the case for all new system owners, some of whom will already have the required skills. Furthermore, ensuring TMF capacity reduces the chance that unqualified owners construct systems that are technically or financially unsound, thereby preventing the wasteful expenditure of investment dollars. This is because TMF capacity will have to be demonstrated before construction can begin. The creation of an elementary business plan will foster more economically viable systems that diminish uncertainty, reduce costs in the long run, and improve water utility services to customers.

REDUCTION OF RULE IMPACTS ON SMALL BUSINESSES

A.R.S. § 41-1035 requires state agencies to reduce the impact of a rule on the class of small businesses, if possible. The Department shall use 1 or more of the 5 methods defined in that Section to reduce the impact, if the methods are legal and feasible in meeting the statutory objectives which are the basis of the rulemaking.

Methods 1, 2, and 3 require the Department to identify compliance, reporting, scheduling, and deadline requirements contained in the rule and, when legal and feasible, to reduce, consolidate, or simplify them for regulated entities who fall within the class of small businesses. This rule does not set schedules or deadlines for achieving compliance with TMF capacity requirements. The application by an intended owner or operator to become a **new** PWS is at the discretion of the applicant. If the applicant wants to become a PWS, then the requirement is for this party to acquire TMF capacity before commencing operations as a water provider, regardless of whether the party is a small or large business.

It has to be pointed out that existing public water systems that have construction projects with an estimated worth of \$12,500 or less are already exempt from the ADEQ review process. Many of the very small PWS have taken advantage of this regulatory exemption. Furthermore, small PWSs tend to have the less complex applications, and therefore the demands made on them by the regulatory approval process are fewer and less stringent than those for large and very large systems serving the more populous and financially able areas of the State.

Method 4 requires the Department to establish performance standards for small businesses to replace design or operational standards in the rule. And Method 5 states that the Department, if legally feasible, shall exempt small businesses from any or all requirements of the rule. It is not possible to establish different performance standards of TMF capacity for small businesses, or even to exempt small businesses (who comprise 98% of all businesses in Arizona) without compromising public health. The record shows that it is the small and very small CWSs in Arizona (those serving 1,000 people or less) that account for 90% of the violations of drinking water requirements.¹ This is because many small PWSs are non-viable or only marginally viable, viability being measured in part by a system's ability to remain in compliance. Therefore, this rule cannot downgrade TMF performance standards or exempt small businesses and simultaneously achieve its statutory objectives.

APPENDIX A -- Capacity Development Review Checklist for New CWS and New NTNCWS

APPENDIX B -- General Statement of Responsibility by Owner

APPENDIX C -- PWS Financial Capacity Worksheets and Financial Viability Test

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

Numerous changes to grammar and punctuation, and stylistic changes were made at the request of the Governor's Regulatory Review Council (GRRC) staff.

References to "application" have been changed to "elementary business plan".

References to "applicant" have been changed to "owner".

ADEQ revised R18-4-603(1) to add the phrase "a 100 year water availability designation from ADWR". See response to comment # 4.

ADEQ revised Appendix A, Item ~~22~~ 23 to read "Has the system received an approval from the ACC on its fee structure or ADWR on its financial capability."

-
1. Rural Community Assistance Corp. for ADEQ, in conjunction with the US EPA Office of Drinking Water, The Future of Safe Drinking Water Protection in Arizona, 1991.

ADEQ deleted the existing Appendix B and added a revised Appendix B form in response to a comment from GRRRC staff.

ADEQ deleted the existing Appendix D and added a revised Appendix D in response to comment # 8.

Changes to the rules are shown below. Text which is stricken represents language which has been deleted since the proposed rules were published by the Office of the Secretary of State. Text which is underlined represents language which has been added to the rules since proposal.

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER**

ARTICLE 1. GENERAL REQUIREMENTS

Section

R18-4-101. Definitions

**ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW
PUBLIC DRINKING WATER SYSTEM**

Section

R18-4-601. Applicability

R18-4-602. ~~Application~~ Elementary Business Plan

R18-4-603. Technical Capacity

R18-4-604. Managerial Capacity

R18-4-605. Financial Capacity

R18-4-606. Review, Approval, Denial Process

R18-4-607. Appeals

Appendix A. Capacity Development Review Checklist for ~~New Community and New Nontransient Noncommunity Water Systems~~ CWS and NTNCWS

Appendix B. General Statement of Responsibility by Owner

Appendix C. Financial Capacity for ~~New Community and New Nontransient Noncommunity Water Systems~~ CWS and NTNCWS Worksheet 1

Appendix D. ~~New Community and New Nontransient Noncommunity Water Systems~~ CWS and NTNCWS Financial Viability Test

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-101. Definitions

In this Chapter the following terms mean:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change

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- 20. No change
- 21. No change
- 22. No change
- 23. No change
- 24. No change
- 25. No change
- 26. No change
- 27. No change
- 28. No change
- 29. No change
- 30. No change
- 31. "Elementary business plan" means a document containing all items required to be submitted for evaluation necessary for a complete review for technical, managerial and financial capacity of a new public water system under ~~A.A.C. R18-4-602 through R18-4-606~~ Article 6.
- ~~31~~32. No change
- ~~32~~33. No change
- 34. "Existing public water system" means a public water system, as defined in A.R.S. § ~~49-352(A)(1)~~ 49-352(B)(1), that has been issued a public water system identification number before October 1, 1999.
- ~~33~~35. No change
- 36. "Financial capacity" means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the ~~Safe Drinking Water Act~~ federal safe drinking water act, as amended in 1996.
- ~~34~~37. No change
- ~~35~~38. No change
- ~~36~~39. No change
- ~~37~~40. No change
- ~~38~~41. No change
- ~~39~~42. No change
- ~~40~~43. No change
- ~~41~~44. No change
- ~~42~~45. No change
- ~~43~~46. No change
- ~~44~~47. No change
- ~~45~~48. No change
- ~~46~~49. No change
- ~~47~~50. No change
- ~~48~~51. No change
- ~~49~~52. No change
- ~~50~~53. No change
- 54. "Major stockholder" means a person who ~~owns~~ has 20% or more ownership interest of ~~in~~ a public water system.
- ~~51~~55. No change
- 56. "Managerial capacity" means the ability of a public water system to conduct its affairs in a manner that will meet and maintain compliance with the requirements of the ~~Safe Drinking Water Act~~ federal safe drinking water act, as amended in 1996.
- ~~52~~57. No change
- ~~53~~58. No change
- ~~54~~59. No change
- ~~55~~60. No change
- ~~56~~61. No change
- ~~57~~62. No change
- ~~58~~63. No change
- ~~59~~64. No change
- ~~60~~65. No change
- ~~61~~66. No change
- ~~62~~67. No change
- 68. "New public water system" means a public water system, as defined in A.R.S. § ~~49-352(A)(1)~~ 49-352(B)(1) that is ~~issued~~ the Department issues its 1st unique public water system identification number ~~by the Department~~ on or after October 1, 1999.
- ~~63~~69. No change

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~~6470~~. No change
~~6571~~. No change
~~6672~~. No change
~~6773~~. No change
~~6874~~. No change
~~6975~~. No change
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~~9096~~. No change
~~9197~~. No change
~~9298~~. No change
~~9399~~. No change
~~94100~~. No change
~~95101~~. No change
~~96102~~. No change

103. "Technical capacity" means the ability of a public water system to ~~ensure finished water meets Safe Drinking Water Act requirements~~ meet the requirements of R18-4-604 and the federal safe drinking water act as amended in 1996 at all times, and includes the ability to correct problems with its distribution, water quality, or source availability and to sustain compliance with its operations and maintenance plan.

~~97104~~. No change
~~98105~~. No change
~~99106~~. No change
~~100107~~. No change
~~101108~~. No change
~~102109~~. No change
~~103110~~. No change
~~104110~~. No change
~~105111~~. No change
~~106112~~. No change
~~107113~~. No change
~~108114~~. No change
~~109115~~. No change
~~110116~~. No change

**ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW
PUBLIC DRINKING WATER SYSTEM**

R18-4-601. Applicability

This Article ~~shall apply~~ applies to new ~~community water systems CWSs and new nontransient noncommunity water systems NTNCWSs~~ that begin operation on or after October 1, 1999. This Article ~~shall~~ does not apply to an existing public water ~~systems system~~.

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R18-4-602. ~~Application~~ Elementary Business Plan

- A. To become a new public water system, an owner shall file an elementary business plan for review and approval by the Department, on a form provided by the Department. The ~~application elementary business plan~~ shall meet the requirements of and contain all information required in ~~sections~~ Sections R18-4-603, R18-4-604, and R18-4-605. ~~The Department shall evaluate the financial plan using the information contained in the checklists, tables, and forms listed in Appendices C and D of this Article. An owner shall not commence operation of a public water system unless it has been approved by the Department in accordance with R18-4-606.~~
- B. An owner shall not commence operation of a public water system without Department approval under R18-4-606.
- ~~BC.~~ If the owner of a new public water system fails to submit a complete application, the Department shall ~~stop~~ suspend the review process and send a notice of incomplete ~~application elementary business plan~~ to the ~~applicant~~ owner. The ~~applicant~~ owner shall submit the ~~outstanding~~ missing information to the Department within 60 days of the date of the notice of incomplete ~~application elementary business plan~~. If ~~outstanding~~ missing information is not received at the Department within ~~the 60 days, day time period,~~ the Department shall ~~deny then the application elementary business plan shall be denied and returned to the applicant and return the elementary business plan to the owner.~~

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the ~~finished~~ drinking water served to the public ~~meets~~ will meet the safe drinking water standards of ~~18 A.A.C. 4, this Chapter;~~
3. Documentation that infrastructure, treatment, and storage design ~~that~~ meets the requirements of ~~18 A.A.C. 4 this Chapter, Articles 2, 3, and 5;~~ this Chapter, Articles 2, 3, and 5;
4. Documentation that the public water system ~~will be~~ is operated by a certified operator of the ~~appropriate~~ sufficient grade and type;
5. ~~An elementary business plan~~ Documentation that contains at least the following:
 - a. Day 1 to final build-out technical and engineering needs projections;
 - b. Proposed water system design specification and proposed uses including commercial and domestic use phases; ~~and~~
 - c. Information describing the life of the plant;
6. ~~An operation and maintenance plan that contains:~~
 - ~~ad.~~ A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
 - ~~be.~~ Manufacturers' specifications on components used in the construction of the water system; ~~and~~
 - ~~ef.~~ Corrective action plan to address site-specific component replacement or repair protocols based on ~~manufacturers'~~ manufacturer's recommendations or ~~engineers'~~ engineer's specification.

R18-4-604. Managerial Capacity Requirements

An owner of a new public water system shall submit the following information as part of the elementary business plan to the Department for a determination of managerial capacity:

1. A managerial operations portion of the elementary business plan that contains the following:
 - ~~a1.~~ A statement of how the public water system ~~will be~~ is owned, such as by major stockholders, board of directors, sole proprietor cooperative, governmental agency or district, corporation, limited partnership, ~~or other,~~ corporation or limited liability corporation;
 - ~~b2.~~ Name, address, and phone number of owner;
 - ~~e3.~~ Organizational chart of the new public water system;
 - ~~d4.~~ Staff job descriptions and responsibilities;
 - ~~e5.~~ Capital Water system capital improvement plan up to the proposed full system build-out or for a 5-year projection, whichever is greater;
 - ~~f6.~~ Certified operator grade and type that will be required by the new public water system, based upon water system design specifications;
 - ~~g7.~~ A statement of the intent to create a ~~new community water system CWS~~ or ~~non-transient non-community water system~~ NTNCWS and any intent to transfer ownership of the public water system as part of the construction plan or project phase build-out;
 - ~~h8.~~ Method to ensure provision of information listed in Appendix B, ~~(4)~~ item 4 to subsequent owners; and
 - ~~i9.~~ A disclosure statement signed by the owner setting forth the owner's responsibility to comply with the requirements of this Article and ~~a general disclosure statement of responsibility~~ to disclose all information relevant to the operation of the public water system upon transfer of ownership as outlined in Appendix B.

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R18-4-605. Financial Capacity Requirements

An owner of a new public water system shall submit information for a 5-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer, ~~for a new drinking water system~~ that demonstrates financial capacity and documents or contains all of the information listed in Appendices C and D.

R18-4-606. Review, Approval, Denial Process

- A. The Department shall review and evaluate technical capacity, based upon the requirements in R18-4-603 and Appendix A. ~~The Department shall notify a new public water system in writing of any deficiency in the application, or of approval, or denial of the application within 90 days of receipt of a complete application.~~
- B. The Department shall review and evaluate managerial capacity, based upon the requirements in R18-4-604 and Appendix A. ~~The Department shall notify a new public water system owner in writing of a deficiency in the application, or of, or of approval, or denial of the application within 90 days of receipt of a complete application.~~
- C. The Department shall accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting the financial capacity requirements contained in this Article for a ~~new community water system or a new nontransient noncommunity water system~~ new CWS or new NTNCWS under the jurisdiction of the ACC. The applicant shall submit documentation to the Department that verifies ACC approval of ~~its~~ the public water system's financial capacity.
- D. The Department shall accept a financial determination as set forth in the certificate of assured water supply by ~~from~~ the Arizona Department of Water Resources, Active Management Area Program (ADWR) as meeting the financial capacity requirements contained in this Article for a ~~new community water system or new nontransient noncommunity water system~~ CWS or new NTNCWS. The applicant owner shall submit documentation to the Department that verifies ADWR approval of its financial capacity.
- E. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the ~~new community water system or new nontransient noncommunity water system~~ CWS or new NTNCWS shall submit to the Department for review a completed financial capacity portion of the elementary business plan. The Department shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D ~~of this Article~~.
- F. The Department shall notify ~~the applicant~~ an owner of a new public water system in writing of a deficiency in the ~~application~~ elementary business plan or approve or deny the elementary business plan within 90 days of a receipt of a complete elementary business plan. The applicant owner shall have 60 days from the date of ~~the~~ a notice of deficiency to submit to the Department the information necessary to correct the deficiency in the ~~application~~ elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by the Department within 60 days of the date of the notice of deficiency, ~~then~~ the Department shall deny the ~~application~~ elementary business plan and return it to the applicant owner with a written explanation for the denial ~~with~~ and information on the appeal process.
- G. If ~~the applicant~~ an owner modifies technical or managerial specifications at any time between the approval to construct and the approval of construction, the applicant owner shall notify the Department of the need to modify the ~~application~~ elementary business plan in the technical, managerial, and financial capacity documentation. The Department ~~may~~ shall ~~deny~~ revoke approval of the elementary business plan if the applicant owner fails to notify the Department within 30 days of a modification.

R18-4-607. Appeals

An applicant owner may appeal ~~an appealable agency action~~ denial of an elementary business plan in accordance with the requirements of under A.R.S. §§ ~~41-1076(2) and 41-1092 et seq.~~

Appendix A

Capacity Development Review Checklist for New Community and New Nontransient Noncommunity Water Systems
Elementary Business Plan Checklist

Items to be documented in the drinking water system elementary business plan:

Technical Capacity:

- | | Yes | No | N/A |
|--|--------------------------|--------------------------|--------------------------|
| 1. Source Adequacy - Does the documentation demonstrate 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Source Adequacy - Does the source approval information demonstrate that the source meets drinking water quality standards or have applicable drinking water technologies been described? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 3. Infrastructure - Does Do the design criteria meet Article 5 <u>the</u> requirements of R18-4-502 through R18-4-509? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 4. Treatment - Does Do the design criteria include treatment technologies as approved by ADEQ in Title 18, Chapter 4, <u>Articles 2, 3, and 5?</u> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 5. Does the system have on-staff a certified operator of the appropriate grade and type <u>on staff</u> ? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Does the documentation include an elementary business plan containing technical and engineering needs projections for a time period covering " Day 1 <u>day 1</u> to final build-out" or for a " <u>5-year</u> " time period, which ever is greater? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 7. Does the documentation include an elementary business plan containing the proposed water system design specifications and proposed uses including commercial and domestic use phases? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 8. Does the documentation include an elementary business plan containing the information on the components used in the design and construction of the system along with the components life span based upon manufacturer's specifications? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 9. Does the documentation include an Operations and Maintenance Plan which that contains standards that are nationally recognized on all site-specific components, such as American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 10. Does the documentation include an Operations and Maintenance Plan <u>operation and maintenance plan</u> with the manufacturer's specifications on all components used in the construction of the water system? | <input type="checkbox"/> | <input type="checkbox"/> | |
| 11. Does the documentation include an Operations and Maintenance Plan and Emergency Operations Plan <u>operations and maintenance plan and emergency operation plan</u> with a corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specifications? | <input type="checkbox"/> | <input type="checkbox"/> | |
| <u>Managerial Capacity</u> | <u>Yes</u> | <u>No</u> | <u>N/A</u> |
| 12. Does the documentation include Ownership <u>ownership</u> type? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Select all that apply. Sole Proprietor..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Major Stockholders..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Board of Directors..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Cooperative..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Government Agency or District..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Corporation..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Limited Liability Corporation..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Partnership</u> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Does the documentation include Name, Address <u>name, address,</u> and Phone <u>telephone</u> number(s) of owner(s)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Does the documentation include an organizational Chart of Owners, Management and Staff <u>chart of owners, management, and staff</u> with their position or job titles? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Does the documentation include staff job descriptions and responsibilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | <u>Yes</u> | <u>No</u> | <u>N/A</u> |
| 16. Does the documentation include a Capital Improvement Plan <u>capital improvement plan</u> up to the proposed full system build-out or for a 5-year projection, whichever is greater? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Does the documentation identify the grade and type of certified operator that will be needed to operate the system according to site specific components? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Does the documentation identify the intent | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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to create a ~~Community or Nontransient~~

~~Nonecommunity water system and to CWS or NTNCWS?~~

19. Does the documentation transfer the ownership of the water system as part of the build-out phase of the project?

1920. Does the documentation identify the policies or mechanisms to ~~insure any transfer of ownership~~

~~will also include ensure that~~ all system-specific ~~Technical, Managerial and Financial~~ technical, managerial, and financial information of the water system ~~will also be is~~ transferred to the a new owner(s) or owner?

Yes No N/A

2021. Does the documentation include a the owner's signed disclosure statement ~~signed by the owner(s) of their ownership~~ agreeing to comply with the requirements of these Articles and a general disclosure statement ~~of their responsibility agreeing~~ to disclose all information relevant to the operation of the water system to any ~~transfer transferee~~ of ownership? (See Appendix B).

Financial Capacity

Yes No N/A

2122. Is the system regulated by the Arizona Corporation Commission ACC? If "Yes", go to Question 2223. If "No", go to Question 2325.

2223. Has the system received an approval from the ACC or ~~ADWR~~ on its fee structure, or ADWR on its financial capacity?

2324. Systems regulated by the ~~Arizona Corporation Commission or Department of Water Resources~~ ACC or ADWR shall provide ~~information required in questions 21 and 22~~ a copy of the ACC approval of fee structure, or ADWR approval of financial capacity for the financial capacity determination review by ADEQ.

~~Financial Capacity Criteria for New Community and All New Nontransient Nonecommunity water systems NOT Regulated by the ACC~~

2425. For New CWSs and NTNCWS NOT regulated by ACC, Is is all information listed in Appendices C and D included?

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Appendix B

~~General Statement of Responsibility by Owner to show that the owner is aware of the accountability to comply with the requirements of the drinking water rules and to disclose all information relevant to the operation of the water system upon any transfer of ownership. Any format is acceptable as long as the below information is contained within the statement. A General Statement of Responsibility is required to be signed by each owner of new community and new non-transient non-community water systems. CWS and new NTNCWS. The owner shall not be required to have the signature notarized.~~

~~A signed statement of responsibility at the beginning of the elementary business plan or as a separate document accompanying plans and specifications shall be acceptable if it contains the following:~~

- ~~1. Name of water System;~~
- ~~2. Type of ownership;~~
- ~~3. Name of each owner;~~
- ~~4. A statement or listing of state agencies that have rules regulating and applicable to the water system;~~
- ~~5. Statement of intent to transfer ownership, if applicable;~~
- ~~6. Drinking water system identification number as issued by ADEQ Drinking Water or delegated county;~~
- ~~7. Date system expects to begin operation or date operation actually began;~~
- ~~8. System sources used for drinking water;~~
- ~~9. A listing or table of contents of topics covered in the system's elementary business plan; and~~
- ~~10. Signature of each owner and date.~~

Appendix B

Drinking Water Capacity Development Statement of Responsibility

<u>Applicant Information:</u>		
Name: _____		
Mailing Address: _____		
Phone Number: _____	Fax Number: _____	E-mail: _____

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Statement Information:

1) Name of Water System: _____ **PWS ID#** _____

2) Ownership Type (Please Check all that apply):

Sole Proprietor Major Stockholders Board of Directors
Cooperative Government Agency District
Public Entity Corporation Limited Liability Corporation
Other (please explain) _____

3) Name of Owner(s): (Check one) See Below Attach a separate sheet if more space is needed

Owner 1:

Owner 2:

Owner 3:

4) Agencies with rules applicable to the Water System: (Please Check all that apply)

Arizona Department of Environmental Quality Arizona Corporation Commission
Arizona Department of Water Resources Arizona Department of Real Estate
Arizona Department of Commerce Arizona Department of Agriculture
Arizona Department of Corrections Office of the Fire Marshal
Arizona Land Department Arizona Department of Revenue
Arizona Department of Transportation Maricopa County Environmental Services
Pima County Dept of Environmental Quality Environmental Protection Agency Region IX
Other(s) please specify _____

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5) Statement of Intent (Select one):

It **IS** the intent of the owner or developer of this NEW CWS or NEW NTNCWS to transfer ownership of the water system.
As part of the ownership transfer, it is understood that the owner or developer has a responsibility to disclose and transfer ALL information relevant to the construction and operation of the water system to the new owner.

It is **NOT** the intent of the owner to transfer ownership of the new CWS or NTNCWS within 1 year of the completion of construction of the water system.

6) Date owner expects to begin operation:

Month _____ Day _____ Year _____

7) Drinking Water Sources used: (Select all that apply)

Ground Water Purchased Ground Water
 Surface Water Purchased Surface Water

8) Table of Contents of Systems Elementary Business Plan (Please Check one):

The Table of Contents of the Elementary Business Plan is attached.
 The Table of Contents of the Elementary Business Plan is summarized below.
Summary _____

9) Signature of each current owner: Check if additional signature page is attached.

I agree to comply with the requirements of 18 A.A.C. 4 R18-4-604 Article 6.

Print Name: _____ Signature _____ Date: _____

Print Name: _____ Signature _____ Date: _____

Print Name: _____ Signature _____ Date _____

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Appendix C

**Financial Capacity for New Community and
 New Nontransient Noncommunity Water Systems CWSs and NTNCWSs**

Worksheet 1

Applicant Owner: _____

Completed by: _____ Date : _____

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
Enter Year:					
1. Beginning Cash on Hand					
a. Unmetered Water Revenue					
b. Metered Water Revenue					
c. Other Water Revenue					
d. Total Water Revenues (1a thru 1c)					
e. Connection Fees					
f. Interest and Dividend Income					
g. Other Income					
h. Total Cash Revenues (1d thru 1g)					
I. Additional Revenue Needed					
j. Loans, Grants or other Cash Injection please specify					
2. Total Cash Balance(1h to 1j)					
3. Total Cash Available (1+2)					
4. Operating Expenses					
a. Salaries and wages					
b. Employee Pensions and Benefits					
c. Utilities					
d. Chemicals					
e. Materials and Supplies					

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f. Laboratory					
g. Contractual Services					
h. Insurance					
I. Miscellaneous					
j. Total Operations and Maintenance Expenses (a thru 4i)					
k. Replacement Expenditures					

1. Total Operations and Maintenance expenditures plus Replacement expenditures. (4j+4k)					
m. Loan Principal/Capital Lease Payments					
n. Loan Interest Payments					
o. Capital Purchases (specify):					
5. Total Cash Paid Out (4m thru 4o)					
6. Ending Cash Position (3- 5)					
7. Number of Customer Accounts					
8. Average Annual User Charge per account (1d/7)					
9. Coverage Ratio (1h-4l)/(4m+4n)					
10. Operating Ratio (1d/4l)					
11. End of Year Operating Cash (6-12)					
12. End of Year Reserves					

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a. Dept Service Reserve <u>Operating Reserves</u>					
b. Bond Retirement Reserve <u>Debt Service Reserve</u>					
c. Capital Improvement Reserve					
d. Replacement Reserve					
e. Other					
Total Reserves (12a thru 12e)					

Appendix C:

Arizona Financial Capacity For New

~~Community and New Nontransient NonCommunity Water Systems~~ **CWSs and NTNCWSs**

Definitions for Worksheet 1

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
------------------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

1. Beginning Cash on Hand	For the current year budget, use the actual cash balance. For all other years, cash on hand should equal item #12 from the previous period.
a) Unmetered Water Revenue	All cash received/ <u>or</u> estimated for water supplied to residential, commercial, industrial and public customers where the customer charge is not based on quantity, i.e., its <u>but is based on other criteria such as</u> diameter of service pipe, room, <u>or</u> foot of frontage or other types of units .
b) Metered Water Revenue	All cash received/ <u>or</u> estimated for water supplied to residential, commercial, industrial, and public customers where the charge is based upon <u>on</u> quantity of water delivered.
c) Other water revenues	Other cash received/ <u>or</u> estimated from sale <u>sales</u> of water, e.g., sales for irrigation, sales for resale, inter-municipal sales, <u>or</u> ad valorem taxes; etc.
d) Total Water Revenues	Total 1(a) thru 1(c)
e) Connection Fee	All cash received/ <u>or</u> estimated for connection of customer service during the year.
f) Interest and Dividend Income	All cash received/ <u>or</u> estimated on interest income from securities, loans, notes, etc <u>and similar instruments</u> , whether the securities are carried as investments or included in sinking or reserve accounts.

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g) Other income	Other revenues collected / or estimated during the period (e.g. such as disconnection or change in service fees, profit on materials billed to customers, servicing of customer lines, late payment fees, rents, sales; of assets, or ad valorem taxes (infrastructure portion), etc.
h) Total Cash Revenues	Add 1(d) thru 1(g)
I) Additional Revenues Needed.	Additional cash needed to cover cash needs.
j) Loans, Grants or other Cash injections.	Includes loans or grants from financial institutions, inter-municipal loans, state or federal sources.
2. Total Cash Balance	Add items 1(h) thru 1(j)
3. Total Cash Available	Add items 1 and 2
4. Operating Expenses	Use actual amounts paid when completing the prior year. Estimate the amounts for projected years based on prior year amounts, trends, and other known variables.
a) Salaries and wages	Case <u>Cash</u> expenditures made / or estimated for salaries, bonuses, and other considerations for work related to the Operation and Maintenance <u>operation and maintenance</u> of the facility, including administration, and compensation for officers, <u>and</u> directors, etc.
b) Employee Pensions and Benefits	Paid vacations, paid sick leave, health insurance, unemployment insurance, pensions <u>pension plan, etc and other similar liabilities.</u>
c) Utilities	Amounts paid / or estimated for all fuel or electrical power for the utilities.
d) Chemicals	Amounts paid / or estimated for chemicals used in the treatment and distribution.
e) Materials and Supplies	Amounts paid / or estimated for materials and supplies used for the Operation and Maintenance or the Public Water System <u>operation and maintenance of the new public water system</u> other than those under contractual services.
f) Laboratory	Amounts paid / or estimated that are associated with <u>for</u> laboratory <u>and associated</u> services.
g) Contractual Services	Amounts paid / or estimated to <u>for</u> outside engineers <u>engineering</u> , accounting, legal, managerial, and other services to work for the facility.
h) Insurance	Amounts paid / or estimated for vehicle, liability, worker's compensation, and other insurance associated with the Public Water System <u>public water system.</u>
I) Miscellaneous	Amounts paid / or estimated for all expenses not included elsewhere; (e.g., such as permit fees, training, <u>and</u> certification fees, etc.).
j) Total operation and maintenance expenditures.	Add amounts in lines 4(a) thru 4(I).

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k) Replacement expenditures	Amounts paid or estimated for replacement of equipment to maintain system integrity (Also also known as Capital Improvement Plan <u>capital improvement plan</u>).
l) Total Operations and Maintenance expenditures plus Replacement expenditures.	Add amounts in 4(j) and 4(k)
m) Loan Principal, Capital Lease or Loan payment.	Include cash payments made or estimated for principal and interest on all loans, including vehicle <u>loans</u> and equipment on time payments, and capital lease payments.
n) Loan Interest payments	Include cash payments made or estimated for interest on all loans, including vehicle <u>loans</u> , and equipment on time payments, and capital lease payments.
o) Capital Purchases	Amount of cash outlays or estimates for items such as equipment, building, <u>or</u> vehicle purchases and leasehold improvement <u>improvements</u> that were not a part of the initial design of the water system.
5) Total Cash Paid Out	Add amounts in 4(m) thru 4(o)
6) Total Cash Available minus Minus Expenditures Calculation.	Take Amount in 1 and subtract Amount in 5. If this amount is positive, then there is operating cash left over after all calculated expenditure obligations have been met. If the number is negative, then there are more expenses than there are funds available to pay for the expenses to operate the water system.
7) Number of Customer Accounts.	Use most recent system data or expected increases.
8) Average User Charge per Customer.	Take amount listed in 1(d) and divide it by amount listed in 7.
9) Coverage Ratio	Take amount in 1(h) and minus subtract the amount in 4(l). Then divide that amount with the sum of 4(m) + 4(n). The equation looks like this: $[1(h) - 4(l)] \div [4(m) + 4(n)]$. Measure of <u>and measures</u> the sufficiency of net operating profit to cover the debt service requirements of the system. A bond covenant might require this the debt service to meet or exceed certain limits. (e.g. 1.25)
10) Operating Ratio	Take amount in 1(d) and divide it by the amount in 4(l). The equation looks like this: $1(d) \div 4(l)$. <u>This figure Measures</u> measures <u>of</u> whether operating revenues are sufficient to cover <u>Operation operation, and Maintenance maintenance,</u> and <u>Replacement replacement</u> expenses. An operating ratio of 1:0 is the bare minimum for a self-supporting facility. With <u>If there are</u> debt service requirements, the operating ratio would have to be higher.
11) End of Year Operating Cash	All non-reserved cash. Add amounts from 6 thru 12.

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12) End of Year Reserves	Do not include depreciation as a reserve unless there is actually a <u>designated</u> “depreciation” reserve that has <u>containing</u> cash set -aside for future expansion.
a) Debt Service Reserve Operating <u>Cash Reserve</u>	Funds specifically set aside to meet debt service requirements set forth in a loan-covenant/bond indenture. <u>Funds set aside to meet cash flow, operating, and seasonal fluctuations.</u>
b) Bond Retirement Reserve Debt <u>Service Reserve</u>	Funds specifically set -aside to retire debt as it is scheduled.
c) Capital Improvement Reserve	Funds specifically set aside to meet long-term objectives for a major facility expansion, improvement, and or the construction of a new facility.
d) Replacement Reserves	Funds specifically set aside for the future replacement of equipment needed to maintain the integrity of the facility over its <u>the useful life of the equipment.</u>
e) Total End of Year Reserves	Add amounts 12 (a) thru 12 (d).

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Appendix D

**New Community and New Nontransient Noncommunity Water System CWS and NTNCWS
 Financial Viability Test**

Test 1 — Do you have a budget in place and are rates sufficient to cover expense?	BUDGET YEAR 1	BUDGET YEAR 5	—BASIS FOR CALCULATION
1. PROJECTED REVENUES	=====	=====	
2. Water Rates	=====	=====	
3. Total Other Revenues	=====	=====	
4. TOTAL PROJECTED REVENUE (Add lines 2-3)	=====	=====	
5. PROJECTED EXPENSES	=====	=====	
6. Total Operation & Maintenance Administrative & General	=====	=====	
 & Depreciation Expenses	=====	=====	
7. Taxes	=====	=====	
8. Debt Service Payments	=====	=====	
9. Net Capital Improvement Purchases From Rates	=====	=====	
10. Operating Cash Reserve (Increase)	=====	=====	
11. Emergency Reserve (Increase)	=====	=====	
12. Replacement Reserve (Voluntary Increase)	=====	=====	
13. TOTAL REVENUE REQUIRED (Add Lines 6-12)	=====	=====	
14. Required Water Rates (Line 13 — Line 3)	=====	=====	
15. Is Line 4 => Line 13	=====	=====	
	=====	=====	
	=====	=====	
	=====	=====	
	=====	=====	
Test 2 — Is the Operating Cash Reserve = to or greater than			
 $\{((O\&M + G\&A \text{ budget subtotal} \times 45)/365)?$	=====	=====	
16. Current Operating Reserve (Beginning of Year)	=====	=====	
17. Plus: Budgeted Increase (Line 10)	=====	=====	
18. Total Operating Cash Res. Funds (Line 16 + 17)(end of year)	=====	=====	
19. Required Operating Cash Reserve (Line 6 X 0.125)	=====	=====	
20. Is line 18 => Than Line 19	=====	=====	
	=====	=====	
	=====	=====	

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<p>TEST 3 – Is the Emergency Reserve = to or greater than the _____ cost of the most vulnerable facility?</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>21. Current Emergency Reserve (beginning of year)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>22. Plus: Budgeted Increase (Line 11)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>23. Total Emergency Res. Funds (Line 21 + 22) (end of year)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>24. Cost of most vulnerable facility</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>25. Is Line 23 => Than Line 24</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table>		=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=										
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<p>TEST 4 – Household Income Index; Is 1.5 percent of Median _____ Household Income = to or greater than Cost/ ERU?</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>26. Median household Income</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>27. Median Household Income X .015 (Line 26 x 0.015)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>28. Cost/Equivalent Residential Units (Line 14/Line 31)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>29. Is Line 27 => Than Line 28</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>Customer Data</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>30. Median Household Income</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 10%; text-align: center;">=====</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">=</td> <td style="text-align: center;">=</td> <td></td> </tr> </table> <p>31. Total Number of Equivalent Residential Units (ERU)</p> <p>Method</p>		=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=			=====	=====			=	=		
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Appendix D

Water System Financial Viability Tests

Test 1: Will the proposed water system collect sufficient revenues to meet all of its projected expenses?

Measurements:

- a. Total Revenues - Total Expenses = Net Income > 0
- b. Total Revenues - One-Time Revenues - Interest Income - Other Income = Operating Revenues
- c. Total Expenses - One-Time Expenditures - Debt Service - Capital Outlays = Operating Expenditures
- d. Operating Revenues - Operating Expenses = Net Revenues > 0
- e. Operating Ratio = Operating Expenses ÷ 1 Operating Revenues

Test 2: Will the proposed water system generate reserves?

The following measurements shall be > 0 at the time submitted:

- a. Operating Cash Reserve = \$ _____
- b. Replacement Reserve = \$ _____
- c. Working Capital = Current Assets - Current Liabilities

Test 3: Are the proposed rates reasonable compared to the median household income of the area to be served?

The following measurement shall be:

Average Annual Rates < Median Household Income $\frac{1}{2}$ x 2.5%.

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

1. ISSUE: ADEQ received 2 comments expressing appreciation of the process ADEQ used in this rulemaking which allowed the stakeholders to write the definitions, rules and draft the legislation that was needed. They expressed their beliefs that this process resulted in a “more user friendly” rule. One commenter also stated that he hoped more agencies will see the benefits of this process.

ANALYSIS: ADEQ appreciates the comments.

RESPONSE: No change.

2. ISSUE: A commenter stated that this is a “timely action”.

ANALYSIS: ADEQ agrees.

RESPONSE: No change.

3. ISSUE: R18-4-601. The commenter requested that the rule be revised to add to the 2nd sentence language that states, “or a public service corporation issued a certificate of convenience and necessity from the Arizona Corporation Commission prior to October 1, 1999, or any political subdivision in the State of Arizona that has received lawful authority to provide water service prior to October 1, 1999.”

ANALYSIS: ADEQ disagrees. A public service corporation that has received a Certificate of Convenience and Necessity (CCN) from the Arizona Corporation Commission (ACC) prior to October 1, 1999, is still a “new” public water system under A.R.S. § 49-353(A)(2)(i). However, if the public service corporation has not yet received a public water system identification number, the Department will still permit it to use the CCN as the means of demonstrating financial and managerial capacity under the current rule language.

RESPONSE: No change to the rule.

1. The sources of median household income data includes the most recent United States Census Bureau (USCB) data collected by the Department or generated by an impartial 3rd party experienced in collecting income data and supplied to the Department by the applicant seeking viability determinations. Acceptable sources of income data, other than USCB data includes feasibility studies, engineering reports, market studies, income surveys, or another source or collection methodology approved by the Department.

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4. **ISSUE:** R18-4-603(1). The commenter recommended that this rule be revised so that instead of referring only to a certificate of assured water supply, it would also allow for an Arizona Department of Water Resources (ADWR) determination of physical availability of water for a period of 100 years.

ANALYSIS: ADEQ agrees.

RESPONSE: The rule has been changed to add 100 year designations of water availability from ADWR.

5. **ISSUE:** R18-4-603. The commenter stated that rules relating to Articles 2, 3, 4, and 5 are somewhat redundant with information being required both in the elementary business plan and in the operation maintenance plan.

ANALYSIS: ADEQ disagrees. Articles 2, 3, and 5 are a listing of the specific Articles within Title 18 Chapter 4 where ADEQ has authority over design requirements related to storage, treatment, and infrastructure. The information requested under the elementary business plan is related to industry recognized standards such as the National Sanitation Foundation. The intent is to provide enough specificity for new water systems as they design their system to allow completion of the elementary business plan to be as simple as possible.

RESPONSE: No change to the rule.

6. **ISSUE:** R18-4-603. The commenter stated that the term “final build-out” is an undefined term and could exceed 15 to 20 years, which could render this effort onerous. The commenter suggests that all data be limited to 5 years and/or final build-out if less, but certainly no more than 5 years. Alternatively, the commenter suggests that ADEQ define “final build-out” and lessen the requirements relating to final build-out.

ANALYSIS: ADEQ disagrees. The intent of the rule is to have water systems consider future projections for service expansion at the time of initial design. This information is obtainable and is needed when completing business plans for long term financing, and when obtaining 100 year Certificates of Assured Water Supply and 100 year water availability designations from ADWR. Defining final build-out to minimize the foresight necessary in considering the full extent of service to 5 years is also inconsistent with the intent of the rule. The Department recognizes that many systems are constructed in phases that may span several years until final build-out is attained. This rule is requiring newly proposed water systems to plan for all known phases at the time of initial system design in a manner which will assure the system is capable of supplying reliable and safe water throughout the phase in process and up to final build-out.

RESPONSE: No change to the rule.

7. **ISSUE:** R18-4-603(4) and Appendix A, item 5. The commenter suggests that the text which states “appropriate grade or type” be revised to state “appropriate grade, type, or higher” to make the rule less restrictive.

ANALYSIS: ADEQ agrees that clarity is necessary.

RESPONSE: The existing rule language was changed to “sufficient grade and type” to clarify the minimum requirements for a certified operator of a water system.

8. **ISSUE:** The commenter stated that it is his understanding that the formulas in Appendix D are illustrative of information to be submitted, but are not exclusive, as long as the requirements of the formulas are met. The commenter recommended that Appendix D be amended to place the questions in Tests 1 through 4 at the beginning of the Appendix, and that it be made clear that the formulas below the questions are illustrative.

ANALYSIS: ADEQ agrees.

RESPONSE: The threshold criteria a new water system must meet in demonstrating financial capacity has been listed under the revised Appendix D.

9. **ISSUE:** R18-4-606. The commenter stated the he believed the legislation was intended to encompass acceptance of financial determinations by ADEQ from not only the Arizona Corporation Commission, but by other public authorities such as cities, towns and improvement districts. The commenter recommended that a new subsection (D) be added to provide for acceptance of financial determinations from cities, towns and improvement districts if the new public water system has gone through a formal process and had their fees and rates approved by that entity.

ANALYSIS: ADEQ disagrees. The intent of the authorizing legislation is to ensure processes where a capacity determination is made by public authorities other than ADEQ are used to the maximum extent possible. However, ADEQ must maintain discretion in determining which public authorities provide adequate capacity determinations. As an example, a sanitary district would not be qualified to make a drinking water system capacity determination. Additionally, a road improvement district, or other narrowly focused public authorities, would likewise be unable to make a drinking water system capacity determination. Where the same information requested in Appendix D of this rule is compiled by a proposed water system for public authorities other than the ACC or ADWR, that information

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can be entered into Appendix D and submitted with the elementary business plan for purposes of demonstrating financial capacity.

RESPONSE: No change to the rule.

10. ISSUE: Appendix A, item 12. The commenter suggested that the reference to “Government Agency or District” should be changed to “Public Entity”, to make it more encompassing.

ANALYSIS: ADEQ disagrees.

RESPONSE: In appendix A, item 12 there is a field for “other” where public authorities other than those which are a governmental agency or district can be entered. This allows the entry of the specific public authority when it is not a Governmental Agency or District.

11. ISSUE: Appendix A, item 22. The commenter recommended that the rule be changed so that a public water system receives approval from the ACC on its fee structure, or ADWR on its financial capability.

ANALYSIS: ADEQ agrees.

RESPONSE: The rule has been revised to read “~~22~~23. Has the system received approval from the ACC on its fee structure or ADWR on its financial capacity?”

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 the rule previously adopted as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER**

ARTICLE 1. GENERAL REQUIREMENTS

Section

R18-4-101. Definitions

**ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A
NEW PUBLIC DRINKING WATER SYSTEM**

Sections

R18-4-601. Applicability

R18-4-602. Elementary Business Plan

R18-4-603. Technical Capacity

R18-4-604. Managerial Capacity

R18-4-605. Financial Capacity

R18-4-606. Review, Approval, Denial Process

R18-4-607. Appeals

Appendix A Capacity Development Review Checklist for CWS and NTNCWS

Appendix B General Statement of Responsibility by Owner

Appendix C Financial Capacity for CWS and NTNCWS Worksheet 1

Appendix D CWS and NTNCWS Financial Viability Test

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-101. Definitions

In this Chapter the following terms mean:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. “Elementary business plan” means a document containing all items required to be submitted for evaluation necessary for a complete review for technical, managerial, and financial capacity of a new public water system under Article 6.
- ~~31~~³². No change
- ~~32~~³³. No change
34. “Existing public water system” means a public water system, as defined in A.R.S. § 49-352(B)(1), that has been issued a public water system identification number before October 1, 1999.
- ~~33~~³⁵. No change
36. “Financial capacity” means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal safe drinking water act, as amended in 1996.
- ~~34~~³⁷. No change
- ~~35~~³⁸. No change
- ~~36~~³⁹. No change
- ~~37~~⁴⁰. No change
- ~~38~~⁴¹. No change
- ~~39~~⁴². No change
- ~~40~~⁴³. No change
- ~~41~~⁴⁴. No change
- ~~42~~⁴⁵. No change
- ~~43~~⁴⁶. No change
- ~~44~~⁴⁷. No change
- ~~45~~⁴⁸. No change
- ~~46~~⁴⁹. No change
- ~~47~~⁵⁰. No change
- ~~48~~⁵¹. No change
- ~~49~~⁵². No change
- ~~50~~⁵³. No change

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54. “Major stockholder” means a person who has 20% or more ownership interest in a public water system.
~~5455.~~ No change
56. “Managerial capacity” means the ability of a public water system to conduct its affairs in a manner that will meet and maintain compliance with the requirements of the federal safe drinking water act, as amended in 1996.
~~5257.~~ No change
~~5358.~~ No change
~~5459.~~ No change
~~5560.~~ No change
~~5661.~~ No change
~~5762.~~ No change
~~5863.~~ No change
~~5964.~~ No change
~~6065.~~ No change
~~6166.~~ No change
~~6267.~~ No change
68. “New public water system” means a public water system, as defined in A.R.S. § 49-352(B)(1) that the Department issues its 1st unique public water system identification number on or after October 1, 1999.
~~6369.~~ No change
~~6470.~~ No change
~~6571.~~ No change
~~6672.~~ No change
~~6773.~~ No change
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~~8894.~~ No change
~~8995.~~ No change
~~9096.~~ No change
~~9197.~~ No change
~~9298.~~ No change
~~9399.~~ No change
~~94100.~~ No change
~~95101.~~ No change
~~96102.~~ No change
103. “Technical capacity” means the ability of a public water system to meet the requirements of R18-4-604 and the federal safe drinking water act as amended in 1996 at all times, and includes the ability to correct problems with its distribution, water quality, or source availability and to sustain compliance with its operations and maintenance plan.
~~97104.~~ No change
~~98105.~~ No change
~~99106.~~ No change
~~100107.~~ No change
~~101108.~~ No change

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- ~~102109.~~ No change
- ~~103110.~~ No change
- ~~104110.~~ No change
- ~~105111.~~ No change
- ~~106112.~~ No change
- ~~107113.~~ No change
- ~~108114.~~ No change
- ~~109115.~~ No change
- ~~110116.~~ No change

**ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A
NEW PUBLIC DRINKING WATER SYSTEM**

R18-4-601. Applicability

This Article applies to new CWSs and new NTNCWSs that begin operation on or after October 1, 1999. This Article does not apply to an existing public water system.

R18-4-602. Elementary Business Plan

- A.** To become a new public water system, an owner shall file an elementary business plan for review and approval by the Department, on a form provided by the Department. The elementary business plan shall meet the requirements of and contain all information required in Sections R18-4-603, R18-4-604, and R18-4-605.
- B.** An owner shall not commence operation of a public water system without Department approval under R18-4-606.
- C.** If the owner of a new public water system fails to submit a complete application, the Department shall suspend the review process and send a notice of incomplete elementary business plan to the owner. The owner shall submit the missing information to the Department within 60 days of the date of the notice of incomplete elementary business plan. If missing information is not received at the Department within the 60 day time period, the Department shall deny the elementary business plan and return the elementary business plan to the owner.

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

- 1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
- 2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
- 3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles 2, 3, and 5;
- 4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
- 5. Documentation that contains at least the following:
 - a. Day 1 to final build-out technical and engineering needs projections;
 - b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
 - c. Information describing the life of the plant;
 - d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
 - e. Manufacturers' specifications on components used in the construction of the water system; and
 - f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.

R18-4-604. Managerial Capacity Requirements

An owner of a new public water system shall submit the following information as part of the elementary business plan to the Department for a determination of managerial capacity:

- 1. A statement of how the public water system is owned, such as by major stockholders, board of directors, sole proprietor cooperative, governmental agency or district, corporation, limited partnership, or limited liability corporation;
- 2. Name, address, and phone number of owner;
- 3. Organizational chart of the new public water system;
- 4. Staff job descriptions and responsibilities;
- 5. Water system capital improvement plan up to the proposed full system build-out or for a 5-year projection, whichever is greater;
- 6. Certified operator grade and type that will be required by the new public water system, based upon water system design specifications;
- 7. A statement of the intent to create a CWS or NTNCWS and any intent to transfer ownership of the public water system as part of the construction plan or project phase build-out;

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8. Method to ensure provision of information listed in Appendix B, item 4 to subsequent owners; and
9. A disclosure statement signed by the owner setting forth the owner's responsibility to comply with the requirements of this Article and to disclose all information relevant to the operation of the public water system upon transfer of ownership as outlined in Appendix B.

R18-4-605. Financial Capacity Requirements

An owner of a new public water system shall submit information for a 5-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer, that demonstrates financial capacity and documents or contains all of the information listed in Appendices C and D.

R18-4-606. Review, Approval, Denial Process

A. The Department shall review and evaluate technical capacity, based upon the requirements in R18-4-603 and Appendix A.

B. The Department shall review and evaluate managerial capacity, based upon the requirements in R18-4-604 and Appendix A.

C. The Department shall accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS under the jurisdiction of the ACC. The applicant shall submit documentation to the Department that verifies ACC approval of the public water system's financial capacity.

D. The Department shall accept a financial determination as set forth in the certificate of assured water supply from the Arizona Department of Water Resources, Active Management Area Program (ADWR) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS. The owner shall submit documentation to the Department that verifies ADWR approval of its financial capacity.

E. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the new CWS or new NTNCWS shall submit to the Department for review a completed financial capacity portion of the elementary business plan. The Department shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D.

F. The Department shall notify an owner of a new public water system in writing of a deficiency in the elementary business plan or approve or deny the elementary business plan within 90 days of a receipt of a complete elementary business plan. The owner shall have 60 days from the date of a notice of deficiency to submit to the Department the information necessary to correct the deficiency in the elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by the Department within 60 days of the date of the notice of deficiency, the Department shall deny the elementary business plan and return it to the owner with a written explanation for the denial and information on the appeal process.

G. If an owner modifies technical or managerial specifications at any time between the approval to construct and the approval of construction, the owner shall notify the Department of the need to modify the elementary business plan in the technical, managerial, and financial capacity documentation. The Department shall revoke approval of the elementary business plan if the owner fails to notify the Department within 30 days of a modification.

R18-4-607. Appeals

An owner may appeal denial of an elementary business plan under A.R.S. § 41-1092 et seq.

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Appendix A

Elementary Business Plan Checklist

<u>Technical Capacity:</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
1. <u>Source Adequacy - Does the documentation demonstrate 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply?</u>	___	___	
2. <u>Source Adequacy - Does the source approval information demonstrate that the source meets drinking water quality standards or have applicable drinking water technologies been described?</u>	___	___	
3. <u>Infrastructure - Do the design criteria meet the requirements of R18-4-502 through R18-4-509?</u>	___	___	
4. <u>Treatment - Do the design criteria include treatment technologies approved by ADEQ in 18 A.A.C. 4, Articles 2, 3, and 5?</u>	___	___	___
5. <u>Does the system have a certified operator of the appropriate grade and type?</u>	___	___	___
6. <u>Does the documentation include an elementary business plan containing technical and engineering needs projections for a time period covering day 1 to final build-out or for a 5-year time period, which ever is greater?</u>	___	___	
7. <u>Does the documentation include the proposed water system design specifications and proposed uses including commercial and domestic use phases?</u>	___	___	___
8. <u>Does the documentation include an elementary business plan containing the information on the components used in the design and construction of the system along with the components life span based upon manufacturer's specifications?</u>	___	___	___
9. <u>Does the documentation include an Operations and Maintenance Plan that contains standards that are nationally recognized on all site-specific components, such as American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory?</u>	___	___	
10. <u>Does the documentation include an operation and maintenance plan with the manufacturer's specifications on all components used in the construction of the water system?</u>	___	___	
11. <u>Does the documentation include an operations and maintenance plan and emergency operation plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specifications?</u>	___	___	
 <u>Managerial Capacity</u>			
12. <u>Does the documentation include ownership type?</u>	___	___	
___ <u>Select all that apply.</u>			
___ <u>Sole Proprietor</u>	___	___	___
___ <u>Major Stockholders</u>	___	___	___
___ <u>Board of Directors</u>	___	___	___
___ <u>Cooperative</u>	___	___	___
___ <u>Government Agency or District</u>	___	___	___
___ <u>Corporation</u>	___	___	___
___ <u>Limited Liability Corporation</u>	___	___	___
___ <u>Partnership</u>	___	___	___

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Other

- | | | | |
|--|-----|-----|-----|
| <u>13. Does the documentation include name, address, and telephone number of owner?</u> | ___ | ___ | ___ |
| <u>14. Does the documentation include an organizational chart of owners, management, and staff with their position or job titles?</u> | ___ | ___ | ___ |
| <u>15. Does the documentation include staff job descriptions and responsibilities?</u> | ___ | ___ | ___ |
| <u>16. Does the documentation include a capital improvement plan up to the proposed full system build-out or for a 5-year projection, whichever is greater?</u> | ___ | ___ | ___ |
| <u>17. Does the documentation identify the grade and type of certified operator that will be needed to operate the system according to site-specific components?</u> | ___ | ___ | ___ |
| <u>18. Does the documentation identify the intent to create a CWS or NTNCWS?</u> | ___ | ___ | ___ |
| <u>19. Does the documentation transfer the ownership of the water system as part of the build-out phase of the project?</u> | ___ | ___ | ___ |
| <u>20. Does the documentation identify the policies or mechanisms to ensure that all system-specific technical, managerial, and financial information of the water system is transferred to a new owner?</u> | ___ | ___ | ___ |
| <u>21. Does the documentation include the owner's signed disclosure statement agreeing to comply with the requirements of these Articles and a general disclosure statement agreeing to disclose all information relevant to the operation of the water system to any transferee of ownership? (See Appendix B).</u> | ___ | ___ | ___ |

Financial Capacity

- | | | | |
|--|-----|-----|-----|
| <u>22. Is the system regulated by the Arizona Corporation Commission (ACC) or ADWR? If Yes go to Question 23. If No go to Question 25.</u> | ___ | ___ | |
| <u>23. Has the system received an approval from the ACC on its fee structure, or ADWR on its financial capacity?</u> | ___ | ___ | ___ |
| <u>24. Systems regulated by the Arizona Corporation Commission or Department of Water Resources shall provide information required in 22 and 23 for the financial capacity determination review by ADEQ.</u> | | | |
| <u>25. For New CWSs and NTNCWS NOT regulated by ACC, is all information listed in Appendices C and D included?</u> | ___ | ___ | ___ |

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Appendix B

Drinking Water Capacity Development Statement of Responsibility

Applicant Information:

Name:

Mailing Address

Phone Number: Fax Number: E-mail:

Statement Information:

1) Name of Water System: _____ **PWS ID# _____**

2) Ownership Type (Please Check all that apply):

____ Sole Proprietor ____ Major Stockholders ____ Board of Directors

____ Cooperative ____ Government Agency ____ District

____ Public Entity ____ Corporation ____ Limited Liability Corporation

____ Other (please explain) _____

3) Name of Owner(s): (Check one) See Below Attach a separate sheet if more space is needed

Owner 1:

Owner 2:

Owner 3:

4) Agencies with rules applicable to the Water System: (Please Check all that apply)

____ Arizona Department of Environmental Quality ____ Arizona Corporation Commission

____ Arizona Department of Water Resources ____ Arizona Department of Real Estate

____ Arizona Department of Commerce ____ Arizona Department of Agriculture

____ Arizona Department of Corrections ____ Office of the Fire Marshal

____ Arizona Land Department ____ Arizona Department of Revenue

____ Arizona Department of Transportation ____ Maricopa County Environmental Services

____ Pima County Dept of Environmental Quality ____ Environmental Protection Agency Region IX

____ Other(s) please specify _____

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5) Statement of Intent (Select one):

It IS the intent of the owner or developer of this NEW CWS or NEW NTNCWS to transfer ownership of the water system.

As part of the ownership transfer, it is understood that the owner or developer has a responsibility to disclose and transfer ALL information relevant to the construction and operation of the water system to the new owner.

It is NOT the intent of the owner to transfer ownership of the new CWS or NTNCWS within 1 year of the completion of construction of the water system.

6) Date owner expects to begin operation:

__ Month _____ Day _____ Year _____

7) Drinking Water Sources used: (Select all that apply)

___ Ground Water Purchased Ground Water

___ Surface Water Purchased Surface Water

8) Table of Contents of Systems Elementary Business Plan (Please Check one):

The Table of Contents of the Elementary Business Plan is attached.

The Table of Contents of the Elementary Business Plan is summarized below.

Summary

9) Signature of each current owner: Check if additional signature page is attached.

I agree to comply with the requirements of 18 A.A.C. 4, Article 6.

Print Name: _____ Signature _____ Date: _____

Print Name: _____ Signature _____ Date: _____

Print Name: _____ Signature _____ Date _____

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Appendix C

Financial Capacity for New CWSs and NTNCWSs

Worksheet 1

Owner: _____

Completed by: _____ Date: _____

<u>5-Year Financial Projection</u>	<u>Year 1</u> <u>Projection</u>	<u>Year 2</u> <u>Projection</u>	<u>Year 3</u> <u>Projection</u>	<u>Year 4</u> <u>Projection</u>	<u>Year 5</u> <u>Projection</u>
<u>Enter Year:</u>					
<u>1. Beginning Cash on Hand</u>					
<u>a. Unmetered Water Revenue</u>					
<u>b. Metered Water Revenue</u>					
<u>c. Other Water Revenue</u>					
<u>d. Total Water Revenues</u> <u>(1a thru 1c)</u>					
<u>e. Connection Fees</u>					
<u>f. Interest and Dividend</u> <u>Income</u>					
<u>g. Other Income</u>					
<u>h. Total Cash Revenues</u> <u>(1d thru 1g)</u>					
<u>I. Additional Revenue Needed</u>					
<u>j. Loans, Grants or other</u> <u>Cash Injection please specify</u>					
<u>2. Total Cash Balance(1h to 1j)</u>					
<u>3. Total Cash Available (1+2)</u>					
<u>4. Operating Expenses</u>					
<u>a. Salaries and wages</u>					

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<u>b. Employee Pensions and Benefits</u>					
<u>c. Utilities</u>					
<u>d. Chemicals</u>					
<u>e. Materials and Supplies</u>					
<u>f. Laboratory</u>					
<u>g. Contractual Services</u>					
<u>h. Insurance</u>					
<u>I. Miscellaneous</u>					
<u>j. Total Operations and Maintenance Expenses (a thru 4i)</u>					
<u>k. Replacement Expenditures</u>					
<u>l. Total Operations and Maintenance expenditures plus Replacement expenditures. (4j+4k)</u>					
<u>m. Loan Principal/Capital Lease Payments</u>					
<u>n. Loan Interest Payments</u>					
<u>o. Capital Purchases (specify):</u>					
<u>5. Total Cash Paid Out (4m thru 4o)</u>					
<u>6. Ending Cash Position (3- 5)</u>					
<u>7. Number of Customer Accounts</u>					

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8. Average Annual User Charge per account (1d/7)					
9. Coverage Ratio <u>(1h-4l)/(4m+4n)</u>					
10. Operating Ratio (1d/4l)					
11. End of Year Operating Cash (6-12)					
12. End of Year Reserves					
<u>a. Operating Reserves</u>					
<u>b. Debt Service Reserve</u>					
<u>c. Capital Improvement Reserve</u>					
<u>d. Replacement Reserve</u>					
<u>e. Other</u>					
Total Reserves (12a thru 12e)					

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Appendix C:
Arizona Financial Capacity For New
CWSs and NTNCWSs
Definitions for Worksheet 1

<u>5-Year Financial</u> <u>Projection</u>	<u>Year 1</u> <u>Projection</u>	<u>Year 2</u> <u>Projection</u>	<u>Year 3</u> <u>Projection</u>	<u>Year 4</u> <u>Projection</u>	<u>Year 5</u> <u>Projection</u>
<u>1. Beginning Cash on Hand</u>	<u>For the current year budget, use the actual cash balance. For all other years, cash on hand should equal item #12 from the previous period.</u>				
<u>a) Unmetered Water Revenue</u>	<u>All cash received or estimated for water supplied to residential, commercial, industrial and public customers where the customer charge is not based on quantity, but is based on other criteria such as diameter of service pipe, room, or foot of frontage.</u>				
<u>b) Metered Water Revenue</u>	<u>All cash received or estimated for water supplied to residential, commercial, industrial, and public customers where the charge is based on quantity of water delivered.</u>				
<u>c) Other water revenues</u>	<u>Other cash received or estimated from sales of water, sales for irrigation, sales for resale, inter-municipal sales, or ad valorem taxes.</u>				
<u>d) Total Water Revenues</u>	<u>Total 1(a) thru 1(c)</u>				
<u>e) Connection Fee</u>	<u>All cash received or estimated for connection of customer service during the year.</u>				
<u>f) Interest and Dividend Income</u>	<u>All cash received or estimated on interest income from securities, loans, notes, and similar instruments, whether the securities are carried as investments or included in sinking or reserve accounts.</u>				
<u>g) Other income</u>	<u>Other revenues collected or estimated during the period (such as disconnection or change in service fees, profit on materials billed to customers, servicing of customer lines, late payment fees, rents, sales of assets, or ad valorem taxes (infrastructure portion).</u>				
<u>h) Total Cash Revenues</u>	<u>Add 1(d) thru 1(g)</u>				
<u>i) Additional Revenues Needed.</u>	<u>Additional cash needed to cover cash needs.</u>				

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<u>j) Loans, Grants or other Cash injections.</u>	<u>Includes loans or grants from financial institutions, inter-municipal loans, state or federal sources.</u>
<u>2. Total Cash Balance</u>	<u>Add items 1(h) thru 1(j)</u>
<u>3. Total Cash Available</u>	<u>Add items 1 and 2</u>
<u>4. Operating Expenses</u>	<u>Use actual amounts paid when completing the prior year. Estimate the amounts for projected years based on prior year amounts, trends, and other known variables.</u>
<u>a) Salaries and wages</u>	<u>Cash expenditures made or estimated for salaries, bonuses, and other considerations for work related to the operation and maintenance of the facility, including administration and compensation for officers and directors.</u>
<u>b) Employee Pensions and Benefits</u>	<u>Paid vacations, paid sick leave, health insurance, unemployment insurance, pension plan, and other similar liabilities.</u>
<u>c) Utilities</u>	<u>Amounts paid or estimated for all fuel or electrical power.</u>
<u>d) Chemicals</u>	<u>Amounts paid or estimated for chemicals used in treatment and distribution.</u>
<u>e) Materials and Supplies</u>	<u>Amounts paid or estimated for materials and supplies used for operation and maintenance of the new public water system other than those under contractual services.</u>
<u>f) Laboratory</u>	<u>Amounts paid or estimated for laboratory and associated services.</u>
<u>g) Contractual Services</u>	<u>Amounts paid or estimated for outside engineering, accounting, legal, managerial, and other services.</u>
<u>h) Insurance</u>	<u>Amounts paid or estimated for vehicle, liability, worker=s compensation, and other insurance associated with the public water system.</u>
<u>i) Miscellaneous</u>	<u>Amounts paid or estimated for all expenses not included elsewhere (such as permit fees, training, and certification fees).</u>
<u>j) Total operation and maintenance expenditures.</u>	<u>Add amounts in lines 4(a) thru 4(i).</u>

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<u>k) Replacement expenditures</u>	<u>Amounts paid or estimated for replacement of equipment to maintain system integrity (capital improvement plan).</u>
<u>l) Total Operations and Maintenance expenditures plus Replacement expenditures.</u>	<u>Add amounts in 4(j) and 4(k)</u>
<u>m) Loan Principal, Capital Lease or Loan payment.</u>	<u>Include cash payments made or estimated for principal and interest on all loans, including vehicle loans and equipment on time payments, and capital lease payments.</u>
<u>n) Loan Interest payments</u>	<u>Include cash payments made or estimated for interest on all loans, including vehicle loans, and equipment on time payments, and capital lease payments.</u>
<u>o) Capital Purchases</u>	<u>Amount of cash outlays or estimates for items such as equipment, building, or vehicle purchases and leasehold improvements that were not a part of the initial design of the water system.</u>
<u>5) Total Cash Paid Out</u>	<u>Add amounts in 4(m) thru 4(o)</u>
<u>6) Total Cash Available Minus Expenditures Calculation.</u>	<u>Take Amount in 1 and subtract Amount in 5. If this amount is positive, there is operating cash left over after all calculated expenditure obligations have been met. If the number is negative, there are more expenses than there are funds available to pay for the expenses to operate the water system.</u>
<u>7) Number of Customer Accounts.</u>	<u>Use most recent system data or expected increases.</u>
<u>8) Average User Charge per Customer.</u>	<u>Take amount listed in 1(d) and divide it by amount listed in 7.</u>
<u>9) Coverage Ratio</u>	<u>Take amount in 1(h) and subtract the amount in 4(l). Then divide that amount with the sum of 4(m) + 4(n). The equation looks like this: $\frac{[1(h) - 4(l)]}{[4(m) + 4(n)]}$ and measures the sufficiency of net operating profit to cover the debt service requirements of the system. A bond covenant might require the debt service to meet or exceed certain limits.</u>

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<u>10) Operating Ratio</u>	<u>Take amount in 1(d) and divide it by the amount in 4(l). The equation looks like this: 1(d)/4(l).</u> This figure measures whether operating revenues are sufficient to cover operation, maintenance, replacement expenses. An operating ratio of 1:0 is the minimum for a self-supporting facility. If there are debt service requirements, the operating ratio would have to be <u>higher.</u>
<u>11) End of Year Operating Cash</u>	All non-reserved cash. <u>Add amounts from 6 thru 12.</u>
<u>12) End of Year Reserves</u>	<u>Do not include depreciation as a reserve unless there is actually a designated depreciation reserve containing cash set aside for future expansion.</u>
<u>a) Operating Cash Reserve</u>	<u>Funds set aside to meet cash flow, operating, and seasonal fluctuations.</u>
<u>b) Debt Service Reserve</u>	<u>Funds specifically set aside to retire debt as it is scheduled.</u>
<u>c) Capital Improvement Reserve</u>	<u>Funds specifically set aside to meet long-term objectives for a major facility expansion, improvement, or the construction of a new facility.</u>
<u>d) Replacement Reserves</u>	<u>Funds specifically set aside for the future replacement of equipment needed to maintain the integrity of the facility over the useful life of the equipment.</u>
<u>e) Total End of Year Reserves</u>	<u>Add amounts 12 (a) thru 12 (d).</u>

Appendix D

Water System Financial Viability Tests

Test 1: Will the proposed water system collect sufficient revenues to meet all of its projected expenses?

Measurements:

- a. Total Revenues - Total Expenses = Net Income > 0
- b. Total Revenues - One-Time Revenues - Interest Income - Other Income = Operating Revenues
- c. Total Expenses - One-Time Expenditures - Debt Service - Capital Outlays = Operating Expenditures
- d. Operating Revenues - Operating Expenses = Net Revenues > 0
- e. Operating Ratio = Operating Expenses ≤ 1 Operating Revenues

Test 2: Will the proposed water system generate reserves?

The following measurements shall be > 0 at the time submitted:

- a. Operating Cash Reserve = \$ _____
- b. Replacement Reserve = \$ _____
- c. Working Capital = Current Assets - Current Liabilities

Test 3: Are the proposed rates reasonable compared to the median household income of the area to be served?

The following measurement shall be:

Average Annual Rates < Median Household Income³ x 2.5%.

- 3 The sources of median household income data includes the most recent United States Census Bureau (USCB) data collected by the Department or generated by an impartial 3rd party experienced in collecting income data and supplied to the Department by the applicant seeking viability determinations. Acceptable sources of income data, other than USCB data includes feasibility studies, engineering reports, market studies, income surveys, or another source or collection methodology approved by the Department.