NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R2-1-401	Amend
R2-1-402	Amend
R2-1-403	Amend
R2-1-404	Amend
R2-1-405	Amend
R2-1-406	Amend
R2-1-407	Amend
R2-1-408	Amend
R2-1-409	Amend
R2-1-410	Amend
R2-1-411	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. § 41-704

Implementing statutes: A.R.S. §§ 41-704, 42-5251, and 42-5252

3. The effective date of the rules:

May 12, 2000

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 1627, July 6, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 2284, August 28, 1998

Notice of Public Information: 4 A.A.R. 4126, December 11, 1998

Notice of Supplemental Proposed Rulemaking: 5 A.A.R. 1788, June 11, 1999

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

Name: Larry Beauchat

Address: 1616 West Adams
Phoenix, Arizona 85007

Telephone: (602) 542-2255

Fax: (602) 542-2008

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

Amendments and corrections are proposed to improve clarity, conciseness, and understandability of specific rules. The changes are proposed to language that does not correctly represent titles and offices within the Arizona Department of Administration, and citations in the Arizona Revised Statutes and the Arizona Administrative Code. The scope of the rules is broadened to accommodate statutory changes relating to "wireless" and "cellular" telephone services. A change is proposed to encompass special projects regarding 9-1-1 availability.

7. A reference to any study upon which the agency relied in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying the 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:

The overall impact of the rules has been favorable. Four important aspects of the rules substantiate this claim, and all are favorable to the taxpayers.

a. The tax is an excise tax and applied to both residential and business communication services. As a percentage of the Basic Exchange Access Line service, both of the primary service groups are assessed 1.25% of their basic rate. The residential line rate is approximately $15.00 and the business line rate is approximately $30.00; the percentage basis of the tax distributes the burden fairly.

b. Services are provided equally to all users. All 9-1-1 calls are given the same level of response. Both residential and business callers are treated equally when requesting emergency services. Arizona has one of the lowest communications tax rates in the United States. Ranking in the lowest five percentile, Arizona citizens experience a monthly tax rate of approximately 16 cents on residence access lines and 38 cents on business access lines. Many states have adopted a flat tax that ranges from 50 cents to $1.00 per month per access line. Arizona's low rates compare even more favorably considering that 99.8% of the public has access to 9-1-1 service. An eight year review of the history of the excise tax fund demonstrates its proficiency and strength in covering expense demands with available funds. The fund is currently strong and viable. Currently, 92 PSAPs in Arizona may avail themselves of this fund. It is fair to say that the economic impact is more than favorable in light of the comprehensive services that are being provided at low cost to all users.

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

R2-1-401 reflects the change in Division for the Assistant Director from Data Management to Information Services. It also provides five additional definitions and deletes unnecessary definitions. Items were corrected to alphabetical order. R2-1-402 is amended to include a statutory citation, and minor language changes for clarity. R2-1-403 provides more distinct terms regarding ALI and database error rate. R2-1-404 is amended to include a defined 60-day interval for response on service plan disapproval. R2-1-405 is amended from a 90-day to a 45-day turnaround time by the ADOA on service plan response to an original 9-1-1 Service Plan submittal. Also, the response time to a revised Service Plan was changed from 90 days to 30 days. R2-1-406 items are changed from an alphabetical designation to a numerical order. R2-1-407 is changed to reflect compliance with ADA requirements for telecommunications devices for the hearing impaired. R2-1-408 removes a potentially unenforceable clause regarding notification of public or private safety agencies. R2-1-409 is amended to broaden the scope of funding for automated call distribution. Consideration will be given to meet database requirements to facilitate the establishment of Enhanced 9-1-1 in rural areas. R2-1-411 amends language regarding Assistant Director "obtaining" information to "requesting" information.

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

The principal comments received by the agency were from two entities; the Maricopa Association of Governments and the Cochise County Department of Emergency Services. The comments and agency responses are summarized as follows:

Several issues raised by MAG were submitted, modified, and adopted by ADOA. These changes ranged from clarification to some of the definitions in the Order of Adoption to utilizing terms that were more appropriate with today's technology. One change was adopted to be fully explicit in terms of meeting mandates from the Office of Americans with Disabilities. A significant change was made to broaden the consideration for Public Safety Answering Points needs to include computer/telephony integrated services, and provide diagnostic tools to measure 9-1-1 Network effectiveness in transporting heavy call load volumes. The comments from Cochise County related to amending some items for clarification and rearranging items for better sequential flow. These suggestions were adopted. Also suggested was having a requirement incorporated in the rules that would mandate a county coordinator be appointed for each county in the state. ADOA did not consider it in the best interest of all counties to mandate such a requirement, nor is it clear ADOA has statutory authority to establish such a requirement or provide funding for such a position.

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. Incorporation 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 1. DEPARTMENT OF ADMINISTRATION

ARTICLE 4. EMERGENCY TELECOMMUNICATIONS SERVICES REVOLVING FUND

Section
R2-1-401. Definitions
R2-1-402. Establishment of 9-1-1 Planning Committee
R2-1-403. Submission of Service Plan
R2-1-404. Certificate of Service Plan Approval
R2-1-405. Resubmitting of a Service Plan
R2-1-406. Modification of an Approved Service Plan
R2-1-407. 9-1-1 System Design Standards
R2-1-408. 9-1-1 Operational Requirements
R2-1-409. Funding Eligibility
R2-1-410. Method of Reimbursement
R2-1-411. Allocation of Funds

ARTICLE 4. EMERGENCY TELECOMMUNICATION SERVICES REVOLVING FUND

R2-1-401. Definitions

In addition to the definitions in A.R.S. § 42-1471, in this Article:

1. "Assistant Director" means Assistant Director of the ~~Data Management~~ Information Services Division of the Arizona Department of Administration.
2. ~~"Automatic Location Identification"~~ "Automatic location identification" or "ALI" means the process of electronically identifying and displaying the address of the calling telephone number to a person answering a 9-1-1 call.
3. ~~"Automatic Number Identification"~~ "Automatic number identification" or "ANI" means the telephone number of a caller that is automatically identified at the PSAP receiving a 9-1-1 call.
4. "Basic 9-1-1" means a service that routes a 9-1-1 call to a PSAP for dispatch services. There are no ALI or ANI data provided with the call.
~~4.~~5. "Busy hour" means the hour period during a 24-hour day when the number of 9-1-1 calls to a PSAP is generally at a maximum.
~~5.~~6. "Busy month" means the 1-month period during a calendar year when, as a general matter, the number of 9-1-1 calls to a PSAP is at a maximum.
~~6.~~7. ~~"Central Office"~~ "Central office" means the physical site of the switching equipment for a telephone exchange area.
8. "Customer premise equipment" or CPE means the PSAP's communication equipment necessary for handling 9-1-1 calls.
~~7.~~9. ~~"Dedicated 9-1-1 Trunk"~~ "Dedicated 9-1-1 trunk" means a telephone circuit that ~~which~~ is used exclusively ~~for the purpose of transmitting~~ to transport 9-1-1 calls.
~~8. "Emergency medical services" means any service which provides immediate action to prevent the loss of life, reduce bodily injury or to prevent or control other emergency situations as determined by a local policy.~~
~~9. "Emergency Telecommunication Service" means a telecommunication service or system that uses the 9-1-1 for emergency calls.~~
~~10. "Exchange access services" means telephone exchange access lines or channels that provide local access from the premises of a subscriber of telephone services to the local telecommunication network to affect the transfer of information.~~
10. "Enhanced 9-1-1" means a service that routes a 9-1-1 call to a PSAP for dispatch services and delivers the telephone number, name, and address to the PSAP.
11. "Fund" means the emergency telecommunication services revolving fund established in ~~A.R.S. § 41-702.01~~ A.R.S. § 41-704(B).
12. ~~"Network Access Mileage Computations"~~ "Network access mileage computations" means a computation based on distance measured from a Central Office located outside of the local exchange area to the Central Office that serves the PSAP is based on the type of circuits between the Central Offices.
13. ~~"Network Exchange Services"~~ "Network exchange services" means telephone circuits or private lines dedicated to and used exclusively to receive, extend, or transfer 9-1-1 calls.
14. ~~"Nine-One-One Service"~~ "Nine-One-One service" or ~~"9-1-1 Service"~~ "9-1-1 service" means a telephone service that allows a user of a public telephone system to reach a PSAP by dialing the digits 9-1-1.
15. "Person" ~~means "person as defined in"~~ has the same meaning as at A.R.S. § 1-215.

16. ~~"Public or Private Safety Agency"~~ "Public or Private safety agency" means any unit of local, state, or federal government, special purpose district, or private person located in whole or in part within this state that provides, or has the authority to provide firefighting, law enforcement, ambulance, ~~medical~~ or other emergency or medical services.
17. ~~"Public Safety Answering Point"~~ "Public safety answering point" or "PSAP" means a communications facility operated on a 24-hour basis that receives 9-1-1 calls and, as appropriate, ~~to dispatch~~ notifies or dispatches public or private safety services ~~to extend, transfer or relay~~, or extends, transfers, or relays 9-1-1 calls to ~~the~~ an appropriate public or private safety ~~agencies~~ agency.
18. ~~"Public Safety Answering Point Manager"~~ "Public safety answering point manager" means ~~the~~ a person ~~having responsibility~~ responsible for the daily operation of a public safety answering point.
19. "PSAP service area" means the area in which an emergency-call-taking service is provided by a PSAP.
~~19.~~20. ~~"Selective Routing"~~ "Selective routing" means a process through which a 9-1-1 call is automatically routed to a predetermined PSAP based on the ~~identified~~ telephone number of the calling party.
~~20.~~21. ~~"Service Plan"~~ "Service plan" means a written document that identifies the method of providing and maintaining 9-1-1 Service in a specific geographic area.
~~21.~~22. ~~"Telephone Exchange Area"~~ "Telephone exchange area" means a specific geographic area designated by the Arizona Corporation Commission ~~that is served by~~ to receive service from 1 ~~one~~ or more central offices.
23. "Wireless service" means mobile or cellular telephone service, whether digital or analog.

R2-1-402. Establishment of 9-1-1 Planning Committee

A. In ~~order to~~ To qualify for funding ~~pursuant to A.R.S. § 41-702.01~~ under A.R.S. § 41-704(B), all the ~~Public~~ public or ~~Private~~ private safety agencies in a specific geographic area to be served shall establish a 9-1-1 planning committee to develop a ~~9-1-1 emergency telephone~~ service plan ~~for the specific geographic area for which the Public or Private Safety Agencies shall be providing service~~.

B. ~~The~~ A 9-1-1 planning committee shall include representation from all ~~Public~~ public and ~~Private Safety Agencies~~ private safety agencies located within the geographic area that have the authority to provide firefighting, law enforcement, ambulance, ~~medical,~~ or other medical or ~~other~~ emergency services.

C. ~~Each~~ To receive funding, a 9-1-1 planning committee shall~~, upon formation,~~ submit a ~~Service Plan~~ service plan as required in R2-1-403 ~~to the Assistant Director~~.

R2-1-403. Submission of Service Plan

Each 9-1-1 planning committee shall submit a ~~Service Plan~~ service plan to the Assistant Director. The following information shall be included:

~~1. The mailing address of the planning committee chairperson, the names of the members of the 9-1-1 planning committee, the date the Service Plan is submitted to the Assistant Director, the scheduled date that the 9-1-1 telephone service will begin, and the signature of the chairperson.~~
~~2. A map showing the geographic boundaries of the telephone exchanges included in the proposed system area, the final PSAP location(s), and any other pertinent jurisdictional boundaries.~~
~~3. The name and mailing address of the Public or Private Safety Agency operating each PSAP and the name and telephone number of the PSAP manager.~~
~~4. A description of the procedures and agreements to be followed when responding to 9-1-1 calls that are routed to a PSAP other than the one serving the area from which the call originates.~~
~~5. A description of the 9-1-1 system routing and switching configuration.~~
~~6. A description of the Network Exchange Services, the central office equipment to be used, and any Network Access Mileage Computations.~~
~~7. An itemized list of estimated installation and ongoing costs as set forth in R2-1-409 for proposed telephone service and equipment. These estimates shall be obtained by the telephone companies and shall be signed by an authorized telephone company employee.~~
~~8. A copy of the equipment specifications used for bidding the system terminal equipment. A minimum of two bids is required.~~
~~9. A copy of the low bid response with itemized equipment costs and associated installation charges and a list of the vendors.~~
~~10. A certification from the 9-1-1 planning committee that the Service Plan meets the requirements of the Public or Private Safety Agencies whose services will be available in response to a 9-1-1 call.~~
~~11. A list of all Public and Private Safety Agencies whose services will be available in response to 9-1-1 calls with the following information for each Public or Private Safety Agency:~~
~~a. agency name;~~
~~b. agency mailing address;~~
~~c. name and telephone number of the agency head;~~
~~d. a brief description of the services to be provided;~~
~~e. a description of current and proposed dispatching procedures.~~

~~12. A description of an alternate method of providing service in the event of the failure of all or a portion of the 9-1-1 Service or the failure of the PSAP primary electrical power.~~
~~13. In order to obtain funding for the ALI feature, a certification from the 9-1-1 planning committee is necessary, stating that at least 90% of the 9-1-1 service area is addressed with street numbers.~~
1. The name and mailing address of the planning committee chairperson;
2. The names of all members of the 9-1-1 planning committee;
3. The date the service plan is submitted to the Assistant Director;
4. The date the 9-1-1 service is scheduled to begin;
5. The signature of the chairperson;
6. A map showing the geographic boundaries of the telephone exchange areas included in the proposed 9-1-1 service system, each PSAP location, and any other jurisdictional boundaries;
7. The name and mailing address of the public or private safety agency operating each PSAP;
8. The name and telephone number of each PSAP manager;
9. A description of the procedures and agreements to be followed when responding to 9-1-1 calls that are routed to a PSAP other than the 1 serving the area from which the call originates;
10. A description of the 9-1-1 system routing and switching configurations;
11. A description of the network exchange services, the central office equipment to be used, and any network access mileage computations;
12. An itemized list of both estimated installation cost and ongoing costs as discussed in R2-1-409 for proposed telephone service and equipment. These estimates shall be obtained by the 9-1-1 planning committee from the telephone company serving the telephone exchange area and signed by an authorized employee of the telephone company or equipment vendor. Equipment that is on term contract from the State of Arizona Purchasing Office is exempt from bidding requirements;
13. A copy of the equipment specifications used for bidding the system customer premise equipment. A minimum of 2 bids is required;
14. A copy of the low-bid response with itemized equipment costs and associated installation charges and a list of vendors;
15. A certification from the 9-1-1 planning committee that the service plan meets the requirements of the public or private safety agencies whose services will be available in response to a 9-1-1 call;
16. A list of all public and private safety agencies whose services will be available in response to 9-1-1 calls with the following information about each:
    a. Agency name,
    b. Agency mailing address,
    c. Name and telephone number of the agency head,
    d. A brief description of the services to be provided, and
    e. A description of proposed procedures for dispatching emergency service providers;
17. A description of an alternate method of providing service if there is a failure of all or a portion of the 9-1-1 service system or a failure of the PSAP primary electrical power;
18. A certification from the 9-1-1 planning committee for the ALI feature, that at least 90% of the 9-1-1 service area is addressed with street numbers. Before implementation of the ALI feature, certification of a less than 10% error rate in the data base shall be obtained from the telephone company responsible for the data base; and
19. A plan for a program of public information regarding 9-1-1 service, which the 9-1-1 planning committee chairperson or designee will implement at least 30 days before 9-1-1 service begins.

R2-1-404. Certificate of Service Plan Approval

A. The Assistant Director shall approve or disapprove a ~~Service Plan~~ service plan within 60 days of its submission.

B. If approved, the Assistant Director shall notify the ~~designated~~ 9-1-1 planning committee chairperson in writing of the ~~acceptance~~ approval of the ~~Service Plan~~ service plan and shall include an itemization of ~~these~~ the costs that are eligible for payment from the ~~Fund~~ fund. This approval shall be in the form of a "Certificate of 9-1-1 Service Plan Approval".

C. If ~~the Service Plan~~ a service plan or any part of a service plan is disapproved, the Assistant Director shall notify the ~~designated~~ 9-1-1 planning committee chairperson in writing within 60 days ~~setting forth~~ of the reasons for the disapproval and the opportunity to submit a revised service plan.

D. By the 15th of December of each year, a 9-1-1 planning committee with an approved service plan shall submit a budget of projected 9-1-1 costs ~~shall be submitted~~ to the Assistant Director for the next fiscal year.

R2-1-405. Resubmitting of a Service Plan

If a ~~final Service Plan~~ service plan or any part of a service plan is disapproved by the Assistant Director, a revised ~~Service Plan~~ service plan may be submitted by the 9-1-1 planning committee chairperson within ~~90~~ 45 days of receipt of the notice of disapproval. The Assistant Director shall approve or disapprove the revised ~~Service Plan~~ service plan within ~~90~~ 30 days following receipt ~~of the revised Service Plan in the manner set forth in R2-1-4014~~.

R2-1-406. Modification of an Approved Service Plan

A. The Assistant Director shall be notified in writing by the 9-1-1 planning committee chairperson at least 60 days in advance of any proposed modification to a 9-1-1 service system that would result in a material change to the ~~Service Plan~~ service plan as approved.

B. Within 30 days of receipt of any proposed ~~modifications~~ modification, the Assistant Director shall approve or disapprove the proposed modification. If the proposed ~~modifications are~~ modification is disapproved, the proposed ~~modifications~~ modification ~~shall be~~ is ineligible for payment from the ~~Fund~~ fund.

C. The PSAP manager shall review PSAP and network ~~modifications~~ services annually and submit any proposed ~~modifications~~ modification in annual budget request by December 15th of the year preceding the fiscal year in which the ~~modifications are~~ modification is proposed to be made.

R2-1-407. 9-1-1 Service System Design Standards

To obtain approval of ~~the Service Plan, the Service Plan must~~ a service plan, the 9-1-1 planning committee shall include the following in the service plan:

~~1. Network grade of service - The 9-1-1 system shall be designed and operated to maintain a grade of service so that no more than one call out of 100 incoming calls will receive a busy signal on the first dialing attempt during the busy hour of an average week during the busiest month of the year.~~

~~2. Emergency services included - The 9-1-1 system shall include the following services:~~

~~a. Law enforcement services including services of the sheriff departments and the Department of~~

~~b. Public Safety,~~

~~c. Firefighting services,~~

~~d. Ambulance or emergency medical services.~~

~~Each PSAP shall have a teletype for the deaf service.~~

~~3. Other services may be included in the 9-1-1 system at the discretion of the Public or Private Safety Agency operating the PSAP, but such services shall not be paid from the Fund.~~

~~4. Hold - PSAP answering equipment shall permit answering personnel to place the 9-1-1 call on hold.~~

~~5. Non-emergency number - Each PSAP and each participating Public or Private Safety Agency shall have at least one published telephone number to call for non-emergency services. One non-emergency number may be shared by two or more participating Public or Private Safety Agencies provided there is a cooperative agreement for call-answering responsibility.~~

~~6. Automatic alarms - Automatic alarm systems and other related devices shall not be installed in such a manner that an automatic alarm signal is connected to the 9-1-1 system.~~

1. A 9-1-1 service system shall be designed and operated to provide service that enables no more than 1 call out of 100 incoming calls to receive a busy signal on the first dialing attempt during the busy hour of an average week during the busy month;
2. Each telephone position with the capability of answering or handling 9-1-1 calls shall be equipped with the necessary interface to communicate with TDD/TTY devices for communications with hearing-impaired individuals in accordance with the Americans with Disabilities Act;
3. A 9-1-1 service system shall include the following services:
   a. Law enforcement services including services of the County Sheriff and the Department of Public Safety;
   b. Firefighting services; and
   c. Ambulance or emergency medical services;
4. Other services may be included in a 9-1-1 service system at the discretion of the public or private safety agency operating the PSAP, but the fund shall not pay for these other services;
5. PSAP answering equipment shall permit answering personnel to place a 9-1-1 call on hold;
6. Each PSAP and each participating public or private safety agency shall have at least 1 published telephone number to call for non-emergency services. One non-emergency number may be shared by 2 or more participating public or private safety agencies if there is a cooperative agreement for call-answering responsibility; and
7. An automatic alarm system or other related device shall not be connected in a manner that activates a call to a 9-1-1 service system.

R2-1-408. 9-1-1 Operational Requirements

To obtain approval from the Assistant Director for payment from the ~~Fund~~ fund for costs eligible for payment under R2-1-409, the PSAP shall:

~~1. Monitor the service - Each PSAP manager shall monitor the 9-1-1 system level of service to ensure that the standards set forth in R2-1-407(A)(1) are met. Each PSAP manager shall obtain from the servicing telephone company a report regarding the 9-1-1 level of service. If the report provided by the telephone company indicates that the required service levels are not being met, the PSAP manager shall:~~

~~a. Request the servicing telephone company to prepare plans, specifications and cost estimates to raise the level of service to that required in R2-1-207(A)(1).~~

~~b. Notify the Assistant Director pursuant to R2-1-206 if, based on information provided by the telephone company, modifications to the system are necessary.~~

~~2. Notification - Any Public or Private Safety Agency shall be immediately notified of any emergency within its jurisdiction.~~

~~3. Service - Each PSAP shall provide continuous service to all callers within its service area 24 hours each day, seven days a week.~~

~~4. Referral of calls - All calls entering the 9-1-1 system that do not require the dispatching of public or private safety units shall be referred to a non-9-1-1 telephone number.~~

~~5. Numbers - The PSAP manager shall designate a telephone number other than 9-1-1 as a backup number should the 9-1-1 system fail. The designated number shall be published in the public telephone directory as the alternate number to call to receive emergency assistance.~~

~~6. Recording calls - The PSAP manager or his or her designee shall develop and maintain a system for recording 9-1-1 calls received by the PSAP. The records shall be retained for a period of at least 31 days from the date of the call and shall include the following information:~~

~~a. Date and time the call was received.~~

~~b. Nature of the problem.~~

~~c. Action taken by the dispatcher.~~

~~7. Public information - The PSAP manager or his or her designee shall prepare and implement a program of public information regarding 9-1-1 service prior to system implementation.~~

1. Monitor the 9-1-1 service system level of service to ensure that the standards in R2-1-407 are met. Once each fiscal year the PSAP manager shall obtain a report regarding the 9-1-1 level of service from the telephone company servicing the telephone exchange area. If the report provided by the telephone company indicates that the required service level is not being met, the PSAP manager shall:
   a. Request the telephone company to prepare plans, specifications, and cost estimates to raise the level of service to that required in R2-1-407.
   b. Notify the Assistant Director under R2-1-406 if, based on information provided by the telephone company, modifications to the system are necessary.
2. Provide service to all callers within its service area 24 hours each day, 7 days a week. To qualify as a primary or secondary PSAP, the PSAP must receive a minimum of 300 9-1-1 emergency calls per month.
3. Refer all calls entering the 9-1-1 service system that do not require a public or private safety response unit be dispatched to a non-9-1-1 telephone number.
4. Designate a telephone number other than 9-1-1 as a backup number in case the 9-1-1 service system fails. The designated alternate telephone number shall be published in the public telephone directory, by the local public safety agency.
5. Develop and maintain a system for recording 9-1-1 calls received by the PSAP. The records shall be retained for at least 31 days from the date of the call and shall include the following information:
   a. Date and time the call is received,
   b. Nature of the problem, and
   c. Action taken by the dispatcher.
6. To qualify as a remote print site, the PSAP must receive a minimum of 100 emergency calls per month.

R2-1-409. Funding Eligibility

A. The following costs of providing 9-1-1 ~~Service~~ service shall be reimbursed by the ADOA 9-1-1 Office from the ~~Fund~~ fund, subject to available ~~funds~~ monies and the following requirements, to ~~those~~ a 9-1-1 planning ~~committees~~ committee that ~~have been issued~~ has a Certificate of 9-1-1 Service Plan Approval ~~by the Assistant Director~~:

1. Costs of the ~~Network Exchange Services~~ network exchange services necessary to provide the minimum grade of service ~~defined herein~~.
2. Costs for ~~station terminal equipment required to receive and process or relay 9-1-1 calls and messages,~~ necessary and appropriate equipment required by the PSAP to receive and process 9-1-1 calls and messages. This may include computer telephone integrated systems or other automated call management and distribution systems.
3. Ongoing maintenance costs following a warranty period, if any, for the ~~station terminal~~ customer premise equipment used in receiving and processing 9-1-1 calls and messages.
4. Necessary and appropriate consulting services or administrative costs, not to exceed 3% of the amounts deposited annually in the revolving fund.

B. The Assistant Director shall consider special projects that further statewide 9-1-1 availability, including addressing or database projects, public education, and training programs on a case-by-case basis. Special project funding is based on community needs and the availability of funds.

R2-1-410. Method of Reimbursement

A. Network exchange services

1. The 9-1-1 planning committee chairperson shall submit the operating telephone company's billing statement for the ~~Network Exchange Services~~ network exchange services to the Assistant Director.
2. ~~Invoices shall be reviewed~~ The Assistant Director shall review invoices for compliance with the original Certificate of 9-1-1 Service Plan ~~approval~~ Approval, and approve and make payment ~~payment shall be made~~ directly to the ~~servicing~~ operating telephone company.

B. Station terminal equipment
1. Payment of the costs for the 9-1-1 ~~station terminal~~ customer premise equipment shall be made ~~only~~ after submission by the designated public safety office, of a copy of the vendor's contract, with an itemized listing of equipment and associated costs and installation charges, to the Assistant Director for review and approval.
2. The Assistant Director shall make payment directly to the vendor upon verification that the invoice is in compliance with the original ~~certificate of approval~~ Certificate of 9-1-1 Service Plan Approval.

C. Maintenance costs
1. Payment of costs for ongoing maintenance shall be made by the ADOA 9-1-1 Office of ~~the 9-1-1 station terminal~~ customer premise equipment following ~~the~~ expiration of ~~the~~ a warranty period for the equipment. Payment shall be made by the designated public safety office submitting a copy of the maintenance ~~fee~~ contract with an itemized ~~listing~~ list of hourly labor rates and equipment costs.
2. The Assistant Director shall make payment directly to the vendor upon verification that the charges are for the 9-1-1 equipment and services originally contracted for and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.

D. ~~Payment of~~ The Assistant Director shall pay the costs for consulting ~~shall be made by the Assistant Director~~ directly to the consultant, ~~but only~~ after the Assistant Director verifies that:
1. The need and proposed cost of consulting services ~~was~~ is identified in either the original 9-1-1 ~~Service Plan pursuant to~~ service plan under R2-1-403 or in the annual budget ~~pursuant to~~ under R2-1-404(D); and
2. A copy of the consultant's ~~fees~~ contract ~~has been~~ is submitted to the Assistant Director.

R2-1-411. Allocation of Funds

The following change access and wireless service line verification shall be conducted by the ADOA 9-1-1 Office each year:

~~**A.**~~1. The Assistant Director shall ~~obtain~~ request from the operating telephone companies providing 9-1-1 service, by ~~the 15th of~~ February 15th of each year, ~~from the operating telephone companies~~ the number and type of exchange ~~Access Services~~ access lines in each telephone exchange area in this state and the amount of 9-1-1 excise tax generated ~~by~~ in each telephone exchange area in each county. ~~of this state.~~

2. The Assistant Director shall obtain request, by February 15th of each year, from each wireless service provider the number of activated wireless service lines within the state and the amount of 9-1-1 tax generated.

~~**B.**~~3. Each 9-1-1 planning committee ~~which has received~~ that has a Certificate of 9-1-1 Service Plan Approval ~~from the Assistant Director~~ shall be apportioned a percentage of ~~funds~~ monies on deposit in the ~~Fund~~ fund. ~~in an amount equal to the cost of the services described in R2-1-409.~~ Payment shall be made directly to the ~~appropriate~~ vendors identified in the 9-1-1 service plan.

~~**C.**~~4. ~~In the event that~~ If the combined statewide 9-1-1 service costs exceed the available monies in the fund, monies shall be allocated by the Assistant Director on a percentage basis determined by the ratio of revenue to expenses for the State as a whole.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

PREAMBLE

1.	**Sections Affected**	**Rulemaking Action**
	R4-20-101	Amend
	R4-20-104	Amend
	R4-20-112	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. § 32-1673

Implementing statutes: A.R.S. §§ 32-1682(D), 32-1685

3. The effective date of the rules:

May 10, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 3616, October 23, 1998

Notice of Rulemaking Docket Opening: 5 A.A.R. 4126, October 29, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 4044, October 29, 1999

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

Name:	Careen Heinze, Executive Director
Address:	State Board of Dispensing Opticians 1400 W. Washington, Suite 230 Phoenix, Arizona 85007
Telephone:	(602) 542-3095
Fax:	(602) 542-3093
E-mail:	asbdo@primenet.com

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

R4-20-104(D) and R4-20-104(E) currently allow a person to substitute a passing score on an opticianry examination or contact lens examination for portions of the written examination if the score was obtained within 6 years before an application date. The Board is repealing the six-year period to allow an individual who has passed the examination at any time to substitute the examination for portions of the written examination. The Board is also amending definitions to provide consistency with the rules. Additionally, the Board has determined that it must increase its fees in order to continue its licensing and oversight functions.

7. A reference to any study the agency relied upon 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 rules are necessary to promote a statewide interest if the rule will diminish a previous grant of a political subdivision of the state:

Not applicable

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

A. Identification of proposed rulemaking

R4-20-104(D) and R4-20-104(E) currently allow a person to substitute a passing score on an opticianry examination or contact lens examination for portions of the written examination if the score was obtained within 6 years before an application date. The Board is repealing the six-year period to allow an individual who has passed the examination at any time to substitute the examination for portions of the written examination. The Board is also amending definitions to provide consistency with the rules. Additionally, the Board has determined that it must increase its fees in order to continue its licensing and oversight functions. The Board is proposing the following fee increases: $25.00 for a dispensing optician license application, $25.00 to $50.00 for issuance of a dispensing optician license, $15.00 to $30.00 for renewal of a dispensing optician license, $75.00 for an optician establishment license application, $75.00 for issuance of an optician establishment license, and $15.00 to $40.00 for renewal of an optical establishment license.

B. Identification of those affected by the rulemaking

The costs associated with implementing the rules will be borne by the Board, dispensing opticians, applicants, consumers of dispensing optician services, and owners of optical establishments. The primary beneficiaries of the rules are the persons to whom the services are being provided.

C. Summary of the economic, small business, and consumer impact statement.

Annual cost/revenues are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

The costs to the Board are moderate for promulgation of the rules. The Board's administrative and staff costs to implement the rules are minimal. The Secretary of State's cost for publishing the rules is minimal. The cost for review of the rules by the Governor's Regulatory Review Council is minimal.

Increased revenues accruing to the Board as a result of the increase in fees range from moderate to substantial.

There will be a minimal increase in cost for an individual applying for a license, license issuance, or renewal of license. The increase is necessary to allow the Board to continue its licensing and oversight functions.

A licensee may chose to pass the cost onto consumers. The Board's continuing oversight is necessary to protect the consumer from improper or inadequate delivery of dispensing optician services.

Because the Board is a 90/10 agency, 90% of the Board's revenues from the collection of license application and renewal fees, examination fees, late renewal fees and other fees are deposited in the Board fund. Ten percent is deposited in the general fund. The projected amount in the general fund is between $1802.00 to $3427.00.

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

The Board made the following changes to the rules:

R4-20-104(A) - The Board deleted "that are spaced no" and inserted "The Board shall not space the examination" before "more".

R4-20-104(B) - The Board changed the 1st sentence to: "A written dispensing optician's examination shall cover the following subjects:"

R4-20-104 - The Board changed "opticianry" to "dispensing optician".

R4-20-104(D) - The Board deleted "written" between "the" and "examination".

R4-20-104(D)(1) and R4-20-104(D)(2) - The Board changed "test" to "examination".

R4-20-104(E) - The Board changed "test" to "examination".

R4-20-112(B) - The Board changed "optician" to "optical".

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

There were no written or oral comments.

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

None

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

None

14. Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:

The rule was not adopted as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

ARTICLE 1. IN GENERAL

Section
R4-20-101. Definitions
R4-20-104. Dispensing Optician Examination
R4-20-112. Fees

ARTICLE 1. IN GENERAL

R4-20-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "ABO" means the American Board of Opticianry
~~1~~2. No change
~~2~~3. No change
~~3~~4. No change
~~4~~5. No change
~~5~~6. No change
~~6~~7. No change
8. "NCLE" means the National Contact Lens Examiners.
~~7~~9. No change
~~8~~10. No change
~~9~~11. No change
~~10~~12. No change
~~11~~13. No change
~~12~~14. No change

R4-20-104. Dispensing Optician Examinations

A. ~~Examinations shall be given at least twice each year and not be more than eight months apart.~~ At least twice each year, the Board shall administer a dispensing optician examination. The Board shall not space the examinations more than 8 months apart.

B. ~~Subjects to be covered by the written examination are as follows:~~ A written dispensing optician examination shall cover the following subjects:

1. Ocular anatomy~~;~~,
2. Geometric optics and laboratory~~;~~,
3. Ophthalmic dispensing~~;~~, and
4. Contact lenses.

C. No change

D. ~~Any person~~ An individual who obtained a passing score on ~~an opticianry~~ a dispensing optician examination administered by the ~~American Board of Opticianry~~ ABO ~~within a six year period prior to application date,~~ and holds a current certificate issued by the ABO, may substitute ~~that~~ the dispensing optician examination for those portions of the ~~written~~ examination required ~~by paragraphs~~ in subsections (B)(1), (B)(2), and (B)(3), by submitting to the Board a current ABO certificate that states ABO requirements have been met and by:

1. ~~submitting~~ Submitting to the Board the original notice of ~~test~~ examination results or the original certificate ~~which~~ that states ~~that~~ the individual passed the examination; or
2. ~~by having~~ Having the ~~American Board of Opticianry~~ ABO submit directly to the Board a notice of ~~test~~ examination results or certificate of passing the examination.

E. ~~Any person~~ An individual who obtained a passing score on a contact lens examination administered by the ~~National Contact Lens Examiners~~ NCLE ~~within a six year period prior to application date,~~ and holds a current certificate issued by the NCLE may substitute that examination for those portions of the ~~written~~ examination required ~~by paragraph~~ in subsection (B)(4), by submitting to the Board a current NCLE certificate that states NCLE requirements have been met and by:

1. ~~submitting~~ Submitting the original notice of ~~test~~ examination results or the original certificate ~~which~~ that states ~~that~~ the individual passed the examination; or
2. ~~by having~~ Having the ~~National Contact Lens Examiners~~ NCLE submit directly to the Board a notice of ~~test~~ examination results or certificate of passing the examination.

R4-20-112. Fees

~~**A.** The following fees are applicable to dispensing optician licensure:~~

~~1. Original dispensing optician's application filing fee is $50.00;~~
~~2. An applicant for a dispensing optician's license who passes the examination shall pay a fee of $25.00 for a license for the remaining months of that calendar year.~~
~~3. An applicant for comity licensure issued under the provisions of A.R.S. § 32-1683(5)(a) whose application is received by the Board or postmarked:~~
~~a. Prior to July 1 shall pay a fee of $50.00 for the remainder of the calendar year;~~
~~b. On or after July 1 shall pay a fee of $25.00 for the remainder of the calendar year.~~
~~4. An applicant who has been notified of having passed the examination or of having been approved for comity licensure shall pay the specified license fee for original licensure within ten months following the date of the Board's notice or the applicant shall retake and pass the practical examination to become licensed.~~
~~5. The annual fee for renewal or reinstatement of a dispensing optician's license is:~~
~~a. $70.00 for renewal applications received by the Board or postmarked by December 31 of the year preceding the license year;~~
~~b. $85.00 for renewal applications postmarked January 1 through January 31 of the license year;~~
~~c. $100.00 for renewal application received by the Board or postmarked on or after February 1 of the license year;~~
~~d. $100.00 for a reinstated license.~~

~~**B.** The following fees are applicable to optical establishment licensure.~~

~~1. Optical establishment license application fees is $25.00.~~
~~2. If the application is approved, the optical establishment license fee is $25.00.~~
~~3. The fee for annual renewal of an optical establishment license is:~~
~~a. $60.00 if the renewal application is received by the Board or postmarked by June 30 of the preceding license year;~~
~~b. $85.00 if the renewal application is received by the Board or postmarked July 1 through July 31 of the license year;~~
~~c. $100.00 if the renewal application is received by the Board or postmarked on or after August 1 of the license year.~~

A. Dispensing optician fees are as follows:

1. License application fee: $75
2. License issuance fee: $75

3. Renewal of dispensing optician license: $100

B. Optical establishment license fees are as follows:

1. License application fee: $100
2. License issuance fee: $100
3. Renewal of optical establishment license: $100

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

1. Sections Affected	**Rulemaking Action**
Article 1	Repeal
R13-5-01	Repeal
R13-5-02	Repeal
R13-5-03	Repeal
R13-5-04	Repeal
Article 2	Repeal
R13-5-10	Repeal
R13-5-11	Repeal
Article 3	Repeal
R13-5-15	Repeal
Article 4	Repeal
R13-5-20	Repeal
Article 5	Repeal
R13-5-25	Repeal
R13-5-26	Repeal
R13-5-27	Repeal
R13-5-28	Repeal
Article 6	Repeal
R13-5-30	Repeal
R13-5-31	Repeal
R13-5-32	Repeal
R13-5-33	Repeal
R13-5-34	Repeal
R13-5-35	Repeal
R13-5-36	Repeal
Article 7	Repeal
R13-5-40	Repeal
R13-5-41	Repeal
R13-5-42	Repeal
R13-5-43	Repeal
Article 8	Repeal
R13-5-45	Repeal
R13-5-46	Repeal
R13-5-47	Repeal
R13-5-48	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. § 41-1830.12(A)

Implementing statutes: A.R.S. §§ 41-1830.11, 41-1830.12, 41-1830.13, 41-1830.14, and 41-1830.15.

3. The effective date of the rules:

May 10, 2000

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

Notice of Rulemaking Docket Opening: 3 A.A.R. 2932, October 17, 1997

Notice of Proposed Rulemaking: 5 A.A.R. 2486, August 6, 1999

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

Name: Capt. C. H. Johnston, Business Manager

Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005-6638

Telephone: (602) 223-2286

Fax: (602) 223-2096

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

The Law Enforcement Merit System Council (Council) is proposing the repeal of its present rules and concurrently replacing the old rules with new rules. The present rules were adopted in 1968. They are outdated and difficult to administer. As agreed during the 5-year review of these rules, the Council proposes to adopt new rules conforming to contemporary rulemaking policies, format, and style.

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 rules are necessary to promote a statewide interest if the rules 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:

Repeal of the Council's outdated administrative rules will not result in any economic, small business, or consumer impact. In accordance with A.R.S. § 41-1055(D)(3) this proposed rulemaking is exempt from the requirement to file an economic, small business and consumer impact statement.

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

There are no changes between the proposed rules, including supplemental notices, and the final rule.

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

There were no written comments received within the time established, nor was there a request for a public meeting. Therefore there are not comments to report.

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

Not applicable

13 Incorporations by reference and their location in the rules:

Not applicable

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

No

15 The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. ~~GENERAL PROVISIONS~~ REPEALED

Section
R13-5-01. ~~Definitions~~ Repealed
R13-5-02. ~~General provisions~~ Repealed
R13-5-03. ~~Scope~~ Repealed
R13-5-04. ~~Merit System Council~~ Repealed

ARTICLE 2. ~~INVESTIGATION AND HEARINGS~~ REPEALED

Section
R13-5-10. ~~Investigation and hearings~~ Repealed
R13-5-11. ~~General powers and duties~~ Repealed

ARTICLE 3. ~~CLASSIFICATION~~ REPEALED

Section
R13-5-15. ~~Classification~~ Repealed

ARTICLE 4. ~~COMPENSATION~~ REPEALED

Section
R13-5-20. ~~Compensation~~ Repealed

ARTICLE 5. ~~GENERAL ENTRANCE AND PROMOTION PROVISIONS~~ REPEALED

Section
R13-5-25. ~~General entrance and promotion provisions~~ Repealed
R13-5-26. ~~Examinations~~ Repealed
R13-5-27. ~~Promotion~~ Repealed
R13-5-28. ~~Veteran's preference~~ Repealed

ARTICLE 6. ~~GENERAL APPOINTMENT PROVISIONS~~ REPEALED

Section
R13-5-30. ~~General appointment provisions~~ Repealed
R13-5-31. ~~Limited term or provisional~~ Repealed
R13-5-32. ~~Intermittent~~ Repealed
R13-5-33. ~~Emergency~~ Repealed
R13-5-34. ~~Re-employment~~ Repealed
R13-5-35. ~~Probationary period~~ Repealed
R13-5-36. ~~Duration appointments~~ Repealed

ARTICLE 7. ~~GENERAL EMPLOYEE CONDUCT PROVISIONS~~ REPEALED

Section
R13-5-40. ~~General employee conduct provisions~~ Repealed
R13-5-41. ~~Report of employee performance~~ Repealed
R13-5-42. ~~Annual leave~~ Repealed
R13-5-43. ~~Transfers~~ Repealed

ARTICLE 8. ~~GENERAL PERSONNEL PROVISIONS~~ REPEALED

Section
R13-5-45. ~~General personnel provisions~~ Repealed
R13-5-46. ~~Layoff and demotion~~ Repealed
R13-5-47. ~~Disciplinary proceedings~~ Repealed
R13-5-48. ~~Retirement~~ Repealed

ARTICLE 1. ~~GENERAL PROVISIONS~~ REPEALED

R13-5-01. ~~Definitions~~ Repealed

~~Unless the context requires otherwise, the definitions hereinafter set forth govern the construction of these rules:~~

~~1. "Agency". Includes "department", "board", "office", "authority", "commission", and every other governmental unit.~~
~~2. "Agency head". The Director of the Department of Public Safety.~~
~~3. "Appointment". The offer to and the acceptance by a person for and of the Department of Public Safety in accordance with these rules.~~
~~4. "Armed Forces". The United States Air Force, Army, Navy, Marine Corps, Army and Navy Nurse Corps, and the United States Coast Guard.~~
~~5. "A.R.S.". Arizona Revised Statutes.~~
~~6. "Business manager". The business manager of the Council provided in these rules.~~
~~7. "Chairman". The chairman of the Council.~~
~~8. "Class" or "rank". A group of positions sufficiently similar with respect to duties and responsibilities that the same title may be reasonably and fairly used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.~~
~~9. "Council". The Arizona Law Enforcement Merit System Council created by Title 28, Chapter 2, Article 2, Section 28-235, Arizona Revised Statutes.~~
~~10. "C.S.A.". The Constitution of the state of Arizona.~~
~~11. "Department". The Department of Public Safety.~~

12. ~~"Disabled veteran". Any veteran as defined herein who is currently declared by the United States Veterans Administration to be ten percent or more disabled as a result of service in the armed forces. Proof of such disability shall be deemed conclusive if it is on record in the United States Veterans Administration.~~
13. ~~"Duration employment". An employment during time of war or during an emergency in connection with the National Defense, which employment is subject to termination and other conditions as prescribed by these rules.~~
14. ~~"Duration examination". An open competitive examination or promotional examination held for the express purpose of providing a list of persons available for duration employment. Employment lists resulting from duration examinations can be used only in making appointments for duration employment.~~
15. ~~"Elector". Any person meeting the requirements set forth in A.R.S § 16-101, 16-104, and C.S.A. Article 7.~~
16. ~~"Eligible list". A list of persons who have been examined in open competitive examination and are eligible for certification for a specific class.~~
17. ~~"Emergency appointment". An appointment made during an actual emergency to prevent the stoppage of public business.~~
18. ~~"Employee". Includes every commissioned employee and noncommissioned employee subject to the Arizona Law Enforcement Merit System and these rules and regulations and legally holding a position in accordance with Council rules.~~
19. ~~"Employee, cadet". A probationary employee in training for the position of a commissioned officer.~~
20. ~~"Employee, commissioned". An employee who has been invested with the authority of a public officer and a peace officer.~~
21. ~~"Employee, emergency". An employee holding a position under emergency appointment.~~
22. ~~"Employee, limited term". An employee whose appointment as a result of re-employment or certification from an employment list shall not exceed the probationary period for the class to which he is appointed.~~
23. ~~"Employee, noncommissioned". One who has not been commissioned.~~
24. ~~"Employee, permanent". An employee who has permanent status.~~
25. ~~"Employee, provisional". An employee holding a position under provisional appointment.~~
26. ~~"Gender". The masculine gender includes the feminine and neuter.~~
27. ~~"General re-employment list". A list established for the re-employment of persons in a particular class in which the persons were previously employed.~~
28. ~~"Improper political activity". Except in the exercise of his right to vote or petition or to privately express his opinion, improper political activity by an employee shall consist of, but is not limited to, the following:~~
    a. ~~Directly or indirectly giving, soliciting, or receiving any assessment, subscription, contribution, or political service, whether voluntary or involuntary, for a person who holds or is a nominee for or seeking the nomination for or an appointment to any public office.~~
    b. ~~Directly or indirectly soliciting or receiving the use of or the promise to use any official authority, whether then possessed or merely anticipated, to secure, retain or affect any position provided for by the Council.~~
    c. ~~Receipt of politically influential or authoritative aid by any person in securing any position, nomination, confirmation, promotion, increase in salary, or change of position or working condition.~~
    d. ~~Membership in any national, state or local committee of a political party or of a partisan political club.~~
    e. ~~Candidacy for nomination or election to any paid public office.~~
    f. ~~Participation in the management or affairs of any political party or in any political campaign.~~
29. ~~"Limited term list". An eligible list established for use exclusively in making limited term appointments.~~
30. ~~"May". Permissive.~~
31. ~~"Military leave". The leave of absence status of a permanent employee or probationer who leaves a position to serve in the armed forces of the United States or of this state in time of national emergency or state military emergency or for military training and who has the right under statutes (A.R.S § 38-297, 38-298, or 38-610) relating to re-employment of persons after military service to return to his position.~~
32. ~~"Member". Any member of the Merit System Council.~~
33. ~~"National emergency". Any period in which the United States is at war.~~
34. ~~"Number". The singular number includes the plural; and the plural includes the singular.~~
35. ~~"Oath". Includes affirmation or declaration.~~
36. ~~"Office". Any position created by the legislative branch of the government, either directly or by necessary implication.~~
37. ~~"Office" or "public officer". The incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.~~
38. ~~"Public officer" or "peace officer". A commissioned officer of the Department of Public Safety.~~
39. ~~"Patrol". The Arizona Highway Patrol Division of the Department of Public Safety.~~
40. ~~"Permanent status". The status of an employee who is lawfully retained in his position after the completion of the probationary period provided by these rules.~~
41. ~~"Person". Includes any person, firm, association, organization, partnership, business trust, corporation or company.~~

~~42. "Personal qualifications". Includes all such personality traits and personal, moral and physical characteristics as are necessarily comprehended by the minimum qualifications established for the class.~~

~~43. "Position". An office or employment in the Department (whether occupied or vacant) involving the performance of duties or services by an individual.~~

~~44. "Probationary status". The status of an employee who has been certified and appointed from an employment list, or who has been re-employed after resignation, or who has been transferred or demoted but who has not completed the probationary period provided by these rules.~~

~~45. "Probationer". An employee who has probationary status.~~

~~46. "Recognized military service". Full-time service by a person in the armed forces during the national emergency or a state military emergency as defined under Arizona Law Enforcement Merit System Council rules.~~

~~47. "Rehabilitation". Restoration of veterans declared to be ten percent or more disabled, either physically or mentally.~~

~~48. "Resident". Any person meeting the requirements set forth in A.R.S § 16-925.~~

~~49. "Rule". Any rule, or amendment thereto, of practice and procedure supplementary to but not inconsistent with the provisions of the Arizona Law Enforcement Merit System.~~

~~50. "Salary" or "wage". The amount of money or credit received as compensation for service rendered exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business.~~

~~51. "Secretary". The secretary of the Merit System Council.~~

~~52. "Section promotional list". A list of persons eligible for certification for a specific class resulting from a promotional examination for a particular section, district or functional group.~~

~~53. "Service-wide promotional list". A list of persons eligible for certification for a specific class resulting from a promotional examination as provided for under Arizona Law Enforcement Merit System Council rules.~~

~~54. "Shall". Mandatory.~~

~~55. "State". The state of Arizona.~~

~~56. "State military emergency". An emergency declared and terminable by the governor by proclamation during, but not limited to, such times as the United States is conscripting personnel for service in the armed forces.~~

~~57. "Tense". The present tense includes the past and future tenses; and the future includes the present.~~

~~58. "Veteran". Any person who has served full-time in the armed forces or the Arizona National Guard and who meets the requirements of the United States Veterans Administration and who has been discharged or released under conditions other than dishonorable.~~

R13-5-02. ~~General provisions~~ Repealed

~~**A.** Delegation of responsibility: Whenever a power is granted or a duty imposed upon the agency head by these rules, the power may be exercised or the duty performed by a deputy or assistant of the agency head or by a person authorized by him, unless it is expressly otherwise provided.~~

~~**B.** Reports: The agency head shall report promptly to the Council such information as the Council may require in connection with each appointment, separation from service, or other change in position or salary, or other matters affecting the status of positions or the performance of duties of employees in his agency, and all such reports shall be prepared in the manner and form prescribed.~~

~~**C.** Information: Information given to the Council by any person shall not be open to inspection except under conditions prescribed by Council rule. Personnel files maintained by the Council shall be open to the governor of this state, members of the Council, the agency head, the Business Manager, and other persons designated by the Council.~~

~~**D.** Service of notice: Whenever any notice, paper, or document, except a subpoena, is directed to be given to or served upon any person or agency, such notice, paper, or document may be personally served or it may be served by mail to the last known residence or business address of the addressee. Unless otherwise specifically provided by statute, the giving of notice of matters to be heard or considered by the Council shall be governed by Council rule.~~

~~**E.** Service by mail: Service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension or discharge, and the notice of a probationer's rejection is made by the enclosure of such charges or notice in a sealed envelope, addressed to the last known address of the person to be served, registered with return receipt requested, and the depositing of it in the United States mail with postage fully prepaid. Service is complete on mailing. Service by mail of any other notice, paper, or document is made in the manner provided by statute. Proof of service, either personal or by mail, shall be made by affidavit.~~

~~**F.** Reference to law and rules: Whenever reference is made to any portion of these rules or of any law of this state, the reference applies to all amendments and additions now or hereafter made.~~

~~**G.** Validity and separation: If any provision of these rules or the application thereof to any person or circumstances is held invalid, the remainder of the rules or the application of such provision to other persons or circumstances shall not be affected thereby.~~

R13-5-03. ~~Scope~~ Repealed

~~Positions covered: The positions covered shall apply as provided for in A.R.S § 28-235 and as outlined under the Merit System Council rules and regulations as provided for in A.R.S § 28-235.~~

R13-5-04. ~~Merit System Council~~ Repealed

~~**A.** Employees: The Council shall select and the agency head shall appoint and provide for the compensation of any personnel as is necessary to carry out and perform the powers, duties, purposes, functions and jurisdictions of the Council.~~

~~**B.** Business Manager: The Council shall select and the Director of the Department of Public Safety shall appoint a Business Manager who shall be an officer of the Department of Public Safety but not a member of the Council.~~

~~**C.** Duties of Business Manager: The Business Manager shall perform and discharge all of the powers, duties, purposes, and functions hereunder or which by law may be vested in the Council except that the adoption of rules and regulations, the creation and adjustment of classifications and grades, compensation therefore, and investigation or hearing of appeals for dismissals, demotions, suspensions and other punitive action for or in the agency shall be and remain the duty of the Council. Any power, duty, purpose, function, or jurisdiction which the Council may lawfully delegate shall be conclusively presumed to have been delegated to the Business Manager unless it is shown that the Council by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The Business Manager may re-delegate to his subordinates unless by Council rule or express provision of law he is specifically required to act personally.~~

~~**D.** Facilities: The Business Manager may secure such suitable and convenient offices, examination rooms, and accommodations throughout the state as may be required for the public convenience, and he shall expend Council funds for them for carrying on the work of the Council.~~

~~**E.** Supplies: The Business Manager shall acquire supplies and equipment necessary for carrying on the work of the Council.~~

~~**F.** Membership in personnel associations: Members of the Council and the Business Manager may join associations of personnel agencies having as their purpose the interchanging or supplying of information relating to the technique of personnel administration.~~

~~**G.** Headquarters: The headquarters of the Council is in the city of Phoenix.~~

~~**H.** Election of officers: The Council shall select its Chairman and Secretary from among its membership at a regular meeting in the month of December of each even-numbered year. They shall hold office for a period of two years or until their successors are elected.~~

~~**I.** Meetings: Upon call of the Chairman, or in his absence the Secretary, the Council shall meet as often as the needs of the agencies may require and in such places as it may designate. Council meetings shall be open to the public, and any interested person shall be given reasonable opportunity to be heard.~~

~~**J.** Quorum: A majority of the members of the Council constitutes a quorum. The vote of two concurring members shall be required to make any action of the Council effective.~~

~~**K.** Minutes: The Council shall keep minutes of its own proceedings and record its official actions. Such minutes and records shall be open to public inspection, subject to reasonable regulations.~~

ARTICLE 2. ~~INVESTIGATION AND HEARINGS~~ REPEALED

R13-5-10. ~~Investigation and hearings~~ Repealed

~~**A.** Initiative: The Council may hold hearings and make investigations concerning all matters relating to the enforcement and effect of these rules. It may inspect any place of employment covered by these rules to ascertain whether the Council rules are obeyed.~~

~~**B.** Request: The Council may make investigations and hold hearings at the direction of the governor or the legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of these rules.~~

~~**C.** Effect of investigation or hearing: The Council may substitute its judgment for that of the agency head as to the justification of punitive action taken and determine whether the cause or causes for the punitive action were substantially supported by the evidence.~~

~~**D.** Notice of hearing: Whenever a hearing is to be held, the Council shall notify the interested person or persons, parties thereto, personally or by registered mail of the time and place of the hearing.~~

~~**E.** Failure to appear: If a person shall fail to appear at the time and place set for the hearing or investigation, the Council may as a consequence thereof make any findings or awards as it may deem proper from the facts submitted.~~

~~**F.** Conduct of hearings: The Council may sit as a whole at a hearing or it may designate one of its members to hold the hearing. A transcript of the hearing shall be reviewed by a majority of the Council prior to making a decision in those cases where one member has been designated to hear a case. The member designated to preside at such hearing may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this state.~~

~~**G.** Conduct of investigations: The Council may sit as a whole or it may designate one of its members or the business manager to conduct investigations. A written report of the results of an investigation conducted by a designated member or the Business Manager shall be reviewed by a majority of the Council prior to making a decision on the matter under investigation. The party conducting the investigation may require the production of books or papers and may cause the deposi-~~

~~tion of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this state.~~

~~**H.** Witness fees: Witnesses, other than employees, at a hearing or investigation are entitled to the same fees as are allowed witnesses in civil cases in courts of record.~~

~~**I.** Payment of fees: If a witness is subpoenaed by initiative of the Council or its representative, fees and mileage may be paid from the funds of the Council when the amount is certified by the Council or the person authorized to conduct the hearing or investigation and a duly executed claim is presented. If a witness is subpoenaed by the Council or its representative upon request of the accused or any person other than the agency head, witness fees and mileage shall be paid by that person and are not proper charges against Council funds. Employees appearing as witnesses shall be entitled to travel expenses as provided by law from the funds of the agency.~~

~~**J.** Immunity: A person who claims privilege against self-incrimination prior to testimony or the production of books or papers shall not be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence in any such hearing or investigation except for perjury committed in so testifying.~~

~~**K.** Depositions: The Council may authorize in writing any party to an action before the Council to cause the deposition of a witness under the following circumstances:~~

~~1. The witness does not reside within the state or is out of state.~~

~~2. The witness is too infirm to attend the action before the Council.~~

~~3. The deposition is to be taken for the purpose of discovery in preparing a case before the Council.~~

~~Depositions so taken are made at the expense of the requesting party. If the presence of the witness cannot be procured at the time of the action before the Council, the deposition may be used in evidence by either party or the Council.~~

~~**L.** Disobedience of subpoena: If a witness fails to appear at the time and place designated in the subpoena, or fails to answer questions relating to the matter about which the Council or presiding member is taking testimony, or fails to produce a document, the Council or presiding member may, by affidavit setting forth the facts, apply to the superior court of the county where the hearing is held, and the court shall thereupon proceed as though such failure had occurred in an action pending before it.~~

~~**M.** Proceedings: All hearings and investigations authorized by these rules shall be governed by this rule of practice and procedure. In the conduct of any such hearing or investigation any informality in any proceeding or in the manner of taking testimony shall not invalidate any order, decision, or rule made, approved, or confirmed by the Council. In the conduct of a hearing or investigation, the Council or the presiding member shall not be bound by technical rules of evidence.~~

~~**N.** Open hearing: The hearing or investigation shall be open to the public and to persons involved as principal parties or witnesses. During the examination of any witness or when the defendant is making a statement or testifying, the Council or the presiding member may upon request exclude all other witnesses. Witnesses so excluded may be kept separate and prevented from communicating with each other until all are examined. The Council may upon request exclude from the examination every person except attorneys in the case, the official court reporter, and members of the Council. The proceedings at the hearing or investigation shall be stenographically or mechanically recorded so that a correct, certified transcript by a court reporter may be made. The defendant shall be entitled to a copy of the transcript upon payment of the costs thereof.~~

~~**O.** Legal counsel: Before the hearing of any appeal, each interested party shall designate for purposes of record the presence of his legal counsel. The member conducting the hearing shall advise each party without legal counsel that he is entitled to counsel and to obtain such counsel if he so desires and shall require a statement for purposes of record from each party as to his willingness to proceed without legal counsel. The hearing shall be postponed for a reasonable length of time for the purpose of obtaining legal counsel upon the request of any party without legal counsel. When a hearing has been reset upon a date agreed to by all parties, the hearing shall proceed, and the absence of legal counsel for any party shall be deemed voluntary rejection of such counsel. The Attorney General shall be the legal advisor of the Council and render such legal services as the Council requires.~~

~~**P.** Presentation of evidence: Both the employee and the agency head shall appear at the hearing or investigation and may present their evidence and witnesses either personally or through their chosen representatives. While evidence irrelevant to the causes set forth in the notice of action may be excluded, both parties shall be allowed reasonable latitude in the presentation of their evidence.~~

~~**Q.** Findings of fact: Whenever any employee or other person actively interested in a matter before the Council and in connection with which it is holding a hearing requests that the Council makes findings, then the Council shall make findings if such request is made at any time prior to the time the Council takes the matter under submission.~~

~~**R.** Settlement of disputes: Whenever any matter is pending before the Council involving a dispute between one or more employees and the agency head and the parties to such dispute agree upon a settlement or adjustment thereof, the terms of such settlement or adjustment may be submitted to the Council; and if approved by the Council, the disposition of the matter in accordance with the terms of such adjustment or settlement shall become final and binding upon the parties.~~

~~**S.** Decision: The Council shall render a decision within a reasonable time after the hearing or investigation. The punitive action taken by the agency head shall stand unless reversed on appeal. In arriving at a decision the Council may consider~~

~~any prior suspension or suspensions of the appellant or any prior proceedings under this rule. The decision shall be in writing and may contain findings of fact and its order for disposition of the case. The findings may be stated in the language of the pleadings or by reference thereto. The decision of the Council shall be binding and final except for appeal as provided in A.R.S § 28-236, and the agency head shall forthwith put the same into effect.~~

~~**T.** Petition for review: After a receipt of a copy of the decision rendered by the Council confirming the agency head's order, the employee may have the determination of the Council reviewed upon writ of certiorari from the superior court of the county in which the employee resides.~~

~~**U.** Commencement of action: Unless otherwise provided for by these rules, no action or proceeding shall be brought by any person having or claiming to have a cause of action or complaint for wrongs or grievances based on or related to these rules or the administration thereof unless such action or proceeding is commenced and served within 120 days from the date the Department has probable cause or after such person discovered, or with reasonable diligence should have discovered, such cause of action or complaint.~~

~~**V.** Rehearings or review of decision:~~

~~1. Except as provided in rule R13-5-10(X), any party in a contested case before the Merit System Council who is aggrieved by a decision rendered in such case may file with the Council, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.~~

~~2. Not later than ten days after a decision is rendered, the Council may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. In such case the Council shall give the parties or their counsel notice and an opportunity to be heard on the matter.~~

~~3. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Council. A response may be filed within ten days after service of such motion or amended motion by any other party. The Council may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~

~~4. The Council may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in rule R13-5-10(W). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~

~~**W.** Basis for rehearing or review: A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:~~

~~1. Irregularity in the administrative proceedings of the Council or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;~~

~~2. Misconduct of the Council or its hearing officer or the prevailing party;~~

~~3. Accident or surprise which could not have been prevented by ordinary prudence;~~

~~4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;~~

~~5. Excessive or insufficient penalties;~~

~~6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;~~

~~7. That the decision is not justified by the evidence or is contrary to law.~~

~~**X.** Decisions not subject to rehearing or review: If in a particular decision the Council makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Council's final decisions.~~

R13-5-11. ~~General powers and duties~~ Repealed

~~**A.** Rules: The Council shall prescribe, amend, and repeal rules in accordance with law for the administration and enforcement thereof. Due notice of the contents of rules shall be given to the agency head and employees. Within a reasonable time after adoption, such rules and amendments shall be published in such manner as the Council determines and distributed free to employees and state agencies and at a reasonable cost to all others.~~

~~**B.** Classification: Upon request of the agency head, the Council shall create and adjust classes of positions in the agency.~~

~~**C.** Punitive action: The Council shall provide for dismissals, demotions, suspensions, and other punitive action for or in the agency.~~

~~**D.** Roster: The Business Manager shall establish and maintain in suitable form an official roster of all persons holding positions in the agency service and enter thereupon their names, complete record of employment in the agency, and other facts prescribed by the Council.~~

~~**E.** Hours and conditions of work: In order to secure substantial justice and equality among employees in the agency service, the Council may provide by rule for days, hours and conditions of work, taking into consideration the varying needs and requirements of the service and the prevailing practices for comparable services in other public employment and in private business.~~

~~**F.** Exchange or transfer of employees: When the agency assumes responsibility for and there is transferred to it a function from any other state agency, the Business Manager may determine the extent, if any, to which employees employed by such other state agency on the date of transfer shall be entitled to have credited to them in the agency service, seniority credits, accumulated sick leave and accumulated vacation because of service with the former agency. The Business Manager shall limit such determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and such seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he had been continuously employed in the agency service.~~

~~**G.** Transferee status: All such employees transferred shall commence service with the agency as probationers.~~

~~**H.** Enforcement of orders and decisions: All orders and decisions of the Council shall be obeyed by and are binding upon the agency heads and employees.~~

ARTICLE 3. ~~CLASSIFICATION~~ REPEALED

R13-5-15. ~~Classification~~ Repealed

~~**A.** Position classification: The Council shall, from time to time, allocate or reallocate all positions to their currently appropriate classification; and shall also prepare position classification plans and necessary changes therein.~~

~~**B.** Creation of classification; qualifications: The Council shall create and adjust classes of positions in the agency service. The classes adopted by the Council shall be known as the Personnel Classification Plan of the Arizona Law Enforcement Merit System Council. The classification plan shall include a descriptive title, a definition outlining the scope of the duties and responsibilities for each class of positions and the minimum qualifications required of applicants for employment or competitors in examinations.~~

~~1. Official class specifications: The Business Manager shall maintain a master set of all approved class specifications. Such specifications shall constitute the Official Class Specifications in the Personnel Classification Plan. The copies of the specification for each class shall indicate the date of adoption or the last revision of the specifications for such class. Copies of the Personnel Classification Plan shall be open for inspection by employees and the public under reasonable conditions during business hours.~~

~~**C.** Allocation of positions: Every position in the agency service shall be allocated by the Business Manager to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if:~~

~~1. Sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used;~~
~~2. Substantially the same requirements as to education, experience, knowledge and ability are demanded of incumbents;~~
~~3. Substantially the same tests of fitness may be used in choosing qualified appointees;~~
~~4. The same schedule of compensation can be made to apply with equity.~~

~~**D.** Modification: From time to time as it deems necessary, the Council may establish additional classes and divide, combine, alter, or abolish existing classes. When such actions are taken, the Council shall determine in each instance whether positions affected are to be reallocated to another class or classes after taking into account the duties and responsibilities, qualifications, performance standards, and other related criteria before and after the change and shall determine the status of the probationary and permanent employees affected.~~

~~**E.** Appeal from allocation: Reasonable opportunity to be heard shall be provided by the Council to any employee affected by the allocation or reallocation of his position.~~

~~**F.** Reclassification of reallocation: The Business Manager shall change the classification of an existing position when a material and permanent change in the duties and responsibilities of the position occurs. If the position is occupied at the time of reallocation, the employee in the position may be reclassified provided that:~~

~~1. They have been in the position at least six months;~~
~~2. They occupied the position during the change in duties;~~
~~3. They meet the minimum qualification of the new classification;~~
~~4. They pass any required examinations. The employee shall serve the required probationary period. Other changes in status of the incumbent may be accomplished only in accordance with these rules relative to layoff, transfers, demotion or promotion.~~

~~**G.** New positions: Positions in the agency service shall be established by the agency head as authorized by law subject to budgetary authorization and the availability of funds. The agency head shall promptly report to the Council his intention to establish new positions in order that such positions may be classified and allocated, and shall so report material changes in the duties of any position in his jurisdiction.~~

~~**H.** Classification title: The classification title approved by the Council shall be used in all communications relating to personnel and in all budget and financial records.~~

~~**I.** Military designations for supervisors: The Director of the Department of Public Safety may apply the use of any of the following military terms and insignia to any uniformed supervisory employee, regardless of classification or pay status,~~

~~for the purpose of indicating to the public and other employees the relative authority such supervisory employees may exercise over all other employees:~~

1. ~~Colonel,~~
2. ~~Lieutenant-Colonel,~~
3. ~~Major,~~
4. ~~Captain,~~
5. ~~Lieutenant,~~
6. ~~Sergeant,~~
7. ~~Corporal.~~

ARTICLE 4. ~~COMPENSATION~~ REPEALED

R13-5-20. ~~Compensation~~ Repealed

~~**A.** Normal work week: Because it is the policy of the state that the normal work week of state employees shall be 40 hours, the normal work week of agency employees shall be 40 hours, except that work weeks of different numbers of hours may be established by the agency head in order to meet the needs of the service.~~

~~**B.** Unusual work schedules: When the agency head finds it impossible or impracticable to establish a normal work week for a class or group of positions due to the unpredictable nature of the extent of the work to be required, the Council may authorize an hourly rate of pay for time worked by employees in such positions commensurate with the appropriate grade and rate of pay on the approved Salary Plan.~~

~~**C.** Compensation in full: Except for nonscheduled overtime compensation, employees shall receive the salary or wage prescribed for their respective class as compensation in full therefor and shall not, under any pretext, receive any excess salary, wage, fee, gratuity, or emolument for their personal services to or on behalf of the state unless otherwise authorized by law.~~

~~**D.** Reimbursement: Reimbursement for expenses incurred shall not be prohibited by these rules, except that expense reimbursement claims shall not be duplicated to the state and/or any political subdivisions thereof by any employee.~~

~~**E.** Compensation plan: The Business Manager shall, from time to time, initiate and prepare compensation plans and necessary changes therein for presentation to the Council for their consideration and approval, and which shall be effective only when approved by the Council.~~

~~**F.** Salary ranges: The Council shall establish and adjust salary ranges for each class of positions in the agency service. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing such ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The Council may make a change in salary range retroactive to the date of application for such change.~~

~~**G.** Hearings: Reasonable opportunity to be heard shall be provided by the Council to any employee affected by a change in the salary range for the class of his position. A salary range shall be considered as substantially the same as another range when the maximum salary is the same as or within one step of the +maximum of such other range, and a range shall be considered to be higher or lower when the maximum salary is at least two steps higher or lower than the maximum of such other range.~~

~~**H.** Limits and intermediate steps: Salary ranges shall consist of minimum and maximum salary limits. The Council shall provide for intermediate steps within such limits to govern the extent of the salary adjustment which an employee may receive at any one time, provided that in classes and positions with unusual conditions or hours of work or where necessary to meet prevailing rates and practices for comparable services in other public employment and in private business the Council may establish more than one salary range or rate or method of compensation within a class.~~

~~**I.** Merit salary adjustment: After completion of a satisfactory probationary period in a position and thereafter, each employee shall receive a merit salary adjustment as provided for in the salary compensation plan upon his employment anniversary date equivalent to one of such intermediate steps when he meets such standards of efficiency as these rules prescribe. When the employee receives an overall performance rating of "unacceptable" on his service evaluation report, his salary shall be reduced one step (or his next merit salary adjustment shall be postponed) for the number of months between the effective date of his performance rating of "unacceptable" and the effective date of his next periodic performance rating of "standard".~~

~~**J.** Qualifying service for merit salary adjustment or seniority: Service, to be counted as qualifying for a merit salary adjustment or seniority, must have been:~~

1. ~~Under permanent appointment or under provisional, emergency or limited term appointment when followed by permanent appointment without any break in continuity of service;~~
2. ~~In the same class or in another class with substantially the same or a higher salary range;~~
3. ~~Uninterrupted from agency service except as provided by subsection (K) (Effect of break in service); or~~
4. ~~Satisfactory as evidenced by an overall employee performance rating of "standard" or better. The employee evaluation report to be considered shall be the last report authorized or required to be filed for the employee by these rules,~~

except that an overall below-standard performance rating received by the employee in a higher class shall not be considered.

K. Effect of break in service:

1. Periods of absence from agency service for the following reasons shall not be counted as qualifying service:
   a. Resignation;
   b. Retirement;
   c. Leave of absence without pay in excess of 30 days; or
   d. Suspension or layoff in excess of 30 days.
2. Periods of absence from agency service for the following reasons shall be counted as qualifying service when authorized by the agency head:
   a. Vacation, compensating time off;
   b. Sickness, injury;
   c. Temporary military training;
   d. Military service and subsequent periods of rehabilitation;
   e. Jury duty;
   f. Leave of absence wherein employee is loaned to another governmental agency for the performance of a specific assignment and is paid by such governmental agency or by the agency governed under these rules;
   g. Leave of absence without pay for 30 days or less, or
   h. Suspension or layoff for 30 days or less.

L. Insufficiency of funds: Salary adjustments shall be made for employees in the agency service in accordance with these rules. If there is not sufficient money available for the purpose in the appropriation from which agency salaries shall be paid, employees shall be assigned leave of absence without pay by the agency head under the layoff procedures prescribed by these rules until sufficient funds are accrued to permit their re-employment.

M. Special adjustments: The agency head may authorize payment at any step above the minimum salary limits in order to meet recruiting problems or, to give credit for prior agency service, or for special duty assignments, in connection with appointments, promotions, reemployments, transfers, reallocations, or demotions. Other salary adjustments within the salary range for the class may be made by the Council upon application of the agency head. Adjustments within the salary range authorized by this rule may be either permanent or temporary. An employee may receive special duty assignment pay only for the period of time he is performing the required duties of the position.

N. Rate above maximum: Employees in a particular class shall receive a salary within the limits established for that class provided that when a position has been allocated to a lower class or the salary range or rate of pay of the class is reduced, the agency head may authorize the payment to an employee of a rate above the maximum of the class. During such time as an employee's salary remains above the maximum rate of pay for his class, he shall not receive further salary increases.

O. Entrance rate: The minimum limit in the salary range for each class is the entrance rate except as otherwise provided in these rules. A merit salary adjustment anniversary date is established for the employee.

P. Rate on movement to class with lower range: Except for a demotion in lieu of layoff, an employee who moves to a class with a lower salary range may receive, if authorized by the agency head, a rate above the minimum. This rate shall not exceed the rate to which he would be entitled if his services in the higher class had been in the class to which demoted. A new merit salary adjustment anniversary date is established for the employee.

Q. Rate on movement to class with the same or higher range: An employee moving to another classification with a similar or higher salary range shall be entitled to the next pay range higher than the one he would have received on his next merit salary adjustment if he had stayed in the same classification. A new merit salary adjustment anniversary date is established for the employee.

R. Full-time and part-time rates: The salary range for each class represents the rate of pay for normal full-time monthly employment unless the compensation plan states otherwise. Where there is part-time or irregular employment in a position for which a monthly salary is established, the employee shall be paid on an hourly basis for the time actually employed.

S. Conversion of rates: Monthly or hourly rate of pay may be converted from one to the other when the agency head considers it advisable. In such a conversion, a 40-hour week is equivalent to a 173.33-hour month. All monthly wages are based on a 40-hour week. Rates resulting from such conversions shall be rounded to the nearest dollar.

T. Rate upon re-employment after permanent separation: A former employee, upon re-employment, shall receive the entrance rate for his class unless otherwise authorized by these rules.

U. Rate upon re-employment after layoff: A person who is employed from a re-employment list after layoff may receive a salary above the entrance rate for his current class. Such salary shall correspond to one of the steps within the salary range for his current class and shall not exceed the salary he would receive if he had been re-employed in his former class, if not re-employed in the same class as at time of layoff.

V. Automatic salary adjustment: A class salary range adjustment shall apply equally to all employees within this class and shall not alter anniversary dates for merit salary adjustments. Salary adjustments shall be made in such order that the employee shall gain the maximum benefit from the adjustments.

~~**W.** Attendance records: The agency head shall cause complete and accurate time and attendance records to be kept for each employee over which he has jurisdiction.~~

~~**X.** Certification of payroll:~~

~~1. All payroll vouchers and accounts or demands containing the names of employees claiming amounts due them as salaries or wages for services rendered shall be submitted to the agency head or his lawfully appointed deputy before any sum of money is disbursed in payment thereof.~~

~~2. If upon examination the agency head or his deputy finds payroll vouchers and accounts or demands to be in conformity with these rules, he shall make certification to such effect thereon. No person shall draw or sign any warrant or check or otherwise pay any person any amount to which the agency head or his deputy has taken exception.~~

~~3. The Business Manager shall review all agency payrolls to ascertain that all employees are paid in accordance to Merit System Council classifications and rules. If the Business Manager finds any employee not being paid in accordance, the Business Manager shall then strike that employee from the payroll.~~

~~**Y.** Special duty assignments~~

~~1. Positions designated as special duty assignments may be compensated at a rate higher than that specified for the classification. Such special duty assignments are temporary and are not promotions as defined by these rules.~~

~~2. Special duty assignment pay will only be awarded to those employees who meet the requirements prescribed for such assignment and who are actually performing in that capacity.~~

~~3. Employees occupying more than one special duty assignment position may only be compensated for one such assignment. The determination of which one of the multiple special duty assignments the employee will be compensated for will be at the discretion of the agency head.~~

~~4. The compensation rate for special duty assignments will be determined by adding the designated special duty assignment pay to the employee's classification salary grade. Compensation for a special duty assignment position will not alter the employee's relative position in the intermediate steps of the compensation plan.~~

ARTICLE 5. ~~GENERAL ENTRANCE AND PROMOTION PROVISIONS~~ REPEALED

R13-5-25. ~~General entrance and promotion provisions~~ Repealed

~~**A.** Establishment of eligible lists: Eligible lists shall be established as a result of free competitive examination open to all persons who lawfully may be appointed to any position within the class for which such examinations are held and who meet the minimum qualifications requisite to the performance of the duties of such position as prescribed by the specifications for the class or these rules.~~

~~**B.** General re-employment lists: For each class there shall be maintained a general re-employment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been laid off or demoted in lieu of layoff. Within one year from the date of his layoff in good standing, or his voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general re-employment list with the consent of the agency head. The general re-employment list may also contain the names of persons placed thereon in accordance with other provisions of these rules.~~

~~**C.** Order of names: The order on which names appear on re-employment lists shall be determined by the relative order of the combined scores of efficiency and seniority as for layoff.~~

~~**D.** Removal of names: Any name, after a period of three consecutive years, shall be removed from the re-employment lists for the class unless the period is extended by the Council.~~

~~**E.** Changes in lists: The Business Manager may make changes in records to correct clerical errors both before and after the announcement of an eligible list, provided that any changes of rank, or addition or subtraction of names, made on lists of eligibles because of clerical errors or re-ratings, shall not change the date of the adoption of such lists, nor give to any persons the right to claim beginning date of eligibility other than the date of the promulgation or adoption of the original eligible list that created their eligibility.~~

~~**F.** Expiration: The duration of each entrance or promotional list shall begin with the date of the promulgation thereof, and shall expire one year thereafter unless such duration is reduced, canceled, or extended by the Council.~~

~~**G.** Reduction: After a list has been in effect for a period of not less than six months, its duration may be reduced or canceled by the Council.~~

~~**H.** Extension: Prior to expiration of a list, the duration of the list may be extended by the Council.~~

~~**I.** Notification: When the duration of a list is reduced, canceled, or expired, all persons whose names appear thereon shall be notified and, provided they possess the current minimum qualifications for the classification involved, given the opportunity to compete in the examination, if any, given to establish a new list for the classification.~~

~~**J.** Classification abolished or divided: An entrance or promotional list for a classification shall be deemed canceled if the classification for which it was established is abolished. If a classification is divided, the list therefor may likewise be divided and the names of the eligibles thereon being placed on one or both new lists established on the basis of compliance with the minimum qualifications prescribed for such classifications. If two or more classifications are consolidated, the lists therefor may likewise be consolidated. When lists are so divided or consolidated, a formula rating may be applied to the education and experience of eligibles involved for the purpose of determining their order or rank on the new lists.~~

R13-5-26. ~~Examinations~~ Repealed

~~A.~~ ~~Competitive examination: Examinations for the establishment of eligibility lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the classification for which they seek appointment.~~

~~B.~~ ~~Type of examination: Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these; and any investigation of character, personality, education and experience, and any tests of intelligence, capacity, technical knowledge, manual skill, or physical fitness.~~

~~C.~~ ~~Minimum qualifications: The minimum qualifications established by the Council for each classification shall be used as a guide for determining the fitness and qualifications of employees, provisional appointees, or applicants for examinations; and for such purposes the Council may require such certificates of citizens, physicians, public officers, or others having knowledge of the applicant, as the good of the service may require. Satisfactory documentary evidence of citizenship, education, physical condition, honorable discharge from the armed forces of the United States, possession of valid licenses for various purposes, or other necessary evidence of identification, fitness, and qualifications shall be furnished to the Business Manager upon his request at the sole expense of the applicant.~~

~~D.~~ ~~General qualifications: All candidates for, appointees to, and employees in the agency service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, good health, and freedom from disabling defects. Where the position requires the operation of a motor vehicle, the applicant must have a valid Arizona operator's license at the time of appointment. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the qualifications of each classification specification and need not be specifically set forth therein. The Council may prescribe alternative or additional qualifications for individual classifications and such shall be made a part of the classification specifications.~~

~~E.~~ ~~Waivers: The Council may establish any legal minimum or maximum age limit for any examination or classification. Minimum qualifications may be waived by the Council whenever insufficient applications for an examination indicate such necessity. To be effective, waivers shall be published as a part of the original examination announcement or supplements thereto. Waivers shall apply only to the examination for which the waivers are announced.~~

~~F.~~ ~~Announcement: Examinations shall be held at such times and places as the Council or the Business Manager may determine. The Business Manager shall direct the preparation of every examination and the publication of an announcement of advertisement thereof within a reasonable time before the scheduled date of the examination. Such announcements shall contain information concerning:~~

1. ~~The date and place of the examination;~~
2. ~~Duties and salary range of the class;~~
3. ~~The nature of the minimum qualifications; and waivers, if any;~~
4. ~~Eligible classes, if a promotional examination;~~
5. ~~The general scope of the examination;~~
6. ~~The relative weight of its several parts if more than one type of test is to be used;~~
7. ~~Source of application forms;~~
8. ~~Closing date for receipt of applications;~~
9. ~~The length and life of the eligible list to be established thereby;~~
10. ~~Such other information as may be required by Council rule;~~
11. ~~Such other information as the Business Manager deems applicable or informative.~~

~~G.~~ ~~Application: Every applicant for examination shall file a formal signed application with the Council. All applications shall be filed at the place, within the time, in the manner, and on the form specified in the examination announcement. A separate application shall be filed for each examination unless otherwise specified in the examination announcement. Approved applications shall remain on file in the office of the Council for at least one year and thereafter until ordered destroyed by the Council. Applications rejected for any reason may be destroyed after six months at the discretion of the Council. Under no circumstances shall applications or examinations be returned to applicants after final submission. Blank application forms shall be furnished without charge to all persons requesting them. Such applications when filed and all other examination materials, including examination questions and booklets, are the property of the Council and are confidential records open to inspection only if and as provided by Council rule.~~

~~H.~~ ~~Rejection of application: The Business Manager shall examine each application for examination and determine if the applicant appears to meet the minimum qualifications prescribed for the class. The Business Manager may return any application that is incomplete or reject any application which shows that the applicant does not meet the minimum qualifications prescribed for the class.~~

~~I.~~ ~~Eligibility:~~

1. ~~Any person who comes under any of the following categories may be refused admittance to any examination, or may not be declared as an eligible, or may not be certified prior to appointment, if he:~~
   a. ~~Lacks any of the requirements established by the Council for the examination or position for which he applies;~~

b. At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he applies;
c. Is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he seeks appointment;
d. Is addicted to the use of intoxicating beverages to excess;
e. Has been convicted of any crime involving the use of a motor vehicle and intoxicating beverages;
f. Is addicted to the use of narcotics or habit-forming drugs;
g. Has been convicted of any crime involving the use of a motor vehicle and narcotics or habit-forming drugs;
h. Has been convicted of a crime involving moral turpitude;
i. Is charged with any crime, which upon conviction, would cause denial of eligibility under this rule;
j. Has been dismissed from any position for any cause which would be a cause for dismissal from the agency service;
k. Has intentionally attempted to practice any deception or fraud in his application, in his examination, or in securing his eligibility; or has failed to file a complete and proper application for examination;
l. Has declined appointment to full-time employment after certification;
m. Has failed to reply within a reasonable time to communications concerning his availability for employment;
n. Has made himself unavailable for employment by requesting that his name be withheld from certification;
o. Is, in the opinion of the agency head, unsuited or not qualified for employment;
p. Directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government of the United States and/or this state, or refuses to subscribe to the Oath of Loyalty set forth in Council rules.;
q. Has taken part in the compilation, administration or scoring of the examination;
r. Has used or attempted to use political pressure or bribery to secure an advantage in any examination or in securing an appointment from an eligible list established as a result of any examination.

2. Upon request of the Council, the agency head or other responsible person shall furnish to the Council an explanation of the reason or reasons for the rejection of an applicant under this rule.

J. Authorization to take examination: Each applicant shall be notified of the approval or disapproval of his application. The applicant's authorization to take the examination shall be in such form as may be prescribed by the Business Manager.

K. Questions approved and sealed: All examinations shall be approved by the Business Manager in advance of the examination. In transmitting material containing examination questions, each package thereof shall be securely sealed and marked. The seal shall not be broken until the beginning of the examination and then only in the presence of all the competitors and by the authorized agent of the Business Manager.

L. Explanations: All necessary explanations shall be made to the whole group taking the written examinations and no question shall be explained to any individual competitor. Examiners shall not make any comment that may assist any competitor to answer any question.

M. Prohibited acts: Communication between competitors during examination is strictly forbidden; and competitors are forbidden to receive any unauthorized assistance in the examination. Before the commencement of an examination, competitors shall be required to hand to the examiner any unauthorized printed or written manner in their possession that might serve to aid them in the examination. Evidence of copying or collusion may result in the cancellation of his examination and the debarment of the competitor from future examinations of any kind. Copies of the questions in the examination shall not be made or taken from the examination room except for the purposes of administration authorized by Council rule.

N. Identity concealed: Written examinations shall be so managed that no examination paper will disclose the name or identity of any applicant until all the examination papers have been marked.

O. Identification number: Each competitor shall write his name and address upon a declaration sheet or card which must have printed upon it a serial number, to be known as his identification number. The competitor shall mark upon each examination sheet his identification number. When the examination papers have been scored, the declaration sheets or cards shall be unsealed; and the examination papers shall be assigned to the names of the persons who wrote them.

P. Prohibited marks: Any competitor in any written examination who places any identifying mark upon his examination papers, other than his identification number, may be deprived of all benefits under such examination.

Q. Rating of written examinations: All examination papers shall be marked and graded under the direction of the Business Manager and in accordance with the examination announcement. When, in the course of grading a competitor's papers, it becomes apparent that he would receive a general average score less than the minimum score for eligibility fixed by the Business Manager or that he would receive less than the minimum score required on a given portion of the examination, the competitor shall be considered as having been disqualified and the marking of his papers need not be completed.

R. Inspection of examination papers: Examination papers shall be open to inspection only as provided by Council rule.

S. Time for inspection: Except as otherwise provided herein, upon written request filed in the office of the Council within ten days after notice of the result of his examination has been mailed to him, any competitor may inspect his examination papers at such location as may be designated by the Business Manager. Such inspection shall be under the supervision of

~~the Business Manager. Examination papers containing copyrighted or standardized examinations shall not be available for such inspection. Competitors desiring to inspect their examination papers at other than the Phoenix office of the Council may be charged a fee to compensate the state for the actual expenses incurred in providing such special inspection accommodation.~~

~~**T.** Who may inspect: A competitor's examination papers shall be open to inspection only by the Council, the Business Manager, the competitor, his attorney upon written authorization of the competitor, or the agency head.~~

~~**U.** Copying prohibited: Copying questions or answers contained in written examination papers, making erasures or alterations in the markings on the papers, or any mutilation thereof by any person is forbidden. Evidence that a competitor or his attorney has copied from, altered, or mutilated an examination paper may result in the competitor's debarment from competition in future examinations or the cancellation of the competitor's eligibility for employment, or both.~~

~~**V.** Inspection of written examination: During regular office hours in the two calendar days beginning on the first work day after a written examination has been held and at the office of the Council or such other place as may be designated by the Business Manager, any competitor may inspect a keyed copy of the questions in his examination for the express purpose of requesting review of such items as the competitor may believe are incorrectly or improperly keyed. Keyed copies of copyrighted or standardized examinations shall not be available for review. The Business Manager may also provide that there will be no key inspection privileges if notice of the suspension of this privilege is made a part of the written examination instructions given to each competitor at the time of the written examination.~~

~~**W.** Appeal from written examination: The competitor may, during the period of inspection provided in this rule, file with the Business Manager a written appeal from any part of the test, citing the item or items against which the appeal is directed and stating the reason for such appeal. The examination shall not be scored until all the disputed items have been reviewed and appropriate adjustment, if any, made by correction in the scoring key or elimination of the disputed items. In no event is the Business Manager required to furnish keyed copies of questions of an essay or problem type when in his judgment such questions are not subject to scoring by an absolute standard. In addition, a written appeal may be made from the result of the written examination on the grounds of fraud or clerical error in scoring the papers. Such appeal shall be filed at the office of the Council within ten days after notice of the result of his examination has been mailed to the competitor filing the appeal.~~

~~**X.** Formula rating: In any examination, the appraisal of education and experience of the competitors may be made by formula applied to the information and data given on their official application. Such appraisal may be made without interview by a qualifications appraisal board and without evaluating the personal qualifications of the competitors.~~

~~**Y.** Qualifications appraisal boards: The education, experience, and personal qualifications of competitors may be rated by the qualifications appraisal boards after interviewing the competitors and making such investigations as may be found necessary.~~

~~**Z.** Composition of boards for employees: Each such qualifications appraisal board may include: One representative of the Council who shall be chairman of the board; and, whenever feasible, one or more citizens who shall not have held elective public office within one year preceding appointment as a member of the qualifications appraisal board and who are qualified to appraise the education, experience, and personal qualifications of competitors. The chairman of the board shall determine the number of citizen members of each such qualifications appraisal board and shall select and appoint such citizen members. If one or more of the members of the qualifications appraisal board is not present during all or part of the proceedings, the qualifications appraisal board may nevertheless proceed. The chairman of the qualifications appraisal board may fill any vacancy according to the standards stated in this rule. Except in a promotional examination, a member of the board shall disclose each instance in which he knows the applicant personally and shall not rate such applicant. The Business Manager shall notify the Council in advance of any qualifications appraisal board and the purpose of it so that the Council can determine who shall be qualified to act as chairman.~~

~~**AA.** Competitive ratings: Rating of education, experience and personal qualifications by qualifications appraisal boards shall be made on a competitive basis in that each competitor shall be rated thereon in relation to the minimum qualifications for the class in question and in relation to the comparable qualifications of other competitors.~~

~~**BB.** Minimum qualifying ratings: Ratings of education, experience, and personal qualifications shall be made independently by each qualifications appraisal board member on forms prescribed. Such ratings may be made either before or after discussion by the qualifications appraisal board. Each member shall sign his forms and deliver them to the chairman of the qualifications appraisal board. Ratings accorded competitors shall be expressed numerically, with 70 being the minimum qualifying rating.~~

~~**CC.** Below qualifying rating: When a competitor is rated below 70 by a member of the qualifications appraisal board, the chairman of the qualifications appraisal board shall make a record of the reason or reasons for such rating on the chairman's rating sheet and this shall be initialed by the member.~~

~~**DD.** Average rating: The ratings of the several members of the qualifications appraisal board shall be averaged to determine each competitor's final rating on education, experience, and personal qualifications.~~

~~**EE.** Majority rating: If the average rating is below 70 but a majority of the members of the qualifications appraisal board assigns at least the required rating of 70, the competitor shall be given a rating of 70. If a majority of the members of the~~

~~qualifications appraisal board assigns a rating below 70, the competitor shall be disqualified regardless of the fact that his average rating may be 70 or more.~~

~~**FF.** Rating of personal traits: As an alternative method, the qualifications appraisal may consist of a formula rating of education and experience and a finding by a qualifications appraisal board as to whether the competitor is acceptable from the standpoint of prescribed personal traits. The evaluation of education and experience shall be determined on the basis of a previously determined formula. If the competitor is found to possess the required education and experience, he shall appear before the qualifications appraisal board. If a majority of the members of the qualifications appraisal board finds that the competitor is acceptable from the standpoint of required personal traits, the qualifications appraisal board shall find him qualified but shall give him no numerical rating. If a majority of the qualifications appraisal board find that the competitor is not acceptable from the standpoint of required personal traits, such members shall record their reasons for such findings; and the competitor shall thereby be disqualified.~~

~~**GG.** Special inquiry: In examinations for classes of trust or involving the handling of money, the exercise of the powers of peace officers, law enforcement or regulation, the handling of information involving crimes or criminals, the collection of taxes or investigations connected therewith, the care or custody of wards of the state, or otherwise requiring the competitors to be of high moral standards and integrity, the Business Manager or the qualifications appraisal board shall, and in any other examinations may, make special inquiry into the past records of all competitors and shall disqualify any whose records or reputations shall in his or their judgment warrant such action. The Council shall be furnished an explanation of the reason or reasons for the disqualification of a competitor under this rule.~~

~~**HH.** Appeal from qualifications appraisal board: Within ten days after the notice of the result of his examination has been mailed to him, a competitor may file with the Business Manager at the office of the Council a written appeal citing grounds of irregularity, bias, or fraud in the conduct of the investigation or interview or of erroneous interpretation or application of the minimum qualifications presented for the class.~~

~~**II.** Hearing: Prior to the time when the Council hears the appeal, the members of the qualifications appraisal board and all other interested persons shall be notified of the time and place of the hearing.~~

~~**JJ.** Appeal granted: If the Council grants the appeal, it may give the competitor a rating of 70 or more on education, experience, and personal qualifications.~~

~~**KK.** Rating method: The final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all phases of the examination.~~

~~**LL.** Weights: The weights assigned to the various parts of an examination represent the relative value of each part in the whole examination. Weights for each phase shall be established by the Business Manager in advance of the giving of the examination and published as part of the announcement of the examination. Unless otherwise stated in the examination announcement for examination consisting of both these parts, the weights shall be: Written test, 40 percent; Qualifications appraisal, 60 percent.~~

~~**MM.** Computing examination score:~~

1. ~~The method of obtaining the average percentage of the examination is as follows:~~
   a. ~~Multiply the rating obtained in each part of the examination by the relative weight of that part;~~
   b. ~~Add the products;~~
   c. ~~Divide the sum of the products by the sum of the relative weights.~~
2. ~~The quotient obtained will be the average score for the examination. To this average score shall be added an amount equal to five percent of such score for veterans with recognized military service.~~

~~**NN.** Minimum qualifying rating: Competitors shall be required to attain a score of not less than 70 in each part of the examination and a general average score of not less than 70 in order to qualify in an examination.~~

~~**OO.** Adjusted score: In written tests, the 70 used to represent the minimum score need not be the arithmetic 70 percent of the total possible score but may be an adjusted score based on a consideration of the difficulty of the test, the quality of the competition, and the needs of the service. Any such adjusted score shall be established by the Business Manager before identification of the competitor's examination papers.~~

~~**PP.** Qualifying for lower class: When an examination is held for any given class and if there is also being held an examination for a lower class in the same series, it shall be within the discretion of the Business Manager to pass a competitor for a place on the eligible list for the lower class if the competitor attains a passing score for the examination for the lower class but does not receive a passing score in the examination in which he is competing.~~

~~**QQ.** Notice of examination result: As soon as the scoring of an examination has been completed and the eligible list established, each competitor shall be notified by mail of the results of his examination and, if successful, of his general average score and his relative position upon the resulting employment list.~~

~~**RR.** Establishing list in case of tie: Two or more competitors receiving the same rating in an examination shall be placed on the resulting list according to their respective ratings attained in the chief essential of the examination. If the foregoing does not result in placement, further determination may be made by application of actual written test scores, and then by length of service in current classification.~~

~~**SS.** Order of names: In establishing any eligible list of promotional list following an examination, the names of persons who have attained the passing mark in such examinations shall be placed on the list in the order of final earned ratings, except as such order may be modified by the application of veterans preference credits.~~

~~**TT.** Length of list: When the order of names has been determined after applying the appropriate veterans preference credits, the Business Manager may thereafter limit to suit the needs of the service the number of names to be placed on the employment list.~~

~~**UU.** Certificates of competence: Certificates of competence may be issued to candidates who are successful in certain phases of examinations involving a particular knowledge, ability or skill. For the period named in such a certificate, the certificate may be accepted as evidence of the candidate's competence in lieu of participation in that phase of an examination.~~

~~**VV.** Continuous testing: For classes of positions for which it is found difficult to maintain adequate eligible lists, applications may be received, examinations may be conducted, and eligible lists created continuously. The names of eligibles who took the same or a comparable examination on different dates may be ranked for purposes of certification in the order of final earned ratings, except as such order may be modified by the application of veterans preferences. Eligibility from a continuous examination may be deemed to be established as of the date of examination.~~

~~**WW.** Merging entrance eligibility lists: When there are names remaining on an eligibility list and there is a need for additional names to draw from, a new examination may be given and both lists then merged in qualifying order.~~

R13-5-27. ~~Promotion~~ Repealed

~~**A.** Promotional lists: Vacancies in promotional positions shall be filled from among employees holding positions in appropriate classes, and appropriate promotional lists shall be established to facilitate this purpose. Every employee having the qualifications and showing willingness and ability to efficiently perform service assigned to him shall be permitted to advance according to merit and ability.~~

~~**B.** Examination: Whenever the needs of the service require, the Business Manager shall announce and provide for promotional examinations for purposes of establishing promotional lists.~~

~~**C.** Eligibility: Promotional examinations shall be limited to employees holding positions with permanent status in a class appropriate for the examination. If the examination is to establish a district or section promotional list, applicants shall be limited to permanent employees holding positions in the district or section.~~

~~**D.** Qualifications: No employee may participate in a promotional examination unless he has the minimum education and experience qualifications and any license, certificate or other evidence of fitness prescribed for the classification for which the examination is given.~~

~~**E.** Performance report: To be eligible to participate in a promotional examination, overall performance ratings of at least "standard" are required for the employee's last one year of service.~~

~~**F.** Resignation of promotional eligible: An employee shall relinquish his right of promotion if such employee:~~

~~1. Resigns from agency service.~~

~~2. Refuses to accept promotion.~~

~~The name of any employee who relinquishes his right to promotion shall be removed from the promotional list.~~

~~**G.** Merging promotional eligibility lists: When there are names remaining on a promotional eligibility list and there is a need for additional names to draw from, a new examination may be given and both lists then merged in qualifying order.~~

R13-5-28. ~~Veteran's preference~~ Repealed

~~**A.** Age limit: A veteran of the Army, Navy, Marine Corps and Coast Guard of the United States, holding an honorable discharge therefrom and who qualifies under the United States Veterans Administration or as defined in A.R.S § 42-276, shall be eligible to apply for and receive employment regardless of age, if otherwise qualified, subject only to the requirement that he is below the regular retirement age at the time of entering the employment. (Ref.: A.R.S § 38-491).~~

~~**B.** Percentage of preference: A veteran of the Army, Navy, Marine Corps and Coast Guard of the United States, holding an honorable discharge therefrom and who qualifies as a veteran under the United States Veterans Administration or as defined in A.R.S § 42-276, who takes an examination pursuant to application for employment shall, in the determination of his final rating on such examination, be given a preference of five percent over persons other than veterans, which shall be added to the grade earned by him, but only if such veteran earns a passing grade without preference. (Ref.: A.R.S § 38-492).~~

~~**C.** Order of names; ties: The veteran shall be eligible for employment in the order and on the basis of the rating attained in the examination after the appropriate percentage credit has been added. All ties shall be decided in favor of veterans.~~

~~**D.** Restoration:~~

~~1. An employee, having been inducted or ordered into active service in the armed forces of the United States after 1 August 1939, and having served in the armed forces and qualifying under the United States Veterans Administration or as defined in A.R.S § 42-276, shall, upon completion of his service, be restored to the position held by him at the time of induction or of reporting for service, or to a position having similar or other duties which he is qualified to discharge, and of like status and pay, if such employee:~~

~~a. Possesses a certificate of satisfactory training and service or honorable discharge issued by the proper military or naval authority;~~

b. ~~Is still qualified to perform the duties of the position.~~

c. ~~Applies for restoration within 60 days after separation from the armed forces;~~

2. ~~For the purposes of computing seniority, retirement and other employment benefits, all service of an employee ordered into military service as contemplated by law, shall be counted as continuous service with the agency; provided, however, that such military service was immediately preceded by agency service and qualification for restoration is made within the time provided.~~

E. ~~Promotion: An employee in recognized military service, whose name appears on a promotional list, appointment from which would accord permanent status, shall be retained on such list and have his name certified to fill any vacancy which may occur during the period his name is so retained on such list; provided, however, the employee is qualified for restoration. The agency head may appoint him to fill the position to take effect upon his return to agency service.~~

F. ~~Examination: An employee in recognized military service shall be entitled to take the identical promotional examination he would have been entitled to take had he continued to hold the position last held prior to entrance into recognized military service. Upon restoration, the examination shall be held if then requested by the employee. If the employee qualifies in the examination, his name shall be appropriately placed on the list that resulted from the original examination. He shall retain his place on the list for one year from the date such eligibility is established.~~

ARTICLE 6. ~~GENERAL APPOINTMENT PROVISIONS~~ REPEALED

R13-5-30. ~~General appointment provisions~~ Repealed

A. ~~Oath of personnel required: Each person appointed to serve in the agency shall, before entering upon his duties, take an oath in writing before the agency head or other person authorized to administer oaths in this state, after reading the provisions of A.R.S. §§ 16-205, 16-206, 13-707, 13-707.01 and 38-231.~~

B. ~~Form: The oath to be taken shall be as follows:~~

~~"I,_____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the state of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ according to the best of my ability, so help me God (or so I do affirm). (A.R.S § 38-231(G)) I further do solemnly swear (or affirm) that I take this obligation freely without mental reservation or purpose of evasion; that I do not advocate, nor am I a member of any purported political party or organization that advocates the overthrow of the government of the United States, or of this state, or of any government in the United States, by force or violence; and that during such time as I am employed by the state of Arizona, I will not advocate nor become a member of any purported political party or organization that advocates the overthrow of the government of the United States or of this state, or of any government in the United States, by force or violence, so help me God."~~

C. ~~Refusal: Any person who refuses or fails to take the oath required by these rules within the time provided forthwith forfeits his right to his position, and the position shall be considered vacant, refusal being sufficient cause for dismissal.~~

D. ~~Administration: The oath shall be administered in a manner which will best awaken the conscience and impress the mind of the person taking the oath, and it shall be taken upon the penalty of perjury.~~

E. ~~Filing: After subscription, oaths shall be filed in the office of the Council.~~

F. ~~Filling positions: The agency head shall fill positions under his jurisdiction by appointment, including cases of transfers, re-employments, promotions and demotions in accordance with these rules. The Governor shall fill the position of Superintendent of the Arizona Highway Patrol from a list of candidates who have been examined and certified by the Merit System Council as meeting the qualifications prescribed in the job specification for Superintendent, as a result of open and competitive examination.~~

G. ~~Appropriate class: No person shall be appointed under a class not appropriate to the duties to be performed.~~

H. ~~Request for certification: Whenever a vacancy in any position under his jurisdiction is to be filled and not by transfer, demotion, or re-employment, the agency head shall submit a request to the Business Manager that the names of persons eligible for appointment to the position be certified. Whenever a vacancy in the position of Superintendent of the Arizona Highway Patrol is to be filled, the Council shall certify the names of employees eligible for promotion to the position to the Governor.~~

I. ~~List order: The order of list preference in certifying eligibles shall be:~~

1. ~~District or section re-employment list,~~
2. ~~District or section promotional list,~~
3. ~~General re-employment list,~~
4. ~~Service-wide promotional list,~~
5. ~~Special limited term,~~
6. ~~Eligible list.~~

J. ~~Comparable lists: In the event an employment list is not available for the class to which a position belongs, certification of names from appropriate employment lists of the same or higher level may be made.~~

~~**K.** Certification of names from entrance examination: There shall be certified to the agency head the names and addresses of the three persons standing highest on the employment list for the class in which the position belongs and who have indicated their willingness to accept appointment under the conditions of employment specified. If fewer than three names of persons willing to accept appointment are on the list from which certification is to be made, then additional eligibles shall be certified from the various lists next lower in order of preference until three names are certified. If there are fewer than three names on such lists, there shall be certified the number thereon. In such case the agency head may demand certification of three names and examinations shall be conducted until three names may be certified. The agency head shall fill the position by the appointment of one of the persons certified.~~

~~**L.** Certification of names from promotional examination: If the list from which certification is to be made is a promotional list, then names of all the eligible employees standing highest in order thereon shall be certified to the agency head. When he deems necessary, the agency head may demand certification of additional names and examinations shall be conducted and an appropriate list established. The agency head shall fill the position by appointment of one of the persons certified.~~

~~**M.** Reply to notice of certification: It shall be the duty of every eligible to deliver his response within ten days after notice of certification is mailed to him. Failure of the eligible to respond within the time provided or to accept full-time employment under the conditions specified shall cause the removal of the eligible's name from the employment list from which certification was made.~~

~~**N.** Certification limit: The name of an eligible shall not be certified to the agency head more than three times. After an eligible's name has been certified from the employment list for the class in which the position belongs and he has been considered three times for actual appointment and has not been appointed, the eligible's name shall be removed from the employment list from which certification was made.~~

R13-5-31. ~~Limited term or provisional~~ Repealed

~~**A.** Limited term: Limited term positions are those positions designated temporary in nature or funded from sources outside of the agency's regular legislative appropriation. Whenever the agency head requires the appointment of a person to a limited term position, the request for certification shall state the expected duration of the position. Persons appointed to limited term positions will after successful completion of a probationary period, acquire all of the rights of permanent employees except layoff, re-employment and reinstatement.~~

~~**B.** Certification: Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept appointment to such position as "limited-term employees."~~

~~**C.** Termination: A limited-term employee may be separated at any time prior to the expiration of the term for which appointed by advising him either orally or in writing of the separation; provided, however, a limited-term employee may not be separated except for cause if emergency or provisional employees in limited-term positions remain employed in the same class and the same layoff subdivision. If separated for cause, the agency head shall give him on or before date of separation, written notice setting forth the reasons therefor. The employee has no appeal from the action of the agency head in terminating his limited-term employment except on the grounds that provisional or emergency employees remain employed in violation of this rule. The Business Manager shall not again certify for re-employment the name of a person who has been separated for cause unless he determines that the reason for separation should not bar the person from further employment. Cause as used in this rule shall include failure to demonstrate merit, efficiency, fitness and moral responsibility.~~

~~**D.** Provisional appointments~~

~~1. When there is no employment list from which a position may be filled, the agency head may fill such position by provisional appointment. Such provisional appointment may continue only until an eligibility list is certified by the Merit System Council for the position to which the employee is a provisional appointee.~~

~~2. An appropriate examination shall be given and an employment list shall be established for each class to which a provisional appointment is made within 12 months after such appointment.~~

~~3. Upon termination a provisional employee has no appeal from the action of the agency head.~~

~~**E.** Special limited term~~

~~1. Special limited term shall not exceed three years for the classification of Officer Trainee. The purpose is to allow the agency to employ qualified Officer applicants for the classification of Officer between the ages of 18 and 21 years and to provide immediate employment for qualified applicants 21 years or older.~~

~~2. Individuals employed under the provisions of this rule may remain on an eligibility list for the duration of appointment. Such eligibility list shall be certified to the agency head under the provisions of R13-5-30(I) at the time the agency head requests certification of eligibles for the classification of Officer.~~

R13-5-32. ~~Intermittent~~ Repealed

~~**A.** Probable amount of work: Whenever the agency head requires the appointment of a person to a position requiring the performance of work or an intermittent or irregular time basis, the request for certification shall state the probable amount of working time to be required.~~

~~**B.** Certification: Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept employment to such position as "intermittent employees".~~

R13-5-33. ~~Emergency~~ Repealed

~~Emergency: The agency head may, to prevent the stoppage of public business when an emergency arises and persons on employment lists are not immediately available, make emergency appointments for a period not to exceed 31 working days.~~

R13-5-34. ~~Re-employment~~ Repealed

~~**A.** After resignation or demotion: The agency head may re-employ within one year any person having probationary or permanent status who was separated from his position through resignation, termination, or who was demoted without fault or delinquency on his part, if within that time there is need for his services in a position in the class from which the employee was separated or demoted or in a lower class requiring similar types of qualifications and knowledges and abilities, or in another class having substantially similar duties, responsibilities, and qualifications, and substantially the same salary range. Any employee re-employed to a position under the provisions of this rule shall serve the probationary period prescribed for the class before attaining permanent status in such position and the employee shall not receive benefit of any prior seniority.~~

~~**B.** After provisional appointment: An employee who has vacated a position within the agency to accept another position under provisional appointment shall, if he so desires, be re-employed in his former position at the termination of such appointment.~~

~~**C.** After rejection from higher position: An employee who has vacated a position to accept another position in a higher class, or a class on the same level, and who is rejected during the probationary period shall be re-employed in his former position.~~

~~**D.** After appointment by governor: An employee who has vacated a position to accept appointment by the governor to an office or position to serve at his pleasure, or for a fixed term, or by the legislature, shall at the termination of such appointment, or term of office, or any extension thereof by operation of law or by new appointment, be re-employed in his former position.~~

~~**E.** Acceptance of position subject to re-employment rights: Every person accepts and holds a position in the agency service subject to re-employment or restoration of another person thereto. The status of the person displaced shall be determined by the Business Manager in accordance with these rules, but such person shall not be deprived of his earned position on the eligible list from which he was certified.~~

R13-5-35. ~~Probationary period~~ Repealed

~~**A.** Length:~~

~~1. An appointee from an entrance eligibility list for a commissioned classification shall be on probation during the required training program for a classification and after having completed this program the appointee shall be on probation for a period of one year unless the agency head increases the length of the individual's probationary period by adding thereto periods of time during which a probationer is absent from his position or has performed below-standard services.~~

~~2. An appointment from an eligible list for a promotional commissioned employee's position is permanent after expiration of one year probationary period of full-time employment unless the agency head increases the length of individual probationary periods by adding thereto periods of time during which a probationer is absent from his position or has performed below-standard services.~~

~~3. An appointment from an eligible list or promotional eligible list for a noncommissioned employee's position is permanent after expiration of a 12-month probationary period of full-time employment with an overall performance appraisal rating of satisfactory. With an overall performance appraisal of excellent or outstanding, the probationary period may be reduced to six months. The agency head may increase the length of individual probationary periods by adding thereto periods of time during which a probationer is absent from his position or has performed in a less than satisfactory manner.~~

~~**B.** Appointment from re-employment lists: Appointments from a sectional or general re-employment list of persons or demotion of employees who have previously satisfied the probationary period in the class to which the appointment or demotion is made do not require an additional probationary period. Any employee demoted or certified to a position from any re-employment list for a class different from that held by him when laid off shall serve a probationary period before attaining permanent status in such position.~~

~~**C.** Rejection: Any probationer may be rejected by the agency head during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, or moral responsibility.~~

~~**D.** Notice of rejection: A rejection during the probationary period is effected by the service upon the probationer of a written notice of rejection which shall include an effective date for the rejection which shall not be later than the last day of the probationary period, and a statement of the reasons for the rejection. Service of the notice shall be made on or prior to the effective date specified. A copy of the notice shall be filed with the Business Manager. If re-appraisals or departmental reviews are not completed prior to the last day of probation, the probationary period will be extended until the reviews are completed.~~

~~**E.** Action of Council: The Council at the written request of a rejected probationer, filed within ten calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the Council may:~~
~~1. Affirm the action of the agency head; or~~
~~2. Restore the probationer to the position from which he was rejected, but this shall be done only if the Council determines, after hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At any such hearing the rejected probationer shall have the burden of proof. Subject to rebuttal by the probationer, it shall be presumed that rejection was free from fraud and bad faith and that the statement of reasons therefor in the notice of rejection is true.~~
~~**F.** Rejection notice withdrawn: The agency head may cancel or withdraw a notice of rejection of a probationer.~~
~~**G.** Military service: If a probationer enters or has entered the military service while serving a probationary period, and following his return satisfactorily completes his probationary period, such probationary period shall be considered to have been satisfactorily completed on the date on which it would have been completed had he remained in the position without interruption.~~
~~**H.** Time of probationer evaluation: A report of the probationer's performance shall be made within 15 days before the end of each six-month period of the probationer's service. If the probationer is laid off or rejected, a final report shall be filed for the period not covered by previous reports.~~
~~**I.** Duty to reject probationer: If the conduct, capacity, moral responsibility, or integrity of the probationer is found to be unsatisfactory, it shall be the duty of the agency head to cause the rejection of the probationer from his position.~~

R13-5-36. ~~Duration appointments~~ Repealed

~~**A.** Scope and application~~
~~1. Whenever the United States is engaged in war or whenever the governor finds that an emergency exists in connection with the national defense, appointments shall be made on a duration basis to all classes and positions, except that the Business Manager may permit regular appointments and provide for regular examinations whenever the regular procedure would be in the best interests of the state.~~
~~2. Unless otherwise provided in these rules, the regulations governing the status, tenure, and conditions of employment of regular employees shall govern the status, tenure and conditions of employment of duration employees.~~
~~**B.** Duration examinations: To establish lists of persons available for duration appointment, the Business Manager may provide for duration open examinations and duration promotional examinations. Duration employment lists resulting therefrom shall not be used in making regular appointments. The regulations governing the conduct of regular examinations shall govern the conduct of duration examinations.~~
~~**C.** Termination: All duration appointments, unless sooner terminated by layoff or other means of separation, shall terminate 90 days after the governor finds and proclaims that the emergency no longer exists.~~
~~**D.** Restoration of veteran: Any person appointed to fill a vacancy existing through the induction or order of a probationary or permanent employee into the armed forces of the United States is hereby notified that such appointment is contingent upon restoration of the former employee as provided by these rules and A.R.S § 38-298.~~

ARTICLE 7. ~~GENERAL EMPLOYEE CONDUCT PROVISIONS~~ REPEALED

R13-5-40. ~~General employee conduct provisions~~ Repealed

~~**A.** Conduct of employees: Every employee shall fulfill to the best of his ability the duties of the office or position conferred upon him and shall prove himself in his behavior inside and outside the service worthy of the esteem which his office or position requires. In his official activities the employee shall pursue the common good, and, not only be impartial, but so act as neither to endanger his impartiality nor to give occasion for distrust to his impartiality.~~
~~**B.** Incompatible activity: An officer or employee shall not engage in any employment, activity, or enterprise unless it has been determined by the Council or the agency head not to be inconsistent, incompatible, or in conflict with his duties as an officer or employee or with the duties, functions or responsibilities of the agency head.~~
~~**C.** Attendance at Council meetings or examinations: Upon giving two days notice to his superior, any qualified employee shall be permitted to take any Council examination during working hours, if the examination is scheduled during such period, or to attend a meeting of the Council at which is scheduled for consideration a matter in which he is an interested party.~~
~~**D.** Voluntary demotion: Any employee may request voluntary demotion to a vacant position. If the class to which the demotion is proposed requires qualifications, knowledges or abilities not measured by the examination for the class from which demotion is proposed, the Business Manager shall provide for examination of the employee for the possession of those additional qualifications, knowledges and abilities. If there is evidence satisfactory to the agency head of the employee's fitness to perform the duties of the lower class, the agency head may demote the employee.~~
~~**E.** Assignment: Except in an emergency, an employee shall not be assigned to perform the duties of any class other than that to which his position is allocated.~~
~~**F.** Physical and psychological examinations: When there is probable cause to believe that an employee is not physically or psychologically able to perform the duties of his employment, the agency head may require a physical or psychological~~

~~examination of the employee sufficient to indicate whether or not the employee is able to perform the duties of his employment. Information provided by the employee during the examination shall be treated as privileged unless waived by the employee, except that the examiner may provide to the agency head diagnosis, conclusions, recommendations, or any other information that is necessary to promote the welfare of the employee, department, or public. An employee who is required to submit to an examination shall be entitled to an appeal as provided in rule R13-5-10. The cost of such examination shall be a proper charge against the support appropriation of the agency.~~

R13-5-41. ~~Report of employee performance~~ Repealed

~~**A.** Purpose: The intent of supervisory evaluation of employee performance is to inform employees and the agency head how well employees carry out their assigned duties and responsibilities. Employees shall be informed of how well they perform their job requirements, and, if necessary, how they may improve such performance. The performance rating system shall permit, as accurately as is reasonably possible, the evaluation of employee performance of assigned duties.~~

~~**B.** Report of Employee Performance: Ratings shall be set forth in a Report of Employee Performance, the form of which shall be designated by the Council. The original report shall be maintained in the employee's personnel file. Copies of the report shall be furnished to the employee and the employee's supervisor.~~

~~**C.** Rating definitions:~~

~~1. "Exceeds standard", indicates that the employee exceeds the expected level of performance required to accomplish the objectives of the position being filled.~~

~~2. "Standard", indicates that the employee meets the expected level of performance required to accomplish the objectives of the position being filled.~~

~~3. "Below standard", indicates that improvement is needed for the employee's work performance to be fully satisfactory.~~

~~4. "Unacceptable", indicates that the employee's work performance is usually well below "standard" and improvement is urgently required.~~

~~**D.** Performance Appraisal Manual: A performance appraisal manual shall be prepared under the authority and approval of the Council and shall contain evaluation procedures, definitions and other information determined necessary by the Council. No modifications to the Performance Appraisal Manual shall be made without Council authorization.~~

~~**E.** Appeals:~~

~~1. Upon review of his Report of Employee Performance, an employee may appeal the overall rating to the Council if the overall rating is below "standard"; if the overall rating would cause a reduction in pay; or if the overall rating would result in the withholding or postponement of salary adjustment.~~

~~**F.** Report periods:~~

~~1. Each employee shall receive a written Report of Employee Performance at least once in each 12-month period.~~

R13-5-42. ~~Annual leave~~ Repealed

~~**A.** Authority: The agency head may grant leave with or without pay to any employee in accordance with these rules.~~

~~**B.** General provisions:~~

~~1. Working days: An employee's leave time accounts for vacation or sickness shall not be charged with more than the hours per prescribed work cycle as provided by law during the employee's leave of absence for vacation or sick leave purposes.~~

~~2. Paid holidays: Employees shall be allowed to be absent with pay for any holiday designated by state law, unless required to work in order to maintain essential state services. Employees required to work on a state holiday shall be compensated as provided by law.~~

~~3. Recording leave: The agency shall install and maintain a system to record leave earned, leave taken and leave balances remaining in each leave category for each employee. Copies of such records may be distributed to employees and shall be available for inspection by employees upon request.~~

~~4. Leave requests: Leave shall be requested and approved in advance of the time when it is taken. The agency may establish reasonable procedures to govern emergency situations when advance approval cannot be obtained.~~

~~5. Transfers: An employee who transfers from one state service agency to a position subject to the jurisdiction of the Law Enforcement Merit System Council shall retain any accumulated annual and sick leave.~~

~~6. Computing length of service to determine rate of accrual: Only complete calendar months of service before and after interruptions or breaks in service shall be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual for annual leave to the next, the following rules shall apply:~~

~~a. Where the employee has been employed by the same agency without interruption or break in continuity of service, the date from which total years of service is counted shall be the first day of the first complete calendar month worked.~~

~~b. Periods during which the employee was employed in a nonelective position by any budget unit of the state shall be counted without regard to whether the position in which he was employed is or was a state service position.~~

c. Periods of service as a state employee prior to a break or interruption in continuity shall not be counted except when the break or interruption was less than 12 months' duration.

d. Where an employee's continuity of state service has been interrupted or broken by his being inducted or ordered into active military service in the Arizona National Guard or the armed forces of the United States, the period of military leave shall be counted as state service in computing his total number of years of service, provided he meets the requirements of state law and applies for restoration to position as therein provided.

e. Where an employee is absent under competent military orders pursuant to state law, such periods of time shall be counted as state service in computing his total number of years of service.

7. Effective date for change in accrual rate: An employee shall be allowed to progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.

8. Maximum accumulation: An employee shall be permitted to accumulate annual leave provided that on January 1 of any year the total number of hours accumulated does not exceed 360. An employee shall be permitted to accumulate sick leave without limit. An employee may accumulate compensatory leave up to a total of 120 hours. This limit may be temporarily raised by the agency head during man-power shortages for periods not to exceed six months.

9. Disposition of excess annual leave: Annual leave in excess of the maximum allowed under these rules shall be credited to the employee's sick leave accumulation. In situations which preclude the granting of sufficient annual leave to avoid disposition under this rule, the agency head may authorize a date other than January 1 for disposition of excess leave.

10. Transfer of annual leave: Within the agency, annual leave may be transferred by one employee to another provided all of the following conditions are satisfied:

a. The employee to whom the leave is transferred has a non-job related, seriously incapacitating and extended illness or injury, or a member of his immediate family has a seriously incapacitating and extended illness or injury.

b. The employee to whom the leave is to be transferred has exhausted all available leave balances.

c. Any annual leave transfer from one employee to another will be added to the sick leave balance of the gaining employee and shall be excluded from any sick leave pay-off authorized by state law for employees leaving agency service.

d. The dollar value of annual leave given up by an employee shall be determined and the amount of leave credited to the gaining employee shall be increased or decreased proportionally by the difference in salaries. The proportionate adjusted dollar value of the leave shall be determined by dividing the dollar amount of the annual leave donated, based upon the contributor's salary, by the recipient's hourly rate. The resulting number is the number of hours donated to the leave recipient.

e. If the leave recipient separates from the agency service or recovers prior to using all leave donated or the need for the leave is otherwise abated, all unused leave donated to the recipient is returned to the leave contributors on a pro rata basis or, at the donating employee's option, to any leave balance bank that may be created for the purposes of this subsection.

f. The Business Manager shall periodically review the procedures developed by the Department pursuant to this subsection to ensure that there is no abuse or misuse of the leave transfer process.

11. Disposition of leave upon termination: Upon termination of employment, each employee shall be compensated at the then current rate of pay for all unused annual and compensatory leave hours up to the maximum allowed by these rules. All unused sick leave credits shall be forfeited unless state law authorizes payment for all or any portion of such credits to retiring employees.

12. Restoration of sick leave credits upon reemployment: If an employee reenters agency service within 12 months of termination, he shall receive credit for 50% of any unused sick leave which was accumulated at the time of termination. The number of hours previously accumulated shall be reduced in proportion to any payment made pursuant to state law.

C. Leave accumulation rates: Each full-time employee shall accumulate annual, sick and compensatory leave in accordance with the following schedules:

1. Annual leave:

Length of Service:	Monthly Accrual Rate:
Less than 7 years	10 Hours
At least 7 but less than 15 years	12 Hours
15 years and over	14 Hours

Part-time employees shall accumulate annual leave in proportion to the fraction of full-time hours worked, calculated to the nearest full hour.

2. Sick leave: Full-time employees shall accumulate sick leave credits at the rate of ten hours per month. Part-time employees shall accumulate sick leave in proportion to the fraction of full-time hours worked, calculated to the nearest full hour.

3. ~~Compensatory leave: Employees may accumulate compensatory leave in lieu of overtime payment, when authorized by law or agency rules at the rate provided by law.~~

~~D.~~ ~~Leave administration:~~

1. ~~Annual leave: Each employee eligible to accrue annual leave credits pursuant to these rules may request and be granted use of accrued annual leave only after six months of service, except that accrued annual leave may be granted prior to six months of service by the agency head in addition to any accrued sick leave for illness or injury rendering the employee unable to perform his official duties or for other essential absences.~~
2. ~~Sick leave: An employee entitled to sick leave shall be eligible to use accrued sick leave credits after completion of one month of employment. The agency shall approve sick leave only after having ascertained that the absence was for an authorized reason. The agency may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the agency does not consider the evidence adequate, it shall disapprove the request for sick leave. Sick leave shall be granted for any approved period of absence of an employee resulting from:~~
   a. ~~Illness or injury which renders the employee unable to perform official duties;~~
   b. ~~Medical examination, consultation, or treatment by a licensed practitioner;~~
   c. ~~Attendance at the death or funeral of spouse, parent, child, brother or sister; or attendance of a sick family member. Except as provided in subsection (B)(10) of this rule, not more than five days of sick leave within any one calendar year may be granted for this purpose.~~
3. ~~Compensatory leave: Employees eligible to accumulate compensatory leave may request and be granted the use of accrued compensatory leave in accordance with law or agency rules.~~
4. ~~Civic duty leave: Civic duty leave shall include approved periods of absence with pay from regularly scheduled work while serving as a juror or casting one's vote pursuant to state law.~~
5. ~~Jury duty: An employee summoned for duty as a juror shall appear as required for such duty. The agency shall require the employee on civic duty leave for jury duty either to remit his fees for such jury duty to the employing agency or shall make an equivalent deduction from the employee's salary. At all times during regular working hours when his presence as a juror is not officially required, he shall return to work until again called or finally released; except, however, that he shall not be required to return to work if, because of the remoteness of the location of such work, he cannot respond to a call to return to jury duty with timeliness or he cannot arrive at work at least one hour before the end of his regularly assigned work shift.~~
6. ~~Military leave: Agency employees shall be provided all rights pertaining to leave for military or national guard duty as provided by state law.~~
7. ~~Educational leave: The agency head is authorized to approve reasonable periods of absence with or without pay to enable employees to attend work-related education and training courses. Agencies shall not, however, approve educational leave until the agency head has determined that the approval of such leave is in the best interest of the agency.~~
8. ~~Administrative leave: Administrative leave shall include temporary periods of absence with pay authorized by the agency head in emergency situations. It may be used for the purpose of relieving an employee of his duties temporarily during the active investigation of an alleged wrongdoing by the employee. Administrative leave may also be based upon the executive declaration by the governor that a state of emergency, disaster or grief exists.~~
9. ~~Recognition leave: Recognition leave shall include a period of paid leave granted by the agency as an incentive to continued superior performance as documented through a formal employee incentive program.~~
10. ~~Leave without pay: Leave without pay shall include any period of approved absence without pay for which an employee has made application.~~
    a. ~~Administration: Leave without pay may be granted for temporary periods of time when there is a reasonable expectation that the employee will return to work at the expiration of the leave.~~
    b. ~~Appointment to exempt positions: An employee may be granted leave without pay to accept appointment to an exempt, nonelective position in state government.~~
    c. ~~Reemployment: After full compliance with the conditions of and upon return from leave of absence, the employee shall be reemployed in his former classification.~~
11. ~~Failure to return: The failure of an employee to return to his position, following a leave of absence with or without pay, or other inexcusable violation of the conditions of the leave of absence, shall constitute a voluntary resignation from agency service by the employee.~~
12. ~~Termination of leave: A leave of absence for any reason is terminated by:~~
    a. ~~Expiration of the term thereof,~~
    b. ~~Inexcusable violation of the conditions thereof,~~
    c. ~~Revocation thereof by order of the agency head and written notice to the employee of such revocation,~~
    d. ~~Cancellation thereof by the employee with the approval of the agency head.~~

R13-5-43. ~~Transfers~~ Repealed

~~A.~~ ~~Administrative decision:~~

1. ~~The agency head may at any time transfer any employee under his jurisdiction:~~
   a. ~~To another position in the same class; or~~

~~b. To another position in a different class designated as appropriate by the Business Manager; or~~
~~c. From one location to another whether in the same position or in a different position as specified above in (a) or (b).~~
~~2. When a transfer reasonably requires an employee to change his place of residence, the agency head shall give the employee a written notice of transfer in advance of the effective date of the transfer.~~

~~**B.** Protest: If a transfer is protested to the Council by an employee as made for the purpose of harassing or disciplining him, the agency head may require the employee to transfer pending approval or disapproval of the transfer by the Council. If the Council disapproves the transfer, the employee shall be returned to his former position and shall be paid the regular travel allowance for the period of time he was away from his original headquarters in addition to his moving costs both from and back to the original headquarters.~~

~~**C.** Filing protest: A copy of the protest shall be filed with the agency head by the employee. Such a protest shall be made within ten days of the time the employee is notified of the transfer.~~

~~**D.** Status of transferred employee: Transfer of an employee from one position to another in the same class shall not require a new probationary period. Transfer of a probationer under like circumstances shall require service of the remainder of the probationary period. Transfer of an employee from one class to another shall require the service of a new probationary period. Any employee rejected during such probationary period shall be re-employed in the position from which he transferred.~~

~~**E.** Limitation: Any transfer of an employee from a position in a lower class to a position in a higher class is a promotion and any transfer of an employee from a position in a higher class to a position in a lower class is a demotion and may be accomplished only in the manner provided for making promotional or demotional appointments.~~

~~**F.** Operation of new machinery: Whenever any position is changed by the adoption of new, different or additional machines or processes while the purpose or product is the same or similar in nature, any employee affected shall be given reasonable opportunity without change in class, status or salary to learn to do the work with the new machine or process and to qualify for status in the different class of position required for such work; provided that an employee may not be promoted to a higher class under the provisions of this Section. An employee who qualifies for appointment in the different class shall be deemed to possess the specific education, experience or other requirements for such class and shall be appointed thereto with the same status and seniority which he last had in his previous class.~~

ARTICLE 8. ~~GENERAL PERSONNEL PROVISIONS~~ REPEALED

R13-5-45. ~~General personnel provisions~~ Repealed

~~**A.** Tenure: The tenure of every permanent employee holding a position is during good behavior. Any permanent employee may be temporarily separated from agency service through layoff, leave of absence, or suspension; permanently separated through resignation or removal for cause; or permanently or temporarily separated through retirement.~~

~~**B.** Resignation: Resignations shall be in writing and made to the agency head. The agency head may accept or reject any resignation from an employee under his jurisdiction. A resignation shall waive all and any rights or privileges provided by these rules, unless otherwise provided for. No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning unless a petition to set it aside is filed with the Council within ten days after the date upon which the resignation is accepted by the agency head. A resignation by the Director of the Department of Public Safety shall be made to the governor.~~

R13-5-46. ~~Layoff and demotion~~ Repealed

~~**A.** Staff reduction: Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interests of economy to reduce the staff, the agency head may lay off employees pursuant to this rule.~~

~~**B.** Assignment of duties: The duties performed by any employees laid off may be assigned to any other employee or employees holding positions in appropriate classes.~~

~~**C.** Layoff by district: Layoffs may be restricted to the employees of a particular district or section, and, if so restricted, re-employment lists shall be established for such districts or sections.~~

~~**D.** Demotion in lieu of layoff: In lieu of layoff, an employee may request demotion to a position of lesser responsibility in the same line of work or to any class with the same or lower maximum salary in which he has previously served in probationary status. Whenever such a demotion requires a layoff in the lower class, the seniority score for the employee shall be recomputed in the lower class.~~

~~**E.** Method: Layoff shall be made in accordance with the relative efficiency and seniority of the employees in the class of layoff. Except as otherwise provided by this rule, one point shall be allowed for each complete month of full-time service in the class of layoff or demotion and in classes that, at the time notice of layoff is given, have the same or a higher maximum salary. One-half point shall be allowed for each complete month of full-time service in all other classes. Service that is less than full-time shall receive seniority credit on a pro rata basis.~~

~~**F.** Order of layoff when combined scores are equal: As between two or more employees having the same combined score for efficiency and seniority, the order of layoff shall be determined by giving preference for retention in the following sequence:~~

1. ~~Veteran,~~
2. ~~Employee with the highest overall report of performance rating,~~
3. ~~Employee with the greatest total calendar time in the class in which the layoff is being made and in classes with the same or higher maximum salary,~~
4. ~~Employee with the greatest total time in agency service,~~
5. ~~Employee with the greatest total calendar time in state service.~~

~~**G.** Re-employment lists: The names of employees to be laid off or demoted shall be placed upon the re-employment lists for the class from which the employees were laid off or demoted.~~

~~**H.** Notice of layoff: An employee shall be notified that he is to be laid off ten days prior to the effective date of the layoff. The notice of layoff shall be in writing and shall contain the reasons for the layoff.~~

~~**I.** Appeal and hearing: An employee may appeal to the Council within ten days after receiving notice of layoff on the ground that the required procedure has not been complied with or that the layoff has not been made in good faith or was otherwise improper.~~

R13-5-47. ~~Disciplinary proceedings~~ Repealed

~~**A.** Punitive action defined: As used in this rule, "punitive action" means dismissal from service, demotion to a lower class, rank or grade, suspension from duty without pay, deduction from vacation credit in lieu of suspension from duty without pay, withholding of merit salary adjustment, reduction to a lower salary step within the range, or other disciplinary action.~~

~~**B.** Procedure: In conformity with this rule, punitive action may be taken against any employee or person whose name appears on any employment list for any cause for discipline specified in this rule.~~

~~**C.** Causes for punitive action: Each of the following constitutes cause for discipline or discharge of an employee:~~

1. ~~Fraud or misrepresentation of any kind in securing appointment;~~
2. ~~Improper political activity as defined in rule R13-5-01;~~
3. ~~Misfeasance, malfeasance or nonfeasance, which shall include, but shall not be limited to:~~
   a. ~~Incompetency,~~
   b. ~~Inefficiency,~~
   c. ~~Inexcusable neglect of duty,~~
   d. ~~Insubordination or any willful disobedience,~~
   e. ~~Dishonesty or any breach of integrity,~~
   f. ~~Inexcusable absence without leave,~~
   g. ~~Disrespectful behavior toward a supervisor and/or supervisory directive.~~
4. ~~Physical or mental disability;~~
5. ~~Drinking or drunkenness on duty;~~
6. ~~Excessive intemperance at any time which would reflect discredit upon the agency;~~
7. ~~Addiction to the use of narcotics or habit-forming drugs.~~
8. ~~Conviction of a crime involving moral turpitude or intoxicating beverages;~~
9. ~~Any act of immorality which would bring the employee into disrepute or reflect discredit upon the agency;~~
10. ~~Discourteous treatment of the public or other employees;~~
11. ~~Any other failure of good behavior or acts either during or outside of duty hours which are incompatible with or inimical to the agency interest;~~
12. ~~Misuse of state property;~~
13. ~~Refusal to take and subscribe to any oath or affirmation which is required by law or Council rule in connection with his employment, or violation of such oath or affirmation after subscription;~~
14. ~~Renouncement of citizenship or allegiance to the United States; or the taking of an oath of allegiance or otherwise pledged allegiance to any foreign country;~~
15. ~~Violation of Council rules;~~
16. ~~Failure to appear or the refusal to testify or to waive immunity from any prosecution on account of any matter about which he may be asked to testify at any hearing or inquiry before the agency head, the Council or any person authorized to conduct any hearing or inquiry.~~

~~**D.** Who may take: The agency head, or any person authorized by him, may take effective punitive action against an employee for one or more of the causes for discipline specified in this rule by notifying the employee of the action, pending service upon him of a written notice.~~

~~**E.** Notice to be given: Punitive action is valid only if a written notice is served on the employee and filed with the Council not later than ten days after the date of such action. The notice shall be served upon the employee either personally or by mail and shall include:~~

1. ~~A statement of the nature of the punitive action;~~
2. ~~The effective date of the action;~~
3. ~~A general statement of the causes therefor;~~
4. ~~A statement advising the employee of his right to answer the notice and the time within which that must be done if the answer is to constitute an appeal.~~

~~**F.** Answer: No later than ten days after service of the written notice of punitive action, the employee may file with the Council a written answer to the notice, which answer shall be deemed to be a denial to all the allegations of the notice of punitive action not expressly admitted and a request for hearing or investigation as provided in this rule. With the consent of the Council an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his appeal, the punitive action taken by the agency head shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the Council to the agency head. When the employee answers the notice of punitive action, any irregularity in the notice given to the employee is deemed to have been waived.~~

~~**G.** Amended notice of punitive action: At any time before an employee's appeal is submitted to the Council for decision, the agency head may serve on the employee and file with the Council an amended or supplemental notice of punitive action. If the amended or supplemental notice presents new causes, the employee shall be afforded a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further answer unless the Council so orders. Any new causes shall be deemed controverted, and any objections to the amended or supplemental causes may be made orally at the hearing or investigation and shall be noted in the record.~~

~~**H.** Hearings and investigations on suspension: Whenever an answer is filed within the time provided by an employee who has been suspended or has suffered a loss of pay of $50 or less, the Council shall make an investigation without a hearing as it deems necessary; however, in the event the employee demands a hearing or such employee has suffered a loss or losses of pay totaling more than $50, or $100 in any calendar year, he shall be afforded a hearing within a reasonable time if he files an answer to the action.~~

~~**I.** Hearing: Whenever an answer is filed within the time provided to a punitive action other than a suspension without pay, the Council shall within a reasonable time hold a hearing.~~

~~**J.** Effect of dismissal: Dismissal of an employee from the service shall~~

~~1. Constitute a dismissal as of the same date from any and all positions which the employee may hold in the service.~~
~~2. Result in automatic removal of the employee's name from any and all employment lists on which it may appear.~~
~~3. Terminate the salary of the employee as of the date of dismissal except that he shall be paid any unpaid salary, and paid for any and all unused or accumulated vacation and any and all accumulated compensating time off or overtime to his credit as of the date of dismissal.~~

~~**K.** Charges: Any person with the consent of the Council or the agency head may file charges against an employee requesting that punitive action be taken for one or more causes for discipline specified in this rule. The employee against whom such charges are filed shall have a right to answer as provided in this rule. In all such cases a hearing shall be conducted. If the Council finds that the charges are true, it shall direct the agency head to take such punitive action as in his judgment is just and proper.~~

~~**L.** Salary when punitive action is revoked: Whenever a punitive action is revoked and the appellant is ordered returned to his former position, the agency head shall direct the payment of salary to the appellant for such period of time as the punitive action was improperly in effect. An appellant alleging improper punitive action under these rules by seeking reinstatement after punitive action has been taken shall conform to the standards and regulations of conduct and action as prescribed by these rules and agency policies for applicants and employees in similar classifications until final disposition of his case is made. Violations of such standards, regulations and policies of conduct and action may be separate cause for punitive action and shall result in forfeiture of all salary claims.~~

~~**M.** Salary claim: Salary shall not be paid for any period of punitive action wherein the appellant was not ready, able, willing and available to perform the duties of his position; except, the appellant shall use due diligence to seek employment during such period the punitive action is in effect and any and all income shall be deducted from any amount due the appellant if the punitive action is revoked. The appellant shall file an affidavit of employment and income with the Business Manager if a salary claim is to be made by the appellant. The affidavit shall disclose the name of the appellant, the source of his income, if any, and total monthly income including earnings, unemployment benefits, workmen's compensation benefits, retirement or disability benefits, or any other income, if any; and in the event of non-employment, the affidavit shall also contain a statement of the reasons therefor. The affidavit shall be filed not later than the tenth day of each successive month and shall contain the details of the prior month of employment or non-employment and total income. Failure of the appellant to file such a complete and correct affidavit for each month the punitive action is in effect and in the manner and time prescribed shall result in forfeiture and denial of all salary claims.~~

R13-5-48. ~~Retirement~~ Repealed

~~MEMBERSHIP IN ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM~~

~~9.1.00 Director~~
~~9.1.01 Superintendent of the Arizona Highway Patrol~~
~~9.1.02 Division Chief~~
~~9.1.03 Assistant Superintendent of the Arizona Highway Patrol~~
~~9.1.04 Inspector~~
~~9.1.05 Major~~
~~9.1.15 Captain~~
~~9.1.16 Lieutenant~~

~~9.1.17 Sergeant~~
~~9.1.18 Corporal~~
~~9.1.19 Officer~~
~~9.1.21 Chief Pilot~~
~~9.1.22 Pilot~~
~~9.1.24 Attache to the Governor's Office~~
~~9.1.27 Helicopter Pilot~~
~~9.2.01 *Chief Communications Engineer~~
~~9.2.02 *Deputy Chief Communications Engineer~~
~~9.2.03 *Communications Engineer~~
~~9.2.04 *Chief Communications Technician~~
~~9.2.07 *Communications Technician~~
~~9.2.08 *Radio Rigger~~
~~9.2.11 *Radio Mechanic~~
~~9.2.12 *Senior Communications Engineer~~
~~9.2.13 *Junior Communications Engineer~~
~~9.2.15 *Data Communications Specialist~~
~~9.2.16 *Radio Rigger Supervisor~~
~~9.2.17 *Communications System Supervisor~~
~~9.2.18 *Lead Communications Technician~~
~~9.7.08 Legal Advisor~~
~~* Employment prior to 1 December 1972~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R18-2-609	Amend
R18-2-610	Renumber
R18-2-610	New Section
R18-2-611	New Section
R18-2-612	Renumber

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. § 49-457(H)

Implementing statute: A.R.S. § 49-457

3. The effective date for the rule:

May 12, 2000

4. List of all previous notices appearing in the register addressing the final rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 1233, April 30, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 4053, October 29, 1999

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

Name: Ross Rodgers

Address: Governor's Agricultural Best Management Practices Committee
Arizona Department of Environmental Quality
3003 North Central Avenue, 5th Floor
Phoenix, Arizona 85012

Telephone: (602) 207-2335

Fax: (602) 207-2366

E-mail: rodgers.ross@ev.state.az.us

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

The Governor's Agricultural Best Management Practices Committee (Committee) is mandated by A.R.S. § 49-457 to promulgate a rule establishing an agricultural general permit for best management practices (BMPs) that reduce PM10 (particulate matter 10 or less micrometers in aerodynamic diameter) from regulated agricultural activities.

The Committee developed a rule that serves as the general permit for all commercial farmers within the Maricopa PM10 nonattainment area. A commercial farmer is defined as "an individual, entity, or joint operation in general control of 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM10 nonattainment area." The rule lists best management practices for 3 separate categories: tillage and harvest, cropland, and noncropland. All commercial farmers must implement at least one BMP from each category. The implementation of the BMPs may not violate any other local, state, or federal law. A commercial farmer must implement the chosen BMPs by December 31, 2001 to demonstrate compliance with the general permit. If a commercial farmer begins operations after December 31, 2000, the commercial farmer has 18 months to demonstrate compliance with the general permit.

Following are the BMPs developed by the Committee for each of the 3 categories:

Tillage and Harvest BMPs

Chemical irrigation, combining tractor operations, equipment modification, limited activity during a high wind event, multi-year crop, planting based on soil moisture, reduced harvest activities, reduced tillage system, tillage based on soil moisture, and timing of tillage operations.

Non-Cropland BMPs

Access restriction; aggregate cover; artificial wind barrier; critical area planting; manure application; reduced vehicle speed; synthetic particulate suppressant; track-out control system; tree, shrub or windbreak planting; and watering.

Cropland BMPs

Artificial wind barrier; cover crop; cross-wind ridges; cross-wind strip-cropping; cross-wind vegetative strips; manure application; mulching; multi-year crop; permanent cover; planting based on soil moisture; residue management; sequential cropping; surface roughening; and tree, shrub, or windbreak planting

A commercial farmer must maintain a record demonstrating compliance with the general permit. A person may develop new practices that reduce PM10. The Committee may meet to review these practices and incorporate them, by rule, into the Agricultural PM10 general permit. The Arizona Department of Environmental Quality (ADEQ) is the agency charged with determining compliance of the general permit as provided in A.R.S. § 49-457 (I), (J), and (K).

7. A reference to any study that the agency proposes to rely 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 summary of the economic, small business, and consumer impact:

The rule imposes an administrative burden on ADEQ as the enforcement agency. The Natural Resource Conservation Districts (NRCDs) within the Maricopa PM10 nonattainment area are required by A.R.S. § 49-457(I) to maintain records. The final rulemaking has an economic impact on the regulated agricultural industry and small agricultural businesses by incurring costs to implement the best management practices. Due to the nature of agricultural economics, the agricultural industry will not be able to recapture the costs associated with the implementation of the best management practices. Agricultural commodity groups, the Cooperative Extension, and NRCDs may be affected by this rulemaking because they will help educate and provide technical assistance to commercial farmers. As a result of this rulemaking, the general public will receive cleaner air and health-related benefits because of reduced PM10 emissions from regulated agriculture activities.

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

R18-2-609 will not be repealed as was proposed because the Section must apply to other areas of the State. The Section was amended to read:

A ~~No~~ person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix planning area, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including ~~but not limited to~~ tilling of land and application of fertilizers, without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

Not repealing R18-2-609 caused the following changes in numbering from the notice of proposed rulemaking to the notice of final rulemaking:

~~R18-2-609. Definitions for R18-2-610~~ R18-2-610. Definitions for R18-2-611

~~R18-2-611.~~ R18-2-612. Evaluation of Nonpoint Source Emissions (R18-2-610 in the existing A.A.C.)

~~R18-2-610.~~ R18-2-611. Agricultural PM10 General Permit; Maricopa PM10 Nonattainment Area

R18-2-610(1) was amended to read:

"Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.

R18-2-610(4) was amended to read:

"Best management practice" means a ~~practical and economically feasible practice that will reduce PM10 from a regulated agricultural activity, is approved by the Agricultural Best Management Practices Committee~~ technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM10 emissions from a regulated agricultural activity.

R18-2-610(17) was amended to read:

"Limited activity during a high wind event" means performing no ~~eliminating~~ ~~agricultural~~ tillage and soil preparation activity ~~activities~~ when the measured wind speed at 6 feet in height is more than ~~above~~ 25 mph at the commercial farm site.

R18-2-610(23), the definition of "operator", was removed and incorporated into R18-2-610(8), "commercial farmer." The definition of "commercial farmer" now reads: "Commercial farmer means an individual, entity, or joint operation in general control of a commercial farm."

R18-2-610(29) was amended to read:

"Regulated agricultural activities" means a commercial farming practice ~~practices~~ that may produce PM10 within the Maricopa PM10 nonattainment area ~~and are subject to the requirements in R18-2-610~~.

R18-2-611(C) was amended to read:

~~A commercial farmer shall comply with this Section by implementing 1 Best Management Practice for each of the following categories:~~

A commercial farmer shall implement at least 1 best management practice from each of the following categories:

1. Tillage and harvest, subsection (E);
2. Noncropland, subsection (F); and
3. Cropland, subsection (G).

A commercial farmer may implement more than 1 best management practice for 1 or more of the categories.

R18-2-611(D) was amended to read:

~~The best management practices selected must not violate any other local, state or federal law.~~

A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.

R18-2-610(H) was amended to read:

A person ~~or entity~~ may develop different ~~new~~ practices not contained in subsection (E), (F), and (G) that reduce PM10. A ~~The~~ person ~~or entity~~ may submit practices that are proven effective through on-farm demonstration trials to the Committee. The Committee may meet to review the submitted practices. ~~The Committee may incorporate these practices by rule into the agricultural PM10 general permit.~~

R18-2-610(I) was amended to read:

A commercial farmer shall maintain a record demonstrating compliance with this Section. The record shall be provided to the Director ~~director~~ within 2 business ~~working~~ days of notice to the commercial farmer. The record shall contain:

1. The name of the commercial farmer,
2. The mailing address or physical address of the commercial farm, and
3. The best management practices selected for tillage and harvest, noncropland, and cropland.

Numerous other minor changes to the proposed rule were made as a result of suggestions by Governor's Regulatory Review Council staff to improve the clarity, conciseness, and understanding of the rules. All changes are shown in the full text of the rule in part 15 of the Notice of Final Rulemaking.

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

The Governor's Agricultural Best Management Practices Committee (Committee) received written comments from 8 interested parties regarding the proposed agricultural PM10 general permit rule. The public comment period was from October 29, 1999, until December 9, 1999. The Committee received 14 oral comments during the December 7, 1999, public hearing held at 3033 North Central, room 1709, Phoenix, Arizona. Each written and oral comment received was addressed by the Committee, in consultation with ADEQ, and the Committee's actions are summarized in the following paragraphs.

Comment #1: One commenter asked that the Committee provide analysis of the impact of the decision in American Trucking Associations, Inc. v. EPA, 175 F.3d 1027 (D.C. Cir. 1999).

Response #1: Part 4 of this court decision vacated revisions to the PM10 standards proposed in 1997 by the EPA. However, the court did not vacate the original PM10 standards. Therefore, states are still required under the Clean Air Act to maintain annual average PM10 levels less than 50 micrograms per cubic meter, and 24 hour average PM10 levels less than 150 micrograms per cubic meter.

Comment #2: One commenter asked that the Committee withdraw the proposed rule and develop a revised rule with the input of several environmental groups.

Response #2: A.R.S. § 49-457 states that by June 10, 2000, the Agricultural Best Management Practices Committee shall adopt, by rule, an agricultural general permit to reduce PM10. The Committee would not be able to withdraw the current rule and still meet the deadline required by law. Also, the Committee held 16 public meetings between September, 1998, and November, 1999. Notices of these meetings were posted in accordance with the open meeting law, and during each meeting the Committee provided an opportunity for public comment.

Comment #3: One commenter asked the Committee to review the South Coast (California) Guide to Agricultural PM10 Dust Control Practices.

Response #3: The Committee reviewed the South Coast Guide to Agricultural PM10 Dust Control Practices during the development of the proposed agricultural PM10 general permit. The Committee did not incorporate the South Coast Guide verbatim because the Maricopa PM10 nonattainment area differs from South Coast in terms of geography, natural resources, and agricultural practices. The Committee has developed a general permit that follows A.R.S. § 49-457 and is practical, effective, and economically feasible for the local conditions of the Maricopa PM10 nonattainment area.

Comment #4: One commenter requested the definition of "best management practice" be changed to, "A practical and economically feasible practice that will reduce PM10 from a regulated agricultural activity, is approved by the Committee, and otherwise conforms with federal Clean Air Act regulations."

Response #4: The term "best management practice" is defined in A.R.S. § 49-457. The Committee will follow the intent of the definition established in law.

Comment #5: One commenter requested the definition of "commercial farm" be changed to, "10 contiguous acres or more of land used for agricultural purposes within the boundary of the Maricopa PM10 nonattainment area or any other PM10 nonattainment area in the State of Arizona."

Response #5: A.R.S. § 49-457 defines "regulated agricultural activities" as, "commercial farming practices that may produce PM10 particulate emissions within the Maricopa PM10 particulate nonattainment area." The Maricopa PM10 nonattainment area is set forth in 40 CFR 81.303. Therefore, the agricultural PM10 general permit must only apply to the Maricopa PM10 nonattainment area and not other PM10 nonattainment areas in the State of Arizona. However, R18-2-609 will not be repealed as stated in the proposed rule and agricultural operations located in areas other than the Maricopa PM10 nonattainment area will continue to be regulated by R18-2-609.

Comment #6: One commenter requested the definition of "regulated agricultural activities" be changed to, "commercial farming practices that may produce PM10 within the Maricopa PM10 nonattainment area or any other PM10 nonattainment area within the State of Arizona and are subject to the requirements of R18-2-610."

Response #6: A.R.S. § 49-457 prevents the Committee from requiring the agricultural PM10 general permit outside the Maricopa PM10 nonattainment area. See response #5.

Comment #7: Three commenters suggested that, in general, the best management practice definitions are too vague and do not contain enough specificity.

Response #7: The Committee added clarifying or more specific language to several best management practice definitions. The Committee followed the intent of A.R.S. § 49-457 to make sure all of the practices adopted will be practical, effective, and economically feasible. The Committee believes the individual best management practice definitions provide sufficient detail for implementation, while allowing commercial farmers the flexibility to tailor the BMPs to their specific operations. Every commercial farm within the Maricopa PM10 nonattainment area is different and drafting very detailed best management practices could make the practices impractical or economically unfeasible.

Comment #8: One commenter requested the addition of, "at a right angle to the prevailing wind direction" to the following best management practices: artificial wind barrier; cross wind ridges; cross wind vegetative strips; tree, shrub, or windbreak planting.

Response #8: The Committee believes that "at a right angle" would mandate that the selected best management practice be exactly 90 degrees to the prevailing wind direction. The meteorological conditions in the Maricopa PM10 nonattainment area cause the prevailing wind direction to change frequently, which could cause a high noncompliance rate. The Committee believes the selected BMP should be implemented as close as possible to a right angle with the prevailing wind direction.

Comment #9: One commenter requested the definition of "access restriction" be changed to, "Restricting or eliminating public access to private roads through signage or physical obstruction."

Response #9: The Committee agrees with this comment and will add this language to the definition of "access restriction."

Comment #10: One commenter requested the definition of "Limited activity during a high wind event" be changed to, "eliminating agricultural activities when the measured wind speed at 6 feet in height is above 15 mph at the commercial farm site."

Response #10: The Committee discussed the appropriate threshold wind speed during several Committee meetings and agreed that the 25 mph threshold is sufficient for the local conditions of the Maricopa PM10 nonattainment area. The 25 mph threshold is also consistent with Maricopa County's Rule 310: Fugitive Dust Sources.

Comment #11: One commenter requested the definition of "planting based on soil moisture" be changed to, "applying sufficient water to soil before performing planting operations to ensure that visible dust emissions do not exceed 100 feet from any source."

Response #11: The agricultural PM10 general permit is required to reduce PM10 from tillage practices and harvesting. Adequate soil moisture should reduce PM10 emissions during a planting operation. Arizona Revised Statutes § 49-457 does not provide a threshold for how far visible dust should be allowed to travel during these operations. The Committee followed the definition for best management practice provided in A.R.S. § 49-457 to make sure all of the practices adopted will be practical, effective, and economically feasible. The Committee believes such a standard would create a best management practice that is not practical or economically feasible.

Comment #12: One commenter requested the definition of "reduce vehicle speed" be changed to, "Operating farm vehicles or farm equipment on unpaved private farm roads at speeds not to exceed 10 mph." The commenter mentioned that most farm equipment cannot travel above 20 mph.

Response #12: The "reduce vehicle speed" best management practice is intended to reduce the speed of farm vehicles, which includes automobiles, and farm equipment that travel on unpaved private farm roads. Most farm equipment does not have a speedometer, and the maximum speed is approximately 20 mph. Therefore, this best management practice will be more effective at reducing the speed of farm vehicles and automobiles. The Committee reviewed unpaved dust emission data and believes that 20 mph is a practical, effective and economically feasible threshold.

Comment #13: One commenter requested the definition of "residue management" be changed to, "Managing the amount and distribution of crop and other plant residues on the soil surface so that a minimum of 60% ground cover as determined by line-intersection method is achieved."

Response #13: The types of crops that can be grown for residue management within the Maricopa PM10 nonattainment area, including barley and wheat, should result in an effective residue. The Committee followed the definition for best management practice provided in A.R.S. § 49-457 to make sure all of the practices adopted will be practical, effective, and economically feasible. The Committee believes such a standard would create a best management practice that is not practical or economically feasible.

Comment #14: One commenter requested the definition of "tillage based on soil moisture" to be changed to, "Applying sufficient water to soil before or during tillage, or delaying tillage to coincide with sufficient precipitation so as to ensure that visible dust emissions do not exceed 100 feet from any source."

Response #14: The agricultural PM10 general permit is required to reduce PM10 from tillage practices and harvesting. Adequate soil moisture should reduce PM10 emissions during a tillage operation. Arizona Revised Statutes § 49-457 does not provide a threshold for how far visible dust should be allowed to travel during these operations. The Committee followed the definition for best management practice provided in A.R.S. § 49-457 to make sure all of the practices adopted will be practical, effective, and economically feasible. The Committee believes such a standard would create a best management practice that is not practical or economically feasible.

Comment #15: One commenter asked the Committee to describe why certain best management practices were not approved from the list of possible practices.

Response #15: Numerous workshops were held to develop a list of possible best management practices in cooperation with the United States Department of Agriculture Natural Resource Conservation Service, Cooperative Extension, Arizona Farm Bureau, Maricopa County Farm Bureau, Agricultural Research Service, The University of

Arizona, Arizona Cotton Growers Association, Western Growers Association, and any other entity that wished to attend. The Committee thoroughly discussed the potential best management practices during their public meetings. The Committee reviewed each potential best management practice and adopted those that are the most effective, practical, and economically feasible. The minutes from the public meetings detailing the best management practice approval process are available by contacting Committee staff at (602) 207-2335.

Comment #16: One commenter asked the Committee to include row orientation, burying whole stalks under, and comprehensive dust control plans as best management practices.

Response #16: The Committee has incorporated the comment into the rule, and believes that the practices mentioned in the comment are included in the agricultural PM10 general permit. Row orientation is a practice that is included under the cross wind ridges best management practice. Burying whole stalks is a practice that is included under the combining tractor operations best management practice because the equipment limits the numbers of agricultural passes on a field. The Committee considers the agricultural PM10 general permit a comprehensive dust control plan, because individual commercial farmers will have to document the best management practices selected for cropland, noncropland, and tillage and harvest practices.

Comment #17: One commenter suggested the Committee require commercial farmers to establish cover on all "out of service" cropland as a best management practice.

Response #17: If land is no longer used for agricultural purposes, it will be regulated under Maricopa County Rule 310, Fugitive Dust Sources, or Rule 310.01, Fugitive Dust From Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways. Establishing cover on all agricultural land currently not in service would be economically infeasible for commercial farmers because the practice would require a tremendous amount of water and maintenance. Also, weeds or other potential fire hazards must be mowed or disked under to comply with the Maricopa County weed abatement ordinance #11.

Comment #18: One commenter suggested the Committee should not include best management practices that could misuse water.

Response #18: The Committee agrees that water must not be misused. However, in some cases water will be the most effective practice to reduce PM10. The Arizona Department of Water Resources (ADWR) works to secure long-term water supplies for Arizona's communities. The ADWR also administers state water laws (except those related to water quality), explores methods of augmenting water supplies to meet future demands, and develops policies that promote conservation and equitable distribution of water. The Committee followed the definition for best management practice provided in A.R.S. § 49-457 to make sure all of the practices adopted will be practical, effective, and economically feasible. The Committee believes that in some cases water use may be the most practical, effective, and economically feasible.

Comment #19: One commenter suggested that language should be added to the proposed rule that requires the general permit and BMPs to apply to the entire farm and be implemented on all source categories.

Response #19: The Committee followed A.R.S. § 49-457 to ensure that PM10 is reduced through techniques that will be implemented in three categories: tillage and harvest activities, cropland, and noncropland. Compliance with the general permit is obtained when a commercial farmer demonstrates through a record that a best management practice has been implemented for each of the relevant categories. The Committee thoroughly discussed this issue and is committed to working with the agricultural community in a vigorous public education program to ensure that meaningful agricultural PM10 reductions occur.

Comment #20: One commenter asked the Committee to develop a technical supporting document that will assist implementation.

Response #20: ADEQ is responsible for developing a technical supporting document (TSD) that is part of the PM10 SIP revision. The Committee will develop a public education document and campaign to assist commercial farmers with best management practice implementation.

Comment #21: The Maricopa County Farm Bureau commented that they will help provide a public education program for commercial farmers.

Response #21: The Committee appreciates Maricopa County Farm Bureau's support of the public education program. The Committee will develop a public education program that will provide greater detail regarding BMP implementation on a case-by-case basis.

Comment #22: Two commenters suggested the Committee should require that a database be set up detailing where all commercial farms are located.

Response #22: Currently, other state agencies have databases that detail where commercial farms are located. ADEQ is responsible for determining compliance of this rule. ADEQ has access to this information and, therefore, need not duplicate the effort. ADEQ will establish a database that includes information regarding complaints and enforcement actions ADEQ takes as prescribed under A.R.S. § 49-457.

Comment #23: Three commenters stated the Committee should require more than 1 best management practice per category.

Response #23: A.R.S. § 49-457 states that "The committee shall adopt by rule a list of best management practices, at least one of which shall be used to demonstrate compliance with the general permit." The general permit developed by the Committee contains 3 categories and 1 best management practice must be implemented per category. Therefore, a commercial farmer must implement a total of 3 best management practices in order to be in compliance with the agricultural PM10 general permit. This mandate meets the statutory requirement.

Comment #24: Two commenters suggested that some of the best management practices should be mandatory. Examples include limited activity during a high wind event, combining tractor operations, access restriction, reduce vehicle speed.

Response #24: The agricultural PM10 general permit is designed to allow commercial farmers to select the best management practices that are the most effective, practical, and economically feasible for their specific commercial farm. Because every commercial farm within the Maricopa PM10 nonattainment area is different, the Committee does not believe the PM10 general permit should require best management practices that may not be effective, practical, or economically feasible for a specific farm. Mandating the implementation of certain best management practices could be counter-productive because the required practice may not be the most effective for the given commercial farm. Also, see response #23.

Comment #25: One commenter stated that the rule should require limited activity during a high wind event, combining tractor operations, and 1 other BMP to be implemented for the tillage and harvest category of the general permit; that access restriction, reduce vehicle speed, and 1 other BMP be implemented for the noncropland category; and that 3 BMPs be implemented for the cropland category.

Response #25: See responses #23 and #24.

Comment #26: One commenter requested that all control measures that are not deemed unreasonable should be implemented under the general permit.

Response #26: See responses #23 and #24.

Comment #27: One commenter suggested the Committee develop a default rule that does not allow dust to go beyond a commercial farmer's property line.

Response #27: A.R.S. § 49-457 does not allow the Committee to develop a default rule. All commercial farmers must follow the agricultural PM10 general permit developed by the Committee. Non-agricultural PM10 sources are covered under Maricopa County Rule 310 or 310.01. The Committee believes such a standard would create a rule that is not practical or economically feasible. See responses #23 and #24.

Comment #28: Two commenters stated the Arizona Department of Environmental Quality (ADEQ) should perform random inspections of commercial farms.

Response #28: ADEQ has the authority to randomly inspect commercial farms.

Comment #29: One commenter requested that all commercial farmers submit a dust control plan to ADEQ.

Response #29: A.R.S. § 49-457 specifically details when the commercial farmer must submit a plan to ADEQ. A.R.S. § 49-457(J) requires that if the Director determines that a person engaged in regulated agricultural activity is not in compliance with the general permit, and the person previously submitted a plan to the local Natural Resource Conservation District, the Director may serve upon the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing under title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance, shall specify that the person has a period that the Director determines is reasonable (but is not less than six months), to submit a plan to the Department specifying the best management practices under R18-2-611 to comply with the general permit. The statute further provides that ADEQ may issue an individual permit to a commercial farmer previously in violation of the general permit on 2 separate occasions.

Comment #30: One commenter stated that ADEQ should assess monetary fines to commercial farmers who are not in compliance with this rule.

Response #30: A.R.S. § 49-457(I), (J), and (K) detail the compliance steps and penalties that ADEQ must follow. ADEQ's general compliance authority, including the authority to assess penalties, is set forth in Arizona Revised Statutes and the Arizona Administrative Code.

Comment #31: One commenter suggested that a complaint-based enforcement program is not sufficient.

Response #31: ADEQ has the authority to randomly inspect commercial farms, and can inspect a commercial farm without a complaint.

Comment #32: Two commenters stated that in order to meet best available control measure and most stringent measure requirements under the Clean Air Act, the Committee should structure the rule to be more stringent than the South Coast Guide to Agricultural PM10 Dust Control Practices.

Response #32: The comment does not pertain to this rulemaking, but rather the State Implementation Plan revision that the State will submit to the Environmental Protection Agency. While developing the agricultural PM10 general

permit, the Committee has followed the intent of A.R.S. § 49-457. The Clean Air Act provides that local agricultural conditions, soil types, meteorological conditions, and economic factors be considered when meeting the best available control technologies and most stringent measure requirements. When the Arizona Department of Environmental Quality submits this general permit to the EPA as a revision to the PM10 State Implementation Plan, the revision must demonstrate how the best available control measure and most stringent measure requirements have been met.

Comment #33: One commenter stated that the State of Arizona will not be able to use PM10 reduction from the agricultural PM10 general permit as a control measure or a contingency measure in the State Implementation Plan because the rule does not have quantifiable emission reductions.

Comment #33: The comment does not pertain to this rulemaking. The Committee does not have the authority to develop emission reduction estimates. The purpose of this rule is not to establish nor quantify emission reductions. ADEQ will develop a technical supporting document that includes this information. The technical supporting document will be included with the State Implementation Plan revision.

Comment #34: One written and several oral commenters stated that the "Maricopa County PM10 State Implementation Plan Microscale Approach; Technical Supporting Document" or the "Evaluation for Compliance with the 24-hour PM10 Standard for the West Chandler and Gilbert Microscale Sites" did not accurately determine agriculture's contribution to PM10 or the ambient air quality for the entire nonattainment area.

Response #34: Although the Committee appreciates this public comment, the Committee has no jurisdiction or authority related to the Microscale study. This public comment period is only in regard to the proposed agricultural PM10 rule.

Comment #35: One commenter suggested that the Microscale study, mentioned in comment #34, cannot differentiate between PM10 from different sources. The PM10 measured at the West Chandler monitor was never scientifically tested to conclude its association with agriculture.

Response #35: See response #34.

Comment #36: One commenter stated that the monitoring research cannot demonstrate that the measured particulate matter originated in close proximity to the monitoring station.

Response #36: See response #34.

Comment #37: One commenter stated that the reliability of the Microscale study is questioned due to missing data on the model day.

Response #37: See response #34.

Comment #38: Ten commenters stated that the rule could impose an economic hardship on commercial farmers.

Response #38: A.R.S. § 49-457 requires the Committee to develop a general permit by rule that reduces PM10 from cropland, noncropland, and tillage and harvest activities. The general permit must include a list of best management practices that are practical, economically feasible and effective. The Committee strived to make sure the best management practices adopted are economically feasible for the individual commercial farmer. The flexibility of the agricultural PM10 general permit will allow commercial farmers to select at least 1 best management practice for each category that is economically feasible and can be implemented to demonstrate compliance with the general permit.

Comment #39: Two commenters stated that agriculture cannot pass the cost of best management practice implementation to their customers. Commodity prices are set on a global market; therefore, all of the costs associated with this rule will be an economic loss to the commercial farmer.

Response #39: The Committee agrees with this comment and believes that the flexibility of the general permit allows the commercial farmer to select best management practices that are the most economically feasible for the commercial farmer's specific operation. Also, see response #38.

Comment #40: Adequate economic assumptions are not included with the Sierra Research economic impact estimations included in the proposed Economic Impact Statement.

Response #40: The Committee agrees, and removed the Sierra Research economic impact estimations from the Economic Impact Statement.

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

None

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

Section
R18-2-609. Agricultural Practices
R18-2-610. Definitions for R18-2-611
R18-2-611. Agricultural PM10 General Permit; Maricopa PM10 Nonattainment Area
~~R18-2-610.~~ R18-2-612. Evaluation of Nonpoint Source Emissions

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

R18-2-609. Agricultural Practices
A ~~No~~ person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix planning area, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including ~~but not limited to~~ tilling of land and application of fertilizers, without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

R18-2-610. Definitions for R18-2-611
The definitions in Article 1 of this Chapter and the following definitions apply to R18-2-611:

1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. "Artificial wind barrier" means a physical barrier to the wind.
4. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM10 emissions from a regulated agricultural activity.
5. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
6. "Combining tractor operations" means performing 2 or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
7. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM10 nonattainment area.
8. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
9. "Committee" means the Governor's Agricultural Best Management Practices Committee.
10. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
11. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
12. "Cropland" means land on a commercial farm that:
    a. Is within the timeframe of final harvest to plant emergence;
    b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
    c. Is a turn-row.
13. "Cross-wind ridges" means soil ridges formed by a tillage operation.
14. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
15. "Cross-wind vegetative strips" means herbaceous cover established in 1 or more strips within the same field.
16. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
17. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at 6 feet in height is more than 25 mph at the commercial farm site.
18. "Manure application" means applying animal waste or biosolids to a soil surface.
19. "Maricopa PM10 nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
20. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
21. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than 1 year.
22. "Noncropland" means any commercial farm land that:
    a. Is no longer used for agricultural production;
    b. Is no longer suitable for production of crops;

c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.

23. "Permanent cover" means a perennial vegetative cover on cropland.
24. "Planting based on soil moisture" means applying water to soil before performing planting operations.
25. "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved private farm roads at speeds not to exceed 20 mph.
26. "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
27. "Reduced tillage system" means reducing the number of tillage operations used to produce a crop.
28. "Regulated agricultural activity" means a commercial farming practice that may produce PM10 within the Maricopa PM10 nonattainment area.
29. "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.
30. "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
31. "Surface roughening" means manipulating a soil surface to produce or maintain clods.
32. "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, and polyacrylamide that is used to control particulate matter.
33. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
34. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
35. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM10.
36. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
37. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
38. "Watering" means applying water to noncropland.

R18-2-611. Agricultural PM10 General Permit; Maricopa PM10 Nonattainment Area

A. A commercial farmer shall comply with this Section by December 31, 2001.

B. A commercial farmer, who begins a regulated agricultural activity after December 31, 2000, shall comply with this Section within 18 months of beginning the regulated agricultural activity.

C. A commercial farmer shall implement at least 1 best management practice from each of the following categories:
1. Tillage and harvest, subsection (E);
2. Noncropland, subsection (F); and
3. Cropland, subsection (G).

A commercial farmer may implement more than 1 best management practice for 1 or more of the categories.

D. A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.

E. A commercial farmer shall implement at least 1 of the following best management practices to reduce PM10 emissions during tillage and harvest activities:
1. Chemical irrigation,
2. Combining tractor operations,
3. Equipment modification,
4. Limited activity during a high-wind event,
5. Multi-year crop,
6. Planting based on soil moisture,
7. Reduced harvest activity,
8. Reduced tillage system,
9. Tillage based on soil moisture, or
10. Timing of a tillage operation.

F. A commercial farmer shall implement at least 1 of the following best management practices to reduce PM10 emissions from noncropland:
1. Access restriction;
2. Aggregate cover;
3. Artificial wind barrier;
4. Critical area planting;

5. Manure application;
6. Reduce vehicle speed;
7. Synthetic particulate suppressant;
8. Track-out control system;
9. Tree, shrub, or windbreak planting; or
10. Watering.

G. A commercial farmer shall implement at least 1 of the following best management practices to reduce PM10 emissions from cropland:

1. Artificial wind barrier;
2. Cover crop;
3. Cross-wind ridges;
4. Cross-wind strip-cropping;
5. Cross-wind vegetative strips;
6. Manure application;
7. Mulching;
8. Multi-year crop;
9. Permanent cover;
10. Planting based on soil moisture;
11. Residue management;
12. Sequential cropping;
13. Surface roughening; or
14. Tree, shrub, or windbreak planting.

H. A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM10. A person may submit practices that are proven effective through on-farm demonstration trials to the Committee. The Committee may meet to review the submitted practices.

I. A commercial farmer shall maintain a record demonstrating compliance with this Section. The record shall be provided to the Director within 2 business days of notice to the commercial farmer. The record shall contain:

1. The name of the commercial farmer,
2. The mailing address or physical address of the commercial farm, and
3. The best management practices selected for tillage and harvest, noncropland, and cropland.

J. The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM10 general permit.

K. The Director shall document noncompliance with this Section before issuing a compliance order.

L. A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457 (I), (J), and (K).

~~R18-2-610~~ R18-2-612. Evaluation of Nonpoint Source Emissions

No change.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY SAFE DRINKING WATER

PREAMBLE

1. Sections Affected	Rulemaking Action
Article 7	New Article
R18-4-701	New Section
R18-4-702	New Section
R18-4-703	New Section
R18-4-704	New Section
R18-4-705	New Section
R18-4-706	New Section
R18-4-707	New Section
R18-4-708	New Section
R18-4-709	New Section
R18-4-710	New Section
Appendix A	New Section
Appendix B	New Section

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. §§ 49-202, 49-203, 49-351, 49-353

Implementing statute: A.R.S. § 49-202

3. The effective date of the rules: Date filed with the Office of the Secretary of State

May 10, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 4583, December 10, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 118, January 7, 2000

Notice of Rulemaking Docket Opening: 6 A.A.R. 296, January 7, 2000

Notice of Public Hearing: 6 A.A.R. 483, January 28, 2000

Notice of Public Information: 6 A.A.R. 485, January 28, 2000

Notice of Public Information: 6 A.A.R. 664, February 11, 2000

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:

A. Background for These Proposed Rules

As required by the 1996 amendments to the Safe Drinking Water Act, in August of 1998, the United States Environmental Protection Agency (EPA) published final regulations that require a community water system (CWS) to provide its customers with an annual water quality report, or Consumer Confidence Report (CCR). The federal regulations amend the National Primary Drinking Water Regulations (NPDWR), Part 141 and regulations for implementation of the NPDWR, Part 142. This federal rulemaking took effect on September 18, 1998 and required each CWS to issue its first CCR by October 19, 1999, then annually by each July 1. Wholesalers were required to deliver information to their buyers by April 1999, unless there is a separate agreement, and annually thereafter. A new CWS must deliver its first CCR by July of the year after its first full calendar year in operation, and annually thereafter.

These rules contain the requirements for CCRs in Arizona. In order for ADEQ to have primacy in the area of CCRs, the rules must be as stringent as the federal regulations. The rules are consistent with federal regulations.

The CCRs will provide valuable information to the customers of CWS and allow them to make personal health-based decisions regarding their drinking water consumption. The information found in these CCRs will also be of benefit to consumers who may want to take a more active role in the quality of their drinking water and to those persons who may have special health needs that could be impacted by the water they drink.

The CCRs must contain information such as the source of the water, levels of contaminants found, the possible source of these contaminants and the corrective actions taken, mandatory language regarding the health effects, the quality of the water delivered, and other information about the CWS.

ADEQ began holding meetings around the state in May and June, 1999 to educate CWSs of the federal requirements and the upcoming Arizona rulemaking. Meetings were held in Wilcox, Yuma, Globe, Phoenix, Tucson, Kingman, Prescott, Flagstaff, Holbrook, Fredonia, and Springerville/Eager. An additional stakeholder meeting was held in Phoenix on September 27, 1999 to receive input from CWS representatives regarding the upcoming CCR rulemaking by ADEQ. Oral proceedings were held around the state in February and March, 2000 in Sierra Vista, Tucson, Phoenix, Flagstaff, Show Low and Parker. The record closed on March 3, 2000.

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:

A.R.S. § 41-1055 Requirements for an EIS

B(2) Persons Directly Affected by the Rule

a) Arizona Department of Environmental Quality

b) All CWSs, public and privately-owned, in Arizona

c) The U.S. Postal Service and other companies in the mail delivery business

d) Printing businesses

e) Consultants

B(3) Cost-Benefit Analysis

I. Cost and Benefits to State Agencies -- Arizona Department of Environmental Quality

As the state's primary agency for the safe drinking water program, ADEQ will receive and maintain records of all CCRs submitted by CWSs. Departmental staff will also inform each new CWS, of this rule's requirements. Although this rule will increase the recordkeeping needs of ADEQ, no additional staff will be needed and no impacts on the Department's budget is anticipated.

II. Cost and Benefits to Political Subdivisions of the State

Political subdivisions of the state that will be affected by these rules are publicly-owned CWSs like municipalities, county governments, water districts and water and sewer authorities that comprise part of the regulated community. All of them are funded by their ratepayers and the taxpaying public. Large cities like Phoenix and Mesa that serve populations greater than 10,000 will be required to transmit their CCRs once a year by mail or other direct delivery means. Some CWSs are already sending out CCRs to their customers. Smaller cities and towns will have the option to take advantage of the mailing waiver and other options open to them. The costs of the compliance with this rulemaking will either be absorbed or passed on to the taxpayers or ratepayers in their respective jurisdictions.

The City of Mesa (Mesa), with an estimated population of 420,000, is a municipality serving a very large urban population that is already implementing this rule. Last year, the Mesa Water Quality Services Department spent $75,000 in external costs to produce and mail out 210,000 brochures containing its Consumer Confidence Report information. In addition, Mesa spent between $15,000 and $20,000 in internal staff costs. The City also mailed out the CCR to industrial and commercial customers within its jurisdiction, as well as owners of master meters. Mesa officials determined that it would make good public relations sense to disseminate the information to as wide a public as possible to assure the consumers about its water quality. Although the expenditures appear to be high, these equate to only about $0.45 per residential household or other recipient of the brochures.

III. Cost and Benefits to Private Businesses, including Small Businesses

A) CWS -- Privately-owned CWSs consist of private water utility companies and other private entities like homeowners associations and developers who deliver water to subdivisions as an ancillary function of their major business. They will also be required to prepare and deliver CCRs to their customers through the various means indicated above. Their costs will either be absorbed by the CWSs themselves, or, if significant, these will be passed on to their ratepayers.

EPA has estimated the costs of complying with the requirements of the proposed rule and made adjustments for additional requirements like having each CWS store copies of their respective CCRs for three years after distributing it. In addition, CWSs serving 100,000 or more people are required to place their CCRs on the Internet. EPA's analysis of costs were evaluated in terms of fixed costs and variable costs. Fixed costs include those that a CWS must incur to comply with the requirements regardless of how many copies of the CCR it must deliver. These include costs associated with reviewing the regulations, collecting data pertinent to the monitoring results and MCL violations, preparing the technical content of the CCR in a format suitable for distribution, identifying the intended recipients of the CCRs and providing instructions for CCR production. Variable costs are those that increase or decrease along with the number of CCRs that need to be delivered. These are generally the costs of paper, printing, photocopying, labels and postage. Based on EPA's estimates, ADEQ believes that the costs to CWSs to comply with this rule are what are indicated in the table below. The table provides the number of CWSs that are currently operating in Arizona (as of September 1999), and the populations they serve as well as the probable total and average costs they will incur. It may be seen that the average cost to CWSs increases with an increase in the size of population served.

Section

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY						
Table 1.						
Community Water Systems and Service Populations						
	# of CWSs	Average Labor Cost /CWS	Other Costs /System		Average Cost /System	Avg Cost /Person
				Total:		
<=500	546	$49	$0.35	$26,945	$49.35	$0.10
501 to 3,300	184	$135	$248	$70,472	$383.00	$0.76--0.12
3,301 to 10,000	55	$468	$816	$70,620	$1,284.00	$0.39--0.13
10,001 to 50,000	35	$787	$2,301	$108,080	$3,088.00	$0.31--0.06
50,001 to 100,000*	3	$803	$2,664	$10,401	$3,467.00	$0.07--0.03
>100,000	7	$803	$2,664	$24,269	$3,467.00	$0.03
	830			$310,787	$374.44	

* EPA numbers had no category for CWS serving 50,001 to 100,000 population. ADEQ staff assumed that the costs for all CWS serving more than 50,000 will be about the same.

Table 1 indicates that almost two-thirds (65.8%) of all CWSs in Arizona have service populations of 500 or fewer. Most of them are in the rural areas of the state, but a few may be found in unincorporated portions of urban counties. A majority of the CWSs will therefore be able to take advantage of the mailing waiver if they choose to do so. Under the waiver they must also provide notices to notify their customers of the CCRs through the local print media and make available a copy of the CCR if requested by specific customers, in lieu of direct delivery to each customer. Another requirement is that CWS must keep CCR copies for three years. This is a recordkeeping requirement that is unlikely to be burdensome.

B) The US Postal Service and other mail delivery businesses will benefit from the increase in mail delivery required of large CWSs, and even small CWSs that would choose this method of information delivery. Other small businesses handling local bulk mailings in some communities could also see an increase in their revenues if they are chosen to deliver the CCRs. A typical CCR is between 2 and 12 pages. A 4-page CCR using ordinary 8 1/2 by 11-inch paper will usually cost $0.33 to mail, while a 6-page (or 12-page double sided) CCR would cost $0.55 in postage.

C) Newspapers and other print or publication media could also increase their revenues due to an increase in public notification requirements. Revenues for mail delivery and public notification are included in the table indicated above. Newspapers generally charge a fixed rate per column inch, or per line for public notices, and the rates vary considerably, depending on the paper's location and circulation size. The number of lines per column inch or the number of characters per line also varies with the size (points) of the characters printed. Below is a sampling of newspapers published in Arizona and their current public notice rates:

1. Apache Junction News, Maricopa County -- $11.50 per column inch
2. AZ Business Gazette, Maricopa County -- $0.33 per line of 20 characters
3. Arizona Republic, Maricopa County -- $6.60 per line of 25 characters
4. Arizona Daily Sun, Coconino County -- $5.74 per column inch
5. Arizona Daily Star, Pima County -- $27.44 per column inch
6. The Tribune, Maricopa County -- between $7.50 and $11.75 per column inch
7. Yuma Daily Sun, Yuma County -- $8.65 per column inch

IV. Costs and Benefits to Residents and Consumers

The residents and water customers being served by the various CWSs will become better informed consumers when they start receiving and reading CCRs on a regular basis. Being better informed about contaminants and other drinking water issues will enable the consuming public to make personal health-based decisions about their drinking water consumption, undertake more dialogue with their water providers, take active steps to ensure that their water (including bottled water) is safe and meets the standards of the Safe Drinking Water Act, and provide feedback to CWSs and other authorities on efforts to educate the general public.

REDUCTION OF RULE IMPACTS ON SMALL BUSINESSES

A.R.S. § 41-1035 requires ADEQ to reduce the impact of the rule on the class of small businesses, if possible. The Department shall use one or more of the five methods defined in the Section to reduce the impact, if the methods are legal and feasible in meeting the statutory objectives that are the basis of 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, and simplify them for regulated entities who fall within the class of small businesses.

The vast majority of Arizona CWSs that are currently operating (94.6% of the 830 total) have fewer than 10,000 customers. Only the 45 largest CWSs, of which the City of Mesa is an example, comprise 5.4% of the total. The minority of large CWSs will be required to mail the CCRs to their customers or transmit them by direct delivery method. The larger CWSs tend to be more financially solvent, able to absorb the costs of direct mailing and are also more likely to pass on their costs to their customers. Very often, these costs are hardly noticed by customers because, on a per household basis, they normally translate to only a few cents. The estimated costs (both internal and external) to the City of Mesa for producing and distributing the CCR brochures to more than 200,000 households and other recipients costs the customers only $0.45 per household per year or about 4 cents per month added to the water bill.

The small CWSs have fewer customers and are more likely to have less financial resources. By granting a mailing waiver to all the small CWSs, the Department is giving them several options for information delivery so as to enable them to choose the method that best works for them. Notification through the print media is one option, but may be more costly than mailing out the CCRs, depending on the number of households served and on what the newspapers charge for public notices. For example, a CWS serving about 3,500 people (estimated 1,300 households) wants to send out a ten-page CCR to its customers. Mailing ten typewritten pages would cost about $715 in postage, plus the cost of paper, photocopying and handling. Assuming a newspaper charges $11.50 per column inch, and the 10-page CCR requires a full newspaper page (126 column inches of between 8 to 12 points), the cost to the CWS would be $1,449. In this case, postal delivery would be the preferred method.

However, if the newspaper charges only $5.74 per column inch, the cost to the CWS would be $723. Public noticing through the newspaper would be the more economical method in this case, if the combined cost of paper, photocopying and handling exceeds $8. The cost of $723 spread out over 1,300 households amounts to about $0.56 per household per year or 5 cents per month. And if the CWS has fewer than 500 customers, its costs would be reduced considerably because there is no requirement to publish its entire CCR but only to give notification that the mailing waiver is used and that the CCR is made available upon request. Assuming this takes 5 column inches and that there is no minimum charge, the initial cost to the CWS would be $28.70. There would be additional costs only if customers request copies of the CCR.

ADEQ believes that by granting the mailing waiver to the smaller CWS, the Department has taken steps to vastly reduce the costs of complying with this rule and given them more affordable options for information delivery.

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

Changes made by ADEQ

Minor changes to grammar and punctuation, and stylistic changes were to comply with current rule writing standards and for clarity and conciseness. Other changes were made for clarity and conciseness in response to comments from the Governor's Regulatory Review Council (G.R.R.C.) staff.

R18-4-710(F) is revised to reduce the recordkeeping requirement from 5 years to 3 years to be consistent with a superseding change by the United States Environmental Protection Agency (EPA) in the federal regulation.

Additional changes were made to the rule in response to public comments. The following changes were made to the rule:

R18-4-701:

This Article applies to CWSs and establishes the minimum requirements for the content of the annual consumer confidence report (CCR) that a CWS shall deliver to its customers. The ~~CCR~~ CWS shall ~~contain~~ provide accurate and understandable information in the CCR on the quality of the water delivered by the CWS and characterize the risks, if any, from exposure to contaminants detected in the drinking water.

R18-4-702:

A. A CWS shall deliver a CCR to each customer annually by July 1~~, 2000, and the CWS shall deliver a CCR to each customer by July 1 each year thereafter~~.

B. The CCR ~~is due by July 1, 2000 and~~ shall contain water quality data ~~used to determine compliance in calendar year 1999. Each CCR thereafter shall contain data used to determine compliance for~~ from the previous calendar year.

C. A new CWS shall deliver its first CCR by July 1 of the year after its ~~first~~ 1st full calendar year in operation.

D. A CWS that sells water to another CWS shall deliver the applicable information required in this Article to the purchaser CWS annually by April 1, ~~2000 and by April 1 annually thereafter,~~ or on a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

R18-4-703:

A. A CWS shall provide to its customers an annual CCR that contains the following information on the source of the water delivered:

1. The type of the water ~~(e.g., surface water, ground water)~~ (i.e., surface or ground water); and
2. The ~~commonly used~~ name~~, if any,~~ and location of the body of water.

B. If a source water assessment has been completed, the CCR shall notify consumers of the availability of this information and how to obtain it ~~from the CWS~~. ~~Where~~ If a CWS has received a source water assessment from the Department, the CCR shall contain a brief summary of the assessment findings and the CWS's susceptibility to potential origins of contamination, using language provided by the Department, or written by the ~~operator~~ CWS in consultation with the Department.

D. A CCR for a CWS operating under a variance or an exemption under R18-4-110 ~~and~~ or R18-4-111 shall contain the following definition:

"Variance" or "exemption" means permission from the Department or the EPA not to meet an MCL or a treatment technique under certain conditions.

R18-4-704:

A. ~~The~~ A CCR shall contain information on the following detected contaminants that are subject to mandatory monitoring ~~for the following~~:

1. Contaminants subject to an MCL, action level, or treatment technique (regulated contaminants); and
2. Contaminants for which monitoring is required by R18-4-404 ~~and~~ or R18-4-405 (unregulated contaminants).

B. The CWS shall display in ~~one~~ 1 table, or several adjacent tables, data relating to the detected contaminants in subsection ~~A~~ (A) of this Section. If ~~a~~ the CWS includes voluntary monitoring data, ~~that~~ those data shall be listed in a table separate from the table of detected contaminants. For detected regulated contaminants, the table shall contain:

1. The MCL for that contaminant;
2. The MCLG for that contaminant expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level applicable to that contaminant, and the CCR shall include the definitions for "treatment technique" or "action level", as appropriate, specified in R18-4-703(E)(1) and (2);
4. For contaminants subject to an MCL, except turbidity and total coliforms, the highest monitoring result used to determine compliance and the range of monitoring results, as follows:
   a. When compliance with the MCL is determined annually or less frequently, the highest monitoring result at any sampling point and the range of detected monitoring results expressed in the same units as the MCL.
   b. When compliance with the MCL is determined by calculating a running annual average of all monitoring results taken at a sampling point, the highest average of the monitoring results and the range of all detected the monitoring results expressed in the same units as the MCL.
   c. When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all monitoring results at all sampling points, the average and range of detected monitoring results expressed in the same units as the MCL.
5. For turbidity, the highest single measurement and lowest monthly percentage of samples meeting turbidity limits specified in R18-4-302 for the filtration technology being used. The CCR shall include an explanation of the reasons for measuring turbidity;
6. For lead and copper, the 90th percentile value of the most recent round of sampling and the number of sampling sites that exceed the action level;
7. For total coliform:
   a. The highest number of positive samples collected each month for a CWS that collects fewer than 40 samples per month; or
   b. The highest percentage of positive samples collected each month for a CWS that collects at least 40 samples per month.
8. For fecal coliform, the total number of positive samples; and
9. The likely source of detected contaminants. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and shall be used when available to the CWS. If the CWS lacks specific information on the likely source of contamination, the CCR shall include one or more of the typical origins for that contaminant listed in Appendix B that are most applicable to the CWS.

C. The table shall clearly identify any data indicating ~~violations~~ violation of MCLs or treatment techniques.

D. The CWS shall derive information in the CCR on detected contaminants from data collected to comply with monitoring and analytical requirements of this Chapter for the previous year. The table for a CWS that monitors less often than once a year for regulated contaminants under this Chapter shall contain the date and results of the most recent sampling. The CCR shall contain a brief statement indicating that the data presented in the CCR are from the most recent testing done ~~in accordance with this Chapter~~ within the last 5 years in accordance with this Chapter.

E. For a detected unregulated ~~contaminants~~ contaminant for which monitoring is required, the table shall contain the average and range at which the contaminant was detected. The CCR may include a brief explanation of the reasons for monitoring for unregulated contaminants.

F. ~~A~~ The CWS shall include in the CCR results of monitoring in compliance with R18-4-404 and R18-4-405 and ~~shall be included~~ for 5 years from the date of last sample or until ~~any of~~ the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

G. If ~~a~~ the CWS distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the CCR shall identify each separate distribution system. Alternatively, a CWS may produce separate CCRs tailored to include data for each service area. Multiple points of entry to a distribution system are not necessarily considered hydraulically independent.

R18-4-705(A) and (B):

A. If a CWS has performed monitoring for Haloacetic Acids or *Cryptosporidium*, or both, that indicates that either Haloacetic Acids or *Cryptosporidium* may be present in the source water or the finished water, the CCR shall contain:

1. A summary of the results of the monitoring~~;~~, and
2. An explanation of the significance of the results.

B. If a CWS has performed any monitoring for radon that indicates that radon ~~may~~ might be present in the finished water, the CCR shall contain:

1. The results of the monitoring~~;~~, and
2. An explanation of the significance of the results.

R18-4-706:

A. A CCR shall contain a clear, understandable explanation of any violation that occurred during the year covered by the CCR, the length of the violation, an explanation of any potential adverse health effects, the health effects language from Appendix B of this Article, and the steps the CWS has taken to correct the violation of any of the following:

1. An MCL, treatment technique, or action level;
2. Monitoring and reporting of regulated and unregulated compliance data;
3. Filtration and disinfection for a CWS that has had a failure of filtration equipment or processes ~~or has had a failure of such equipment or process~~ that constitutes a violation. The CCR shall contain the following language as part of the explanation of potential adverse health effects:
   "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."
4. Lead and copper. For a CWS that failed to take ~~one~~ 1 or more actions prescribed by R18-4-306 through R18-4-308, and R18-4-311 through R18-4-315~~, the CCR shall contain the applicable language from Appendix B of this Article for lead, copper, or both~~.
5. Treatment techniques for Acrylamide and Epichlorohydrin. For a CWS that violated the requirements of R18-4-317~~, the CCR shall include the relevant language from Appendix B~~.
6. Recordkeeping of compliance data~~;~~.
7. Violation of the terms of a variance, an exemption, or an administrative or judicial order.

R18-4-707:

If a CWS is operating under the terms of a variance or an exemption issued under R18-4-110 and R18-4-111, the CCR shall contain:

1. An explanation of the reasons for the variance or exemption;
2. The date on which the variance or exemption was issued;
3. A brief status report on the steps the CWS is taking to install a method of treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and
4. A notice of any opportunity for public input in the review, or renewal, of the variance or exemption.

R18-4-708:

A. ~~The~~ A CCR shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water. This explanation shall contain, at a minimum, the language of subsections (B) through (D). A CWS may include additional information.

The subsection after subsection (A) is labeled (B) and all other subsections are renumbered consecutively.

D. ~~To~~ In order to ensure that tap water is safe to drink, the United States Environmental Protection Agency prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. The United States Food and Drug Administration regulations establish limits for contaminants in bottled water.

G. In communities with a large proportion of non-English speaking residents, the CCR shall contain information in the appropriate language regarding the importance of the CCR or contain a telephone number or address where ~~such~~ these residents may contact the CWS to obtain a translated copy of the CCR or assistance in the appropriate language.

R18-4-709:

A. A CCR shall prominently display the following language:

"Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, ~~people~~ persons with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. United States Environmental Protection Agency and Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791)."

C. A CWS that detects nitrate at levels more than 5 mg/l, but less than the MCL shall include a short informational statement about the impacts of nitrate on children. The CWS may create its own informational statement, in consultation with the Department, or the CWS may use the following language:

"Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than ~~six~~ 6 months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."

R18-4-710:

A. A CWS shall mail or otherwise directly deliver ~~one~~ 1 copy of the CCR to each customer, except as provided in subsection ~~(G)~~ (H) by July 1 annually.

B. A CWS shall make a good faith effort to notify its consumers who do not get water bills of the availability of the CCR. A good faith effort to notify consumers would include a use of methods appropriate to the particular CWS such as:

1. Posting the ~~CCRs~~ CCR on the Internet,
2. Mailing to postal patrons in metropolitan areas,
3. Advertising the availability of the CCR in the news media,
4. ~~Publication~~ Publishing in a local newspaper,
5. Posting in public places such as cafeterias or lunch rooms of public buildings,
6. ~~Delivery of~~ Delivering multiple copies for distribution by single-biller customers such as apartment buildings or large private employers, or
7. ~~Delivery~~ Delivering to community organizations.

C. A CWS shall deliver a copy of the CCR to the Department not later than the date the CWS delivers the CCR to its customers. A CWS that complies with the requirements of subsection ~~(G)~~ (H) shall deliver a copy of the CCR to the Department by July 1 annually. Within 3 months of delivery of the CCR to a Department, ~~a~~ the CWS shall send a certification to the Department that verifies that the CCR has been distributed to the customers of the CWS, or that the CWS has complied with the requirements of subsection ~~(G)~~ (H). The certification shall also verify that the information in the CCR is correct and consistent with the compliance monitoring data previously submitted to the Department.

D. A CWS that sells water to another CWS shall send written verification to the Department that the seller CWS has complied with the requirements of R18-4-702(D). The written verification shall be sent to the Department within 3 months of compliance with R18-4-702(D).

E. Each CWS shall make its ~~CCRs~~ CCR available to members of the public upon request.

F. Each CWS that serves 100,000 or more persons shall post its current year's CCR to a publicly accessible site on the Internet.

G. Each CWS shall retain a copy of its ~~CCRs~~ CCR for at least 3 years.

H. Mailing waiver. A CWS that serves ~~less~~ fewer than 10,000 people may perform the following instead of the requirements of subsection (A):

1. For a CWS that serves, more than 500, but ~~less~~ fewer than 10,000 people:
   a. Inform customers that the CWS will not provide copies of the CCR by mail or other direct delivery method,

b. Publish the entire CCR annually in at least ~~one~~ 1 local newspaper or other news ~~media~~ medium serving areas in which ~~your~~ the CWS's customers are located, and
c. Send written notification to the Department that the CWS intends to comply with the requirements of this subsection.

2. For a CWS that serves 500 or fewer people:
a. Inform customers that the CWS will not provide copies of the CCR by mail or other direct delivery method,
b. Provide notice annually that the CCR is available upon request, and
c. Send written notification to the Department that the CWS intends to comply with the requirements of this subsection.

Subsections after (D) were renumbered consecutively.

Appendix A

Regulated Contaminants

Microbiological Contaminants	**MCL**	**Major Sources in Drinking Water**
1. Total Coliform Bacteria	~~presence~~ Presence of coliform bacteria in 5% or more of monthly samples.	Naturally present in the environment
2. Fecal coliform and *E. coli* positive	A routine sample and a repeat sample are total coliform positive, and one is also Fecal coliform or *E. coli* positive.	Human and animal fecal waste

Additionally in Appendix A, the word "runoff" was changed to "run-off" for consistency.

In Appendix B, the word "six" was changed to "6" in items 19 and 20.

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

GENERAL COMMENTS

ISSUE: During stakeholder meetings for this rule, ADEQ requested input from stakeholders regarding the units that are reported with each contaminant's detection. It appears ADEQ has taken EPA's approach in requiring that the results be "expressed in the same units as the MCL". Stakeholders expressed a desire to leave this to the discretion of the individual CWS, because varying units can be confusing to the consumer. The City supports the stakeholder recommendation.

ANALYSIS: ADEQ disagrees with this comment. The rule allows the CWS to determine in what unit of measurement it will report, as recommended by the stakeholders. The rule does require, for consistency and understandability, that once a unit of measurement has been selected by the CWS, that same unit must used throughout the CCR for expression of the MCL and MCLG.

RESPONSE: No change to the rule.

ISSUE: The rule will be more expensive for small water providers than medium and large water providers. The commenter suggests that ADEQ consider an option for small systems serving between 500 and 10,000 people to seek administrative relief from publishing the CCR. The proposal would be for the provider to submit the CCR table to ADEQ and have ADEQ load the CCR on its web page. The water provider could use the notice in the local media, mail or direct delivery to inform the public of the CCR availability at the ADEQ web page and local library.

ANALYSIS: Federal regulations require ADEQ rules be at least as stringent as the federal requirements. The federal regulations do not have a provision that allows small systems serving between 500 and 10,000 people to "seek administrative relief" by having their CCR posted on the ADEQ internet web page. The central purpose of the CCR rule is to ensure that each person served by a CWS either receive the CCR by direct delivery, or are notified of the availability of the CCR. Not all persons served by a CWS have access to the internet and consequently it may be difficult or impossible for those persons to obtain a copy of a CCR distributed solely in that manner. Posting the CCR on the ADEQ internet web page as the only means of distribution is contrary to the central purpose of the CCR rule. A CWS may provide copies of their CCR to a public library or post it on an internet website, but it must also meet the requirements of R18-4-710.

RESPONSE: No change to the rule.

ISSUE: The commenter believes that if the radon rule is finalized as proposed, the AMCL concept (and the Multimedia Mitigation program) will present a unique risk communication challenge for utilities as it pertains to the CCRs. Typically, contaminant levels are shown in comparison to the MCLGs and MCLs. In order to avoid confusion, the CCR rule should be revised to deal with radon as a separate topic within the CCR. In this manner, the detected radon concentrations, the MCLGs, the MCL, and the AMCL can be presented in a table or discussion item separate from

the rest of the detected contaminants. Furthermore, specific radon language should be developed for those utilities that will have radon concentrations that fall in between the MCL and AMCL.

ANALYSIS: ADEQ recognizes the communication challenges this portion of the CCR rule might present. However, because the federal rule is not yet final, and ADEQ cannot make changes to this rule to address a federal requirement that does not yet exist. Radon is currently not a regulated contaminant, does not have a MCL, AMCL, or MCLG, therefore, it must be addressed separately from regulated contaminants, as the commenter suggests. For a CWS having difficulty with developing language for its particular situation, ADEQ will provide assistance to the CWS individually, upon request.

RESPONSE: No change

ISSUE: For large systems such as the City of Phoenix, which has about 350,000 water accounts, the most cost-effective manner of sending the report to its customers is by including the report with the water bills. A separate mailing would incur postage costs in excess of $100,000. The current regulations require the city to have the report to all customers by July 1st. It also requires all Community Water Systems (CWSs) that sell water to Phoenix to supply us with information about that water's quality by April 1st. Phoenix must include the report with the water bills sent during May, because some May bills actually reach the Post Office in June. (If the city sent the report with the June bills, some reports would not reach the Post Office until after the July 1st deadline.) The complications of typesetting, proofing, printing and delivering the reports to the city's mail room mean that the copy for the report must be sent to the typesetter in March. That is about a week BEFORE the deadline for other CWSs to provide us with information about the contents of water sold to Phoenix. Rather than force those CWSs that sell water to Phoenix to move up the deadline for providing the data, we recommend that a concept of "substantial compliance" be adopted so that the MAJORITY of reports can be mailed before the July 1st deadline, but that the remainder of the billing cycle, NOT TO EXCEED ONE THIRD of the reports, be mailed after the July 1st deadline.

ANALYSIS: ADEQ recognizes that a CWS may have to modify its internal processes to comply with the rules and that there will be costs associated with compliance. In order for ADEQ to have primacy, the rules must be at least as stringent as the federal regulations. The federal regulations do not provide for a concept of "substantial compliance", allowing for partial compliance with any requirements. Therefore, ADEQ cannot include such a provision in these rules.

RESPONSE: No change

ISSUE: The current regulations require that tables concerning contaminants such as Arsenic list the lowest and highest levels found during testing. There is no requirement or recommendation to show the most likely level of the substance in the water delivered to customers. The problems with the present requirement is that the source of the highest (or lowest) test result may be for only a tiny portion of the CWS's water and therefore could mislead consumers. For example, most (96%) of the water Phoenix delivers to customers comes from surface water supplies. These sources normally produce water volumes ranging from 175 to 425 Million Gallons per Day (MGD). Water from these plants often has Arsenic levels, which are non-detectable. Our wells normally produce about 1 MGD. If a well, which tests at having 15 parts per billion (ppb) of Arsenic supplements the surface water supply, the level of Arsenic in water delivered to the customer is likely to be less than 3 ppb and frequently will be so diluted it is non-detectable. Consequently, we recommend that there be a requirement that the table include (or at least be permitted to include) a column that indicates the most likely level of the substance reaching the consumer. This approach should reduce confusion on the part of customers and demonstrate the efforts of CWSs to provide consumers with quality drinking water.

ANALYSIS: ADEQ believes that the rules, as written, allow for inclusion of this information. The rule requires that actual compliance monitoring results, not speculation, be displayed in the detection or violation tables. Other monitoring results, such as samples taken at a customers home, may be displayed in a separate Section of the CCR. Therefore, a CWS may include results from surveillance monitoring that is not compliance monitoring in a separate table if the CWS determines this additional information will give its customers a greater understanding of the CWS's water quality.

RESPONSE: No change

ISSUE: The people that get this report don't seem to be interested in it. It seems to be a great deal of work and waste and essentially there is no significance to the report.

ISSUE: My report to my 20 service connections approximately 60 people was met with a complete lack of interest and almost disbelief that the large bureaucracy is requiring these reports. It's time consuming and seek if possible any kind of exclusion from the CCR with only 20 service connections.

ANALYSIS: ADEQ acknowledges that new rules present additional tasks for the water systems, but to retain primacy the state must have rules that are no less stringent than the federal rules. ADEQ has included the mailing waiver provision R18-4-710(G) to reduce the burden on small water systems.

RESPONSE: No change

ISSUE: If I had a detect per my MAP (Monitoring Assistance Program), and the average is below the detect, do I need to include this information in the CCR?

ANALYSIS: The rule requires any results from required monitoring that are above the detection levels to be included in the CWS's CCR. If the system has quarterly monitoring results that average below the detection, but with one or more individual results that are above the detection level, the system must report the average of the results, and the range of detected results (i.e. the highest and lowest detected results).

RESPONSE: No change.

R18-4-702

ISSUE: R18-4-702(A). The term "deliver" in the statement "A CWS shall deliver a CCR to each customer by July 1, 2000…." needs to be better defined, so that a PWS can deliver the CCRs to the post office by July 1. Once the CCRs are in the post office's possession, the PWS has no control of the actual delivery date to the customer, especially if it is delivered by bulk mail.

ANALYSIS: ADEQ disagrees that the term "deliver" needs to be defined. Usage of the term is ordinary usage. Webster's Third New International Dictionary defines "delivery" as "to send to an intended destination". Additionally, general business practices allow that once mail is delivered to the post office and receives a postmark, the mail is considered delivered. ADEQ practices would be consistent with ordinary business practice, and ADEQ would consider a CWS to have met its obligation upon delivering the CCR to the post office.

RESPONSE: No change.

ISSUE: Please specify in R18-4-702 that compliance will be in regards to CCR requirements.

ANALYSIS: This comment requests a specification that is incorrect. R18-4-702 requires data that is contained in the CCR be the same data that was submitted to ADEQ by the CWS to determine compliance for the previous year.

RESPONSE: No change.

ISSUE: R18-4-702(D). The City appreciates the contractual flexibility ADEQ has incorporated into this paragraph. The term contract should remain loose enough that a letter between the parties suffices. Additionally, ADEQ should require that the contract, or letter, between the buyer and seller be kept on file or be submitted to the regulating entity.

ANALYSIS: ADEQ agrees that determining the manner and form of this contract is better decided by the CWS. ADEQ disagrees that this rule should require that the contract or letter should be kept on file or submitted to ADEQ. However, ADEQ has added the requirement in R18-4-710(D) that a CWS that sells water to send written notification to ADEQ verifying that all information required in R18-4-702 has been sent to the buyer.

RESPONSE: R18-4-710 is amended to add a new subsection (D) that states, "A CWS that sells water to another CWS shall send written verification to the Department that the seller CWS has complied with the requirements of R18-4-702(D). The written verification shall be sent to the Department within 3 months of compliance with R18-4-702(D)." Subsequent subsections are renumbered to reflect the addition of this new subsection.

ISSUE: R18-4-702(D). District supports the stakeholders's recommendation that the wholesaler and the CWS determine by mutual agreement whether or not the volume of water delivered is significant to obtain the CCR table from the wholesaler.

ANALYSIS: ADEQ disagrees with the commenter's interpretation of the stakeholder recommendation. What the stakeholders recommended is that the seller always provide the information to the buyer. The buyer will then determine whether the volume of water is significant and should be included in the buyer's CCR.

RESPONSE: No change.

ISSUE: "A CWS that **sells**…." Do you have to provide information to another CWS if you did NOT provide water during the time period covered by the Consumer Confidence Report? If there are pipe connections between two cities for emergency uses only; do the cities still have to exchange water information required by the CCR?

ANALYSIS: The rule requires CWSs that sell water to another CWS to provide information to the buyer. If a CWS does not sell water to another CWS during the time period covered by the CCR, no transfer of data is required. If pipe connections between 2 cities are not used during the CCR covered period, no transfer of data is required.

RESPONSE: No change

R18-4-703

ISSUE: R18-4-703(B). The District does not support the proposed language "and how to obtain it (Source Water Assessment) from the CWS." The U. S. Environmental Protection Agency guidance manual on page 4 states that CWSs only have to notify consumers of the availability of this information.

ANALYSIS: ADEQ will revise the rule to be consistent with the federal regulation that requires the CWS notify the consumer of the availability of this information, but does not require that copies be obtained from the CWS.

RESPONSE: The phrase "from the CWS" will be stricken.

ISSUE: The economic section of this proposed rule did not address the cost (of providing copies of the Source Water Assessment to consumers) for CWS or for ADEQ.

ANALYSIS: ADEQ believes that the revision to R18-4-702(D) that deletes the phrase "from the CWS" addresses the concern of the cost of providing copies of the Source Water Assessment report to consumers.

RESPONSE: No change.

ISSUE: R18-4-703(B). The statement in this Section using the language ". . . provided by the Department or written by the operator in consultation with the Department . . ." the commenter would like to see "CWS" replace "operator", to be consistent with the language in the rest of the rule package.

ANALYSIS: ADEQ agrees with this comment and will change the word "operator" to the term "CWS."

RESPONSE: The term "operator" is stricken and the term "CWS" is added in its place.

ISSUE: The District supports ADEQ's position that this cost could be prohibitive to ADEQ. CWSs would be impacted the same way. Therefore, the District recommends that ADEQ publish the Source Water Assessment Reports on its web page or to the availability at local libraries. The CWSs would notify the public of the availability on the ADEQ web page and local libraries.

ANALYSIS: ADEQ is unsure whether it will possess the adequate resources to put all of the reports on the ADEQ web page at the time they are completed. The Source Water Assessment Plan establishes a multi tiered approach for Source Water Assessment Report dissemination designed to make copies of a report available to all persons wishing to have one while considering the associated costs of making these reports available.

RESPONSE: No change.

ISSUE: R18-4-703(C). The word "contaminant" throughout the rule should be flexible or reconsidered. Contaminant infers a negative connotation, and many parameters measured in drinking water are not viewed negatively (e.g. calcium). ADEQ might consider a more consumer friendly word such as "substance".

ANALYSIS: The term "Maximum Contaminant Level" (MCL) in federal law and these rules are written to be consistent with federal law and other rules and terms in 18 A.A.C. 4. Use of the term "substance" would be inconsistent and cause confusion.

RESPONSE: No change.

R18-4-704

ISSUE: The current regulation states that information about the levels of unregulated contaminants for which monitoring is required, including Cryptosporidium and radon where they have been found, must be included in the reports. Management of the Water Services Department believes this requirement is counterproductive when considering the purpose of the report. The monitoring done is to assist EPA, ADEQ and other regulatory bodies in establishing a Maximum Contaminant Level (MCL) or other standard that is based on scientific research that has undergone rigorous peer review. Inclusion of the data in the report before hazard levels are scientifically identified and confirmed can lead to gross misunderstandings of the quality of water being provided to customers. For example, EPA is considering a MCL of 300 picocurries per liter (pCi/l) for radon. At the same time, the agency is considering an Alternative MCL (AMCL) or 4,000 pCi/l. Many communicators and experienced customer service personnel believe such a variation almost certainly will lead to some customers misunderstanding the quality of water being delivered to them. Consequently, we recommend that the requirement relating to reporting levels found during monitoring for unregulated contaminants should be eliminated.

ANALYSIS: ADEQ disagrees with this comment. The requirement of reporting of levels for unregulated contaminants is consistent with requirements established in the federal regulations. For ADEQ to have primacy in this area, the rules must be at least as stringent as the federal regulations, therefore ADEQ cannot eliminate this requirements. However, for unregulated contaminants for which monitoring is required, such as calcium, R18-4-704(E) allows the CWS to include a brief explanation of the reasons for monitoring for unregulated contaminants.

RESPONSE: No change.

ISSUE: R18-4-704(B). "The CWS… tables, relating to the **detected** contaminants subject to mandatory monitoring". Keeping the detected and non-detected contaminants in separate tables will create extra work each year, since the detection of contaminants may vary. All the contaminants subject to mandatory monitoring (regulated and unregulated) should be included in a table(s) and data should be reported for all, regardless of detects or non-detects. This way the customers will get familiar with one format that will be used every year.

ANALYSIS: The requirements of R18-4-704(B) apply only to detected contaminants. Therefore, contaminants that were not detected in compliance monitoring are not to be included in this table.

RESPONSE: No change.

ISSUE: R18-4-704(B)(4)(a) is unclear. Does the proposed rule require that the highest monitoring result for each sampling point be reported or just the single highest result and the overall range of detection from all sampling points in the system be combined?

ANALYSIS: The rule requires that the CWS display the highest monitoring result ". . . at **any** sampling point . . .". ADEQ believes that use of the word "any" in R18-4-704(B)(4)(a) is establishes that the requirement is for the highest result from **any** of the system's sampling points, not the highest result from each of the system's sampling points.

RESPONSE: No change

ISSUE: R18-4-704(B)(4)(b) which states in part, "...and the range of all the monitoring results..." is not consistent with items (a) and (c). For consistency, it should state "...and the range of all the **detected** monitoring results..."

ANALYSIS: ADEQ agrees there is an inconsistency and the rule should be revised to add the word "detected" for consistency.

RESPONSE: Add "detected" after "range of all".

ISSUE: R18-4-704(B)(4)(b). "When compliance……running annual average…., the **average of the monitoring results** and the range…". The EPA rule (141.153(d)(4)(iv)(B)) states that this should be the "highest average of any of the sampling points". Should this average be the average of all the monitoring results or the highest average of any of the sampling points? These averages are two different values.

ANALYSIS: ADEQ agrees that the federal regulation requires the ". . .highest average of any of the sampling points . . ." and will "highest" to the rule.

RESPONSE: Add "highest" before the phrase "average of the".

ISSUE: If a Point of Entry (POE) is sampled (i.e. Synthetic Organic Chemicals) in the third quarter 1999 (3Q99), fourth quarter 1999 (4Q99), first quarter 2000 (1Q00) and second quarter 2000 (2Q00), the running average of the four consecutive quarterly results will consist of values from two different years. The MCL is based on this running average, not the individual quarterly results. There could be the case that the individual quarterly results from 3Q99 and 4Q99 exceed the MCL, however when averaging the results from all four quarters (1999 and 2000), the running average meets the MCL. When reporting the 1999 data, you would have to average the two 1999 quarterly results, which would indicate that the MCL was exceeded. This will not provide the customers with the accurate running average.

ANALYSIS: ADEQ recognizes that CWSs may monitor outside of their designated monitoring schedule. The example provided by the commenter describes a monitoring and report violation that must be included in the CCR under R18-4-706. R18-4-706 describes the requirements for explaining violations in the CCR.

RESPONSE: No change.

ISSUE: R18-4-704(B)(4)(c). "When compliance. . .system-wide basis…., the average and **range of detected monitoring results**…". Is this the range of the individual results from all the distribution sampling sites from that year, or is it the range of the quarterly averages? The MCL is based on the quarterly average of all the sampling sites, not on the individual results from the sampling sites.

ANALYSIS: ADEQ rules contained in 18 A.A.C. 4, Article 2, require that for systems monitoring quarterly or more frequently, compliance is determined by a running annual average of all samples taken at each sample point. This comment refers to an MCL that is based on a running annual average of all sampling sites, not a quarterly average of all sampling sites. The rule requires the average of all samples and the range of all detections, not the range of the quarterly averages.

RESPONSE: No change

ISSUE: R18-4-704(B)(9) **"**The likely source of detected contaminants" should not have to be listed within the table that the substances are listed. It would provide for easier consumer education if a textual discussion were allowed adjacent to the table. This would allow for incorporation of the same "likely source" for multiple substances. For example, many of the inorganic substances are naturally occurring in Arizona water supplies, and could be discussed textually instead of repeatedly listing "erosion of natural deposits" in a table. This approach could provide for more meaningful dialog for the average consumer.

ANALYSIS: The rule provides for tables to include text or letters with a corresponding key. This allows the commenter to develop a table such as the example given in the comment.

RESPONSE: No change.

ISSUE: R18-4-704(C). ADEQ states "A CWS shall derive information in the CCR on the detected contaminants from data collected to comply with monitoring and analytical requirements of this Chapter for the previous year. The table for a CWS that monitors less often than once a year for regulated contaminants under this Chapter shall contain dates and results of the most recent sampling." The City has two recommendations relating to this part of the rule. (1) Many CWSs' monitor for some substances more often than the required monitoring schedule. If a PWS has monitoring data that is representative of data from the year to be reported, this data would be more pertinent to the consumer than data from samples collected 2 or 3 years prior. More recent data, from the year to be reported, should be eligible for replacement of older data, even though it may not be in ADEQ's database. This recommendation conflicts with language stated in R18-4-710(C); therefore, both paragraphs of the rule need to be revised to be able to provide the most pertinent data possible. (2) Supplying individual monitoring dates for samples collected prior to the required

year will prove difficult for complex CWSs with multiple POEs. For example, since radiochemical monitoring is only required every four years and a PWS may collect samples at its multiple POEs on many different days or different years, a system would be required to list a large amount of dates for the affected parameters. This would make the table very cumbersome and confusing. The City suggests that ADEQ require PWSs to express a range of sample collection dates textually.

ANALYSIS: ADEQ recognizes that CWSs have a great deal of monitoring and reporting to include in CCRs, but maintains that the federal regulation requires systems to address compliance monitoring data separately from additional monitoring that systems may perform. Other monitoring results a CWS collects that are in addition to the required compliance monitoring may be displayed in a separate Section of the CCR. Therefore, CWSs may include results from surveillance monitoring that is not compliance monitoring in a separate table if the system believes this additional information will give their customers a greater understanding of the system's water quality. The rule does require systems to include dates of compliance monitoring results, but allows CWSs to place the dates of compliance monitoring results either beside each individual contaminant or at the top of the table.

RESPONSE: No change

ISSUE: R18-4-704(D) states in part, "...data presented in the CCR are from the most recent testing done in accordance with this Chapter within the last 5 years..." does not address reporting requirements for contaminants that are sampled less frequently than 5 years. A statement should be added that addresses reporting requirements for contaminants that are sampled less frequently than 5 years.

ANALYSIS: ADEQ disagrees that a statement should be added. Information on detected contaminants only needs to be included in the CCR for 5 years from the date the sample was collected. For contaminants monitored less frequently than 5 years, the CCR for the sixth year after that monitoring event need not include those contaminants.

RESPONSE: No change.

ISSUE: R18-4-704(F). The wording of this paragraph is confusing and should be clarified. We believe ADEQ intended that a CWS include information regarding the testing of the unregulated SOCs and VOCs and the availability of the results. We suggest ADEQ review this paragraph, the EPA required language relating to reporting unregulated contaminants, and ADEQ's current rule R18-4-404(G) to clarify the draft language

ANALYSIS: ADEQ has reviewed these requirements. The commenter is incorrect in its statement of ADEQ's intent. ADEQ intends that CWSs report all detected results for unregulated contaminants for which monitoring is required. This is consistent with the federal requirements. ADEQ rules must be at least as stringent as the federal rules.

RESPONSE: Insert the word "and" after the cite of R18-4-405.

R18-4-705

ISSUE: Recommend that "and/or" be substituted for "or" in the first sentence of R18-4-705.

ANALYSIS: The rule is revised for clarity.

RESPONSE: The phrase ", or both," is added after "*Cryptosporidium*".

ISSUE: R18-4-705(A)(2) and (B)(2). ADEQ needs to supply suggestions to assist utilities with the requirement of providing "An explanation of the significance of the results" for substances that are not yet regulated (e.g., radon). We suggest the following example: "This substance will begin being regulated in the near future. The City is collecting samples in anticipation of this rule change to determine the levels of this substance in the drinking water."

ISSUE: R18-4-705(A) and (B). It is uncertain what "significance of the results" refers to. Would the language in the example provided on page 8 of the U.S. EPA guidance manual be appropriate?

ANALYSIS: The EPA determines when it will establish new regulations for contaminants that were previously unregulated. ADEQ can neither predict which unregulated contaminants will become newly regulated contaminants, nor when. Therefore, any language put in rule prior to designation by the EPA would be speculative and could be inconsistent with what the EPA does designate. ADEQ will assist individually a CWS that requests assistance in developing its language

RESPONSE: No change

ISSUE: R18-4-705(B)(1) "**The results of the monitoring; and**". Does this include all the results, the average, or the high and the low? Since there is not an adopted MCL by the State, what do you compare your results to?

ANALYSIS: The rule was written to be flexible to allow CWSs to summarize results in a manner they believe will provide clear and understandable information to their customers.

RESPONSE: No change.

R18-4-708

ISSUE: The numerical and alphabetic references are incorrect and need to be corrected.

ANALYSIS: The rule is revised to correct a typographical error.

RESPONSE: The subsection after subsection (A) is labeled (B) and all other subsections are renumbered consecutively.

R18-4-709

ISSUE: R18-4-709(D). There is a period missing between the first and second sentence of this paragraph.

ANALYSIS: The rule is revised to correct this typographical error.

RESPONSE: A period is added after "children" in the first sentence.

ISSUE: R18-4-709.B. I believe that the informational statement about arsenic should be modified to read "The arsenic level in your water is below the present MCL set by EPA; however, the EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough." Similarly, in paragraph C (nitrate), the informational statement in the draft rule should follow "The nitrate level in you water is below the present MCL"

ANALYSIS: ADEQ disagrees that the language in R18-4-709(B) should be revised. Those CWSs that choose to use that language can. The rule also permits a CWS to develop alternative language fore arsenic and nitrate informational statements in consultation with ADEQ.

RESPONSE: No change.

R18-4-710

ISSUE: R18-4-710(A) is not clear regarding how the report may be mailed and "directly deliver" should be defined.

ANALYSIS: ADEQ disagrees that this term should be defined. ADEQ would like to allow some flexibility determining "direct delivery" and does not want to give a narrow definition that would limit a CWS from using a legitimate form of direct delivery. ADEQ will rely on the general usage of these terms and will recognize methods ordinarily used in the course of business as meeting the requirements for "mailed" and "direct delivery".

RESPONSE: No change.

ISSUE: R18-4-710(C). The last sentence of this paragraph will need to be revised if the City's recommendation for R18-4-704(C) is followed in the final rule.

ANALYSIS: ADEQ did not revise the rule in response to the comment related to R18-4-704(C). ADEQ recognizes that CWSs have a great deal of monitoring and reporting to include in CCRs, but maintains that the federal regulation requires systems to address compliance monitoring data separately from additional monitoring that systems may perform. Other monitoring results a CWS collects that are in addition to the required compliance monitoring may be displayed in a separate section of the CCR. Therefore, CWSs may include results from surveillance monitoring that is not compliance monitoring in a separate table if the system believes this additional information will give their customers a greater understanding of the system's water quality. The rule does require systems to include dates of compliance monitoring results, but allows CWSs to place the dates of compliance monitoring results either beside each individual contaminant or at the top of the table.

RESPONSE: No change

ISSUE: R18-4-710(F). The records retention was reduced from five years to three years. If a CWS must post the Consumer Confidence Report on the Internet, should the Internet also retain copies for three years?

ANALYSIS: The rule requires a CWS serving 100,000 persons to post the current year's CCR on the Internet, and to retain a copy of that CCR for 3 years. The rule allows some flexibility for CWSs to choose a method of record retention. However, the rule does not regulate the Internet so the Internet is not subject to the recordkeeping rule.

RESPONSE: No change

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

Not applicable

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

None

14. Was this rule previously 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 7. CONSUMER CONFIDENCE REPORT

Section

ARTICLE 7. CONSUMER CONFIDENCE REPORT

R18-4-701. Applicability

This Article applies to CWSs and establishes the minimum requirements for the content of the annual consumer confidence report (CCR) that a CWS shall deliver to its customers. The CWS shall provide accurate and understandable information in the CCR on the quality of the water delivered by the CWS and characterize the risks, if any, from exposure to contaminants detected in the drinking water.

R18-4-702. General Requirements

A. A CWS shall deliver a CCR to each customer annually by July 1.

B. The CCR shall contain water quality data from the previous calendar year.

C. A new CWS shall deliver its first CCR by July 1 of the year after its first full calendar year in operation.

D. A CWS that sells water to another CWS shall deliver the applicable information required in this Article to the purchaser CWS annually by April 1, or on a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

R18-4-703. Content of the Consumer Confidence Report

A. A CWS shall provide to its customers an annual CCR that contains the following information on the source of the water delivered:

1. The type of the water (e.g., surface water, ground water); and
2. The name, if any, and location of the body of water.

B. If a source water assessment has been completed, the CCR shall notify consumers of the availability of this information and how to obtain it. If a CWS has received a source water assessment from the Department, the CCR shall contain a brief summary of the assessment findings and the CWS's susceptibility to potential origins of contamination, using language provided by the Department or written by the CWS in consultation with the Department.

C. Each CCR shall contain the following definitions:

1. "Maximum Contaminant Level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology; and
2. "Maximum Contaminant Level Goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

D. A CCR for a CWS operating under a variance or an exemption under R18-4-110 or R18-4-111 shall contain the following definition:

"Variance" or "exemption" means permission from the Department or the EPA not to meet an MCL or a treatment technique under certain conditions.

E. A CCR that contains data on a contaminant for which the Department has set a treatment technique or an action level shall contain 1 or both of the following definitions, as applicable:

1. "Treatment technique" means a required process to reduce the level of a contaminant in drinking water.
2. "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a CWS shall follow.

R18-4-704. Information on Detected Contaminants

A. A CCR shall contain information on the following detected contaminants that are subject to mandatory monitoring:

1. Contaminants subject to an MCL, action level, or treatment technique (regulated contaminants); and
2. Contaminants for which monitoring is required by R18-4-404 or R18-4-405 (unregulated contaminants).

B. The CWS shall display in 1 table, or several adjacent tables, data relating to the detected contaminants in subsection (A). If the CWS includes voluntary monitoring data, those data shall be listed in a table separate from the table of detected contaminants. For detected regulated contaminants, the table shall contain:

1. The MCL for that contaminant;
2. The MCLG for that contaminant expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level applicable to that contaminant, and the CCR shall include the definitions for "treatment technique" or "action level", as appropriate, specified in R18-4-703(E)(1) and (2);
4. For contaminants subject to an MCL, except turbidity and total coliforms, the highest monitoring result used to determine compliance and the range of monitoring results, as follows:
   a. When compliance with the MCL is determined annually or less frequently, the highest monitoring result at any sampling point and the range of detected monitoring results expressed in the same units as the MCL.
   b. When compliance with the MCL is determined by calculating a running annual average of all monitoring results taken at a sampling point, the highest average of the monitoring results and the range of all detected monitoring results expressed in the same units as the MCL.
   c. When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all monitoring results at all sampling points, the average and range of detected monitoring results expressed in the same units as the MCL.
5. For turbidity, the highest single measurement and lowest monthly percentage of samples meeting turbidity limits specified in R18-4-302 for the filtration technology being used. The CCR shall include an explanation of the reasons for measuring turbidity;
6. For lead and copper, the 90th percentile value of the most recent round of sampling and the number of sampling sites that exceed the action level;
7. For total coliform:
   a. The highest number of positive samples collected each month for a CWS that collects fewer than 40 samples per month; or
   b. The highest percentage of positive samples collected each month for a CWS that collects at least 40 samples per month.
8. For fecal coliform, the total number of positive samples; and
9. The likely source of detected contaminants. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and shall be used when available to the CWS. If the CWS lacks specific information on the likely source of contamination, the CCR shall include 1 or more of the typical origins for that contaminant listed in Appendix B that are most applicable to the CWS.

C. The table shall clearly identify any data indicating violation of MCLs or treatment techniques.

D. The CWS shall derive information in the CCR on detected contaminants from data collected to comply with monitoring and analytical requirements of this Chapter for the previous year. The table for a CWS that monitors less often than once a year for regulated contaminants under this Chapter shall contain the date and results of the most recent sampling. The CCR shall contain a brief statement indicating that the data presented in the CCR are from the most recent testing done within the last 5 years in accordance with this Chapter.

E. For a detected unregulated contaminant for which monitoring is required, the table shall contain the average and range at which the contaminant was detected. The CCR may include a brief explanation of the reasons for monitoring for unregulated contaminants.

F. The CWS shall include in the CCR results of monitoring in compliance with R18-4-404 and R18-4-405 for 5 years from the date of last sample or until the detected contaminant becomes regulated and subject to routine monitoring requirements, whichever comes first.

G. If the CWS distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the CCR shall identify each separate distribution system. Alternatively, a CWS may produce separate CCRs tailored to include data for each service area. Multiple points of entry to a distribution system are not necessarily considered hydraulically independent.

R18-4-705. Information on Haloacetic Acids, Cryptosporidium, Radon, and Other Contaminants

A. If a CWS has performed monitoring for Haloacetic Acids or Cryptosporidium, or both, that indicates that either Haloacetic Acids or Cryptosporidium may be present in the source water or the finished water, the CCR shall contain:

1. A summary of the results of the monitoring, and
2. An explanation of the significance of the results.

B. If a CWS has performed any monitoring for radon that indicates that radon might be present in the finished water, the CCR shall contain:

1. The results of the monitoring, and
2. An explanation of the significance of the results.

R18-4-706. Information on Violations

A CCR shall contain a clear, understandable explanation of any violation that occurred during the year covered by the CCR, the length of the violation, an explanation of any potential adverse health effects, the health effects language from Appendix B of this Article, and the steps the CWS has taken to correct a violation of any of the following:

1. An MCL, treatment technique, or action level;
2. Monitoring and reporting of regulated and unregulated compliance data;
3. Filtration and disinfection for a CWS that has had a failure of filtration equipment or processes, that constitutes a violation. The CCR shall contain the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."
4. Lead and copper. For a CWS that failed to take 1 or more actions prescribed by R18-4-306 through R18-4-308, and R18-4-311 through R18-4-315;
5. Treatment techniques for Acrylamide and Epichlorohydrin. For a CWS that violated the requirements of R18-4-317;
6. Recordkeeping of compliance data; or
7. Violation of the terms of a variance, an exemption, or an administrative or judicial order.

R18-4-707. Variances and Exemptions

If a CWS is operating under the terms of a variance or an exemption issued under R18-4-110 and R18-4-111, the CCR shall contain:

1. An explanation of the reasons for the variance or exemption;
2. The date on which the variance or exemption was issued;
3. A brief status report on the steps the CWS is taking to install a method of treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and
4. A notice of any opportunity for public input in the review, or renewal, of the variance or exemption.

R18-4-708. Additional Information

A. A CCR shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water. This explanation shall contain, at a minimum, the language of subsections (B) through (D). A CWS may include additional information.

B. The sources of drinking water include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

C. Contaminants that may be present in source water include the following:

1. Microbial contaminants, such as viruses and bacteria, that may be from sewage treatment plants, septic systems, agricultural livestock operations, or wildlife;
2. Inorganic contaminants, such as salts and metals, that can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;
3. Pesticides and herbicides, that may come from a variety of sources such as agriculture, urban storm water runoff, and residential uses;
4. Organic chemical contaminants, including synthetic and volatile organic chemicals, that are by-products of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and
5. Radioactive contaminants, that can be naturally occurring or be the result of oil and gas production and mining activities.

D. To ensure that tap water is safe to drink, the United States Environmental Protection Agency prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. The United States Food and Drug Administration regulations establish limits for contaminants in bottled water.

E. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants in tap water and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791). Information on bottled water can be obtained from the United States Food and Drug Administration.

F. The CCR shall contain the telephone number of the owner, operator, or designee of the CWS as a source of additional information concerning the CCR.

G. In communities with a large proportion of non-English speaking residents, the CCR shall contain information in the appropriate language regarding the importance of the CCR or contain a telephone number or address where these residents may contact the CWS to obtain a translated copy of the CCR or assistance in the appropriate language.

H. The CCR shall contain information about the time and place of regularly scheduled meetings or other opportunities for public participation in decisions that may affect the quality of the water.

I. The CWS may include additional information necessary for public education consistent with, and not detracting from, the purpose of the CCR.

R18-4-709. Additional Health Information.

A. A CCR shall prominently display the following language:
"Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, persons with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. United States Environmental Protection Agency and Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791)."

B. A CWS that detects arsenic at levels more than .025 milligrams per liter, but less than the MCL shall include in its CCR a short informational statement about arsenic. The CWS may create its own informational statement, in consultation with the Department, or the CWS may use the following language:
"The EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally occurring mineral known to cause cancer in humans at high concentrations."

C. A CWS that detects nitrate at levels more than 5 mg/l, but less than the MCL shall include a short informational statement about the impacts of nitrate on children. The CWS may create its own informational statement, in consultation with the Department, or the CWS may use the following language:
"Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than 6 months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."

D. A CWS that detects lead above the action level in more than 5%, but fewer that 10%, of homes sampled shall include a short informational statement about the special impact of lead on children. The CWS may create its own informational statement, in consultation with the Department, or the CWS may use the following language:
"Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791)."

R18-4-710. Consumer Confidence Report Delivery and Recordkeeping

A. A CWS shall mail or otherwise directly deliver 1 copy of the CCR to each customer, except as provided in subsection (H) by July 1 annually.

B. A CWS shall make a good faith effort to notify its consumers who do not get water bills of the availability of the CCR. A good faith effort to notify consumers would include a use of methods appropriate to the particular CWS such as:
1. Posting the CCR on the Internet,
2. Mailing to postal patrons in metropolitan areas,
3. Advertising the availability of the CCR in the news media,
4. Publishing in a local newspaper;,
5. Posting in public places such as cafeterias or lunch rooms of public buildings;
6. Delivering multiple copies for distribution by single-biller customers such as apartment buildings or large private employers, or
7. Delivering to community organizations.

C. A CWS shall deliver a copy of the CCR to the Department not later than the date the CWS delivers the CCR to its customers. A CWS that complies with the requirements of subsection (H) shall deliver a copy of the CCR to the Department by July 1 annually. Within 3 months of delivery of the CCR to a Department, a CWS shall send a certification to the Department that verifies that the CCR has been distributed to the customers of the CWS, or that the CWS has complied with the requirements of subsection (H). The certification shall also verify that the information in the CCR is correct and consistent with the compliance monitoring data previously submitted to the Department.

D. A CWS that sells water to another CWS shall send written verification to the Department that the seller CWS has complied with the requirements of R18-4-702(D). The written verification shall be sent to the Department within 3 months of compliance with R18-4-702(D).

E. Each CWS shall make its CCR available to members of the public upon request.

F. Each CWS that serves 100,000 or more persons shall post its current year's CCR to a publicly accessible site on the Internet.

G. Each CWS shall retain a copy of its CCR for at least 3 years.

H. Mailing waiver. A CWS that serves fewer than 10,000 people may perform the following instead of the requirements of subsection (A):

1. For a CWS that serves, more than 500, but fewer than 10,000 people:
   a. Inform customers that the CWS will not provide copies of the CCR by mail or other direct delivery method,
   b. Publish the entire CCR annually in at least 1 local newspaper or other news medium serving areas in which the CWS's customers are located, and
   c. Send written notification to the Department that the CWS intends to comply with the requirements of this sub-section.
2. For a CWS that serves 500 or fewer people:
   a. Inform customers that the CWS will not provide copies of the CCR by mail or other direct delivery method,
   b. Provide notice annually that the CCR is available upon request, and
   c. Send written notification to the Department that the CWS intends to comply with the requirements of this sub-section.

Appendix A. Regulated Contaminants

Microbiological Contaminants	**MCL**	**Major Sources in Drinking Water**
1. Total Coliform Bacteria	Presence of coliform bacteria in 5% or more of monthly samples.	Naturally present in the environment.
2. Fecal coliform and E. coli	A routine sample and a repeat sample are total coliform positive, and 1 is also fecal coliform or *E. coli* positive	Human and animal fecal waste.
3. Turbidity	Treatment Technique	Soil Run-off
Radioactive Contaminants	**MCL**	**Major Sources in Drinking Water**
4. Beta/photon emitters	4 Millirems/ Year	Decay of natural and man-made deposits.
5. Alpha emitters	15 Picocuries/Liter	Erosion of natural deposits.
6. Combined radium	5 Picocuries/ Liter	Erosion of natural deposits.
Inorganic Contaminants	**MCL in mg/l**	**Major Sources in Drinking Water**
7. Antimony	.006	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
8. Arsenic	.05	Erosion of natural deposits; Run-off from orchards; Run-off from glass and electronics production wastes.
9. Asbestos	7 Million Fibers/Liter	Decay of asbestos cement water mains; Erosion of natural deposits.
10. Barium	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
11. Beryllium	.004	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.
12. Cadmium	.005	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; run-off from waste batteries and paints.
13. Chromium	.1	Discharge from steel and pulp mills; Erosion of natural deposits.
14. Copper	Action Level =1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives.

15. Cyanide	.2	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
16. Fluoride	4	Erosion of natural deposits; Water additive that promotes strong teeth; Discharge from fertilizer and aluminum factories.
17. Lead	Action Level =.015	Corrosion of household plumbing systems; Erosion of natural deposits.
18. Mercury	.002	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
19. Nitrate	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
20. Nitrite	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
21. Selenium	.05	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.
22. Thallium	.002	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.
Synthetic Organic Contaminants including Pesticides and Herbicides	**MCL in mg/l**	**Major Sources in Drinking Water**
23. 2,4-D	.07	Runoff from herbicide used on row crops.
24. 2,4,5-TP [Silvex]	.05	Residue of banned herbicide.
25. Acrylamide	Treatment Technique	Added to water during sewage/wastewater treatment.
26. Alachlor	.002	Runoff from herbicide used on row crops.
27. Atrazine	.003	Runoff from herbicide used on row crops.
28. Benzo(a)pyrene [PAH]	.0002	Leaching from linings of water storage tanks and distribution lines.
29. Carbofuran	.04	Leaching of soil fumigant used on rice and alfalfa.
30. Chlordane	.002	Residue of banned termiticide.
31. Dalapon	.2	Runoff from herbicide used on rights of way.
32. Di(2-ethylhexyl) adipate	.4	Discharge from chemical factories.
33. Di(2-ethylhexyl) phthalate	.006	Discharge from rubber and chemical factories.
34. Dibromochloropropane (DBCP)	.0002	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
35. Dinoseb	.007	Runoff from herbicide used on soybeans and vegetables.
36. Diquat	.02	Runoff from herbicide use.
37. Dioxin [2,3,7,8-TCDD]	.00000003	Emissions from waste incineration and other combustion; Discharge from chemical factories.
38. Endothall	.1	Runoff from herbicide use.
39. Endrin	.002	Residue of banned insecticide.
40. Epichlorohydrin	Treatment Technique	Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
41. Ethylene dibromide	.00005	Discharge from petroleum refineries.

42. Glyphosate	.7	Runoff from herbicide use.
43. Heptachlor	.0004	Residue of banned pesticide.
44. Heptachlor epoxide	.0002	Breakdown of heptachlor.
45. Hexachlorobenzene	.001	Discharge from metal refineries and agricultural chemical factories.
46. Hexachloro-cyclopentadiene	.05	Discharge from chemical factories.
47. Lindane	.0002	Runoff/leaching from insecticide used on cattle, lumber, gardens.
48. Methoxychlor	.04	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
49. Oxamyl [Vydate]	.2	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.
50. PCBs [Polychlorinated biphenyls]	.0005	Runoff from landfills; discharge of waste chemicals.
51. Pentachlorophenol	.001	Discharge from wood preserving factories.
52. Picloram	.5	Herbicide runoff.
53. Simazine	.004	Herbicide runoff.
54. Toxaphene	.003	Runoff/leaching from insecticide used on cotton and cattle.
Volatile Organic Contaminants	**MCL in mg/l**	**Major Sources in Drinking Water**
55. Benzene	.005	Discharge from factories; Leaching from gas storage tanks and landfills.
56. Carbon tetrachloride	.005	Discharge from chemical plants and other industrial activities.
57. Chlorobenzene	.1	Discharge from chemical and agricultural chemical factories.
58. o-Dichlorobenzene	.6	Discharge from industrial chemical factories.
59. p-Dichlorobenzene	.075	Discharge from industrial chemical factories.
60. 1,2-Dichloroethane	.005	Discharge from industrial chemical factories.
61. 1,1-Dichloroethylene	.007	Discharge from industrial chemical factories.
62. cis-1,2-Dichloroethylene	.07	Discharge from industrial chemical factories.
63. trans-1,2-Dichloroethylene	.1	Discharge from industrial chemical factories.

64. Dichloromethane	.005	Discharge from pharmaceutical and chemical factories.
65. 1,2-Dichloropropane	.005	Discharge from industrial chemical factories.
66. Ethylbenzene	.7	Discharge from petroleum refineries.
67. Styrene	.1	Discharge from rubber and plastic factories; Leaching from landfills.
68. Tetrachloroethylene	.005	Leaching from PVC pipes; Discharge from factories and dry cleaners.
69. 1,2,4-Trichlorobenzene	.07	Discharge from textile-finishing factories.
70. 1,1,1- Trichloroethane	.2	Discharge from metal degreasing sites and other factories.
71. 1,1,2- Trichloroethane	.005	Discharge from industrial chemical factories.
72. Trichloroethylene	.005	Discharge from metal degreasing sites and other factories.
73. TTHMs [Total trihalomethanes]	.1	Byproduct of drinking water chlorination.
74. Toluene	1	Discharge from petroleum factories.
75. Vinyl Chloride	.002	Leaching from PVC piping; Discharge from plastics factories.
76. Xylenes	10	Discharge from petroleum factories; Discharge from chemical factories.

Appendix B. Health Effects Language

Microbiological Contaminants

1. Total Coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
2. Fecal coliform/E. Coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.
3. Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants

4. Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
5. Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
6. Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

Inorganic Contaminants

7. Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
8. Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
9. Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
10. Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
11. Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

12. Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
13. Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
14. Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
15. Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
16. Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.
17. Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
18. Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
19. Nitrate. Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
20. Nitrite. Infants below the age of 6 months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
21. Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
22. Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic Organic Contaminants Including Pesticides and Herbicides

23. 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
24. 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
25. Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
26. Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
27. Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
28. Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
29. Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
30. Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
31. Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
32. Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
33. Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
34. Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
35. Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
36. Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
37 Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts

38. Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
39. Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
40. Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
41. Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
42. Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
43. Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
44. Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
45. Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
46. Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
47. Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
48. Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
49. Oxamyl [Vydate]. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
50. PCBs [Polychlorinated biphenyls]. Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
51. Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
52. Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
53. Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
54. Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants

55. Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
56. Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
57. Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
58. o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
59. p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
60. 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
61. 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
62. cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
63. trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
64. Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

65. 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
66. Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
67. Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
68. Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
69. 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
70. 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
71. 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
72. Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
73. TTHMs [Total Trihalomethanes]. Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
74. Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
75. Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
76. Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEW BOARD

PREAMBLE

1. Sections Affected **Rulemaking Action**

Article 1	New Article
R20-7-101	New Section

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. §§ 23-422 and 23-423

Implementing statutes: A.R.S. §§ 23-422 and 23-423

3. The effective date of the rules:

May 12, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 2391, July 23, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 4693, December 27, 1999

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

Name: Lisa Gervase

Address: 4150 W. Northern
Phoenix, Arizona 85051

Telephone: (602) 955-1254

Fax: (602) 955-1261

E-mail: lisa.gervase@azbar.org

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

This rule sets forth the Board's procedures that petitioners and respondents must follow. This rule codifies years of existing practice. The Board has no salaried staff and prior contract attorneys who handled the Board's administrative and legal functions did not seek to have procedural rules promulgated. The rules for judicial review of administrative decisions and the civil appellate rules were used in drafting this rule. The language is clear and understandable for attorneys and non-attorneys. The purpose of the rule is to have 1 place where parties can locate and follow the Board's procedures.

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:

There is no economic, small business, and consumer impact or minimal (less than $1,000.00) impact this rule.

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

R20-7-101(A): Paragraph (3) was added to clarify when "service" is effected.

R20-7-101(B)(1): "Appellant" was changed to "Petitioner" in this subsection and throughout the rule. The reference to subsection (C)(2) was changed to (D).

R20-7-101(C)(2): At the end of this sentence "for the petitioner" was added to clarify who rebuttal oral argument is for.

R20-7-101(C)(3): This sentence was amended to clarify that the Board may extend, but not limit, time for oral argument, and that if the Board asks questions, a party's time to respond is not counted against the party's oral argument time.

R20-7-101(C)(4): The first portion of this sentence was deleted because it referred to a non-existent paragraph.

R20-7-101(E)(1): The first sentence was expanded to remind readers that a brief must be filed by the date specified in the briefing schedule or by a time extension granted by the Board.

R20-7-101(H): After "A party", "or a party's attorney" was added so that both parties and attorneys were covered by the ex parte prohibition. Grammatical changes also were made to this sentence.

Throughout the rule, minor grammatical and stylistic changes were made to make the rule clearer.

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

There were no written comments.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE.

CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEW BOARD

ARTICLE 1. OSHA REVIEW BOARD

Section

ARTICLE 1. OSHA REVIEW BOARD

R20-7-101. Procedures

In addition to A.R.S. § 23-423, the following apply to the Occupational Safety and Health Administration Review Board (Board):

1. Filing and service.
   a. A party filing a document with the Board shall submit 1 original and 6 copies to the Board, and 2 copies to the opposing party or, if represented, the opposing party's counsel;
   b. The Notice of Review mailed under A.R.S. § 23-423(D) shall contain:
      i. The address for filing documents, and
      ii. The briefing schedule.
   c. A document is considered served:
      i. On the date it is personally delivered;
      ii. Five days after it is mailed by express or first-class mail; or
      iii. On the date of the return receipt if it is mailed by registered or certified mail, return receipt requested.
2. Form and size of briefs.
   a. A party requesting review of an administrative law judge's decision (petitioner) shall file an opening brief with the Board no later than 30 calendar days after service of the briefing schedule, or before any time extension granted under subsection (4) expires. The opening brief shall contain:
      i. A statement of the case and the administrative law judge's decision;
      ii. A concise statement of the facts relevant to the issues presented for review with specific references to the record. The record consists of the official hearing transcript and the exhibits accepted into evidence at the hearing before an administrative law judge. This statement of facts shall contain only facts in the record;
      iii. A statement of the issues presented for review;
      iv. An argument that contains the petitioner's contentions with respect to the issues presented, with citations to appropriate statutes, rules, or other legal authority; and
      v. A short conclusion stating the relief sought.
   b. A party responding to an opening brief (respondent) shall file a response brief with the Board no later than 30 days after service of the opening brief. A response brief shall conform to the requirements of subsections (2)(a)(i) through (2)(a)(v), except that information provided under subsections (2)(a)(i) through (2)(a)(iii) need not be included unless the respondent believes the petitioner's statements are insufficient or incorrect.
   c. The petitioner may file a reply brief within 20 days after service of the response brief. The reply brief shall be confined strictly to rebutting points urged in the response brief. If the reply brief goes beyond rebutting points urged in the response brief, the Board may strike the additional information from the brief.
   d. An opening brief and a response brief shall not exceed 35 typewritten pages, and a reply brief shall not exceed 15 typewritten pages, excluding pages containing a table of contents, table of authorities, or appendix. All briefs shall be legible and double-spaced, except quotations of more than 2 lines may be indented and single-spaced.
3. Oral argument.
   a. A party may request oral argument by noting on the first page of the party's brief immediately below the title of the brief "oral argument requested," or by filing, no later than 10 days after the time for filing the reply brief, a separate document requesting oral argument.
   b. Each party shall have 15 minutes for oral argument, including no more than 5 minutes in rebuttal for the petitioner. If no oral argument is requested, the Board shall decide the case on the briefs.
   c. The Board may extend the time for oral argument and may ask questions. Time to respond to the Board's questions is not counted against a party's 15 minutes of oral argument.
   d. A party may use a presentation aid during oral argument that relies only on facts or evidence in the record.
4. Time extension. A party may request an extension of time to file a brief. The request shall be in writing and filed with the Board.
5. Failure to file a brief or appear at hearing.
   a. If a petitioner fails to file an opening brief within the time required in the briefing schedule or before any time extension expires, the Board shall dismiss the appeal. If a respondent fails to file a response brief within 30 days of service of the opening brief, the appeal is deemed submitted for decision based only on the opening brief.
   b. If a party fails to appear at the Board meeting at which the appeal has been scheduled, that party waives oral argument and the Board shall decide the appeal based on the submitted briefs and oral argument by the other party.
6. Board's decision.
   a. At the time scheduled for the appeal and after oral argument, if any, the Board shall discuss only the issues presented. The Board's discussion, decision, and reason for its decision shall be on the record at the Board meeting.
   b. A party or a party's attorney shall not provide input during the Board's deliberation. If the Board has additional questions of a party during its deliberation, the Board shall allow each party or each party's attorney to respond.

c. The Board shall mail a written decision that conforms to its decision on the record, no later than 30 days of the Board's meeting, to the parties citing the parties' statutory appeal rights.

7. Remand for settlement. Upon the parties' stipulation, the Board may remand a case to the administrative law judge to consider a settlement agreement.

8. Ex parte communication.
A party or a party's attorney shall not communicate, directly or indirectly, with a Board member about any substantive issue in an appeal filed with the Board, but may communicate with the Board if:
   a. All parties are physically present;
   b. It is during a scheduled proceeding and a party fails to appear after proper notice; or
   c. It is by written motion or correspondence with copies to all parties.