NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS BOARD OF MEDICAL EXAMINERS

PREAMBLE

1. Sections Affected	Rulemaking Action
R4-18-101	Repeal
R4-18-101	New Section
R4-18-102	Amend
R4-18-103	New Section
Table 1	New Table
R4-18-104	Amend
R4-18-105	Renumber
R4-18-105	Amend
R4-18-106	Repeal
R4-18-106	Renumber
R4-18-106	Amend
R4-18-108	Repeal
R4-18-108	Renumber
R4-18-108	Amend
R4-18-109	Renumber
R4-18-109	Amend
R4-18-110	Repeal
R4-18-111	Renumber
R4-18-112	Repeal
R4-18-113	Repeal
R4-18-114	Repeal
R4-18-115	Repeal
R4-18-116	Renumber
R4-18-117	Renumber
Article 2	New Article
R4-18-201	New Section
R4-18-202	New Section
R4-18-203	New Section
R4-18-204	New Section
R4-18-205	New Section
R4-18-206	New Section
R4-18-207	New Section
R4-18-208	New Section
R4-18-209	New Section
Article 3	Reserved

Article 4	New Article
R4-18-401	New Section
R4-18-402	New Section
Article 5	New Article
R4-18-501	New Section

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

Authorizing statute: A.R.S. § 32-1504(A)(1)

Implementing statutes: A.R.S. §§ 32-1501(8), 32-1504(A)(3), 32-1504(A)(4), 32-1504(A)(5), 32-1504(A)(7), 1504(A)(9), 32-1504(B)(1), 1504(B)(3), 32-1522, 32-1522.01, 32-1523, 32-1523.01, 32-1524, 32-1525, 32-1526, 32-1527, 32-1529, 32-1551, 32-1559, 32-1560, 32-1561,32-1581, and 41-1072 through 41-1078.

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 1232, April 30, 1999

Notice of Rulemaking Docket Opening: 6 A.A.R 3115, August 18, 2000

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

Name: John L. Brewer, N.M.D., Executive Director

Address: Naturopathic Physicians Board of Medical Examiners
1400 W. Washington Street, Suite 230
Phoenix, Arizona 85007

Telephone: (602) 542-8242

Fax: (602) 542-3093

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

The proposed rules provide additional guidance and clarity to the regulated community and others impacted by the rules. Obsolete requirements are deleted. The scope of subject matter covered is increased. This rulemaking complies with statutory mandates that rules be promulgated to implement certain provisions. Generally, deleted materials are not included in the brief discussion that follows.

R4-18-101. Definitions. This section is revised and updated. Definitions are added to address the broader scope of subject matter covered.

R4-18-102. Board Meetings; Elections. The amendments are primarily administrative in nature.

R4-18-103. Time-frames for Board Approvals. This new section complies with the statutory mandate to specify in a rule time-frames within which the Board will make a determination of administrative completeness and then complete a substantive review and render a decision regarding a request for an approval. Overall time-frames are also specified.

R4-18-104. Examination Procedures. The rule is revised to reflect current examination procedures.

R4-18-105. Continuing Medical Education. This rule specifies minimum continuing educational requirements and addresses the quality of educational programs.

R4-18-106. Notice of Civil and Criminal Actions. Time to provide notice to the Board is increased.

R4-18-108. Hearing procedures. Minor wording revision.

R4-18-109. Rehearing or Review of Decision. Time-frames are increased.

Application requirements are clearly detailed by R4-18-201 through R4-18-209.

R4-18-201. Application to Take a Naturopathic Medical Licensing Examination.

R4-18-202. Application for a Naturopathic Medical License.

R4-18-203. Application for a Specialist Certificate.

R4-18-204. Application for a Medical Assistant Certificate.

R4-18-205. Application for a Certificate to Dispense.

R4-18-206. Application for a Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program.

R4-18-207. Application for a certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program.

R4-18-208. Application for a Certificate to Conduct a School of Naturopathic Medicine.

R4-18-209. Renewal of Licenses and Certificates.

R4-18-401. Education Program Standards for Schools of Naturopathic Medicine. This rule specifies accreditation, course content, and minimum clinical training program requirements. A school must appoint a Chief Medical Officer. The rule specifies requirements for accepting transfer credit.

R4-18-402. Qualifications of Chief Medical Officer; Requirements; Duties. This rule designates minimum professional qualifications and experience. Duties include maintenance of a roster containing essential information, periodic verifications regarding supervisors, maintaining records relating to instruction completed, and maintaining documentation of completion of training. Minimum supervisor-to-trainee ratios are specified.

R4-18-501. Requirements for Clinical, Preceptorship, Internship, and Postdoctoral Training Programs. This rule requires the appointment of a Chief Medical Officer. Minimum requirements for training programs are specified, including course approval requirements for training in a specialty area.

6. 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:

None

7. 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

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

A preliminary analysis indicates that the following provisions may have an economic, small business, or consumer impact. Public comment regarding impact is requested and appreciated.

R4-18-103. Time-frames for Board Approvals. This rule should not have an economic impact. The consequences of missing a time-frame are defined by statute.

R4-18-104. Examination Procedures. A proctor and test related materials involve expenses. However, this rule may have little impact on costs since these elements are necessary for the examination process.

R4-18-105. Continuing Medical Education. Education requirements involve potential costs to individuals subject to the minimum requirement. Costs may include expense of attending programs as well as the opportunity cost of being away from practice while attending programs. There are also record keeping costs. Small business may derive income from offering such programs. The Board will bear costs associated with audits.

The rules covering applications, R4-18-201 through R4-18-209, involve certain requirements that may impose costs on an applicant in addition to the value of time required to complete an application. For example, several of the rules require services of a notary, acquisition of passport photos, making of photocopies, and being finger printed. These costs could be considered necessarily incident to providing information appropriate for evaluation of an applicant.

Some of the potential costs that may be absorbed by individuals or entities other than an applicant are mentioned below. These costs are generally minimal and are in most cases ordinary costs associated with the relationship to an applicant.

R4-18-201. Application to Take a Naturopathic Medical Licensing Examination. The applicant's school provides verification of course completion.

R4-18-202. Application for a Naturopathic Medical License. The applicant's school provides transcripts. The school or facility that conducted training provides documentation. The licensing agency provides verification of licensure. A national board of examiners supplies verification.

R4-18-203. Application for a Specialist Certificate. A specialty college provides transcripts. A specialty board issues verification.

R4-18-205. Application for a Certificate to Dispense. Development and implementation of a written procedure covering storage of devices and natural substances in a secure area will involve costs.

R4-18-206. Application for a Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program. Applicant's school will provide a transcript. The Chief Medical Officer's and Supervisor's letters could impact the training program provider.

R4-18-207. Application for a Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program. The applicant must provide a floor plan and a sample of the document to be issued to a student or resident physician upon completion of training.

R4-18-208. Application for a Certificate to Conduct a School of Naturopathic Medicine. This rule requires an applicant to provide a copy of the license issued by the Arizona State Board for Private Postsecondary Education. An issuing agency must provide documentation that the applicant meets requirements for accreditation, certification, recognition, or approval.

R4-18-401. Education Program Standards for Schools of Naturopathic Medicine. Accreditation, minimum course and clinical training requirements, and the appointment of a Chief Medical Officer all involve costs. However, quantification of the rule's impact is difficult because a school must incur costs of this nature to be able to provide adequate training to ensure competency of graduates. The rule's marginal economic impact could vary among schools.

R4-18-402. Qualifications of Chief Medical Officer; Requirements; Duties. Each of the requirements discussed in #5 imposes a potential cost on the training program operator. However, as with the previous rule, quantification of the rule's impact is difficult because a training program operator must incur costs of this nature to be able to provide adequate training to ensure competency of graduates. The marginal economic impact could vary among training programs.

R4-18-501. Requirements for Clinical, Preceptorship, Internship, and Postdoctoral Training Programs. Each of the requirements discussed in #5 imposes a potential cost on the training program operator. However, as with the previous two rules, quantification of the rule's impact is difficult because a training program operator must incur costs of this nature to be able to provide adequate training to ensure competency of graduates. The marginal economic impact could vary among training programs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John L. Brewer, N.M.D., Executive Director

Address: Naturopathic Physicians Board of Medical Examiners
1400 W. Washington Street, Suite 230
Phoenix, Arizona 85007

Telephone: (602) 542-8242

Fax: (602) 542-3093

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted until 6:00 p.m. September 19, 2000 to the person identified in item 4.

The Board will conduct an oral proceeding at the following location in the state for the purpose of taking oral and written testimony on the proposed rule from members of the public.

Date: September 19, 2000

Time: 4:00 p.m. to 6:00 p.m.

Location: 1400 W. Washington Street, Suite 230
Phoenix, Arizona 85007

Phone in access: (602) 542-8242

The public record on the proposed rulemaking will close at 6:00 p.m. on September 19, 2000.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS BOARD OF MEDICAL EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Sections

~~R4-18-101.~~ ~~Definitions~~ Repealed
R4-18-101. Definitions
R4-18-102. Board Meetings; Elections
R4-18-103. ~~Reserved~~ Time-frames for Board Approvals
Table 1. Time-frames
R4-18-104. Examination Procedures
~~R4-18-109.~~ R4-18-105. ~~Reserved~~ Continuing Medical Education
~~R4-18-106.~~ ~~Examination Subjects Required for Licensing under A.R.S. § 32-1523~~ Repealed
~~R4-18-111.~~ R4-18-106. Notice of Civil and Criminal Actions
~~R4-18-108.~~ ~~Titles, Use of Abbreviations~~ Repealed
~~R4-18-116.~~ R4-18-108. Hearing Procedures
~~R4-18-117.~~ R4-18-109. Rehearing or Review of Decision
~~R4-18-110.~~ ~~Display of Licenses; Notice of Change of Status~~ Repealed
R4-18-111. Renumbered
~~R4-18-112.~~ ~~Reserved~~ Repealed
~~R4-18-113.~~ ~~Reserved~~ Repealed
~~R4-18-114.~~ ~~Reserved~~ Repealed
~~R4-18-115.~~ ~~Reserved~~ Repealed
R4-18-116. Renumbered
R4-18-117. Renumbered

ARTICLE 2. LICENSES; CERTIFICATES; RENEWAL

Sections

R4-18-201. Application to Take a Naturopathic Medical Licensing Examination
R4-18-202. Application for a Naturopathic Medical License
R4-18-203. Application for a Specialist Certificate
R4-18-204. Application for a Medical Assistant Certificate
R4-18-205. Application for a Certificate to Dispense
R4-18-206. Application for a Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program
R4-18-207. Application for a Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program
R4-18-208. Application for a Certificate to Conduct a School of Naturopathic Medicine
R4-18-209. Renewal of Licenses and Certificates

ARTICLE 3. DISPENSING REQUIREMENTS

Sections

Reserved

ARTICLE 4. REQUIREMENTS FOR SCHOOLS OF NATUROPATHIC MEDICINE

Sections

R4-18-401. Education Program Standards for Schools of Naturopathic Medicine
R4-18-402. Qualifications of Chief Medical Officer; Requirements; Duties

ARTICLE 5. REQUIREMENTS FOR CLINICAL, PRECEPTORSHIP, INTERNSHIP, AND POSTDOCTORAL TRAINING PROGRAMS

Section
R4-18-501. Requirements for Clinical, Preceptorship, Internship, and Postdoctoral Training Programs

ARTICLE 1. GENERAL PROVISIONS

~~R4-18-101.~~ ~~Definitions~~ Repealed

~~For purposes of Title 32, Chapter 14 of the Arizona Revised Statutes and these regulations, unless the context requires a different meaning or unless inconsistent with the manifest intention of the board:~~

1. ~~"Abnormalities of the human mind and body" means diseases, injuries, ailments, or infirmities and other conditions of the human mind and body, ordinarily justifying professional assistance from a Naturopathic physician.~~
2. ~~"Diagnosis" means the determination of the nature of a person's condition and includes physical, clinical and laboratory examinations, and the employment of x-rays for diagnostic purposes.~~
3. ~~"Hygienic" means all forms of hygiene and the use of local and topical antiseptics and nonpoisonous, extracted, compounded, or concentrated substances obtained from an animal, a plant, or a mineral origin and utilizes for aseptic and therapeutic purposes by a doctor of naturopathic medicine.~~
4. ~~"Laws and regulations relating to public health" means any applicable state or federal law, relating to public health and includes but is not limited to the requirements for the registration of birth certifications, reporting of violent wounds and injuries and child abuse as required by law.~~
5. ~~"Nonsurgical" means a system of treating without surgical invasion of the human body but does not preclude the use of acupuncture, electrical currents, or the repair and care incident thereto to superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in superficial structures, and the use of standard clinical procedures in connection therewith.~~
6. ~~"Physiotherapy" means the treatment of disease by use of all natural forces, including but not limited to electrotherapy, hydrotherapy, aerotherapy, mechanotherapy, message and therapeutic exercise.~~
7. ~~"Preceptorship" means a clinical course of study wherein a student of naturopathic medicine works in a naturopathic clinic under the supervision of a doctor of naturopathic medicine.~~
8. ~~"Sanitary" means the use of all forms of bacteriostatic procedures, including but not limited to the use of topical antiseptics.~~
9. ~~"System of treating" means the total management of a disease or other condition of the human body, including its prevention diagnosis, alleviation, treatment, and cure.~~
10. ~~"Rebates" means requesting, listing, accepting or receiving any compensation or commission for prescribing or recommending any diagnostic or treatment procedure; or offering, giving or promising, either directly or indirectly, any gift in return for the procurement of a patient or patients for any diagnostic or treatment procedure.~~

R4-18-101. Definitions

The following definitions apply to this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an individual has provided, or caused to be provided, all of the information and documentation required by statute or rule for an application.
2. "Applicant" means a person requesting from the Board an initial, temporary, or renewal license or certificate, or approval to take a naturopathic medical examination.
3. "Application packet" means the forms and additional information the Board requires to be submitted by an applicant or on behalf of an applicant.
4. "Chief medical officer" means a doctor of naturopathic medicine who is responsible to the Board for a clinical, preceptorship, internship, or postdoctoral training program's compliance with the laws and rules of this state and the federal government.
5. "Clinical laboratory" means "Clinical laboratory" as defined in A.R.S. § 36-451.
6. "Continuing medical education" means courses, seminars, lectures, conferences, and workshops related to subjects listed in A.R.S. §§ 32-1525(B)(1), (2), and (3).
7. "Course work" means organized subject matter in which instruction is offered within a specific period of time and for which credit toward graduation is awarded.
8. "Credit" means 1 earned academic unit of study awarded for:
   a. Course work completed by a student at a school;
   b. Each hour of instruction completed in a clinical, preceptorship, internship, or postdoctoral training program; and
   c. Each hour of instruction completed in a continuing medical education program.

9. "Dispense" means "Dispense" as defined in A.R.S. § 32-1581.
10. "Educational program" means the academic course work provided by a school of naturopathic medicine and includes the clinical training program conducted by a school of naturopathic medicine or in conjunction with a school of naturopathic medicine.
11. "Endorsement" means the procedure for granting an Arizona license to an applicant who is currently licensed to practice naturopathic medicine by another state, district, or territory of the United States or by another country which requires a written examination substantially equivalent to the written examination provided for in A.R.S. § 32-1525.
12. "Examination proctor" means a person appointed by the Executive Director of the Board to maintain security of test booklets and answer sheets given to and received from applicants for examination and to monitor applicants taking an examination.
13. "Facility" means a "health care institution" as defined in A.R.S. § 36-401, office or clinic maintained by a health care institution or by an individual licensed under A.R.S. Title 32, Chapter 13, Chapter 14, Chapter 17, or Chapter 29, office or public health clinic maintained by a state or county, office or clinic operated by a qualifying community health center under A.R.S. § 36-2907.06, or an office or clinic operated by a corporation, association, partnership, or company authorized to do business in Arizona pursuant to A.R.S. Title 10.
14. "Hour" means not less than 50 minutes of instruction.
15. "Naturopathic medical licensing examination" means the test required by the Board:
    a. For a regular license as described in A.R.S. § 32-1525(B); or
    b. For a license by endorsement as described in A.R.S. § 32-1525(C).
16. "Physician" means "Physician" as defined in A.R.S. § 32-1501.
17. "Resident physician in training" means an individual whom:
    a. Graduated from a school of naturopathic medicine with a doctoral degree in naturopathic medicine; and
    b. Holds a current and valid certificate issued by the Board to diagnose and treat patients under supervision in a preceptorship, internship, or postdoctoral training program.
18. "School" and "school of naturopathic medicine" mean the same as "Approved school of naturopathic medicine" defined in A.R.S.§ 32-1501.
19. "Student" means the same as "Naturopathic medical student" defined in A.R.S.§ 32-1501.
20. "Substantive review" means the Board's process for determining whether an applicant for licensure, certification, or approval meets the requirements of A.R.S. Title 32, Chapter 14, and this Chapter.
21. "Supervise" means to be physically present and within sight or sound of a medical assistant, student, or physician resident in training who is providing naturopathic medicine care to a patient.
22. "Supervisor" means an individual licensed under A.R.S. Title 32, Chapter 13, 14, 17, or 29 who supervises a medical assistant, student, or resident physician in training.

R4-18-102. Board Meetings; Elections

A. The Board shall hold ~~its statutorily required~~ a regular ~~meetings~~ meeting in January and July of each year. ~~Such other meetings of the Board, as may be required for the conduct of its business, shall be held from time to time as the board determines necessary.~~

B. The Board shall hold its annual election of ~~the~~ officers at the January Board meeting.

R4-18-103. ~~Reserved~~ Time-frames for Board Approvals

A. Table 1 lists the overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame by extending the substantive time-frame. The overall time-frame may not be extended by more than 25%.

B. Table 1 lists the administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the board. The administrative completeness review time-frame begins when the Board receives an application packet for an approval.
1. If the application packet is not complete, the Board shall send a written notice of deficiencies to the applicant. The notice shall specify each deficiency.
    a. The administrative completeness review time-frame and overall time-frame are suspended from the postmark date of the notice until the Board receives the missing items.
    b. An applicant who disagrees with the Board's statement of deficiencies may request a hearing.
2. When an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If the Board grants the requested approval during the administrative completeness review time-frame, the Board shall not issue a separate written notice of administrative completeness.

C. Table 1 lists the substantive review time-frame described in A.R.S. § 41-1072(3) for each type of approval granted by the board. The substantive review time-frame begins on the postmark date of the notice of administrative completeness.
1. As part of the substantive review, the Board may conduct investigations, inspections, and other activity and may require the production of additional documentation and information as may be permitted by statute or rule. Inspections may require more than 1 visit.
2. During the substantive review time-frame, the Board may make 1 comprehensive written request for additional information or documentation.
3. The Board and applicant may mutually agree in writing to allow the Board to submit supplemental requests for additional information or documentation.
4. The substantive review time-frame and the overall time-frame shall be suspended from the postmark date of any request made under subsection (C)(2) or (C)(3) until the date the Board receives the requested information or documentation.

D. The Board shall send a written notice of approval to an applicant who meets all criteria for approval under A.R.S. Title 32, Chapter 14, and this Chapter.

E. The Board shall send a written notice of denial to an applicant who fails to meet all criteria for approval under A.R.S. Title 32, Chapter 14, and this Chapter.

F. The Board shall consider an application withdrawn as provided in A.R.S.§ 32-1524.

G. An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.

H. Time-frames are stated in calendar days. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board shall consider the next business day to be the time-frame's last day.

Table 1. Time-frames

Type of Approval	Statutory Authority	Administrative Completeness Time-frame	Substantive Review Time-frame	Overall Time-frame
To Take a Naturopathic Medical Licensing Examination (R4-18-201)	A.R.S. §§ 32-1504(A), 32-1525	30 days	60 days	90 days
License (R4-18-202)	A.R.S. §§ 32-1504(A), 32-1522, 32-1523, 32-1523.01, 32-1524	30 days	60 days	90 days
Specialist Certificate (R4-18-203)	A.R.S. §§ 32-1504(B), 32-1529	30 days	60 days	90 days
Medical Assistant Certificate (R4-18-204)	A.R.S. §§ 32-1504(A), 32-1559	30 days	60 days	90 days
Certificate to Dispense (R4-18-205)	A.R.S. §§ 32-1504(A), 32-1581	30 days	60 days	90 days
Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-206)	A.R.S. §§ 32-1504(A), 32-1560, 32-1561	30 days	60 days	90 days
Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-207)	A.R.S. §§ 32-1504(A)	30 days	60 days	90 days
Temporary License (R4-18-202(D)(3))	A.R.S. §§ 32-1504(A), 32-1522.01	30 days	15 days	45 days
Approval of a School (R4-18-208)	A.R.S. §§ 32-1504(A)(4)	60 days	60 days	120 days
Renewals (R4-18-209)	A.R.S. §§ 32-1504(A), 32-1526	15 days	15 days	30 days

R4-18-104. Examination Procedures

A. Prior to the commencement of ~~written~~ each examination, each applicant shall~~: be given an examination number which shall be the only identifying mark placed on the examination papers. Each page of the examination shall be marked with the identifying number, and no applicant's name shall appear on any page of the examination.~~

1. Write their name and sign their name on a sign-in sheet provided by the Board; and
2. Show a picture identification that contains the applicant's signature to the examination proctor.

~~**B.** The pages of the examination shall be numbered consecutively at the top of each page. Only 1 side of a page may be used in answering examination questions.~~

~~**C.**~~**B.** ~~Prior to the examination,~~ The examination proctor assigned by the Board to administer examinations shall:

1. Inform the applicants for examination ~~shall be informed~~ of the time limit allowed for each section of the examination~~. No credit will be received for any work done by the applicant after the time limit.~~,
2. Provide each applicant a test booklet containing the questions for the examination and an answer sheet for the applicant to mark the answers, and
3. Provide a written report to the Board regarding incidents covered under subsection (C).

C. An applicant shall forfeit the right to continue the examination and shall forfeit the application and examination fees paid to the Board if the applicant:

1. Uses a book, paper, or material other than material supplied by an examination proctor to provide assistance;
2. Receives assistance while taking the examination; or
3. Provides assistance to another applicant taking an examination.

~~**D.** In the event that doubt exists as to the interpretation of a question, inquiries by the applicant shall be directed to a Board member only.~~

~~**F.**~~**D.** At the close of the examination, each applicant shall return ~~his~~ the test booklet containing the examination questions and the answer sheets and deliver them~~, together with the examination questions, to a member of the Board or a duly appointed proctor~~ to the examination proctor.

~~**E.** Any applicant using a book, paper or device to assist him or receiving assistance or giving assistance to another applicant, shall forfeit his right to continue the examination and shall forfeit his application fee.~~

~~**G.** Subsequent to review of the applicant's answers to the examination, results of the examinations will be forwarded in writing to each applicant.~~

E. After approval by the Board, the Executive Director shall forward an applicant's examination results in writing to the applicant.

~~**H.** The Board may administer the Naturopathic Physicians Licensing Exam (NPLEX) in lieu of all or part of an examination prepared by the Board.~~

F. In lieu of examinations administered by the Board, the Board may accept examinations conducted by the following national boards of examiners for examination subjects encompassed by A.R.S. § 32-1525(B)(1) and (2) under the conditions specified by A.R.S. § 32-1525(K):

1. North American Board of Naturopathic Examiners (except naturopathic jurisprudence);
2. National Board of Chiropractic Examiners (except part one examination subjects);
3. National Board of Osteopathic Examiners (except naturopathic jurisprudence);
4. United States Medical Licensing Examinations (except naturopathic jurisprudence).

~~**R4-18-109.**~~ **R4-18-105. Continuing Medical Education**

A. Physicians licensed by the Board shall annually attend ~~Continuing~~ continuing medical education consisting of 15 ~~classroom~~ hours ~~directly relating to the practice of naturopathic medicine shall be required annually~~ of instruction.

B. The following ~~courses and classes~~ qualify for continuing medical education credit if directly related to ~~the practice of naturopathic medicine~~ the subjects of examination provided for in A.R.S. § 32-1525(B)(1), (2) and (3):

1. Continuing medical education ~~courses and classes offered under the direct supervision of~~ approved by a state association of naturopathic physicians, a United States district or territory association of naturopathic physicians, or by a province of Canada ~~or district~~ association of naturopathic physicians, provided that the ~~state or district in which the~~ association is organized ~~is one~~ in a jurisdiction that licenses naturopathic physicians.
2. Continuing medical education ~~courses and classes~~ sponsored or offered by ~~the Board~~ an approved ~~schools~~ school of naturopathic medicine.
3. Continuing medical education ~~courses and classes offered by or~~ approved or accredited by:
   a. ~~the~~ The American Medical Association, ~~or~~
   b. The American Osteopathic Association~~.~~,
   c. The American Association of Naturopathic Physicians,
   d. A specialty college that holds a current and valid certificate issued by the Board to conduct a postdoctoral training program, or
   e. The Accreditation Council for Continuing Medical Education.
4. Any ~~other~~ continuing medical education ~~courses or classes approved by the Board~~ completed by a physician with course content comparable to continuing medical education qualifying under subsection (B)(1), (2), or (3). ~~Board approval shall be based upon the course content and requirement that the courses or classes sought to be approved have a level of instruction comparable to continuing education courses or classes offered by state and district associations or Board-approved schools of naturopathic medicine.~~

C. ~~The licensee~~ A physician licensed by the Board shall ~~provide to the Board proof (verified under oath by licensee) of continuing education as follows:~~ maintain proof of continuing medical education for 3 years. The proof maintained shall consist of a document or documents that includes all of the following:

1. Dates of continuing medical education~~,~~;
2 Name of association, organization, school, or specialty college ~~institution,~~;
3. Subject matter~~,~~; and
4. ~~Actual clock hours~~ Hours of instruction time.

D. The requirements of continuing medical education described in this ~~rule~~ Section shall not apply ~~in the calendar year in which this rule becomes effective or~~ to ~~licensees~~ physicians:

1. ~~during~~ During the calendar year of their first ~~naturopathic~~ license issued by the Board, or
2. Who have permanently retired from practice in accordance with A.R.S. § 32-1528.

E. The Board shall audit 15% of those physicians who renew their license each year for having completed continuing medical education. The Board shall randomly select the physicians to be audited.

F. A physician selected by the board for audit of continuing medical education shall provide to the Board, within 30 days after request by the Board, a copy of the documents required in subsection C for continuing medical education completed in the past 3 calendar years.

~~**R4-18-106. Examination Subjects Required for Licensing under A.R.S. § 32-1523**~~ **Repealed**

~~The 2 subject areas of examination shall be:~~

~~1. Oral examination in the subject of naturopathic jurisprudence, including applicable federal and state laws, rules, and, regulations.~~

~~2. Oral examination in the subject of practical clinical skills of naturopathic medicine, including but not limited to:~~

~~a. Physical diagnosis;~~

~~b. Medical emergencies; and~~

~~c. Office procedures.~~

~~**R4-18-111.**~~ **R4-18-106. Notice of Civil and Criminal Actions**

A. ~~Every licensee~~ Other than notices, subpoenas, and complaints provided by the Board to a person licensed or certified, every person who holds a license or certificate issued by the Board shall, within ~~10~~ 30 days of receipt, notify the Board of any notice, subpoena, summons, or ~~receipt of~~ complaint, whether civil or criminal, arising directly or indirectly out of the licensee's or the certificate holder's conduct ~~of his professional~~ that is related to the person's practice.

B. Notice to the Board shall consist of either a photocopy or facsimile copy of such notice or other service or may be in letter form advising the Board of the:

1. ~~nature~~ Nature of the cause of action~~,~~;
2. ~~setting forth any allegations~~ Allegations made by the plaintiff~~, and~~;
3 ~~giving the name~~ Name and address of the plaintiff and ~~his~~ the plaintiff's attorney of record, if any; and
4. ~~giving the date~~ Date, time, and place where appearance is required.

C. Notice to the Board shall be by certified or registered mail.

~~**R4-18-108. Titles, Use of abbreviations**~~ **Repealed**

~~**A.** A doctor of naturopathic medicine licensed in this state may use the designations "Doctor of Naturopathic Medicine", "Doctor of Naturopathy", "Naturopath", and "Naturopathic Physician".~~

~~**B.** A doctor of naturopathic medicine licensed in this state may use the abbreviation "N.M.D.", "N.D.", and "D.N.".~~

~~**R4-18-116.**~~ **R4-18-108. Hearing Procedures**

Hearings shall be conducted in accordance with the provisions of A.R.S. Title 41, Chapter 6 ~~of the Arizona Revised Statutes~~.

~~**R4-18-117.**~~ **R4-18-109. Rehearing or Review of Decision**

A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ~~10~~ 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at ~~his~~ the party's last known residence or place of business.

B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within ~~10~~ 30 days after service of such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issue raised in the motion and may provide for oral argument.

C. 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 agency 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 Board 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.

D. The Board 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 subsection (C). 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.

E. Not later than ~~10~~ 30 days after a decision is rendered, the Board 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. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ~~10~~ 30 days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding ~~20~~ 30 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If in a particular decision the Board 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.

H. If a decision is issued as a final decision without an opportunity for rehearing, any applicant for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

~~**H.**~~**I.** For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

~~**I.**~~**J.** To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Board, such statutory provisions shall govern.

~~**R4-18-110. Display of Licenses; Notice of Change of Status**~~ **Repealed**

~~**A.** Each person licensed by the Board shall at all times display the license issued to him or her by the Board in a conspicuous place in his or her office or place of professional practice.~~

~~**B.** Licensees shall notify the Board of any change in the information provided to the Board concerning license application or its renewal, including changes in name, address, and place of practice.~~

~~**C.** All notice requirements under this rule shall be in writing and made within 30 days of change of status.~~

R4-18-111. Renumbered

~~**R4-18-112. Reserved**~~ **Repealed**

~~**R4-18-113. Reserved**~~ **Repealed**

~~**R4-18-114. Reserved**~~ **Repealed**

~~**R4-18-115. Reserved**~~ **Repealed**

ARTICLE 2. LICENSES; CERTIFICATES; RENEWAL

R4-18-201. Application to Take a Naturopathic Medical Licensing Examination

A. No later than 90 days before an examination date, an applicant for a naturopathic medical licensing examination shall submit an application packet to the Board that includes:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains the applicant's:
   a. Name, mailing address, telephone number, and social security number or United States resident identification number;
   b. Date of birth and place of birth; and
   c. Height, weight, hair color, and eye color.
2. Two passport photographs of the applicant, no larger than 1 1/2" x 2", taken not more than 90 days before the date of the application; and
3. The application fee and the examination fee required under R4-18-107.

B. No later than 90 days before an examination, a student applicant who meets the requirements in A.R.S. § 32-1525(I) may:

1. Apply to take either part one or part two or apply to take both part one and part two of a naturopathic medical licensing examination by submitting an application form provided by the Board that contains:
   a. The student applicant's name, address, telephone number, and social security number or United States resident identification number;
   b. The requested examination date;
   c. The part or parts of the examination as stated in A.R.S. § 32-1525(B) for which the request is being made;
   d. The name of the school of naturopathic medicine that the applicant is attending;
   e. A verification by the academic dean of the school of naturopathic medicine being attended that the student applicant has successfully completed the courses for examination.

C. After taking and passing a naturopathic medical licensing examination, an applicant or student applicant intending to practice in Arizona shall submit an application for licensure packet to the Board.

R4-18-202. Application for a Naturopathic Medical License

A. Except as provided in A.R.S. § 32-1525(J), an applicant for a regular license shall submit to the Board an application packet that includes an application form provided by the Board, signed and dated by the applicant, and notarized that contains:

1. The applicant's name, mailing address, telephone number, and social security number or United States resident identification number;
2. The applicant's date of birth and place of birth;
3. The applicant's height, weight, hair color, and eye color;
4. One passport photograph of the applicant, no larger than 1 1/2" x 2", taken not more than 90 days before the date of the application;
5. The name and address of the school of naturopathic medicine from which the applicant graduated, date of entrance, and graduation date;
6. A photocopy of the diploma issued to the applicant upon successful completion of study at an approved school of naturopathic medicine;
7. The name and address of the facility from which the applicant completed a clinical training program, date of entrance, and completion date;
8. A photocopy of a document of completion of a clinical training program, including date completed, signed by the chief medical officer of the facility where the clinical training program was completed;
9. The name and address of each college or university attended by the applicant, dates attended, and degree, certificate, or college credits earned;
10. A statement of whether the applicant has taken and passed each part of the naturopathic medical licensing examination, and date of passage;
11. A statement of whether the applicant has ever been charged with, convicted of, or entered into a plea of no contest to a felony or to a misdemeanor involving moral turpitude;
12. A statement of whether the applicant has ever had an application for a license, certificate, or registration, other than a driver's license, denied or rejected by any state agency, United States district or territory agency, or agency of another country;
13. A statement of whether the applicant has ever had a license, certificate, or registration, other than a driver's license, suspended or revoked by any state agency, United States district or territory agency, or agency of another country;
14. A statement of whether the applicant has a complaint pending or has ever been disciplined by a licensing agency of any state, United States district or territory, or another country for any act of unprofessional conduct as defined in A.R.S. § 32-1501.
15. A statement of whether the applicant, in lieu of disciplinary action by a licensing agency, has ever entered into a consent agreement or stipulation with a licensing agency of any state, United States district or territory, or another country;
16. A statement of whether the applicant has a complaint relating to medical incompetency pending or has ever been found guilty of or liable for medical incompetency;
17. A statement of whether the applicant has ever been named as a defendant in any malpractice matter that resulted in a settlement or judgment against the applicant;
18. A statement of whether the applicant has any medical condition that in any manner impairs or limits the applicant's ability to practice naturopathic medicine;
19. A completed and legible fingerprint card;
20. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation;
21. The license application fee required by R4-18-107; and
22. The fingerprint report fee required by R4-18-107.

B. In addition to the requirements of subsection (A), an applicant shall arrange to have the applicant's official transcript from the school of naturopathic medicine directly submitted to the Board no later than 60 days before the examination.

C. In addition to the requirements of subsections (A) and (B), a graduate from an institution outside of the United States or Canada and who is not licensed by any other state, district, or territory of the United States shall submit to the Board documentation of completion of either a 2 year internship training program or a postdoctoral training program approved by the Board, including date completed, signed by the chief medical officer of the school of naturopathic medicine or the facility where the internship or postdoctoral training program was completed.

D. In addition to the requirements of subsections (A) and (B), an applicant for a license by endorsement shall submit to the Board:

1. The name and address of the agency from which applicant is currently licensed, issuance date of license, license number, and current status of the license;
2. A verification of licensure signed and dated by an official of the agency licensing applicant that includes the following:
   a. The date of issuance,
   b. The current status,
   c. A statement of whether the applicant was ever denied a license by the agency,
   d. A statement of whether any disciplinary action is pending against the applicant,

e. A listing of each examination subject tested on the agency's written examination and the applicant's grade on each subject, and

3. A statement of whether the applicant is requesting a temporary license.

E. In addition to the requirements in subsections (A) and (B), an applicant requesting the Board to accept the applicant's results of a part one examination or a part two examination, or both, conducted by a national board of examiners identified in R4-18-104 shall submit to the Board:

1. The name and address of the national board of examiners from which the applicant took an examination or examinations covering the subjects listed in A.R.S. § 32-1525(B)(1) and (2); and
2. A verification signed and dated by an official of the national board of examiners that indicates:
   a. The date and location of examination; and
   b. A listing of each examination subject tested on in part one or part two, or both, by the national board of examiners and the applicant's grade achieved on each part of the examination.

R4-18-203. Application for a Specialist Certificate

A. An applicant for a specialist certificate shall submit to the Board an application packet that includes:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
   a. The applicant's name, mailing address, telephone number, and social security number or United States resident identification number;
   b. The applicant's date of birth and place of birth;
   c. The applicant's height, weight, hair color, and eye color;
   d. The name and address of each college or university attended by applicant, degree earned or credit hours achieved, and dates attended;
   e. The name and address of the facility where applicant completed a clinical, internship, or preceptorship training program and date of completion;
   f. The name and address of the specialty college where applicant completed the approved postdoctoral training in the specialty being applied for and date of completion; and
   g. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
2. One passport photograph of the applicant, no larger than 1 1/2" x 2", taken not more than 90 days before the date of the application; and
3. The specialty certificate application fee required by R4-18-107.

B. In addition to the requirements of subsection (A), an applicant shall arrange to have submitted directly to the Board:

1. An official transcript signed by an official of the specialty college; and
2. A letter from the specialty board that conducted the applicant's specialty exam verifying certification as a specialist in the specialty for which application is being made.

R4-18-204. Application for a Medical Assistant Certificate

An applicant for a medical assistant certificate shall submit an application packet to the Board that includes an application form provided by the Board, signed and dated by the applicant, and notarized that contains:

1. The applicant's name, mailing address, telephone number, and social security number or United States resident identification number;
2. The applicant's date of birth and place of birth;
3. The applicant's height, weight, hair color, and eye color;
4. The name and address of the medical assistant school where applicant completed medical assistant training, date of completion, and name of applicant's supervisor;
5. The name and address of the high school from which applicant graduated and date of graduation or agency name and address where applicant obtained a general education diploma and date obtained;
6. The name and address of each college or university, other than medical assistant school, from which applicant graduated and dates of graduation;
7. If licensed or certified as a medical assistant or health care professional in any state, district, or territory of the United States, or another country the name and address of the licensing or certifying agency, issuance date, license or certification number, and current status of the license or certification;
8. One passport photograph of the applicant, no larger than 1 1/2" x 2", taken not more than 90 days before the date of application;
9. A photocopy of the diploma or certificate issued to applicant upon successful completion of medical assistant training or a notarized letter from applicant's supervisor certifying that applicant successfully completed medical assistant training;
10. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and

11. The medical assistant certificate application fee required by R4-18-107.

R4-18-205. Application for a Certificate to Dispense

A. A physician applying for a certificate to dispense shall submit to the Board an application form provided by the Board, signed and dated by the applicant, and notarized that contains:
1. The applicant's name, address, telephone number, and social security number or United States resident identification number;
2. The number of the license issued to the applicant by the Board;
3. The address of each location at which applicant intends to dispense;
4. A statement of whether applicant is registered by the United States Department of Justice to dispense controlled substances under 21 U.S.C., Chapter 13;
5. A statement of whether any action has been taken against a license or certificate held by the applicant by any state or federal court or any state or federal agency;
6. A copy of applicant's current Drug Enforcement Administration Certificate of Registration, if any, for each location from which applicant desires to dispense;
7. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation, and agreeing to conform to the provisions in A.R.S. § 32-1581, and this Chapter; and
8. The certificate to dispense application fee required by R4-18-107.

B. In addition to the requirements of subsection (A), a physician shall submit to the Board a photocopy of the written procedure required by A.R.S. § 32-1581(A)(4). The written procedure shall indicate how the physician will store and maintain devices and natural substance articles in a secured cabinet or room and maintain an ongoing inventory of its contents. At a minimum, the written procedure shall include designation of the persons who have access to the cabinet or room and procedures for recording requests for access to devices and natural substances.

R4-18-206. Application for a Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program

A. An applicant for a certificate to engage in a clinical, preceptorship, internship, or postdoctoral training program shall submit to the Board an application packet that includes an application form provided by the Board, signed and dated by the applicant, and notarized that contains:
1. The applicant's name, address, telephone number, and social security number or United States resident identification number;
2. The applicant's date of birth and place of birth;
3. The applicant's height, weight, hair color, and eye color;
4. One passport photograph of the applicant, no larger than 1 ½" x 2", taken not more than 90 days before the date of application;
5. The name of the clinical, preceptorship, internship, or postdoctoral training program;
6. The name and address of each facility at which applicant will be engaging in the training program;
7. The name, address, and telephone number of the chief medical officer of the training program;
8. The name, type of license, license number, address, and telephone number of each supervisor assigned by the chief medical officer to the applicant;
9. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
10. The application fee for a certificate to engage in the training program required by R4-18-107.

B. In addition to the requirements in subsection (A), a naturopathic medical student applicant for a certificate to engage in a clinical training program shall list the name and address of the approved naturopathic medical school being attended and applicant shall arrange to have directly submitted to the Board:
1. An official transcript from the school of naturopathic medicine being attended;
2. A notarized letter from the chief medical officer listed in subsection (A)(7) verifying that applicant will be entering the clinical training program and the anticipated starting and completion dates of the clinical training program;
3. A notarized letter from each supervisor verifying supervision of the applicant.

C. In addition to the requirements in subsection (A), an applicant for a certificate to engage in an internship, preceptorship, or postdoctoral training program shall:
1. State on the application form the name and address of the approved naturopathic medical school from which applicant graduated and date graduated;
2. If licensed to practice naturopathic medicine, state on the application form the applicant's license number and the name and address of the licensing agency; and
3. Arrange to have directly submitted to the Board:
   a. An official transcript from the approved naturopathic medical school from which applicant graduated;

b. If licensed to practice naturopathic medicine, a copy of the license;
c. A notarized letter from the chief medical officer listed in subsection (A)(7) verifying that applicant will be entering the internship, preceptorship, or postdoctoral training program and the anticipated starting and completion dates of the training program; and
d. A notarized letter from each supervisor verifying supervision of the applicant.

R4-18-207. Application for a Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program

A chief medical officer applying on behalf of a school of naturopathic medicine for a certificate to conduct a clinical training program, or applying on behalf of a physician to conduct a preceptorship training program, or applying on behalf of a hospital, college, university, or health care organization for a certificate to conduct an internship or postdoctoral training program shall submit to the Board an application packet that includes:

1. An application form provided by the Board, signed and dated by the chief medical officer, and notarized that contains:
   a. The chief medical officer's name, mailing address, and telephone number;
   b. The name and address for the training program;
   c. The name and mailing address of each facility at which the training program will be conducted;
   d. A brief narrative description of each facility that is to be used in the training program, including square footage;
   e. The maximum number of students or resident physicians in training who will be permitted to engage in instruction at a facility at any 1 time;
   f. The mission statement and objectives of the training program;
   g. The name, narrative description, and number assigned by the chief medical officer to each subject of instruction;
   h. The total cost for a student or resident physician in training to complete the program;
   i. A statement of whether a student or resident physician in training will be paid monetary compensation while completing instruction in a program;
   j. If applicable, the amount of monetary compensation paid to a student or resident physician in training; and
   k. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation.
2. A floor plan, no larger than 8 1/2" x 11", of each facility to be used in the training program, designating each examination room, treatment room, bed, classroom, laboratory, x-ray and diagnostic imaging room, restroom, reception area, office, and storage area;
3. A sample of the document to be issued to a student or resident physician in training as proof of completion of the training program;
4. A roster that contains the name of each supervisor who will be providing instruction in the training program and:
   a. The professional degree of the supervisor;
   b. The supervisor's license number issued by a licensing agency or board in Arizona;
   c. A statement of whether the supervisor has ever had a license, certification, or registration suspended or revoked by an agency or board in any state, district, or territory of the United States, or another country; and
   d. A statement of whether, on the date of application, any disciplinary action against a supervisor is pending before an agency or board in any state, district, or territory of the United States, or another country; and
5. The application fee required by R4-18-107 for a certificate to conduct a training program.

R4-18-208. Application for a Certificate to Conduct a School of Naturopathic Medicine

A person applying for a certificate of approval to conduct a school of naturopathic medicine shall submit to the Board an application packet that includes:

1. An application form provided by the Board that contains:
   a. The applicant's name, address, telephone number, and social security number or United States resident identification number;
   b. The applicant's date of birth and place of birth;
   c. A copy of the license issued by the Arizona State Board for Private Postsecondary Education;
   d. The number and qualifications of proposed faculty and staff;
   e. The name and address of the proposed chief medical officer;
   f. The number of students anticipated for enrollment at the school;
   g. The name and mailing address of each location where the school will be offering instruction;
   h. The name, narrative description, and number assigned to each subject of instruction;
   i. A statement of when applicant intends to offer a clinical training program;

j. The following signature:
i. If a sole proprietorship, the individual;
ii. If a corporation, any 2 of the corporation's officers;
iii. If a partnership, the managing partner; or;
iv. If a limited liability company, the designated manager, or if no designated manager, any 2 members of the limited liability company;
2. Written documentation from the issuing agency encompassed by A.R.S. § 32-1501(8)(a),(b), or (c) that the school's education program meets the requirements of A.R.S. § 32-1501(8)(a), (b), or (c); and
3. The application fee required by R4-18-107 for a certificate to conduct a school of naturopathic medicine.

R4-18-209. Renewal of Licenses and Certificates

A. A doctor of naturopathic medicine shall renew a license by submitting an application packet that includes:
1. A renewal form provided by the Board that contains:
a. The applicant's name, current practice address, telephone number, and social security number or United States resident identification number;
b. Office or corporate names used by applicant;
c. Each additional practice location where applicant practices and the address and telephone number for each additional location;
d. A statement of whether any enforcement action was taken against the applicant during the previous 12 months by a licensing agency other than the Board;
e. A statement of whether applicant was named in a malpractice suit during the previous 12 months;
f. A statement of whether applicant entered a plea of no contest to, or was convicted of, any felony or a misdemeanor involving moral turpitude during the previous 12 months;
g. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
h. The applicant's signature and date signed;
2. The applicant's signed and dated statement that applicant:
a. Has complied with the continuing medical education requirements of this Chapter;
b. Will maintain records for 3 years relating to applicant meeting the continuing medical education requirements of this Chapter; or
c. Has failed to comply with the continuing medical education requirements of this Chapter;
3. The fee required by R4-18-107 for annual renewal of a medical license; and
4. The fee required by R4-18-107 for each duplicate license that applicant requests to be issued for each additional practice address.

B. A certificate held by a medical assistant shall be renewed by submitting an application packet that includes:
1. A renewal form provided by the Board that contains:
a. The applicant's name, current address, telephone number, and social security number or United States resident identification number;
b. A statement of any change in applicant's name;
c. The location at which applicant provides medical assistance and the name of the doctor of naturopathic medicine supervising applicant at that location;
d. Each additional location at which applicant provides medical assistance and the name of the doctor of naturopathic medicine supervising applicant at each additional location;
e. The applicant's signature and date signed; and
2. The fee required by R4-18-107 for annual renewal of a medical assistant certificate;
3. The fee required by R4-18-107 for each duplicate certificate that applicant requests to be issued for each additional practice addresses where applicant engages in practice as a medical assistant.

C. A certificate to engage in a clinical, preceptorship, internship, or postdoctoral training program shall be renewed by submitting an application packet that includes:
1. A renewal form provided by the Board that contains:
a. The applicant's name, current address, telephone number, and social security number or United States resident identification number;
b. If applicable, the name of the naturopathic medical school being attended:
c. The type of training program for which applicant is applying;
d. The name, type of license held, license number, address, and telephone number of each supervisor assigned to applicant by the chief medical officer;
e. The name and address of each facility at which applicant engages in the training program;
f. A statement of whether applicant has ever been named as a defendant in any malpractice matter that resulted in a settlement or judgment against the applicant or any other party;

g. A statement of whether applicant entered a plea of no contest to, or was convicted of, any felony or a misdemeanor involving moral turpitude during the previous 12 months;
h. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
i. The applicant's signature and date signed; and

2. The fee required by R4-18-107 for annual renewal of a certificate to engage in the training program; and
3. The fee required by R4-18-107 for each duplicate certificate that applicant requests to be issued to engage in a training program at each additional facility.

D. A certificate to conduct a clinical, preceptorship, internship, or postdoctoral training program shall be renewed by submitting an application packet that includes:

1. A renewal form provided by the Board that contains:
   a. The applicant's name, current address, telephone number, and social security number or United States resident identification number;
   b. The name of the chief medical officer;
   c. The name and address of the clinical, preceptorship, internship, or postdoctoral training program;
   d. The name and address of each additional location where the training program is being conducted;
   e. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
   f. The chief medical officer's signature and date signed; and
2. The fee required by R4-18-107 for annual renewal of a certificate to conduct the training program; and
3. The fee required by R4-18-107 for each duplicate certificate that applicant requests to be issued for each additional facility where the training program is being conducted.

E. A certificate to dispense shall be renewed by submitting an application packet that includes:

1. A renewal form provided by the Board that contains:
   a. The applicant's name, current address, telephone number, and social security number or United States resident identification number;
   b The practice address at which applicant dispenses;
   c. Each additional address at which applicant dispenses;
   d. A statement of whether any action has been taken against a license or certificate held by applicant by any state or federal court or any state or federal agency;
   e. The applicant's sworn statement verifying that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation; and
   f. The applicant's signature and date signed; and
2. Except as exempted by A.R.S. § 32-1530, the fee required by R4-18-107 for annual renewal of a certificate to dispense; and
3. The fee required by R4-18-107 for each duplicate certificate that applicant requests to be issued for each additional dispensing address where applicant dispenses devices or natural substances.

F. A certificate to conduct a school of naturopathic medicine shall be renewed by submitting an application packet that includes:

1. A renewal form provided by the Board that contains:
   a. The applicant's name, current address, telephone number, and social security number or United States resident identification number;
   b. A statement of any changes in the status of the initial application submitted to the Board;
   c. The chief medical officer's signature and date signed; and
2. The fee required by R4-18-107 for annual renewal of a certificate to conduct a school of naturopathic medicine.

ARTICLE 3. RESERVED

ARTICLE 4. REQUIREMENTS FOR SCHOOLS OF NATUROPATHIC MEDICINE

R4-18-401. Education Program Standards for Schools of Naturopathic Medicine

A. A school of Naturopathic medicine shall:

1. Have an educational program that meets 1 or more of the requirements in A.R.S. § 32-1501(8) (a), (b), or (c);
2. Conduct courses of instruction in the basic medical science subjects listed in A.R.S. § 32-1525(B)(1);
3. Conduct courses of instruction in the clinical medical science subjects listed in A.R.S. § 32-1525(B)(2);
4. Conduct courses of instruction in the clinical competency medical subjects listed in A.R.S. § 32-1525(B)(3);
5. Have a clinical training program that is conducted by or in conjunction with its education program. The clinical training program shall consist of not less than 1200 hours of instruction. Not less than 800 hours of instruction in the clinical training program shall be under supervision by a Supervisor in diagnosis and treating patients;
6. Appoint a chief medical officer who meets the requirements listed in this Article; and

7. Award credit only for course work and clinical training completed by a student.

B. A school of naturopathic medicine shall not issue a doctoral degree in naturopathic medicine to a student until the student has completed the course of instruction required by subsections (A)(2), (3), and (4) and the clinical training program required by subsection (A)(5).

C. A school of naturopathic medicine may accept transfer credit for academic courses from a school, college, or university that is:

1. Accredited or a candidate for accreditation by an accrediting agency recognized by the United States Secretary of Education;
2. Accredited or a candidate for accreditation by an accrediting agency recognized by the Council for Higher Education Accreditation or its successor; or
3. Certified, recognized, approved, or accredited by another country's department of education or such equivalent department that is authorized by the laws of that country to certify, recognize, approve, or accredit educational institutions.

R4-18-402. Qualifications of Chief Medical Officer; Requirements; Duties

A. To qualify as a chief medical officer for a clinical training program, preceptorship training program, internship training program, or postdoctoral training program, the individual shall:

1. Hold an active medical license issued by the Board; and
2. Have practiced naturopathic medicine for 5 years in Arizona or have practiced naturopathic medicine for 5 years under a license issued by a naturopathic licensing agency in another state, district, or territory of the United Stated or a province of Canada.

B. The chief medical officer of a clinical training program, preceptorship training program, internship training program, or postdoctoral training program shall maintain a roster at all times that indicates all of the following:

1. The name of each resident physician in training or student enrolled in the training program, including the individuals certificate number issued by the Board to engage in the training program, and the date the resident physician in training or student entered into the training program;
2. The name and address of each facility at which the training program is being conducted, including a brief narrative description of the facility and the total square footage of the facility;
3. A floor plan for each facility at which the training program is being conducted that designates each examination room, treatment room, bed, classroom, laboratory, x-ray and diagnostic imaging room, restroom, reception area, office, and storage area;
4. The maximum number of resident physicians in training or students permitted to engage in instruction at the facility at any 1 time;
5. The name, address, telephone number, degree, and license number of each Supervisor at each facility where the training program is being conducted;
6. The name of the Supervisor assigned to each resident physician in training or to each student at each facility where the training program is being conducted; and
7. The name, narrative description, and number assigned to each subject of instruction to be conducted at the facility.

C. The Chief Medical Officer of a clinical training program, preceptorship training program, internship training program, or postdoctoral training program shall:

1. Assign not less than 1 Supervisor for every 8 resident physicians in training that are enrolled in a preceptorship training program, internship training program, or postdoctoral training program;
2. Not assign a Supervisor to supervise more than 8 resident physicians in training at any 1 time;
3. Assign not less than 1 Supervisor for every 6 students enrolled in a clinical training program;
4. Not assign a Supervisor to supervise more than 6 students at any 1 time;
5. Check with the licensing agency of each Supervisor once each calendar year to determine if any action has been taken by that agency against the Supervisor's license to practice;
6. Maintain a photocopy of the document issued to each resident physician in training and to each student that completes the training program; and
7. Maintain a record of the hours and the subjects of instruction completed by a resident physician in training or by a student that is enrolled in a training program.
8. Upon request of a resident physician in training or student, the Chief Medical Officer shall send to the Board a copy of the document issued to the resident physician in training or student indicating that the individual has completed a training program.

ARTICLE 5. REQUIREMENTS FOR CLINICAL, PRECEPTORSHIP, INTERNSHIP, AND POSTDOCTORAL TRAINING PROGRAMS

R4-18-501. Requirements for Clinical, Preceptorship, Internship, and Postdoctoral Training Programs

A. To be eligible for a certificate to conduct a clinical training program, preceptorship training program, internship training program, or postdoctoral training program an applicant shall appoint a chief medical officer who meets the qualifications listed in Article 4.

B. A clinical training program shall be conducted or sponsored only by an approved school of naturopathic medicine and shall be conducted only for naturopathic medical students enrolled at the conducting or sponsoring school.

C. A preceptorship training program, internship training program, or postdoctoral training program shall be conducted only for graduates who earned a doctoral degree in naturopathic medicine from a school of naturopathic medicine.

D. A preceptorship training program shall have a course of instruction in diagnosing and treating patients in the general practice of naturopathic medicine.

E. An internship training program shall consist of not less than 24 months of instruction that includes rotations by a resident physician in training of not less than 2 weeks and not more than 12 weeks in each of:

1. The clinical medical science subjects listed in A.R.S. § 32-1525(B)(2), and
2. The clinical competency medical subjects listed in A.R.S. § 32-1525(B)(3).

F. A postdoctoral training program that offers training in a specialty area of practice shall have a course of instruction that is approved by the Naturopathic Certification Board of Medical Examiners for the specialty area of practice covered by the training program, and

1. The American Board of Naturopathic Medical Specialties Council on Postdoctoral Education; or
2. The Council on Naturopathic Medical Education Committee on Postdoctoral Medical Education; or
3. Approved or accredited for specialty training by a Board recognized licensing agency of another state, district, or territory of the United States or another country.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES NONCOMMUNICABLE DISEASES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-4-103	Repeal
R9-4-301	Renumber
R9-4-301	New Section
R9-4-302	Renumber
R9-4-302	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. § 36-136(F)

Implementing statutes: A.R.S. §§ 36-1673 and 36-1675

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 4323, November 12, 1999

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

Name: Patricia M. Arreola

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5943

Fax: (602) 230-5933

E-Mail: parreol@hs.state.az.us

OR

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 West Adams, Room 102
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1090

E-Mail: kphilli@hs.state.az.us

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

The Department is repealing the definitions section pertaining specifically to the Blood Lead Levels Article and replacing it with a new definitions section within the Blood Lead Levels Article. The Department is also amending the only section previously in the Blood Lead Levels Article to conform to current rulemaking format and style requirements, to clarify the rule, and as described below.

The Department is changing the adult blood lead level reportable by physicians to 25 micrograms per deciliter of blood. The Department is making this change in response to the National Institute for Occupational Safety and Health's identification of 25 micrograms per deciliter of blood as the level of concern for adults. Although physicians will no longer be required to report adult blood lead level results of less than 25 micrograms per deciliter of blood, the Department will still receive this information from clinical laboratory directors for tracking purposes.

Under the amended rule, clinical laboratory directors will be required to report all blood lead results rather than just blood lead results of 10 micrograms per deciliter of blood or greater. While the current rule allows the Department to gather valuable data on children and adults who have elevated blood lead levels, the data currently required by the rule do not allow the Department to determine true prevalence rates for lead poisoning in Arizona or to assess true lead screening rates. Requiring laboratory directors to report all blood lead results to the Department will enable the Department to characterize the scope of the lead poisoning problem in Arizona and thus to identify risk areas and design effective prevention programs.

The amended rule also will require both physicians and laboratory directors to report blood lead levels at or above 45 micrograms per deciliter in children and at or above 60 micrograms per deciliter in adults within 1 working day of detection rather than within 5 days of detection. The Department is making this change to ensure timely environmental management in accordance with U.S. Centers for Disease Control and Prevention guidelines. The amended rule also provides that a physician or laboratory director may designate a representative to make the reports to the Department on behalf of the physician or laboratory director.

Finally, the amended rule will require both physicians and laboratory directors to report additional fields of information regarding the individuals tested for blood lead, the physicians ordering the tests, the laboratories performing the tests, and the blood draws. Many physicians and laboratory directors are currently providing much of this additional information to the Department as a courtesy. The Department needs this additional information in order to provide more effective case management and follow-up services. The Department has also eliminated the reporting requirement for race or ethnicity.

6. 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:

None

7. 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

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

Physician offices and clinical laboratories will bear the costs of the additional reporting requirements, which are expected to be minimal-to-moderate. A large portion of this will be a 1-time expense, with only a minimal annual long-term expense anticipated. The Department believes that the majority of physician offices are small businesses, but is aware of only 1 clinical laboratory that is a small business.

The Department will bear the costs of the rulemaking process as well as the costs of receiving and maintaining the additional data to be reported by physicians and clinical laboratories. The total cost to the Department is expected to be substantial, although a large portion of it represents a 1-time expense. The Governor's Regulatory Review Committee and the Office of the Secretary of State will also bear the costs of the rulemaking process, which are expected to be minimal-to-moderate for each.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Patricia M. Arreola
Address:	Arizona Department of Health Services Bureau of Epidemiology and Disease Control Services 3815 North Black Canyon Highway Phoenix, Arizona 85015
Telephone:	(602) 230-5943
Fax:	(602) 230-5933
E-Mail:	parreol@hs.state.az.us
	OR
Name:	Kathleen Phillips, Rules Administrator
Address:	Arizona Department of Health Services 1740 West Adams, Room 102 Phoenix, Arizona 85007
Telephone:	(602) 542-1264
Fax:	(602) 542-1090
E-Mail:	kphilli@hs.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date:	September 18, 2000	September 19, 2000
Time:	9:00 a.m.	10:00 a.m.
Location:	Arizona Dept. of Health Services 1740 W. Adams St. Conf. Rms. A & B Phoenix, Arizona 85007	Tucson State Complex 400 W. Congress Rm. 131 Tucson, Arizona 85701
Nature:	Oral Proceeding	Oral Proceeding

Written comments may be submitted until the close of record, September 19, 2000, at 5:00 p.m., to either individual listed in question 4.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS

Section
R9-4-103. ~~Definitions: Blood Lead Levels~~ Repealed

ARTICLE 3. BLOOD LEAD LEVELS

Sections
R9-4-301. Definitions
~~R9-4-301.~~ R9-4-302. Reporting Significant Blood Lead Levels

ARTICLE 1. DEFINITIONS

~~R9-4-103.~~ ~~Definitions: Blood Lead Levels~~ Repealed
~~In Article 3, Blood Lead Levels, unless the context otherwise requires:~~

~~1. "Physician" means a person engaged in the practice of medicine and licensed pursuant to A.R.S. Title 32, Chapter 13 or 17.~~
~~2. "Whole human blood" means blood taken from any person, alive or dead, which has not been separated into its plasma, erythrocyte, leukocyte and/or thrombocyte components.~~

ARTICLE 3. BLOOD LEAD LEVELS

R9-4-301. Definitions
In this Article, unless otherwise specified:

1. "Adult" means an individual 16 years of age or older.
2. "Child" means an individual younger than 16 years of age.
3. "Clinical laboratory" has the same meaning as in A.R.S. § 36-451.
4. "Patient" means the individual whose blood has been tested for lead content.
5. "Public" means funded by and operated under the direction of the federal or state government or a political subdivision of the state.
6. "Public insurance" means a public program, such as the Arizona Health Care Cost Containment System, KidsCare, Indian Health Services, or TRICARE, that pays for medical services.
7. "Whole blood" means human blood from which plasma, erythrocytes, leukocytes, and thrombocytes have not been separated.

~~R9-4-301.~~ R9-4-302. Reporting Significant Blood Lead Levels

A. ~~Any~~ A physician who ~~finds evidence~~ receives a laboratory result showing a level of lead in whole ~~human~~ blood ~~at or above~~ equal to or greater than 10 micrograms of lead per deciliter of whole blood for a child or 25 micrograms of lead per deciliter of whole blood for an adult shall ~~file a~~ report ~~of an elevated~~ the blood lead level ~~with~~ to the Department as follows:

1. ~~Reports~~ The physician shall ~~be made~~ report the blood lead level within ~~five~~ 5 working days ~~of~~ from the date of ~~finding the level to be elevated~~ receipt of the laboratory result if the blood lead level is less than 45 micrograms of lead per deciliter of whole blood for a child or less than 60 micrograms of lead per deciliter of whole blood for an adult.
2. ~~Reports shall be by telephone or submitted in writing on forms supplied by the Department.~~ The physician shall report the blood lead level within 1 working day from the date of receipt of the laboratory result if the blood lead level is equal to or greater than 45 micrograms of lead per deciliter of whole blood for a child or equal to or greater than 60 micrograms of lead per deciliter of whole blood for an adult.
3. ~~All reports shall include the patient's name, address, telephone number, the date of birth, race or ethnicity, gender, occupation, the level of lead and the date the blood lead level was found to be elevated. The report shall also include the name and address of the laboratory making the determination, and the name, address and telephone number of the person making the report.~~ A physician may designate a representative to make the reports to the Department on behalf of the physician.

B. ~~Clinical~~ A clinical laboratory ~~directors~~ director ~~or their designated representatives who find evidence of lead in a sample of whole blood at or above 10 micrograms of lead per deciliter of whole blood~~ shall ~~file a~~ report ~~of an elevated~~ to the Department the results of all tests for ~~blood~~ lead ~~with the Department~~ in whole blood as follows:

1. ~~Reports~~ The clinical laboratory director shall ~~be made~~ report the blood lead test result within ~~five~~ 5 working days ~~of~~ from the date of ~~finding the level to be elevated~~ completing the test if the blood lead level is equal to or greater than 10 but less than 45 micrograms of lead per deciliter of whole blood for a child or equal to or greater than 25 but less than 60 micrograms of lead per deciliter of whole blood for an adult.
2. ~~Reports shall be by telephone or submitted in writing on forms supplied by the Department.~~ The clinical laboratory director shall report the blood lead test result within 1 working day from the date of completing the test if the blood lead level is equal to or greater than 45 micrograms of lead per deciliter of whole blood for a child or equal to or greater than 60 micrograms of lead per deciliter of whole blood for an adult.
3. ~~All reports shall include the patient's name, address, telephone number, the date of birth, race or ethnicity, gender, the name of the patient's physician, the level of lead, and the date the blood lead level was found to be elevated. The report shall also include the name and address of the laboratory making the determination.~~ The clinical laboratory director shall report blood test results that are less than 10 micrograms of lead per deciliter of whole blood for a child or less than 25 micrograms of lead per deciliter of whole blood for an adult at least once each month.
4. A clinical laboratory director may designate a representative to make the reports to the Department on behalf of the clinical laboratory director.

C. A physician or clinical laboratory director shall submit each report to the Department by telephone; in a writing sent by fax, delivery service, or mail; or by an electronic reporting system authorized by the Department.

D. A report shall include the following information:
1. The patient's name, address, and telephone number;
2. The patient's date of birth;
3. The patient's gender;
4. If the patient is an adult, the patient's occupation and the name, address, and telephone number of the patient's employer;
5. An indication of the patient's funding source and the specific health plan name, if applicable:
   a. Public insurance,
   b. Private insurance,
   c. Self-pay,
   d. Workplace monitoring program,
   e. Other, or
   f. Unknown;
6. The type of blood draw used (venous or capillary);
7. The date the blood was drawn;
8. The blood lead level;
9. The date the blood lead level was received by the physician or determined by the laboratory;
10. The name, address, and telephone number of the laboratory that tested the blood; and
11. The name, practice name, address, and telephone number of the physician who ordered the test.

NOTICE OF PROPOSED RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

PREAMBLE

1. Sections Affected	**Rulemaking Action**
R10-4-101	Repeal
R10-4-101	Renumber
R10-4-101	Amend
R10-4-102	Repeal
R10-4-102	Renumber
R10-4-102	Amend
R10-4-103	Repeal
R10-4-103	Renumber
R10-4-103	Amend
R10-4-104	Repeal
R10-4-104	Renumber
R10-4-104	Amend

R10-4-105	Repeal
R10-4-105	Renumber
R10-4-105	Amend
R10-4-106	Repeal
R10-4-106	Renumber
R10-4-106	Amend
R10-4-107	Repeal
R10-4-107	Renumber
R10-4-107	Amend
R10-4-108	Repeal
R10-4-108	Renumber
R10-4-108	Amend
R10-4-109	Repeal
R10-4-109	Renumber
R10-4-109	Amend
R10-4-110	Repeal
R10-4-110	Renumber
R10-4-110	Amend
R10-4-111	Repeal

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. §§ 41-2408 and 41-2402

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

Name: Karen L. Ziegler

Address: 3737 North 7th Street, Suite 260
Phoenix, Arizona 85014

Telephone: (602) 230-0252

Fax: (602) 728-0752

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

The purpose of the article is to establish the guidelines to be used to govern the Crime Victim Compensation Program. Without the establishment of rules governing the administration of the program, the funds cannot be made available, awarded, or properly administered.

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

The promulgation of this rule will not diminish a previous grant of authority of a political subdivision of this state.

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

There will be a positive significant economic impact as a result of the amendments to the proposed rules.

Costs/Benefits to implementing agency: The Arizona Criminal Justice Commission will experience no increase in its supplies and services budget. The personnel budget will not be increased. The management of the funds will be continue to be accomplished through the use of existing staff. No increase in administrative overhead is anticipated.

Costs/benefits to other agencies directly affected by the amendments: Other state agencies will not be adversely effected by the amendments to the rules governing distribution of funds. The amendments serve the following purpose; 1.) bring the rules into conformance with the language of the Secretary of State's Office; 2.) delete reference to the subrogation agreement that is now in statute and; 3.) increase the benefits available to victims of crime. The State Treasury Department would have no cost increases as a result of the amended rules. The department already receives and administers the account into which these funds are deposited.

Costs/benefits to political subdivisions: All Arizona criminal justice agencies and non-profit organizations providing victim services potentially benefit from the distribution of Crime Victim Compensation funds. The Arizona Criminal Justice Commission allocates funds to each county based on population. The designated operational unit in each county is able to retain a portion of the fund for administrative costs.

Costs/benefits to business: There are no significant costs to private industry. The Crime Victim Compensation Program provides reimbursement of unpaid medical and mental health counseling expenses to victims that would otherwise have no resource to pay bills. This is a benefit to businesses in Arizona because these bills would otherwise be a write off. The administrative portion of these funds provide a proportionate stimulant to the economy of recipient communities through added jobs that may otherwise not be available.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Karen L. Ziegler

Address: 3737 North 7th Street, Suite 260
Phoenix, Arizona 85014

Telephone: (602) 230-0252

Fax: (602) 728-0752

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Arizona Criminal Justice Commission will schedule a public hearing if it receives written requests for a public hearing from five or more persons.

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

None

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

None

11. Full text of the rules follows:

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

Sections

R10-4-101. ~~R10-4-103.~~ Definitions
R10-4-102. ~~R10-4-104.~~ Administration of the Fund
R10-4-103. ~~R10-4-105.~~ Statewide Operation
R10-4-104. ~~R10-4-106.~~ Operational ~~Operation~~ Unit Requirements
R10-4-105. ~~R10-4-107.~~ Crime Victim Compensation Board
R10-4-106. ~~R10-4-108.~~ Award Criteria
R10-4-107. ~~R10-4-109.~~ Hearings and Appeals
R10-4-108. ~~R10-4-110.~~ Emergency Awards
R10-4-109. Renumbered
R10-4-110. Renumbered
R10-4-111. ~~Subrogation Agreement~~ Repealed

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

~~R10-4-101.~~ ~~Short Title~~ Repealed

~~The provisions of these rules shall be known and cited as the "Arizona Crime Victim Compensation Program".~~

~~R10-4-102.~~ ~~Purpose~~ Repealed

~~The Commission, in recognition that many innocent persons suffer physical injury, extreme mental distress, or death as a direct result of criminal acts or in their efforts to prevent criminal acts or apprehend persons committing or attempting to commit criminal acts, and that victims and derivative victims may thereby suffer disabilities, incur financial hardships, or become dependent on public assistance, shall allocate the public resources available to satisfy these purposes in the most efficient and cost-effective manner possible through the state operation and supervision of locally administered operational units.~~

~~**R10-4-103.**~~ **R10-4-101. Definitions**

In these rules:

1. "Allowable expense" means a cost ~~for which a compensation award is~~ authorized under these rules to receive a compensation award ~~and made~~ by the ~~Crime Victim Compensation~~ Board to a victim, a derivative victim, or both for economic loss.
2. "Board" means the Crime Victim Compensation Board of ~~for~~ an operational unit.
3. "Claimant" means any natural person, ~~who is legally present~~ in the United States, filing a claim under these rules and authorized to receive a compensation award for economic loss because the person is:
   a. A victim of criminally injurious conduct that occurs while the person is ~~legally present~~ in the United States;
   b. A resident of this state who is injured by an act of international terrorism ~~as defined in 18 U.S.C. 2331, 1992, (and no later editions or amendments) which is incorporated by reference and on file with the Commission and the Office of the Secretary of State~~;
   c. A derivative victim;
   d. A person authorized to act on a victim's behalf ~~of victim~~, or a person authorized to act on behalf of a ~~dependent of a~~ deceased victim's dependent ~~victim~~ if the victim died as a direct result of criminally injurious conduct or an act of international ~~intentional~~ terrorism ~~as defined in 18 U.S.C. 2331~~; or
   e. A person who assumes an ~~the~~ obligation or pays an ~~the~~ expense directly related to a victim's ~~the~~ economic loss incurred as a direct result of criminally injurious conduct or an act of international terrorism ~~as defined in 18 U.S.C. 2331~~.
   f. Claimant does not mean ~~include~~:
      i. The offender, an accomplice of the offender, or a person ~~1~~ who encouraged or in any way participated in or facilitated criminally injurious conduct~~,~~ or an act of international terrorism ~~as defined in 18 U.S.C. 2331~~;
      ii. A person ~~persons~~ serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough, or a ~~any~~ person who has escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism; or
      iii. A person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense only if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system.
4. "Collateral source" means a source of compensation for economic loss that a claimant has received, or that is available to a claimant including:
   i. The offender or a 3rd party responsible for the offender's actions;
   ii. The United States government ~~of the United States~~ or any of its agencies, a state or any of its political subdivisions, or an instrumentality of 2 or more states, unless the law providing for the compensation makes the compensation ~~it~~ excess or secondary to benefits under this rule~~,~~; specifically excluding those federal funds granted under 42 U.S.C. 10602;
   iii. Social Security, Medicare, and Arizona Health Care Cost Containment System payments;
   iv. State-required, temporary, nonoccupational disability insurance;
   v. Worker's compensation insurance;
   vi. Wage continuation program ~~programs~~ of any employer;
   vii. Insurance proceeds ~~Proceeds of a contract of insurance~~ payable to the victim or claimant for loss that the victim or claimant sustained because of the criminally injurious conduct or act of international terrorism; or
   viii. A contract providing for prepaid hospital and other health care services or ~~benefits for~~ disability benefits.
5. "Commission" means the Arizona Criminal Justice Commission, ~~as~~ established by A.R.S. § 41-2404.
6. "Criminally injurious conduct" means conduct that:~~, whether completed or preparatory, that poses a substantial threat of physical injury, extreme mental distress or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under applicable laws~~.
   a. Constitutes a crime as defined by the laws of this state whether or not the perpetrator of the act is convicted;
   b. Poses a substantial threat of physical injury, extreme mental distress or death; and
   c. Is punishable by fine, imprisonment, or death, or would be punishable but the person engaging in the conduct lacked capacity to commit the crime under applicable laws.

7. "Derivative victim" means:
   a. The spouse, child, parent, stepparent, stepchild, sibling, or guardian ~~parent, spouse, child, or sibling~~ of a victim who died as a result of criminally injurious conduct or act of international terrorism and includes a child born after the victim's death.
   b. A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the Board to be substantially similar to a relationship in subsection (7)(a).
   c. A member of the victim's family ~~of the victim~~ who witnessed the criminally injurious conduct.
   d. A nonfamily member who witnessed a violent ~~heinous~~ crime.
   e. A person whose mental health counseling and care or presence during the victim's mental health counseling and care ~~of the victim~~ is required for the successful treatment of the victim.
8. "Economic loss" means financial detriment consisting only of medical expenses, mental health counseling and care expenses, work loss, and funeral expenses.
9. "Extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
10. "Fund" means the Crime Victim Compensation and Assistance Fund.
11. "Funeral expense" means charges ~~any reasonable charge that is~~ incurred as a direct result of a victim's funeral, ~~and~~ cremation, or burial.
12. "International terrorism" means an act as defined in ~~at~~ 18 U.S.C. 2331, incorporated by reference and on file with the Commission and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
13. "Jurisdiction" means any county in ~~within~~ this state.
14. "Medical expense" means a cost related to medical care due ~~attributable~~ to a physical injury resulting from criminally injurious conduct or an act of international terrorism~~, as defined in 18 U.S.C. 2331~~. Medical expense ~~It~~ includes a cost resulting from damage to prosthetic devices or dental devices. Medical expense ~~It~~ does not include ~~that portion of~~ a charge for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution ~~institutional~~ engaged in providing nursing care and related services ~~in excess of a charge for semi-private accommodations~~, unless private accommodations ~~other than semi-private accommodations~~ are medically required.
15. "Mental health counseling and care expense" means a cost related to the assessment, diagnosis, and treatment of a victim's ~~an individual's~~ mental and emotional function ~~functioning~~ that is required to alleviate extreme mental distress resulting from criminally injurious conduct or an act of international terrorism~~, as defined in 18 U.S.C. 2331~~. Mental health counseling and care expense ~~It~~ does not include ~~that portion of~~ a charge for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services ~~in excess of a charge for semi-private accommodations~~, unless private accommodations ~~other than semi-private accommodations~~ are medically required.
16. "Operational unit" means a public or private agency ~~that is~~ authorized by the Commission ~~to establish a crime victim compensation program and~~ to receive, evaluate, and present to the Board, under these rules and state law, compensation claims from claimants.
17. "Program" means the Crime Victim Compensation Program.
18. "Subrogation" means the substitution of the state and an ~~the~~ operational unit, to the extent that the operational unit used the operational unit's funds, in the place of the claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award.
19. "Work loss" means a reduction in income from work that a victim would have performed if the victim had not been injured or killed. Work Loss does not include~~, minus~~ any income earned from substitute work or income available to the victim from ~~performed by the victim, or income the victim would have earned in available~~ appropriate substitute work that the victim was capable of performing but unreasonably failed to perform ~~undertake~~.
20. "Victim" means a person who suffers physical injury, extreme mental distress, or death as a direct result of any of the following:
   a. Criminally injurious conduct that occurs while the person is ~~legally present~~ in the United States;
   b. An act of international terrorism ~~as defined in 18 U.S.C. 2331~~;
   c. A person's good faith effort ~~of any person~~ to prevent criminally injurious conduct; or
   d. A person's good faith effort ~~of any person~~ to apprehend a person suspected of engaging in criminally injurious conduct or an act of international terrorism~~, as defined in 18 U.S.C. 2331~~.

R10-4-102. ~~R10-4-104~~. Administration of the Fund

A. The Commission shall deposit ~~in the Crime Victim Compensation Fund~~ all funds ~~monies~~ received under A.R.S. § 12-116.01 and any other funds received ~~monies from any federal source~~ for compensating crime victims in the Fund ~~of crime~~.

B. The Commission shall designate, ~~at the beginning of~~ each state fiscal year, 1 operational unit in ~~within~~ a jurisdiction to receive an allocation from the Fund.

C. The Commission shall distribute a portion of the Fund to each designated operational unit for expenditure by the Board~~,~~. Funds shall be distributed by a formula ~~based on a uniform base amount to be~~ determined annually by the Commission~~,~~ ~~from staff recommendations derived from an analysis of the prior year expenditure history, and with any remaining monies to be divided among jurisdictions on a population basis.~~ The formula shall be derived using:

1. An analysis of prior year's expenditure history; and
2. A uniform base amount with the remaining funds divided among jurisdictions based on population.

D. The Commission shall reserve the lesser of $50,000 or 10% of the Fund to be used in the event of an unforeseen increase of victimization by criminally injurious conduct or act ~~acts~~ of international terrorism ~~as defined in 18 U.S.C. 2331~~, when compensation ~~for which~~ cannot be provided by an ~~any~~ operational unit.

E. If there is an unforeseen increase in victimization by criminally injurious conduct or act ~~acts~~ of international terrorism, ~~as defined in 18 U.S.C. 2331~~, the Commission shall allow a claimant to apply directly to the Commission for compensation based on ~~upon~~ criteria established by R10-4-106 ~~R10-4-108~~.

F. If any funds ~~money~~ received from the Commission remain unexpended by the Board at the end of a fiscal year, the funds ~~operational unit~~ shall be returned ~~return the unexpended money~~ to the Commission within 45 days after the end of the fiscal year and redeposited ~~which shall redeposit the unexpended money~~ in the Fund for use in the next fiscal year.

G. Funds collected by an operational unit through subrogation and restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-106.

H.~~G.~~ An operational unit that receives ~~raises~~ additional funds ~~monies~~ for victim compensation shall submit a written report to the Commission. The report shall contain ~~that tells~~ the amount of ~~the~~ additional funds ~~monies~~ distributed to compensate crime victims ~~of crime~~. The Commission shall use the information in the written report to apply for federal matching ~~of the additional~~ funds ~~monies~~ from the Victims of Crime Act Fund. If ~~the~~ matching funds ~~monies~~ are received, the Commission shall forward the matching funds ~~monies~~ to the appropriate operational unit.

I. The operational unit may use funds to pay administrative costs to the extent authorized by the Commission.

R10-4-103. ~~R10-4-105~~. Statewide Operation

For any portion of the state not served by an operational unit, the Commission may operate a compensation program in accordance with these rules or may provide for a ~~such~~ program by contract.

R10-4-104. ~~R10-4-106~~. Operational ~~Operation~~ Unit Requirements

A. A public or private agency seeking designation as an operational unit shall submit to the Commission a letter requesting designation.

B. To be eligible to receive designation and funding by the Commission as the operational unit for a jurisdiction, a unit shall agree to:

1. Not use Commission funds or federal funds to supplant funds otherwise available to the program for crime victim compensation;
2. Not discriminate in evaluating claims made by or on behalf of victims and derivative victims of criminally injurious conduct occurring in the operational unit's ~~within its~~ jurisdiction who are nonresidents of the jurisdiction and those who are residents of the jurisdiction;
3. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring in ~~within~~ this state;
4. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring in ~~within~~ the unit's jurisdiction;
5. Forward to the Board compensation claims of residents of the unit's jurisdiction who are victims or derivative victims of criminally injurious conduct or an act of international terrorism occurring ~~that occurs~~ in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b)(1)-(6) ~~or of an act of international terrorism as defined in 18 U.S.C. 2331~~;
6. Notify ~~Provide notice to~~ the Commission of any changes in the unit's procedures before the changes take effect. If the changes are material, the unit shall receive prior written approval from the Commission before instituting the changes;
7. Submit a written quarterly report to the Commission on a form provided by the Commission that describes in detail its activities under this rule~~, including the impact that Commission funds had on the unit.~~ The report shall ~~also~~ include:
   a. The impact that Commission funds had on the unit.
   b.~~a.~~ The amount and ~~each~~ source of revenue available ~~for the unit~~ for victim compensation ~~correspondence~~;

c.~~b.~~ The total number of claims, awards, denials, pending claims, total amount of awards; and the ethnic background, ~~national origin~~, disability, age, and sex of each victim;

d.~~c.~~ The ~~average amount of all awards; the~~ total number ~~and total amount~~ of claims ~~awards~~ for state resident ~~federal victims~~ and nonresident victims; the number and award amount ~~of awards~~ by type of crime; and the number and award amount ~~of awards~~ by type of expense, including medical, mental health counseling, work loss, and funeral;

e.~~d.~~ The type of provider for mental health counseling and care awards including psychiatrist, psychologist, rape crisis center, and community mental health center; the number, amount, and duration of mental health counseling and care awards; and

f.e. Referral sources ~~Sources that referred victims to the unit~~;

8. Provide ~~Make~~ application forms ~~available~~ to all persons who claim an award as a result of criminally injurious conduct or an act of international terrorism that occurred in ~~within~~ the unit's jurisdiction ~~or of an act of international terrorism, as defined in 18 U.S.C. 2331~~. The application form shall~~, at a minimum,~~ contain the following information:

a. The name, address, ethnic background, ~~national origin~~, age, and sex of the victim or derivative victim of the criminally injurious conduct or ~~an~~ act of international terrorism~~, as defined in 18 U.S.C. 2331,;and the name and address of the claimant, and the relationship of the claimant to the victim~~;

b. The claimant's name, address and relationship to the victim;

c.~~b.~~ If the victim is deceased, the name and address of each derivative victim, and the extent to which each was dependent on ~~upon~~ the victim for financial support;

d.~~c.~~ The nature of the criminally injurious conduct or act of international terrorism~~, as defined in 18 U.S.C. 2331, that is the basis for the claim~~ and the date ~~on which~~ the conduct occurred;

e.~~d.~~ The law enforcement agency or officer ~~to whom~~ the criminally injurious conduct or act of international terrorism~~, as defined in 18 U.S.C. 2331,~~ was reported to;

f.e. The nature and extent of the injuries ~~that~~ the victim sustained from the criminally injurious conduct or act of international terrorism~~, as defined in 18 U.S.C. 2331~~, ~~the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries~~;

g. The name and address of any person who gave medical treatment to the victim for the injuries and the name and address of any hospital or similar institution where the victim received medical treatment for the injuries;

h.~~f.~~ The economic loss ~~that a claimant~~ sustained as a result of the criminally injurious conduct or ~~an~~ act of international terrorism~~, as defined in 18 U.S.C. 2331~~;

i.~~g.~~ The name and amount of any collateral source ~~compensation that~~ the victim, a derivative victim, or a claimant has received or is entitled to receive ~~from any collateral source~~ for economic loss as a result of ~~that resulted from~~ the criminally injurious conduct or ~~an~~ act of international terrorism~~, as defined in 18 U.S.C. 2331, and the name of each collateral source~~;

j.~~h.~~ An affirmation that the claimant is not~~: an illegal alien; is not the offender, accomplice, or facilitator; is not serving or was not serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough; and has not escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough, at the time of the criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331. A unit shall not exclude a person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense from receiving benefits unless the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system; and~~

i. An offender, accomplice, or facilitator of the criminally injurious conduct or act of international terrorism;

ii. Serving or was not serving a sentence of imprisonment in any detention facility, home arrest program, work furlough and has not escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism;

k.~~i.~~ A release authorizing the unit's investigative agent to obtain any report, document, or information that relates to the determination of a ~~the~~ compensation claim ~~for an award of compensation that is requested in the application~~.

9. Comply with all civil rights requirements;

10. Ensure each compensation claim ~~Ensure that it monitors, investigates, and substantiates each claim for compensation~~ is monitored, investigated and substantiated before forwarding the claim to the Board for ~~to make~~ an award.~~;~~ and

~~11. Provide other information and assurances the Commission may require to carry out any of its duties or responsibilities.~~

R10-4-105. ~~R10-4-107~~. Crime Victim Compensation Board

A. Each operational unit shall establish ~~have established~~ a Crime Victim Compensation Board. The Board~~, which~~ shall consist of an odd number ~~and~~ with at least ~~not fewer than~~ 3 members. The Board shall be ~~to be~~ appointed by the Commission Chairman ~~of the Commission~~ from a list submitted by the operational unit. Members of the Board shall receive no compensation for their services.

B. ~~The term of office of each~~ Each appointed member's term ~~member~~ shall be 3 years; except ~~that of~~ those members first appointed. Approximately~~, approximately~~ 1/3 shall be appointed for a 3-year term, 1/3 for a 2-year term, and 1/3 for a 1-year term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. The Commission Chairman shall appoint a member to complete a vacated term~~, to be made by the Chairman of the Commission~~ from a list submitted by the operational unit.

C. The majority of the Board membership ~~of the Board~~ constitutes a quorum for the transaction of business. The Board shall elect from ~~among~~ its membership a chairman and ~~such~~ other officers as ~~it deems~~ necessary, to serve ~~for such~~ terms determined by ~~as~~ the Board ~~determines~~.

D. The Board shall make a compensation award ~~awards~~ according to ~~in accordance with the requirements of~~ these rules and perform ~~any~~ other act ~~acts~~ necessary for the operation of the program.

R10-4-106. ~~R10-4-108~~. Award Criteria

A. The ~~An operational unit's~~ Board shall meet at least every 60 days to decide, based on ~~upon~~ the investigative agent's findings, whether to make an award, ~~and, if so,~~ the terms of the award, and the amount of the award within 60 days of receipt of the application by the operational unit except where good ~~due~~ cause exists. The Board shall inform the applicant of the Board's decision in writing within 5 days of the decision.

B. The Board shall not make a compensation award unless it determines that:

1. Criminally injurious conduct or an act of international terrorism~~, as defined in 18 U.S.C. 2331~~ was committed;
2. The criminally injurious conduct or act of international terrorism~~, as defined in 18 U.S.C. 2331,~~ directly resulted in physical injury to, extreme mental distress to, or death of the victim;
3. The criminally injurious conduct or act of international terrorism~~, as defined in 18 U.S.C. 2331,~~ was reported to the appropriate law enforcement authority ~~authorities~~ within 72 hours after its discovery unless good cause is shown to justify a delay; and
4. The compensation application ~~for a compensation award~~ was submitted to the operational unit within ~~with~~ 2 years ~~1 year~~ of the discovery of the crime or act of international terrorism~~, as defined in 18 U.S.C. 2331,~~ unless good cause is shown to justify a delay.

C. The Board shall make a compensation award ~~awards~~ from the Fund only for the following:

1. Medical expenses due ~~attributable~~ to a victim's physical injury or death resulting from criminally injurious conduct or an act of international terrorism~~, as defined in 18 U.S.C. 2331~~;
2. Work loss for; ~~attributable to a victim's physical injury, extreme mental distress, or death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, provided the compensation award for work loss does not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1). A compensation award for work loss attributable to a victim's death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, may be made to a surviving spouse, child, sibling, or parent of the victim if the Board determines the death resulted in a loss of support from the victim to the spouse, child, sibling, or parent, provided the award for work loss does not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1). A compensation award to the parent or guardian of a minor victim may be made for work loss attributable to transporting or accompanying the victim to a medical, or mental health counseling and care visit provided the award for work loss does not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1);~~
   a. A victim's physical injury, extreme mental distress, or death resulting from criminally injurious conduct or an act of international terrorism. The compensation award for work loss, after deducting any collateral source for work loss, cannot exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1);
   b. A deceased victim's spouse, child, sibling, or parent if the Board determines the death resulted in a loss of support from the victim to the spouse, child, sibling, or parent. The compensation award for work loss, after deducting any collateral source for work loss, cannot exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1);
   c. A parent or guardian of a minor victim to transport or accompany the victim to a medical, mental health counseling and care visit, or court proceeding. The compensation award for work loss, after deducting any collateral source for work loss, cannot exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1); or

d. A victim or derivative victim to attend court proceedings. The compensation award for work loss, after deducting any collateral source for work loss, cannot exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1).

3. Funeral expenses due ~~attributable~~ to a victim's death resulting from criminally injurious conduct or an act of international terrorism.~~, as defined in 18 U.S.C. 2331, provided the~~ The compensation award for funeral expense cannot ~~does not~~ exceed $5,000 ~~$2,500~~; and
4. Mental health counseling and care expenses due ~~attributable~~ to a victim's or derivative victim's extreme mental distress resulting from criminally injurious conduct or an act of international terrorism.~~, as defined in 18 U.S.C. 2331, provided the~~ Mental health counseling and care expenses cannot ~~does not~~ exceed a 36 ~~12~~ month period starting with the 1st treatment. Mental health counseling and care for derivative victims shall be included as a portion of the maximum award.

D. The Board shall not make a compensation award ~~claim~~ to a claimant ~~to the extent~~ that ~~it~~ exceeds;
1. Twenty ~~Ten~~ thousand dollars in the aggregate for a victim and any derivative victim; and
2. The amount existing in the Fund and not committed to other compensation awards, at the time the Board makes the compensation award determination.

E. The Board shall deny or reduce a compensation award to a claimant if ~~to the extent that~~:
~~1. In the event of an insufficiency of funds in a given year, an otherwise valid claim may be denied or it may be extended for consideration in the next fiscal year.~~
1. The economic loss has been recouped from a collateral source;
2. The degree of responsibility for the cause of the injury or death was due ~~attributable~~ to the victim's ~~victim, either through~~ negligence or through intentional or knowing unlawful conduct that substantially provoked or aggravated the incident causing ~~giving rise to~~ the injury;
3. The claimant has not fully cooperated with the appropriate law enforcement agency ~~agencies~~. In determining the extent of ~~any~~ non-cooperation, the following criteria shall be used;
   a. If the claimant failed to assist in the prosecution of a person who engaged in criminally injurious conduct or an act of international terrorism, ~~as defined in 18 U.S.C. 2331,~~ or failed to appear as a witness, the claim for a compensation award shall be denied;
   b. If the claimant initially decided not to assist in the prosecution but then ~~subsequently~~ decided to assist in the prosecution and this causes a person ~~who~~ engaged in criminally injurious conduct or an act of international terrorism, ~~as defined in 18 U.S.C. 2331,~~ to escape prosecution or directly negatively affects the prosecution, the claim for a compensation award shall be denied;
   c. If the law enforcement authority ~~authorities~~ indicates ~~indicate~~ that the claimant was reluctant to give information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities, the award shall be reduced or denied;
   d. If the claimant demonstrates that ~~the claimant's~~ failure to cooperate was due to a compelling health or safety risk, the Board shall make a full award within the constraints in subsection (D).

F. If there are insufficient funds ~~with which~~ to make a compensation award ~~in a given year~~, the Board may; ~~deny or extend an otherwise valid claim for consideration in the next fiscal year.~~
1. Deny the claim;
2. Make a partial award and reconsider the claim during the current fiscal year; or
3. Extend a valid claim into the next year.

G. The operational unit shall not provide funds to pay any attorney's fees incurred by the claimant.

~~**H.** The operational unit may use funds to pay administrative costs to the extent authorized by the Commission.~~

H.~~I.~~ The operational unit, in its discretion, may directly pay ~~compensate~~ the claimant, the provider ~~or pay providers~~, or both.

R10-4-107. ~~R10-4-109~~. Hearings and Appeals

A. The Board, in its discretion, may conduct a hearing upon any application submitted ~~to it~~.
1. A claimant ~~Any party, in a contested case before the Board~~, ~~who is~~ aggrieved by a decision, ~~rendered in the such case may file with the Board, no later than ten~~ may request a hearing within 30 days after service of the decision. A~~, a~~ written request for a hearing ~~rehearing~~ or review of a Board ~~the~~ decision shall specify ~~specifying~~ the particular grounds for the request ~~therefor~~. For purposes of this paragraph, a Board decision shall be ~~deemed to have been~~ served when personally delivered or mailed by certified mail to the party at the ~~his~~ last known residence or place of business.
2. A request for a hearing, ~~rehearing~~ under this rule, may be amended at any time before it is ruled on ~~upon~~ by the Board. The Board may require ~~the filing of~~ additional written explanation of the issue raised in the request and may provide for oral argument.
3. A hearing ~~rehearing~~ or review of the decision may be granted for any of the following causes ~~materially affecting the requesting party's rights~~:

a. Irregularity in the administrative proceedings of the Board or its operational unit, or any order of abuse or discretion, where ~~whereby~~ the requesting party was deprived of a fair Board decision ~~hearing~~;
b. Board misconduct ~~Misconduct of the Board~~:
c. Newly discovered material evidence which could not with reasonable diligence ~~have~~ been discovered and produced at the original Board meeting ~~hearing~~;
d. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting ~~hearing~~;
e. The ~~That the~~ decision is not justified by the evidence or is contrary to the rules.

4. The Board may affirm or modify the decision or grant a hearing ~~rehearing~~ to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (3). An order granting a hearing ~~rehearing~~ shall specify with particularity the ground or grounds on which the hearing ~~rehearing~~ is granted and ~~the hearing~~ shall cover only those matters ~~so~~ specified.
5. Within ~~Not later than~~ 30 ~~ten~~ days after a decision is rendered, the Board may, on its own initiative, order a hearing ~~rehearing~~ or review of its decision for any reason for which it might have granted a hearing ~~rehearing~~ on a motion of a party. After giving a party or parties notice and an opportunity to be heard on the matter, the Board may grant a request for a hearing ~~rehearing~~ for a reason not stated in the request. In either case, the grounds for the request shall be specified. ~~order granting such a rehearing shall specify the grounds therefor~~.
6. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. ~~э~~ 41-1001.
7. If ~~To the extent that~~ the provisions of this rule are in conflict with the provisions of any statute providing for hearings ~~rehearing~~ or decisions of the Board, the ~~such~~ statutory provisions shall govern.

R10-4-108. ~~R10-4-110~~. Emergency Awards

A. An ~~Each~~ operational unit may grant an emergency award, if there is a reasonable likelihood that the person is or will be an eligible ~~to be a~~ claimant and serious hardship will result to the person if immediate payment is not made; provided~~, however,~~ that:
1. The emergency award amount ~~of such emergency award~~ shall not exceed $500; and
2. The emergency award amount ~~of such emergency award~~ shall be deducted from the ~~any~~ final award made to the claimant.

R10-4-109. Renumbered

R10-4-110. Renumbered

~~R10-4-111.~~ ~~Subrogation Agreement~~ Repealed

~~**A.** As a condition to receipt of a compensation award, the claimant shall sign a subrogation agreement which provides that the state and the operational unit, to the extent that the operational unit used its own funds, are entitled to all of the claimant's rights to receive or recover benefits or advantages up to the amount of the award for economic loss for which an award was made from a collateral source that is or would be available to the victim or claimant. The claimant may still sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award. The claimant may also join with the Attorney General, or the operational unit, or both as co-plaintiff in any action against the offender or a third party.~~

~~**B.** The agreement shall provide that if payment of an award is made to someone other than the claimant, the state and operational unit are subrogated to all of the payee's rights to receive or recover benefits or advantages for allowable expenses for which an award payment was made, from a collateral source that is or would be available to the victim, claimant, or payee.~~

~~**C.** The agreement shall provide that the state shall have first right of subrogation in any matters arising under this Section. All monies that are collected by the state pursuant to this right of subrogation as provided in this Section shall be deposited in the Fund.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER C. INDIVIDUALS

PREAMBLE

1. Sections Affected **Rulemaking Action**

R15-2C-604	New Section
R15-2C-605	New Section

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

Authorizing statute: A.R.S. §§ 42-1005

Implementing statute: A.R.S. §§ 43-1091

3. List of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 6 A.A.R. 2961, August 11, 2000

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

Name: Patricia Trent, Supervisor

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

E-Mail: trentp@revenue.state.az.us

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

A.R.S. § 43-1091 provides that for individual income tax purposes the Arizona gross income of nonresidents only includes that portion of the federal adjusted gross income that represents income from sources within Arizona. A.A.C. R15-2C-604 provides guidance to nonresident members of professional athletic teams regarding the method to be used in determining the portion of their compensation that is from sources in Arizona. This rule is similar to a rule proposed by the Federation of Tax Administrators in 1994, which has been adopted by 20 states. A.A.C. R15-2C-605 provides similar guidance to nonresident athletes that are not part of a team and whose income is event oriented.

In addition, Laws 2000, Ch. 372, Sec. 12, adds A.R.S. § 43-209, that requires the Department to adopt and enforce rules for the collection of tax under Title 43 on income earned for services rendered in Arizona by professional athletes and employees of professional sport franchise organizations. This section is repealed from and after November 30, 2000, if a majority of qualified electors reject the levy of a surcharge on car rentals and a tax on hotels. However, even if Laws 2000, Ch. 372, Sec. 12 is repealed, the rules will still be needed and the Department will still have the authority to make the rules.

6. Reference to any study that the agency proposes to rely on and 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:

None

7. 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

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

It is expected that the benefits of the rules will be greater than the costs. The addition of these rules will benefit the nonresident athletes and the Department by providing a standardized method for determining income attributable to Arizona. These rules only provide guidance in the application of the statute; the statute imposes the tax. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Patricia Trent, Supervisor

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

E-Mail: trentp@revenue.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: September 18, 2000

Time: 9:30 a.m.

Location: Department of Revenue Building
1600 W. Monroe, Training Room A, 9th Floor
Phoenix, Arizona 85007

Nature: Public Hearing

A person may submit written comments regarding the proposed rule by submitting the comments no later than 5 p.m., September 18, 2000, to the person listed in #4.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER C. INDIVIDUALS

ARTICLE 6. NONRESIDENTS

Sections

ARTICLE 6. NONRESIDENTS

R15-2C-604. Nonresident Members of Professional Athletic Teams

A. The Arizona source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individua''s total compensation for services rendered as a member of a professional athletic team during the taxable year which the number of duty days spent within Arizona rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without Arizona during the taxable year. Duty days shall be included in the taxable year in which they occur.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in Arizona. However, such travel days shall be considered in the total duty days spent both within and without Arizona.

C. For purposes of this Section:

1. The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.
2. The term "member of a professional athletic team" includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, trainers, and broadcasters employed by the team.
3. The term "duty days" includes:
   a. All days during the taxable year from the beginning of the professional athletic team's first regular game of the season through the last game in which the team competes or is scheduled to compete except:
      i. Duty days for any person who joins a team during the period from the beginning of the professional athletic team's first regular game of the season through the last game of the season in which the team competes, or is scheduled to compete, shall begin on the day the person joins the team. Conversely, duty days for any person who leaves a team during the period from the beginning of the professional athletic team's season through the last game in which the team competes, or is scheduled to compete, shall end on the day the person leaves the team. Where a person switches teams during the taxable year, a separate duty day calculation shall be made for the period the person was with each team.
      ii. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.
   b. Days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the period described in subsection (C)(3)(a) other than practice days and exhibition games before the first regular game of the season (for example, participation in instructional leagues, the "Pro Bowl" or promotional events). Rendering a service includes conducting training after the first regular game of the season and rehabilitation activities, but only if conducted at the facilities of the team.
   c. Game days (other than exhibition games, practice days, and days spent at team meetings after the first regular game of the season), promotional events, and days served with the team through all post-season games in which the team competes or is scheduled to compete.
   d. All days on the disability list. However, days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Arizona, shall not be considered duty days spent in Arizona.
   e. The provisions of this subsection can be illustrated by the following examples:

      Example 1: Player A, a member of a professional athletic team, is a nonresident of Arizona. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract that covers seasons that occur during year1/year2 and year2/year3. Player A's contract provides that A receives $500,000 for the year1/year2 season and $600,000 for the year2/year3 season. Assuming player A receives $550,000 from the contract during taxable year 2 ($250,000 for 1/2 the year1/year2 season and $300,000 for 1/2 the year2/year3 season), the portion of the compensation received by player A for taxable year 2, attributable to Arizona, is determined by multiplying the compensation player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Arizona during taxable year 2 (attributable to both the year1/year2 season and the year2/year3 season) and the denominator of which is the total number of player A's duty days spent both within and without Arizona for the entire taxable year.

Example 2: Player B, a member of a professional athletic team, is a nonresident of Arizona. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Arizona, B's team travels to Arizona for a game. The number of days B's team spends in Arizona for practice, games, meetings, and other activities, while B is present at such clinic, shall not be considered duty days spent in Arizona for player B for that taxable year for purposes of this section, but such days are considered to be included within total duty days spent both within and without Arizona.

Example 3: Player C, a member of a professional athletic team, is a nonresident of Arizona. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Arizona as well as at personal facilities in Arizona. The days C performs rehabilitation exercises in the facilities of C's team are duty days spent in Arizona for player C for that taxable year for purposes of this Section. However, days player C spends at personal facilities in Arizona are not duty days spent in Arizona for player C for the taxable year for purposes of this Section, but these days are included within total duty days spent both within and without Arizona.

Example 4: Player D, a member of a professional athletic team, is a nonresident of Arizona. During the season, D travels to Arizona to participate in the annual all-star game as a representative of D's team. The number of days D spends in Arizona for practice, the game, meetings, etc., are duty days spent in Arizona for player D for the taxable year for purposes of this section, as well as being included within total duty days spent both within and without Arizona.

Example 5: Assume the same facts as given in example 4, except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Instead Player D is travelling to and attending the game solely as a spectator. The number of days player D spends in Arizona for the game are not duty days spent in Arizona for purposes of this Section. However, these days are included within total duty days spent both within and without Arizona.

4. The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year. Total compensation also includes compensation received for services that are rendered during the taxable year on a date that does not fall within this period (for example, participation in instructional leagues, the "Pro Bowl" or promotional events).
5. For purposes of subsection (C)(4) total compensation shall include, but is not limited to, salaries, wages, bonuses as described in subsection (C)(6), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in the year. Total compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered for the team.
6. For purposes of this section, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in subsection (A) of this Section are:
   a. Bonuses earned as a result of play (for example, performance bonuses) during the season, including bonuses paid for championship, playoff or "bowl" games played by a team, or for selection to all-star league or other honorary positions; and
   b. Bonuses paid for signing a contract, unless all of the following conditions are met:
      i. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;
      ii. The signing bonus is payable separately from the salary and any other compensation; and
      iii. The signing bonus is nonrefundable.

D. Where it is demonstrated that the method provided under this Section does not fairly and equitably apportion compensation, the Department may require the member of a professional athletic team to apportion and allocate compensation under a method prescribed by the Department as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation where the nonresident member demonstrates that the method provided under this Section does not fairly and equitably apportion compensation. The proposed method must be fully explained in the nonresident member's Arizona nonresident personal income tax return.

R15-2C-605. Nonresident Professional Athletes Who Are Not Team Members

Individual nonresident professional athletes who are not members of a professional athletic team and whose income is event-oriented (for example, golfers, tennis players, boxers, and jockeys) must allocate to Arizona income earned in Arizona and related expenses.

Example: A professional golfer comes into Arizona to compete in a tournament. The golfer wins $150,000 prize money based on success in the tournament. The golfer must report the $150,000 to Arizona as Arizona income. The golfer may subtract expenses incurred in winning the $150,000 in calculating Arizona taxable income.

NOTICE OF PROPOSED RULEMAKING

TITLE 16. TAX APPEALS

CHAPTER 3. STATE BOARD OF TAX APPEALS - DIVISION TWO - LUXURY, TRANSACTION PRIVILEGE (SALES), RENTAL OCCUPANCY, USE, ESTATE, INCOME

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R16-3-101	Repeal
R16-3-101	New Section
R16-3-102	Repeal
R16-3-102	New Section
R16-3-103	Repeal
R16-3-103	New Section
R16-3-104	Repeal
R16-3-104	New Section
R16-3-105	Repeal
R16-3-105	New Section
R16-3-106	Repeal
R16-3-106	New Section
R16-3-107	Repeal
R16-3-107	New Section
R16-3-108	Repeal
R16-3-108	New Section
R16-3-109	Repeal
R16-3-109	New Section
R16-3-110	Repeal
R16-3-110	Renumber
R16-3-110	Amend
R16-3-111	Repeal
R16-3-111	New Section
R16-3-112	Repeal
R16-3-112	New Section
R16-3-113	Repeal
R16-3-113	New Section
R16-3-114	Repeal
R16-3-114	New Section
R16-3-115	Repeal
R16-3-115	Renumber
R16-3-115	Amend
R16-3-116	Renumber
R16-3-117	Repeal
R16-3-118	Repeal
R16-3-119	Repeal
R16-3-120	Repeal
R16-3-121	Renumber

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

Authorizing statute: A.R.S. § 42-1252

Implementing statutes: A.R.S. §§ 42-1252 and 42-1253

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 4712, December 27, 1999

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

Name: Ruben M. Medina

Address: 101 N. First Avenue, Suite 2340
Phoenix, Arizona 85007

Telephone: (602) 528-3966

Fax: (602) 528-3956

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

The State Board of Tax Appeals (the "Board") is updating and reorganizing its rules to conform to statutory and procedural changes. The old rules in Title 16, Chapter 3 are being concurrently repealed in this rulemaking. The new rules incorporate changes proposed in the last 5-year review report. All rule Sections have been updated to reflect current rule drafting style.

6. A reference to any study that the agency proposed 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

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

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact.

Modifications to the Chapter to reflect procedural changes and improve readability will benefit those participating in the Board's administrative appeals process. Other than the impact attributable to the difference in the time value of money, the economic impact to small businesses and consumers under the Board's amended rules should generally be the same as when the existing rules were promulgated. A minimal increase in the economic impact to those participating in the Board's administrative appeals process will occur under new rules the Board plans to implement that require parties to submit additional copies of pertinent documents.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ruben M. Medina

Address: 101 N. First Avenue, Suite 2340
Phoenix, Arizona 85007

Telephone: (602) 528-3966

Fax: (602) 528-3956

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled where, when, and how persons may request an oral proceeding on the proposed rules:

No oral proceedings are scheduled. The Board will schedule an oral proceeding on the proposed rules if a written request for the proceeding is submitted to the agency personnel listed in question 4 of this preamble. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement may be submitted to the person listed in item #4 no later than 5:00 p.m., August 31, 2000.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 3. STATE BOARD OF TAX APPEALS ~~– DIVISION TWO~~ - LUXURY, TRANSACTION PRIVILEGE (SALES), ~~RENTAL OCCUPANCY,~~ USE, ESTATE, INCOME

ARTICLE 1. GENERAL PROVISIONS

Sections

ARTICLE 1. GENERAL PROVISIONS

R16-3-101. ~~Purpose~~ Definitions

~~The purpose of the law providing for the establishment of the State Board of Tax Appeals, Division Two (hereinafter "Board") is to provide taxpayers with an effective opportunity to appeal from decisions of the Department of Revenue (hereinafter "Department") concerning luxury, transaction privilege (sales), rental occupancy, use, estate, income and any other taxes not appealable to Division One. In order to implement that law and its purpose, these rules and Regulations are hereby promulgated.~~

For purposes of this Article:

1. "Appellant," unless otherwise noted, means the taxpayer or the representative of the taxpayer against whom the Department has issued a tax assessment or refund denial, or other person or entity directly interested who is legally entitled to initiate the proceedings.
2. "Board" means the State Board of Tax Appeals.
3. "Clerk" means the Clerk appointed by the Board to carry out the duties established by A.R.S. § 42-1252.
4. "Commission" means the Municipal Tax Code Commission.
5. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
6. "Department" means the Arizona Department of Revenue.
7. "Good cause" means illness, emergency, or other reason as determined by the Board.
8. "Hearing Officer" means a person appointed by the Board to take oral testimony and other evidence, make recommendations, and carry out the duties of the Board established by A.R.S. § 42-1252.
9. "Memorandum" means a written submission in support of a party's position.
10. "Notice of Appeal" means a written request for correction or redetermination including all applicable attachments.
11. "Notice of determination" means a written notification issued by the Department of a tax assessment, refund or reimbursement denial, the application of penalties and interest or any other action taken that is subject to appeal as a contested case or an appealable agency action under A.R.S. Title 41, Chapter 6.

12. "OAH" means Office of Administrative Hearings as established by A.R.S. § 41-1092.01.
13. "Quorum" means 2 members of the Board.
14. "Refund denial" means a taxpayer's claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.
15. "Supporting authorities" means principal cases and authorities cited and relied on by a party.

R16-3-102. ~~Proper parties~~ Notice of Appeal

~~An appeal from a ruling of the Department shall be filed by and in the name of the person against whom the deficiency or other tax liability was determined, or by and in the full descriptive name of the fiduciary or other person directly interested who is legally entitled to institute the proceedings. If there is a variance between the name set forth in the notice of determination or other notice of tax liability issued by the Department and the name of the appellant, the appeal shall contain a statement of the reasons for such variance.~~

A. Appellant shall sign the notice of appeal and mail or deliver the original and 6 copies to the Board's office in Phoenix, Arizona. The Board shall consider a notice of appeal received by mail filed on the date shown by its postmark. In the absence of a legible postmark, the Board shall determine whether an appeal was timely filed.

B. A notice of appeal shall be typed, legibly written, or legibly printed and shall include the following information:
1. Appellant's name and address. If there is a difference between the name set forth in the notice of determination and the name set forth in the notice of appeal, the notice of appeal shall contain an explanation of the difference.
2. The amount of tax assessed or refund or reimbursement denied by the Department or the OAH, the type of tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of the tax assessment or refund or reimbursement denial that is appealed.
3. A statement of issues involved in the appeal.
4. A statement of errors Appellant alleges the Department committed in the determination of the tax assessment or refund or reimbursement denial.
5. Relief sought.
6. Whether an oral hearing is requested. Appellant may waive a previously requested hearing within 10 days after the due date of the reply memorandum.

C. Appellant shall file 6 copies of the tax assessment or refund or reimbursement denial and any findings of fact and conclusions of law issued by the Department or the OAH with the notice of appeal.

D. Appellant shall file the notice of appeal not more than 30 days after the final decision or order of the Department or the OAH becomes final.

E. In addition to the requirements set forth in subsections (A) through (D), a notice of appeal regarding reimbursement for fees and other costs shall include 6 copies of the following:
1. The application that was submitted to the Department for reimbursement of fees and other costs.
2. Documentation of payment of fees and other costs.

F. A notice of appeal filed by a party aggrieved by an order or decision of the Municipal Tax Code Commission must be filed within 30 days after notice of the order or decision of the Commission has been received by the party and shall be signed by Appellant and include the following information:
1. Names and addresses of the municipalities.
2. Taxpayer's name and address.
3. The applicable tax rates of the municipalities.
4. A statement of issues involved in the appeal.
5. The relief sought.
6. Whether an oral hearing is requested.

G. Appellant shall submit 6 copies of the respective municipal ordinances involved in the notice of appeal.

H. In an appeal from an order or decision of the Commission, "Appellant" means the taxpayer, city, town, or representative of the taxpayer, city, or town initiating the appeal.

R16-3-103. ~~Form of notice of appeal~~ Supplementation of Notice of Appeal

~~**A.** All notices of appeal shall be typewritten, legibly written or legibly printed and shall state the following information:~~
~~1. Appellant's name and address.~~
~~2. The amount of deficiency (or liability) determined by the Department, the nature of the tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of taxes in controversy.~~
~~3. Statement of error(s) alleged to have been committed by the Department in the determination of the deficiency.~~
~~4. Statement of fact(s) upon which the appellant relies to support their assignment of error(s) alleged to have been committed by the Department.~~
~~5. Relief sought.~~
~~6. If oral hearing is requested.~~

~~**B.** A copy of the decision notice, including any findings of fact and conclusions of law issued by the Department, shall be filed with the notice of appeal.~~

~~**C.** A notice of appeal shall not be accepted for filing more than 30 days after the receipt of the decision or order of the Department.~~

A. If Appellant files a timely notice of appeal that is incomplete, the Clerk may grant Appellant additional time to perfect the appeal.

B. The Board may dismiss an appeal or exclude supplemental information that is not filed within the additional time granted.

C. The Clerk may grant Appellant, upon written request, a reasonable extension of time to comply with the provisions of this rule.

R16-3-104. ~~Manner of filing~~ Memoranda, Waivers and Supporting Authorities

~~**A.** An appeal to the Board from action by the Department and any memoranda in support of such appeal shall be mailed or delivered to the office of the Board in Phoenix, Arizona and shall be filed in duplicate.~~

~~**B.** Upon receipt of a notice of appeal, the Clerk shall record the filing of the appeal in the docket book and assign a case number. A copy of the appeal and any memoranda in support thereof shall then be transmitted by the Board to the Department at Phoenix, Arizona.~~

~~**C.** A fee will not be charged for the filing of any document.~~

A. Parties shall submit an original and 6 copies of all memoranda filed with the Board. The Board shall provide a copy of any memorandum filed to the opposing party.

B. A party may waive the filing of a memorandum in writing within 10 days before the memorandum is due.

C. Appellant may file a memorandum of 15 pages or less in support of the appeal within 20 days after filing the notice of appeal.

D. The Department may file a response memorandum of not more than 15 pages within 20 days after receiving Appellant's memorandum or waiver.

E. Appellant may file a reply memorandum of not more than 10 pages within 15 days after receiving the Department's memorandum. Appellant's reply memorandum shall be limited to a reply to the issues of law or fact raised in the Department's memorandum.

F. Parties shall file 6 copies of supporting authorities at the time of filing memoranda.

G. The Board may grant a reasonable extension of time for the filing of memoranda upon written request from either party for good cause shown.

R16-3-105. ~~Timeliness of appeal~~ Stipulations and Statements of Fact

~~**A.** An appeal will be timely filed if it is received at the office of the Board within 30 days from receipt of the Department's decision. If the last day for filing an appeal falls on a Saturday, Sunday, or legal holiday, the appeal may be timely filed on the following business day. An appeal filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether an appeal was timely filed.~~

~~**B.** An appeal not filed within the time prescribed shall be dismissed pursuant to R16-3-108.~~

At the Board's request, the parties shall file a stipulation or separate statements of fact stating the facts upon which they agree, the facts that are in dispute and the reasons for the dispute. If there are no facts in dispute, this should be stated in the stipulation or statements.

R16-3-106. ~~Supplementation of appeal~~ Dismissal, Withdrawal or Abeyance of Appeal

~~If the appeal is timely but incomplete, the appellant may be granted an additional period of time by the Clerk within which to supplement the appeal. The appeal is subject to dismissal or the supplemental information is subject to exclusion if it is not filed within the time period which was granted for that purpose. Reasonable extensions of time for complying with the provisions of this rule may be granted upon written request.~~

A. If the Board lacks jurisdiction of an appeal, the appeal shall be dismissed by the Board on its own motion or on motion by the Department.

B. An appeal may be withdrawn upon Appellant's written notification or the parties' written stipulation any time before the Board issues its decision.

C. The Board may hold an appeal in abeyance for a reasonable period of time upon written request of either party, written stipulation of the parties, or at its own discretion.

R16-3-107. ~~Memoranda~~ Request for Hearing

~~**A.** The appellant may file a memorandum in support of the appeal within 30 days of filing the notice of appeal. The Department will be allowed 30 days from the date of receipt of appellant's memorandum to respond. In the event that appellant does not file a memorandum, the Department will be allowed 30 days to file its memorandum from the time appellant's memorandum would have been due. The appellant will then be allowed 30 days from receipt of the Department's memorandum to respond. Appellant's reply memorandum shall be limited to a reply to the issues of law or fact raised in the Department's memorandum. Reasonable extensions of time for the filing of memoranda may be granted upon written request from either party. The Board will transmit a copy of any memorandum filed to the opposing party. Both or either party to the appeal may waive the filing of memorandum.~~

~~**B.** If the last day for filing a memorandum falls on a Saturday, Sunday, or legal holiday, the memorandum may be timely filed on the following business day. A memorandum filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether a memorandum was timely filed.~~

A. The Board shall schedule a hearing upon written request of either party. Either party may waive appearance, in writing, at least 10 days prior to the hearing.

B. A hearing officer or 1 or more members of the Board may hold a hearing and take testimony and other evidence.

C. The Board shall send a written notice of the time and place of the hearing to the parties at least 20 days in advance. Hearings shall ordinarily be scheduled to last no more than 1 hour. The Board may, upon written request, grant a party additional time for the hearing if the request is submitted to the Clerk within 10 days after the due date of the reply memorandum,

D. The Board may postpone, continue, or cancel a hearing for good cause upon the written request of either party if the request is submitted at least 10 days prior to the hearing.

E. If an oral hearing is not requested, the Board shall consider the appeal submitted for decision based on the record.

R16-3-108. ~~Dismissal of appeal~~ Hearing Procedure

~~**A.** Prior to the issuance of a decision by the Board, an appeal may be withdrawn at the written request of the appellant or upon the basis of a written stipulation between the appellant and the Department. The Board shall thereafter enter an order dismissing the appeal.~~

~~**B.** Whenever it is evident that the Board lacks jurisdiction of an appeal, such appeal shall be dismissed by order of the Board on its own motion or on motion filed by the Department.~~

A. The hearing shall ordinarily proceed in the following manner:

1. Appellant may make an opening statement.
2. The Department may make an opening statement or reserve its opening statement until the close of Appellant's case.
3. Appellant shall state its position and present its evidence.
4. The Department may make an opening statement or reserve its opening statement until the close of Appellant's case.
5. Appellant may make closing statements or arguments.
6. The Department may make closing statements or arguments.
7. Appellant may reply to any statements or arguments.

B. The Board may direct a party to submit additional memoranda or information within a prescribed period of time. The opposing party may respond to the additional memoranda or information within a prescribed period of time.

C. The Board may recess or continue a hearing for good cause.

R16-3-109. ~~Deferral~~ Evidence

~~The Board may defer proceedings for an indefinite period upon the filing of a written stipulation between the appellant and the Department. Proceedings may also be deferred for a reasonable period upon the request of either party or at the discretion of the Board.~~

A. The Board shall accept oral evidence only upon oath or affirmation.

B. Each party may call and examine witnesses, introduce exhibits, and cross-examine witnesses on any matter relevant to the appeal. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. The presiding officer and any member of the Board or its staff may question witnesses.

C. The Board may admit any relevant evidence including affidavits and other forms of hearsay evidence. The Board shall be liberal in admitting evidence but shall consider objections to the admission and comments on the weakness of evidence in assigning weight to the evidence.

D. The Board may admit carbon copies, photocopies, or copies made by similar procedures in place of original documents upon a showing of proper foundation.

E. A party may substitute an exhibit with an exact legible copy upon written request if the request is submitted to the Board within 10 days after the hearing.

~~**R16-3-110.** **Hearing; oral or waived**~~ **Repealed**

~~**A.** After the notice of appeal and permitted memoranda are filed, the appeal shall be set for oral hearing. Written notice of the time and place of hearing will be sent to the parties at least 20 days in advance. The hearing may be postponed for good cause shown, in the Board's discretion, at the written request of either party.~~

~~**B.** Oral hearing may be waived in writing by both the appellant and the Department. If oral hearing is waived, the appeal will be deemed submitted to the Board for decision upon the basis of the notice of appeal and any memoranda filed in the matter. Either party may waive appearance at the oral hearing.~~

~~**R16-3-116.** **R16-3-110**~~**. Official Notice**

A. The Board may take official notice ~~as an admission of facts in the case~~ of the following as admissions of facts:
1. The records maintained by the Board.
2. Tax returns filed with the Department for or on behalf of ~~appellant~~ Appellant or any affiliated company ~~together with~~ and related records on file with the Department.
3. Any fact which may be judicially noticed by the courts of this state.

B. The parties may, at the hearing, ~~request permission to~~ refute any matters thus officially noticed.

R16-3-111. ~~**Hearing before single member/hearing officer**~~ **Subpoena**

~~When a member of the Board or hearing officer conducts a hearing, that individual shall make a report to the other members of the Board. The report shall include a summary of the material evidence presented at the hearing, a recommendation as to the Board's decision and the reasons in support of the recommended decision.~~

The Board may, at its discretion or upon written request submitted by a party at least 15 days before a hearing, issue subpoenas for the attendance of witnesses or the production of books, records, documents, or other evidence that is not confidential or privileged. A subpoena shall be served on behalf of and at the expense of the party requesting its issuance.

R16-3-112. ~~**Place of hearing; time allowed**~~ **Burden of Proof**

~~Oral hearings are held in the Board's hearing room in Phoenix, Arizona. Hearings shall ordinarily be conducted between the hours of 9 A.M. and 5 P.M. and are scheduled to last for not more than one hour. If additional time is needed, this may be arranged in advance through the Clerk of the Board. Hearings may be authorized to be held in other parts of the state subject to the approval of a majority of the Board.~~

Appellant shall, with 2 exceptions, bear the burden of proof as to all issues of fact. The Department shall bear the burden of proof on the issue of whether or not Appellant is liable for civil fraud penalties. In addition, the Department has the burden of proof by a preponderance of the evidence in any proceeding before the Board regarding any factual issue relevant to ascertaining the tax liability of a taxpayer if the record establishes, by the preponderance of the evidence, that Appellant has:
1. Asserted a reasonable dispute regarding the issue;
2. Fully cooperated with the Department regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information, and documents within Appellant's control, as reasonably requested by the Department; and
3. Kept and maintained records as required by Titles 42, 43, and the Department.

R16-3-113. ~~**Hearing procedure**~~ **Transcripts and Records**

~~**A.** The hearing will ordinarily proceed in the following manner:~~
~~1. The appellant may make an opening statement;~~
~~2. The Department may make an opening statement or reserve its opening statement until the close of the appellant's case;~~
~~3. The appellant will state its position and present its evidence;~~
~~4. The Department may, if previously reserved, make an opening statement, state its position and present its evidence;~~
~~5. Closing statements or arguments of the appellant may be made;~~
~~6. Closing statements or arguments of the Department may be made;~~
~~7. The appellant may reply to any statements or arguments.~~

~~**B.** If the Board desires the submission of additional memoranda or information, it shall so direct the parties to comply within a reasonable period of time.~~

~~**C.** Whenever, because of illness, emergency or for other reasons the Board considers that it would be in the interest of justice to order a recess or continuance, the hearing shall be recessed or continued to a specified date, time and place.~~

A. The hearing before the Board shall be transcribed upon written request submitted by a party to the Board at least 5 days prior to the hearing. The transcript shall be prepared at the expense of the requesting party.

B. The records of the Board shall not be removed from its office for use as evidence or other purposes. Certified copies of records that the Board is permitted by law to divulge may be provided.

R16-3-114. ~~**Stipulation of facts**~~ **Decisions and Orders of Dismissal**

~~The appellant and the Department may file a stipulation stating the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The Board may require the parties to file such a stipulation.~~

A. A quorum of the Board must agree on a decision or order of dismissal.
B. All decisions shall be in writing and shall include separately stated findings of fact and conclusions of law.
C. A decision or order of dismissal of the Board shall be mailed, return receipt requested, or delivered to the parties.
D. Except in the case of a tax dispute between municipalities, a decision or order of dismissal shall be final 30 days after Appellant receives it unless an aggrieved party files a motion for rehearing or review within 15 days after receiving it.
E. In a dispute between municipalities, a decision or order of dismissal shall be final when received by the party. An aggrieved party has 30 days to appeal the decision or order of dismissal to the superior court.

~~R16-3-115.~~ ~~Evidence~~ Repealed

~~A.~~ ~~Oral evidence will be taken only on oath or affirmation.~~
~~B.~~ ~~Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against it. A party or its employee, agent or officer may be called by the opposing party and examined as if under cross-examination. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. Any member of the Board or its staff may question witnesses.~~
~~C.~~ ~~Any relevant evidence, including affidavits and other forms of hearsay evidence, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Board will be liberal in admitting evidence, but objections to the admission of and comments on the weaknesses of evidence will be considered in assigning weight to the evidence. The Board may deny admission of evidence which it considers irrelevant, untrustworthy or unduly repetitious.~~
~~D.~~ ~~Carbon copies, photocopies or copies made by other types of similar procedures may, upon a showing of proper foundation, be admitted in evidence or substituted in place of the original documents.~~
~~E.~~ ~~At the conclusion of the hearing, any exhibit may be withdrawn on written request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy of the original thereof.~~

~~R16-3-121.~~ R16-3-115. Rehearing or Review of Decision

A. ~~Procedure; grounds. A decision of the Board may be vacated and~~ The Board may grant a rehearing or review of ~~the~~ decision ~~granted~~ on motion ~~filed~~ by ~~the~~ an aggrieved party within 15 days from receipt of such order or decision or at its own discretion for ~~any of~~ the following reasons ~~materially affecting his rights~~:

1. ~~Irregularity in the proceedings of the Board or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.~~ The findings of fact, conclusions of law, order or decision are not supported by the evidence or are contrary to law.
2. ~~Misconduct of the prevailing party.~~ The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence.
4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
5. ~~Excessive or insufficient damages.~~ Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action.
6. ~~Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the appeal.~~ The decision is the result of bias or prejudice.
7. ~~That the decision is the result of passion or prejudice.~~
8. ~~That the decision, findings of fact, or conclusions of law is not justified by the evidence or is contrary to law.~~

~~A decision of the Board is revoked pending determination of the motion for rehearing or review of decision.~~

~~B.~~ ~~Scope. On motion for a rehearing or review of a decision, the Board may open the decision, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new decision.~~ A decision of the Board shall be held in abeyance pending a determination on the motion for rehearing or review of decision. Upon denying a motion for rehearing or review, the Board shall reinstate the original decision. The original decision becomes final 30 days after Appellant is notified of the Board's action on the motion for rehearing or review.

~~C.~~ ~~Contents of motion; amendment; rulings reviewable~~

1. ~~The motion for a rehearing or review of a decision shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.~~
2. ~~Upon the general ground that the Board erred in admitting or rejecting evidence, the Board shall review all rulings during the hearing upon objections to evidence.~~
3. ~~Upon the general ground that the decision or findings of fact is not justified by the evidence, the Board shall review the sufficiency of the evidence.~~

The motion for a rehearing or review of a decision shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before the Board rules on it.

~~**D.** Time for serving affidavits. When a motion for rehearing or review of a decision is based upon affidavits, they shall be served with the motion. The opposing party has 20 days after receipt of the motion and affidavits within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Board for good cause shown or by the parties by written stipulation. The Board may permit reply affidavits.~~ No response shall be made to the motion for rehearing or review unless the Board requests it.

~~**E.** On initiative of the Board. Before the decision becomes final, the Board on its own initiative may order a rehearing or review of the decision for which it might have granted a rehearing or review of the decision on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.~~ On granting a motion for rehearing or review, the Board may open the decision, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and issue a new decision.

~~**F.** Questions to be considered at rehearing or review of decision. A rehearing or review of a decision, if granted, shall be only a rehearing or review of the question or questions with respect to which the decision is found erroneous, if separable. If a rehearing or review is ordered because the refund or assessment is excessive or insufficient and granted solely for that reason, the decision shall be set aside only in respect of the refund or assessment, and shall stand in all other respects.~~

~~**G.** Specification of grounds of rehearing or review of a decision in order. No order granting a rehearing or review of a decision shall be made and entered unless the order specifies with particularity the ground or grounds on which the rehearing or review of the decision is granted.~~

R16-3-116. Renumbered

R16-3-117. ~~Subpoena~~ Repealed

~~**A.** Subpoenas for the attendance of witnesses and/or the production of books, records, documents and other evidence may, upon request by any party or at the Board's instance, be issued by the Board. Except where the subpoena is issued at the instance of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance.~~

~~**B.** Nothing in this regulation shall be construed to authorize the issuance of a subpoena for confidential or privileged information.~~

R16-3-118. ~~Burden of proof~~ Repealed

~~The burden of proof will be upon the appellant as to all issues of facts. In any proceeding involving the issue of whether or not the appellant has been guilty of fraud with intent to evade tax, the burden of proof will be upon the Department.~~

R16-3-119. ~~Transcripts and records~~ Repealed

~~**A.** The record of hearing before the Board will be transcribed at the request of any party to the appeal. The transcript shall be prepared at the expense of the requesting party, unless otherwise provided by law. A request that the hearing be transcribed shall be made in writing to the Clerk of the Board at least five days in advance of the hearing.~~

~~**B.** The records and files of the Board will not be removed from its office for use as evidence or other purposes. Certified copies of records which the Board is permitted by law to divulge will, however, be furnished.~~

~~**C.** Where certified copies of papers or records are requested, a reasonable charge will be made as determined by the Board.~~

R16-3-120. ~~Decisions and orders~~ Repealed

~~**A.** A decision or order must be agreed upon by a quorum of the Board. Two members shall constitute a quorum. Any member who dissents may state the reasons for their dissent.~~

~~**B.** All decisions shall be in writing and shall include findings of fact and conclusions of law, separately stated.~~

~~**C.** Notice of the decision or order of the Board shall be mailed, return receipt requested, or delivered to all parties to the proceedings.~~

~~**D.** Such order or decision shall be final as to a party upon the expiration of 30 days from receipt thereof. The Board shall send a copy of the return receipt from the appellant to the Department within five days of the return thereof.~~

R16-3-121. Renumbered

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION – MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections affected: | **Rulemaking Action:**

R17-4-709	Amend
R17-4-709.04	Amend
Appendix A	Amend
R17-4-709.07	Amend
R17-4-709.09	Amend
Form B	New Form
R17-4-709.10	New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-1381, 28-1382, 28-1383, and 28-1464, as amended by Laws 2000, Ch, 153, §§ 1, 2, 3, and 7, effective October 1, 2000.

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 2128, June 9, 2000

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

Name: Lynn S. Golder, Hearing Officer II

Address: Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602)712-7941

Fax: (602)241-1624

E-Mail: lgolder@dot.state.az.us

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

This rulemaking action deals with the Arizona ignition interlock device (IID) program rules, R17-4-709 and R17-4-709.01 to R17-4-709.09, effective January 11, 2000. The Arizona Department of Transportation, Motor Vehicle Division (Division) proposes to conform the program's rules to statutory changes enacted during the 2000 legislative session by amending 3 of the rules and Appendix A and by adding new R17-4-709.10. Additionally, the Division proposes to add Form B Ignition Interlock Installer Bond as a 2nd acceptable bond form for authorized installers, and to make appropriate changes to R17-4-709.09 to include Form B.

The statutory changes affecting the ignition interlock device program require a 1-year, Division-issued certified ignition interlock device (CIID) order when a person has a conviction by an Arizona court for:

- A DUI under A.R.S. § 28-1381 committed after September 30, 2000, and a conviction for a DUI, an extreme DUI, or an aggravated DUI committed within 5 years before the current DUI violation;
- An extreme DUI under A.R.S. § 28-1382 committed after September 30, 2000; or
- An aggravated DUI under A.R.S. §§ 28-1383(A)(1), 28-1383(A)(2), or 28-1383(A)(3)(b) committed after September 30, 2000.

An Arizona court convicting a person of an offense listed above and committed after September 30, 2000, may issue a CIID order for more than 1 year. An Arizona court or Division CIID order takes effect on the date the person reinstates the driving privilege after suspension or revocation. Finally, statutory changes to A.R.S. § 29-1464(I) require a Division-issued CIID-order extension of no more than 1 year if the person subject to the order:

- Operates an employer's motor vehicle in violation of a requirement in A.R.S. § 28-1464(A);
- Rents, leases, or borrows a motor vehicle in violation of the notification requirement in A.R.S. § 28-1464(D);
- Asks or allows another person to breathe into a CIID in violation of A.R.S. § 28-1464(D);
- Tampers with or evades a CIID in violation of A.R.S. § 28-1464(F); or
- Operates a motor vehicle without a CIID in violation of A.R.S. § 28-1464(H).

To conform the IID program rules to statutory changes, this rulemaking action:

- Replaces "R17-4-709.09" with "R17-4-709.10" in R17-4-709, line 1;
- Adds the phrase "or the Division" to the definition on "participant" in R17-4-709, to R17-4-709.04(B), and to Appendix A, line 4;
- Adds the phrase "or Division" to Appendix A, line 5 and to the last line of Appendix A;
- Adds the phrase "or Division order" to R17-4-709.07(B);
- Changes R17-4-709.09(B) to state: "Form A Ignition Interlock Installer Bond and Form B Ignition Interlock Installer Bond, which follow this Section, are the approved bond forms;"
- Adds "or Form B" to R17-4-709.09(C)(3);
- Replaces "the approved bond form" to "an approved bond form" in R17-4-709.09(D);
- Adds Form B, approved by the Division Director on June 21, 2000, that shows the new Arizona Department of Transportation logo and is otherwise identical to Form A; and
- Adds R17-4-709.10 to give effect to A.R.S. § 28-1464(I) by establishing a mandatory 1-year extension by the Division of a CIID order when the person subject to the order is convicted of any of the specified violations.

6. 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:

None

7. 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

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

For this preliminary summary:

- Minimal means less than $1,000,
- Moderate means between $1,000 and $10,000, and
- Substantial means more than 10,000.

The changes to the Arizona ignition interlock device program rules are required by statutory amendments, effective October 1, 2000. From the start of the ignition interlock device pilot program in December 1998 to July 20, 2000, under the permanent program, approximately 600 Arizona court CIID orders were issued and no devices were installed. The new mandatory, Division-issued CIID orders will greatly expand the program, with economic consequences resulting from that expansion. As with the program's regular rules that became effective January 11, 2000, the reduction in future DUIs and the increase in business opportunities outweigh the costs.

The Division incurs the following costs from the statutory amendments:

- Minimal to moderate costs for this rulemaking and preparation of Form B Ignition Interlock Installer Bond,
- Moderate to substantial costs for processing more applications for certification of ignition interlock device models,
- Substantial enforcement costs for monitoring compliance by more authorized installers and participants, and
- Substantial costs for computer programming and issuing approximately 6,000 CIID orders in 2001. A person who does not comply with a Division-issued CIID order will remain unlicensed.

For 1999 offenses, as of July 20, 2000, Arizona courts handed down 14,808 DUI convictions (about 4,500 involving defendants with prior convictions, based on a 5-year recidivism rate of 35% after subtracting the number of extreme DUI convictions), 1,770 extreme DUI convictions, and 1,268 aggravated DUI convictions. When the Arizona ignition interlock device program includes most drivers with Arizona convictions for multiple DUIs within 5 years, extreme DUIs, or aggravated DUIs, the risk to public safety from alcohol-impaired drivers in Arizona goes down.

Many program participants may mean additional applications by manufacturers for certification of ignition interlock device models in addition to the 5 models currently certified by the Division. Manufacturers incur substantial costs for Division certification of ignition interlock device models, including testing by an independent laboratory and the laboratory's report, and for supplying enough devices to authorized installers. Manufacturers will also incur costs to provide oversight to an adequate number of authorized installers for a large number of participants. In turn, manufacturers will benefit from increased revenues for supplying a large number of devices in Arizona. Independent laboratories may also have an opportunity to do more business because of the expanded Arizona ignition interlock device program.

Authorized installers and surety companies will incur no additional costs from Form B. More participants may mean more bonds issued by surety companies because manufacturers of certified devices appoint more authorized installers. Although a surety company accepts a financial risk with regard to each authorized installer it bonds, the aggregate bond premiums more than cover the risk. The authorized installer's premium, and the time and effort and authorized installer expends to obtain the bond, do not increase because Form B exists. More installer bonds issued might result in lower premiums.

An authorized installer servicing many Arizona ignition interlock device program participants would incur increased costs for permanent or mobile facilities, equipment, and record keeping. However, the installation, leasing, and servicing fees paid to an authorized installer by many participants would more than offset the installer's costs doing more business.

Finally, major expansion of the Arizona ignition interlock device program does not increase participants' pecuniary costs. In fact, increased demand might bring these costs down.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Lynn S. Golder, Hearing Officer II

Address: Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602) 712-7941

Fax: (602)241-1624

E-Mail: lgolder@dot.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments on the proposed rulemaking or preliminary summary of economic, small business, and consumer impact should be submitted to the person specified in question # 4 no later than the close of the record at 5:00 p.m., September 29, 2000.

An oral proceeding is scheduled as follows:

Date: September 25, 2000

Time: 1:00 p.m.

Location: Arizona Department of Transportation Headquarters
Board Room, #145
206 South 17th Avenue
Phoenix, Arizona 85007

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

ARTICLE 7. MISCELLANEOUS RULES

Sections

ARTICLE 7. MISCELLANEOUS RULES

R17-4-709. Ignition Interlock Device Program Definitions.

In Sections R17-4-709.01 through ~~R17-4-709.09~~ R17-4-709.10, unless the context otherwise requires:

"Audit" means an examination by Arizona Department of Transportation, Motor Vehicle Division personnel of participant records, and supplies of warning labels and written instructions.

"Authorized installer" means a person or entity appointed by a manufacturer to install and service certified ignition interlock devices provided by the manufacturer.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify the device's accuracy.

"Certified ignition interlock device" has the meaning prescribed in A.R.S. § 28-1301(1).

"Data logger sheet" means a printed report generated from an ignition interlock device that contains all activities, data recordings, and actions pertaining to the device.

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Ignition interlock device" has the meaning prescribed in A.R.S. 28-1301(4).

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device in accordance with Sections 1 and 2 of the National Highway Traffic Safety Administration (NHTSA) Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), 57 FR 11772 to 11787, April 7, 1992.

"Manufacturer" means a person or entity that provides ignition interlock devices, requests the Division to certify a model of ignition interlock device, and appoints and oversees authorized installers of the certified ignition interlock device.

"Material modification" means a change to a certified ignition interlock device that affects the functioning of the device.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 57 FR 11772 to 11787, April 7, 1992.

"Participant" means a person who is ordered by an Arizona court or the Division to equip each motor vehicle operated by the person with a functioning certified ignition interlock device and who becomes an authorized installer's customer for installation and servicing of the certified ignition interlock device.

"Use" means to install, operate, service, repair, or remove an ignition interlock device.

R17-4-709.04 Modification of a Certified Ignition Interlock Device Model.

A. A manufacturer shall notify the Division in writing of any material modification of a certified ignition interlock device model.

B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Division, a manufacturer shall:

a. Submit to the Division a completed application form and all additional items required by R17-4-709.01(C), and
b. Obtain certification of the materially modified ignition interlock device from the Division.

Appendix A. Ignition Interlock Installation Verification

ARIZONA
IGNITION INTERLOCK INSTALLATION VERIFICATION
As Ordered by the Court or the Division

COURT OR DIVISION DOCKET No.: _____ TODAY'S DATE_____

PARTICIPANT NAME: _____

ADDRESS: _____

CITY_____ ST_____ ZIP_____

PHONE NUMBER: _____

DRIVER LICENSE No OR SS No.: _____

INSTALLER NAME: _____

ADDRESS: _____

CITY_____ ST_____ ZIP_____

PHONE NUMBER: _____

IGNITION INTERLOCK DEVICE MANUFACTURER and MODEL TYPE: _____

_____

IGNITION INTERLOCK DEVICE SERIAL NUMBER(s): _____

VEHICLE IDENTIFICATION INFORMATION:

TITLE OWNER: _____TITLE No.: _____

Make: _____ Model_____ VIN_____

Color_____ Year_____ License Plate No._____

Odometer reading: _____

PARTICIPANT EDUCATION CHECKLIST

_____ I have been instructed on the use of the system
_____ I understand how to power the system on and off
_____ I have delivered and passed a proper breath sample.
_____ I have delivered and understand an abort test.
_____ I understand how the alcohol retest feature works
_____ I understand that if I smoke cigarettes or drink alcohol before testing that I may receive a sensitive or fail reading.
_____ I have been informed of how to obtain service for my system or to have questions answered.
_____ I have received my operator's manual.
_____ I have been informed of the penalties for tampering with, circumventing, or misusing the system.
_____ I have been informed of what happens after failing three breath attempts.
_____ I have been informed of what happens after failing "rolling retest."

MONITORING:

Your next monitoring check is _____. Your ignition system will remind you that you are due to make an appointment. If you fail to make an appointment, your ignition interlock device will shut down and you will be unable to start your car. It will be your responsibility to have your car towed to the Service Center. If you fail to appear you may be found in noncompliance, and your driver license can be suspended for at least 1 year under A.R.S. § 28-1463.

Signature of Participant: _____Date_____

Signature of Installer: _____Date_____

Attach copy of Court or Division Order for Installation of Ignition Interlock Device.

R17-4-709.07 Emergency Assistance by Authorized Installers; Continuity of Service to Participants.

A. A manufacturer shall ensure that an authorized installer provides a participant with a 24-hour emergency phone number for assistance in the event the certified ignition interlock device fails or the vehicle experiences problems related to the ignition interlock device's operation. Emergency assistance provided by the authorized installer shall include technical information, towing service, and road service.
1. If the participant's motor vehicle is located not more than 50 miles from the authorized installer, emergency assistance shall be provided within 2 hours after the call for assistance.
2. If the participant's motor vehicle is located not more than 100 miles from the authorized installer, emergency assistance shall be provided within 4 hours after the call for assistance.
3. The authorized installer shall make the certified ignition interlock device functional within 48 hours after a participant's emergency assistance call or shall replace the device.

B. A manufacturer shall ensure uninterrupted service to a participant for the duration of the participant's Arizona court order or Division order.
1. If a manufacturer terminates an authorized installer's appointment, the manufacturer shall:
   a. Obtain participant records from the former authorized installer; and
   b. Provide the participant records to a new authorized installer for retention in accordance with R17-4-709.08; or
   c. If the manufacturer does not appoint a new authorized installer, the manufacturer shall retain the participant records in accordance with R17-4-709.08.
2. A manufacturer shall:
   a. Ensure that an authorized installer has a permanent facility within 100 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer;
   b. Ensure that an authorized installer uses a mobile facility for scheduled accuracy checks at specified locations within 100 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; or
   c. Pay to remove a participant's installed certified ignition interlock device and install a certified ignition interlock device, including a model provided by a 2nd manufacturer, that has an authorized installer with:
      i. A permanent facility within 100 miles of the participant's Arizona residence, or
      ii. A mobile facility for scheduled accuracy checks at a specified location within 100 miles of the participant's Arizona residence.
3. A manufacturer shall notify a participant of the appointment of a new authorized installer or replacement of a certified ignition interlock device at least 30 days before the new authorized installer's appointment becomes effective or replacement of the device occurs.
4. Within 10 days after a change in the list of authorized installers submitted to the Division by a manufacturer, the manufacturer shall submit an updated list of authorized installers to the Division.

R17-4-709.09 Ignition Interlock Device Installer Bond Requirements.

A. The amount of the ignition interlock installer bond is $25,000.

B. Form A Ignition Interlock Installer Bond and Form B Ignition Interlock Installer Bond, which ~~follows~~ follow this Section, ~~is~~ are the approved bond ~~form~~ forms.

C. Before installing, servicing, or removing a Division-certified ignition interlock device, an installer shall:
1. Be appointed by a manufacturer as an authorized installer of an ignition interlock device model certified by the Division or for which the manufacturer seeks certification;
2. Obtain an ignition interlock installer bond in the approved form from a surety company authorized by the Arizona Department of Insurance to do general surety business in Arizona; and
3. Submit the original completed Form A or Form B to the Arizona Department of Transportation, Motor Vehicle Division, Enforcement Services, 2500 West Broadway Road, Tempe, Arizona 85282.

D. An installer shall maintain an ignition interlock installer bond in ~~the~~ an approved form while installing, servicing, or removing Division-certified ignition interlock devices.

E. An installer appointed to install, service, or remove more than 1 certified ignition interlock device model needs only 1 bond.

Form B. **Ignition Interlock Installer Bond**

Motor Vehicle Division
ADOT
96-0196 R06/00

Enforcement Services
Motor Vehicle Division
2500 W Broadway Rd
Tempe AZ 85282

IGNITION INTERLOCK INSTALLER BOND

Bond Number

Principal Name (Ignition Interlock Device Installer) | Business Type ❒ Individual ❒ Partnership ❒ Corporation

Trade Name/Doing Business As | Business Location City | State

Surety Name | Surety State

The Surety named above, a corporation duly organized and existing under and by virtue of the laws of the Surety State named above and duly authorized by the Arizona Department of Insurance under the laws of the State of Arizona to do a general surety business in the State of Arizona, and the Principal named above give this bond to the State of Arizona, as Obligee.

Recitals Principal and Surety jointly and severally bind themselves, their successors, assigns, and legal representatives to the Obligee in the sum of $25,000.

1. The sum stated above establishes the limit of Surety's liability at any time after the effective date of the bond.
2. Principal is a manufacturer-appointed installer of ignition interlock devices certified by the Arizona Department of Transportation, Motor Vehicle Division (MVD).

Duration This bond becomes effective on the date of device certification or upon the execution of this document, whichever occurs last. This bond shall remain in effect until terminated by Surety as follows: Surety may terminate liability under this bond if surety gives 60 days written notice to the MVD Director of the intent to terminate liability. Written notice shall be delivered to MVD at the address above. Termination of liability occurs on the last day of the month that includes the end of the 60-day period. If a new bond is filed by the Principal and accepted by the MVD Director, termination of liability under this bond occurs on the effective date of the new bond. The Surety shall remain fully liable for acts or omissions of the Principal before termination of liability.

Condition of Obligation Principal shall make monetary payment in compensation to any person ordered by an Arizona court to equip a motor vehicle with a certified ignition interlock device and who suffers loss from:

1. Insolvency or discontinuance of business of Principal, or
2. Noncompliance of Principal or Principal's agent with the administrative rules made under ARS 28-1462.B.

Venue Any action or proceeding in connection with this bond or the obligations arising under this bond shall be brought in Maricopa County, Arizona.

Severability If a court of competent jurisdiction finds any provision of this bond unenforceable, all other provisions of this bond shall remain in effect.

The Principal and Surety executed this bond on _____.

A power of attorney must be attached designating the Surety Attorney-In-Fact.

Surety Attorney-In-Fact Name	Principal or Duly Authorized Officer Name	Signature
Phone ( )	Partner Name	Signature
Signature	Partner Name	Signature

Surety Resident Agent Name	Title	Send Bond Claims To
Mailing Address		Mailing Address
City, State, Zip Code		City, State, Zip Code
Signature	Phone ( )	Phone ( )

R17-4-709.10 **Mandatory Extension of a Certified Ignition Interlock Device Order.**

A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).

B. Each conviction for a violation of A.R.S. § 28-1464(A), § 28-1464(C), § 28-1464(D), § 28-1464(F), or § 28-1464(H) will result in an extension by the Division of a participant's certified ignition interlock device order.

C. Each extension by the Division of a participant's certified ignition interlock device order will be for 1 year.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM

PREAMBLE

1. Sections Affected | **Rulemaking Action**

Chapter 16	New Chapter
Article 1	Reserved
Article 2	New Article
R18-16-201	New Section
R18-16-202	New Section
Article 2	New Article
R18-16-301	New Section
R18-16-302	New Section
Article 4	New Article
R18-16-401	New Section
R18-16-402	New Section
R18-16-403	New Section
R18-16-404	New Section
R18-16-405	New Section
R18-16-406	New Section
R18-16-407	New Section
R18-16-408	New Section
R18-16-409	New Section
R18-16-410	New Section
R18-16-411	New Section
R18-16-412	New Section
R18-16-413	New Section
R18-16-414	New Section
R18-16-415	New Section
R18-16-416	New Section
Appendix A	New Section
Article 5	New Article
R18-16-501	New Section
R18-16-502	New Section
R18-16-503	New Section
R18-16-504	New Section
R18-16-505	New Section
Article 6	Reserved
Article 7	Reserved

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. §§ 41-1003, 49-104, and 49-203

Implementing statutes: Laws 1997, Chapter 287, Section 56, A.R.S. §§ 49-282.03, 49-282.06, and 49-289.03

3. The effective date of the rules:

The interim rules in this Notice of Proposed Rulemaking will become effective upon the date they are approved by the Attorney General.

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

None

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

Name: Robert Craig Salminen or Martha Seaman, Rule Development Section

Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809

Telephone: (602) 207-2227 or (602) 207-2221 (Any extension may be reached in-state by dialing 1-800 234-5677 and asking for that extension.)

Fax: (602) 207-2251

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

A. Authorization

This is an interim rulemaking authorized at Laws 1997, Chapter 287, §§ 56(B) and (C). The session law exempts this interim rulemaking from the rule making provisions at A.R.S. Title 41, Chapter 6, Article 3, but requires the Department to submit the interim rules to the Secretary of State for publication in the *Arizona Administrative Register*. The Department must provide for a 60 day period after publication for interested parties to comment on the proposed interim rules. Additionally, these rules are subject to review and approval by the Attorney General.

B. Purpose of the Proposed Rules

In 1997, the Legislature enacted Senate Bill 1452 (Laws 1997, Chapter 287) intended as a comprehensive reform of the Water Quality Assurance Revolving Fund (WQARF), Arizona's version of the federal "superfund" program. The intent of the new legislation is to provide an efficient, equitable process for the remediation of soil and water. These proposed interim rules are intended to implement provisions of the comprehensive WQARF revision.

C. Overview of the Rules

The following is a brief summary, intended to serve as a road map, of today's proposed rules:

Article 2, Preliminary Investigations and Site Scoring, governs the performance of preliminary investigations at the site of a reported release or threatened release of a hazardous substance and adopts the eligibility and evaluation site scoring model that was established by the Department in 1996.

Article 3, Public Information, governs notices to the public, opportunities for public comment, and the location of informational repositories maintained by the Department or others.

Article 4, Remedy Selection, is the heart of this rulemaking. Broad in scope, this Article governs the WQARF process from remedial investigations and feasibility studies through the design, implementation and completion of remedies. Article 4 defines the community involvement process, as it applies to the Department and to parties outside of the agency. Requirements governing Departmental approval of remedial action work performed by persons outside of the Department are established. Article 4 also establishes rules governing early response actions.

Article 5, Interim Remedial Actions, establishes a procedure that allows the Department to provide quick, short-term or interim solutions to water quality problems arising in wells due to the spread of hazardous contamination originating at a WQARF site.

D. Background of the Rules

1. The 1986 WQARF Statute ("Old WQARF")

The Water Quality Assurance Revolving Fund (WQARF), Arizona's version of the federal "superfund" program, was established by the Legislature in 1986 to address sites that pose actual or potential risks to public health, welfare and the environment due to historical soil or water contamination. The WQARF program was modeled on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the federal superfund statute. Contaminated sites were addressed using a combination of funds from WQARF and private responsible parties. The Arizona Department of Environmental Quality (ADEQ) could either expend public funds to clean up contaminated sites and seek reimbursement from responsible parties or compel responsible parties to clean up the site through administrative and judicial means.

Both CERCLA and WQARF originally established a "joint and several" liability scheme for parties that were responsible for contaminating a site. Under joint and several liability, one responsible party could be held liable for the entire cost of the cleanup at a site where there are numerous responsible parties.

Over time, many came to believe that the original WQARF statutory scheme provided an ineffective means for addressing contaminated soil and groundwater. Critics argued that joint and several liability was used to prompt settlement by responsible parties whose "pockets" were deep enough, leaving them to seek contribution towards cleanup costs from other responsible parties. They argued that this liability scheme imposed an unfair burden on the first-identified parties to investigate and prove the liability of other parties through costly and time-consuming litigation.

Others claimed that the selection of cleanup goals was flawed and the process for determining methods to cleanup a site were laborious. Specific cleanup criteria were not provided in statute. However, Maximum Contaminant Levels established under the Safe Drinking Water Act for tap water were usually adopted as goals within the aquifer for groundwater sites. Controversy ensued over whether it is feasible or cost-effective to restore every aquifer to drinking water quality. Many argued that the costs of aquifer restoration are often prohibitive and the likelihood of success doubtful at many sites.

Finally, inadequate funding for the program was blamed for delays in the cleanup of contaminated sites. The program was established with Legislative intent to provide $5 million in annual funding. However, funding was sporadic and often inadequate to support cleanup efforts, especially at sites where no responsible parties are identified or no solvent parties remain.

2. The 1997 WQARF Statute ("New WQARF")

In 1995, WQARF became the subject of a comprehensive review. The Groundwater Cleanup Task Force was established by ADEQ and the Arizona Department of Water Resources in December, 1995 to provide recommendations for reform of the WQARF program. The Task Force was comprised of a broad cross section of interested parties including, public stakeholders, private stakeholders, and technical experts.

In 1996, the Legislature enacted significant revisions to the WQARF program. The intent of that legislation, HB 2114 (Laws 1996, Chapter 259), was to lay the groundwork for an even more comprehensive revision of the program. HB 2114 established the Joint Select Committee on WQARF to conduct a broad examination of the WQARF program and make recommendations to reform the program to the Legislature. The Joint Select Committee was mandated to consider the recommendations of the Groundwater Task Force regarding administrative and legislative improvements to WQARF.

The Task Force and hundreds of others spent, literally, tens of thousands of hours examining various aspects of Arizona's cleanup programs as well as similar programs in other states and at the federal level. The deliberations of the Task Force ended in November, 1996 and their recommendation were reported to the Joint Select Committee on WQARF on December 23, 1996. In January, 1997, the legislature began the process of drafting new WQARF legislation. After extensive deliberation, the legislation was passed in the form of Senate Bill 1452 and was filed with the Secretary of State on April 30, 1997, as Laws 1997, Chapter 287.

The major provisions of S.B. 1452 are as follows:

Proportionate Liability

Under new WQARF, liability for costs of the cleanup of contaminated sites is proportionate rather than joint. Cleanup costs are proportionately allocated among responsible parties using a process defined in statute. Identification of responsible parties and the allocation of cleanup costs are the responsibilities of the Department. A non-judicial allocation hearing process is available for the resolution of disputes regarding the Department's allocations.

Program Funding

The adoption of a proportionate liability system increased the need for adequate and dedicated program funding. To ensure that WQARF program funding is sufficient to administer the program and to pay allocated, uncollectible orphan shares, the legislature supports the WQARF program with an annual $18 million expenditure.

Site Prioritization

New WQARF calls for sites to be prioritized with a greater emphasis on risk to human health. The statute provides a process to score sites according to actual and potential exposure to hazardous substances. This score and other factors are considered when prioritizing the expenditure of WQARF funds.

Cleanup Methods and Goals

New WQARF also allows increased flexibility in selection of groundwater cleanup methods and levels. ADEQ is authorized to adopt rules for remedy selection that incorporate analysis of a range of cleanup alternatives, from remediation of the contamination to no action. Significantly, the statute clarifies that cleanup need not always result in achievement of drinking water standards in the aquifer itself.

Community Involvement

New WQARF provides for enhanced community involvement and public participation at all stages of the cleanup process. The statute establishes a process to encourage active community involvement, including provisions for notices, detailed community involvement plans, and the formation of a community advisory board for each site.

Settlements Encouraged

Finally, the new WQARF process encourages prompt settlements as an alternative to litigation. The Department is authorized to offer a 25% discount to responsible parties who settle after the Department provides notice to them of their proportionate share of liability.

3. Today's Rulemaking

The rules being proposed today were developed with extensive stakeholder participation. After the enactment of S.B. 1452, the Department held hundreds of meetings over several years to discuss issues related to the implementation of S.B. 1452. The resulting rules are the product of numerous, intensive discussions with interested parties including, public stakeholders, private stakeholders, and technical experts.

Today's rulemaking is somewhat removed from the broad issues of liability allocation and program funding. The Legislature addressed these and other issues, including responsible party searches, in great detail in their drafting of the new WQARF statute. As noted in the "Overview of the WQARF Process" section, today's rulemaking does not revisit issues that were adequately addressed in statute. Instead, this rulemaking focuses on the other essential elements of the legislation. Therefore, these rules, even more than most, must be read in close conjunction with the underlying statutes.

E. Overview of the WQARF Process

The purpose of this Section is to briefly explain the entire WQARF process. As indicated in Section D dealing with the background of the rules, this rulemaking does not address all of the WQARF process. This Section is intended to clarify how this rulemaking fits into the broader context of the WQARF statutory framework. A more detailed description of these proposed rules can be found in Section F.

It is important to note that many of the rules being proposed allow other parties to perform activities in lieu of the Department. However, for the sake of brevity, this overview focuses on the scenario in which the Department is conducting the cleanup.

Preliminary investigations

The WQARF process begins when the Department receives information about a release or potential release of a hazardous substance. This information may come from a citizen complaint, from an investigation conducted by the Department or from an investigation conducted outside of the Department. If, based on the Department's initial screening of the information, it appears that a release has occurred or may occur and that no other program is addressing the release, the Department conducts a preliminary investigation.

The purpose of the preliminary investigation is to confirm the release or potential release and determine whether further investigation or action is necessary. The preliminary investigation is not a complete investigation to determine the extent of the contamination nor is its purpose to identify the parties responsible for the contamination. If, upon completion of the preliminary investigation, the Department determines that no additional investigation or action is necessary, the site is dropped from further consideration. If, the Department determines that additional investigation or action is necessary, the site is scored using the eligibility and evaluation model and listed on the WQARF site registry.

Site Scoring

The eligibility and evaluation site scoring model is a tool to evaluate the actual and potential risk to public health, welfare, and the environment from a release or threatened release of a hazardous substance. The eligibility and site scoring model includes a quantitative section where a point total is assigned based on weighted factors. In addition, the model lists certain qualitative factors to be considered in determining the priority for assignment of staff resources and WQARF funding to a particular site.

The scoring of a site does not necessarily mean that the site poses a risk to human health, welfare, and the environment. It means that the site has or may have contamination above a regulatory standard and further investigation is necessary to determine the appropriate action. There is no threshold score for placement on the registry.

The Site Registry

The site registry provides public access to information on WQARF sites. The registry replaces the old WQARF Priority List and provides a listing of sites based on the relative risk posed by contamination at each listed site. The registry contains a brief description of each site, the site's score, and the current status of the cleanup. The registry is updated regularly and is published annually in the *Arizona Administrative Register* and in a state-wide newspaper. The Department also maintains a web site and conducts meetings throughout the state to provide information on registry sites.

Any person may request that a site or a portion of a site be rescored on the registry. After determining that the information submitted is sufficient to take action, the Department publishes notice of the request and accepts public comment. Any changes to the score or status of the site are published in the registry. Rescoring on the registry may be requested by any person no more often than once a year.

The statutory provisions governing the maintenance of the WQARF site registry and the process for requesting the rescoring of a site are sufficiently specific that no rules regarding the WQARF site registry have been promulgated or are included in this rulemaking.

Responsible Party Search

If the Department determines that cost recovery may be appropriate at a site, the Department initiates a responsible party search that proceeds concurrently with the remedy selection process. The Department uses information gathered in the responsible party search to determine the financial viability and the legal liability of potentially responsible parties (PRPs). The Department is required to use its best efforts to identify all persons who may be liable for cost recovery. Identification of PRPs enables the Department to allocate proportional shares of liability among the identified responsible parties in order to finance the remedy.

The statutory provisions governing the responsible party search are sufficiently specific that no rules regarding the responsible party search have been promulgated or are included in this rulemaking.

Community Involvement

The WQARF program provides for extensive community involvement to ensure that the public is apprised of activity in its neighborhoods and is aware of the potential risks associated with any suspected contamination. The program provides the public with opportunities to be directly involved in the process beginning with the investigation of the contamination and continuing through the completion of the cleanup of the site.

The Community Involvement Area

Within 90 days after placing a site on the registry, the Department establishes a preliminary community involvement area (CIA). The preliminary CIA is based on the boundary of the contamination and on site-specific factors, including proximity of the site to schools, parks, or potentially affected water providers. The purpose of the preliminary CIA is to establish the geographic location of potentially interested or affected parties prior to the development of a formal community involvement plan.

The statutory provisions governing the establishment of the community involvement area are sufficiently specific that no rules regarding the community involvement area have been promulgated or are included in this rulemaking.

"289.02" Notice

After the CIA is established, the notice required under A.R.S. § 49-289.02 is sent to residents, commercial occupants, and owners of registered wells within the CIA. The notice contains available information regarding the hazardous substance contamination at the site, the site's score, the ways that the contaminants may reach human health and the environment, and the possible health impacts of the exposure, if any. The notice also identifies Department personnel to be contacted for further information regarding the site.

The statutory provisions governing the notice under A.R.S. § 49-289.02 are sufficiently specific that no rules regarding the notice have been promulgated or are included in this rulemaking.

"287.03" Notice

Prior to proceeding with the remedial investigation, the Department prepares a scope of work, a fact sheet and an outline of the community involvement plan. The Department provides notice required under A.R.S. § 49-287.03 to potentially liable parties and other interested persons within the CIA of the availability of the scope of work, the fact sheet and outline of the community involvement plan, and of the opportunity to comment on the documents. The Department also provides for 1 or more public meetings.

Community Involvement Plan

Before the Department conducts a remedial investigation and feasibility study at a site, a community involvement plan (CIP) is developed. The CIP establishes the community advisory board and provides for notices, notifications, and the distribution of public information. The purpose of the community advisory board is to advise the Department, the public, and interested parties of issues and concerns related to the cleanup. The community advisory board is composed a cross-section of interested parties and affected groups and the members are chosen by a selection committee.

If a person other than the Department wishes to conduct work at a site or a portion of a site, alternate community involvement processes may apply. If a CIP has been prepared, community involvement activities must be conducted in accordance with the plan. If the Department has not initiated work on a site, a CIP may not have been prepared. In that case, a person may develop a plan for approval and adoption by the Department or may conduct community involvement activities that are appropriate to the scope and schedule of the work performed. If no plan has been developed or adopted, minimum requirements are set out in Article 4 for conducting community involvement activities apply.

Agreement to Conduct Work

A party may enter into an agreement with the Department if they wish to perform work at a site instead of the Department. Allowing another party to perform work at a site permits the Department to work on other sites and provides a party conducting the cleanup with a way to get the some of the lower priority sites or portions of sites cleaned up faster. The party must agree to clean up the site following the remedial investigation and feasibility study process.

The statutory provisions governing the agreement to conduct work are sufficiently specific that no rules regarding the agreement to conduct work have been promulgated or are included in this rulemaking.

The Remedial Investigation

The purpose of a remedial investigation is to collect enough information to determine the appropriate cleanup actions needed at the site. The information collected includes: the physical characteristics of the site; the nature, extent and sources of the contamination; and the actual and potential impacts of contaminants on the site to public health, welfare and the environment. The remedial investigation also identifies present and reasonably foreseeable uses of land and waters of the state that have been or are threatened to be impacted by the contamination.

After the information is collected and the conditions at the site are known, the Department holds public meetings to discuss the site and to determine the remedial objectives. The Department invites land owners, local governments, water providers, and the public to discuss uses impaired or lost due to the contamination as well as future uses which could be impacted by the contamination.

After the meetings the Department prepares a report of the proposed remedial objectives for the site that lists the uses, the time-frames when action is needed to protect or provide for the use, and the duration of the actions needed. The Department accepts and considers public comment on the proposed remedial objectives and holds additional public meetings depending upon the level of public interest.

The Feasibility Study

Using the information collected in the remedial investigation, the feasibility study identifies options that may achieve remedial objectives. The goal of the feasibility study is to identify the best option or options for meeting the remedial objectives. Different options are identified and compared against each other to select the option which will be included in the proposed remedial action plan.

Proposed Remedial Action Plan

After the feasibility study is completed, the Department prepares a proposed remedial action plan that describes the proposed cleanup or remedy and provides an opportunity for public comment. The plan describes the means by which the proposed remedy will meet each of the remedial objectives identified in the remedial investigation and how accomplishment of the remedial objectives is to be measured. The plan also provides an estimate of the cost of the cleanup.

If the Department intends to seek recovery of costs and conduct a cost allocation proceeding, the Department provides notice to potentially responsible parties of the opportunity to submit their cleanup costs and of the opportunity to object to costs submitted by other parties. Any approved costs may be used as a credit against potential liability in a settlement or allocation. The costs of the cleanup are finalized in the record of decision.

Actions Taken Before Remedy Selection

Many times some action is needed before the formal process for selecting a cleanup occurs. There are 3 different ways to address more immediate cleanups.

Emergency Response Actions

Emergency response actions are outside of the remedy selection process, but are critical to the WQARF program. Emergency response actions are taken when a spill or some other action presents an immediate emergency situation. They are short-term actions to alleviate the emergency.

The statutory provisions governing emergency response actions are sufficiently specific that no rules regarding emergency response actions have been promulgated or are included in today's rulemaking.

Early Response Actions

Early response actions (ERA) are certain remedial actions initiated by the Department or any person prior to selection of a remedy at a site. In many instances, ERAs may involve "spending a penny today to save a dollar tomorrow." ERAs may prevent spreading or exacerbation of contamination by containing or removing the source of contamination or may prevent the loss of water supply. In other instances, ERAs may address a current risk to human health, welfare and the environment that cannot or should not go unaddressed until a final remedy is developed. ERAs may be relatively inexpensive short-term actions, such as fencing or providing bottled water, or they may involve an expensive large-scale groundwater treatment system.

Interim Remedial Actions

Interim remedial actions (IRAs) are actions taken or funded by the Department to address the loss or reduction of available water from a well on the site. An IRA may be used in those cases where a person affected by contamination or potential contamination of a well wants to apply for funds or to have the Department undertake action to address the well before adequate information exists to make decisions regarding the cleanup. If the Department later determines that the IRA was not necessary or that the party requesting the action is responsible for the contamination of the well, the requesting party must reimburse the Department. IRAs must be the minimum necessary to address the loss or reduction of available water from the well.

Record of Decision

The record of decision documents the selected remedy for a site. The record of decision includes an estimated cost, time-frames for beginning and completing the cleanup process, and a demonstration that the selected remedy meets the remedial objectives.

Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy.

The design and implementation stage includes the development of the engineered design of the selected remedy and implementation of the remedy through construction. A period of operation and maintenance may follow the design and construction activities.

Requests for a No Further Action Determination

After a site is cleaned up, a person may request a determination that a site or a portion of a site requires no further action. A no further action determination precludes the Department from conducting further remedial action at the site or portion of the site covered by the request. The Department retains access to the site and may reopen investigation of the site or require additional remedial action under certain circumstances.

After determining that the information is sufficient to take action, the Department publishes notice of the request and accepts public comment. After the close of the comment period, the Department provides notice of its decision to the requesting party and to any commentors. No further action determinations are published in the registry.

The Allocation Process

If the Department determines that cost recovery may be appropriate, the Department notifies each potentially responsible party of the basis for that determination, a detailed accounting of the method, and results of the allocation and the party's percentage share of the cost. The notification includes an offer to settle the party's liability based upon an agreement to pay 75% of the share of the costs allocated to that person. If a responsible party chooses not to settle, the process continues through the selection of an allocator and into the allocation hearing process. The allocation hearing proceeds under procedures established in the WQARF statute and results in the issuance, by the allocator, of an allocation report identifying liable parties and their proportionate shares of liability. The allocator's findings regarding liability and the proportionate shares of liability may be appealed in superior court.

The statutory provisions governing the allocation process are sufficiently specific that no rules regarding the allocation process have been promulgated or are included in today's rulemaking.

Settlements

The WQARF process encourages prompt settlements as an alternative to litigation. The Department will consider offers by potentially liable parties to settle their liability to the state under both state and federal law. All settlements require an opportunity for public comment and, in cases where contribution protection is requested, settlements require court approval.

The statute specifically authorizes qualified business settlements and financial hardship settlements in cases where responsible parties cannot afford to pay their full share of cleanup costs. Qualified business settlements provide a quick, efficient, and affordable means for businesses with gross incomes of 2 million dollars or less to resolve their potential WQARF liability. Financial hardship settlements allow any person to settle its potential WQARF liability if that person can demonstrate a financial hardship. Financial hardship settlements are designed to help those parties who are unable to pay their allocated share of liability without going out of business.

The statutory provisions governing qualified business settlements and financial hardship settlements sufficiently specific that no rules regarding the WQARF site registry have been promulgated or are included in this rulemaking.

F. Specific Section by Section Explanation of Today's Interim Rulemaking:

The Section by Section explanation of the proposed rule is as follows:

R18-16-201. and R18-16-202. Preliminary Investigations and Site Scoring

R18-16-201. Preliminary Investigations

The preliminary investigation (PI) process begins with information about a release or a potential release of a hazardous substance to soil or water. This information may come from a citizen complaint, investigations conducted by others, or from investigations conducted by a regulatory program within the Department. The Department conducts a screening process to determine if the information is credible, if another regulatory program has jurisdiction, or if the site is already being cleaned up by a party voluntarily. If it appears that a release has occurred or may occur and WQARF is the appropriate program, the Department initiates a PI. If not, the Department either terminates the investigation or refers the site to another Departmental program.

The purpose of the PI is to determine if a release has occurred or may occur and, if so, to determine the potential risk to public health, welfare, and the environment so that the site can be scored and placed on the registry. The PI is not a complete investigation to determine the extent of the contamination nor is its purpose to determine those responsible for the contamination. The PI is limited to gathering only enough information to confirm that a release has occurred or may occur and whether further investigation or action is necessary.

If it is determined in the course of a preliminary investigation that a release has not occurred or is not likely to occur, the Department terminates the PI. Likewise, if it is determined that a release has occurred, but the release or threatened release is below regulatory standards, the Department terminates the PI. For a release to soils, this means that the soil remediation standards rule (18 A.A.C. 7, Article 2) has been met, including all conditions necessary for approval such as a demonstration of leachability to groundwater. For a release to water, this means that the water quality standards (18 A.A.C. 11) have been met or if there is no standard, a risk level approved by the Department.

The PI is designed to collect information necessary to score the site using the eligibility and evaluation model. The information should be based on existing information if it is available and is valid. If additional information is necessary to score a site, a work plan must be developed to collect the information. The work plan must include some basic information and a description of how available records will be searched, including a requirement to obtain information from water providers. If sampling is necessary, the work plan must include additional information including a conceptual site model. The conceptual site model focuses the sampling efforts and ensures that all necessary information is collected.

After the PI is completed, a report is prepared describing the results of the investigation. The Department reviews the report and determines whether the release is below the regulatory standards or risk levels described above. For releases below regulatory standards, no additional investigation or action is necessary and the site is dropped from further consideration. For releases above the regulatory standards, the site is scored using the eligibility and evaluation model and a draft registry report is prepared.

This rule also provides for a person other than the Department to conduct a PI. The person must submit a request to the Department with the required information and enter into a written agreement with the Department.

R18-16-202. Site Scoring

This rule adopts the eligibility and evaluation site scoring model. Session law from Laws 1997, Chapter 287, requires the Department to adopt the eligibility and evaluation site scoring model to score a WQARF site for placement on the registry. The placement of a site on the registry indicates that further investigation or action is necessary.

The eligibility and evaluation site scoring model was developed by the Site Prioritization Subcommittee of the Groundwater Cleanup Task Force in 1996 to evaluate the actual and potential risk to public health, welfare, and the environment from a release or threat of a release of a hazardous substance. The model provides a quantitative section to evaluate risk by assessing the actual and potential contaminant exposure to public health and the environment resulting from a release or threat of a release of a hazardous substance. The point total is determined using the following weighted factors: release event (10 points); site and contaminant characteristics (30 points); human exposure routes (65 points); and environmental factors (15 points). The largest number of points in the human exposure section is assigned to the groundwater pathway. Within each pathway, actual exposure is given more points than potential exposure. As a result, sites with groundwater contamination and those with contamination of multiple media typically score the highest.

The scoring of a site does not necessarily mean that the site poses a risk to human health, welfare, and the environment. It means that the site has or may have contamination above a regulatory standard and further investigation is necessary to determine the appropriate action. There is no threshold score for placement on the registry.

The model also contains a qualitative section dealing with "other factors." The Department will prepare a narrative on these factors to help determine the priority for assignment of staff resources and WQARF funding to a particular site.

R18-16-301. and R18-16-302. Public Information

This Article was originally published in a Notice of Proposed Exempt Rulemaking in 5 A.A.R. 256, January 22, 1999 (see also, the Notice of Public Information in 5 A.A.R. 506, February 12, 1999). As required under the session law, the Department provided 60 days after publication for public comment. No public comments were received. The rule was reviewed by the Attorney General as authorized under A. R. S. § 41-1044, but was not approved and, thus, never became effective. Proposed Article 3 has been withdrawn. A Notice of Public Information will be published on or near the date of this notice.

Article 3 was previously published under the title "Community Involvement". Community involvement, however, is a broad concept and is an integral part of the WQARF program, most notably of the remedy selection process set out in Article 4. Article 3 governs only the provision of notice to the public, the provision of opportunities for public comment and the location of information repositories maintained by the Department or others as a part of the WQARF program. Article 3, as published today, is entitled "Public Information." This new title reduces the potential for confusion.

R18-16-301. Public Notification and Opportunities for Public Comment

This Section applies to the Department and to others providing the public with notice of and an opportunity to comment on activities taking place on a WQARF site. The WQARF program is self-implementing and is intended to encourage remedial actions by parties other than the Department. These parties may assume responsibility for community involvement activities, including the provision of notice and opportunities to comment. This rule establishes a single set of standards applicable to the Department and to others involved in the community involvement process.

R18-16-301 sets default standards for the provision of notice and opportunities to comment. If A.R.S. Title 49, Chapter 2, Article 5 or a community involvement plan requires notification of the public or provision of an opportunity to comment, the terms of the statute govern the form and frequency of the notification and the duration of the comment period. If the statute does not specify form, frequency, or duration, the terms of the community involvement plan control, but only to the extent that the requirements of the community involvement plan meet or exceed the requirements of rule. If neither the statute nor the community involvement plan specify form, frequency or duration, this rule establishes the standards.

R18-16-301(D) is intended to promote timely remedial actions in situations that present an immediate danger to public health, public welfare or the environment.

R18-16-302. Location of Information Repositories

R18-16-302 has been retitled "Location of Information Repositories" and is narrower in scope than the previously published rule. R18-16-302 no longer governs the contents of information repositories. Content requirements for information repositories now appear in proposed Sections R18-16-403 and R18-16-404. The former R18-16-302(C), governing the location of information repositories, is now the exclusive subject of the rule. Under proposed R18-16-302, as published today, public information repositories are located at either an office of the Department or at another facility. Public information repositories located at a facility other than a Department office must provide reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.

R18-16-401. through R18-16-416. Remedy Selection

The scope of these rules extends from the investigation of a site on the registry through the completion of the cleanup, including community involvement activities. The process for selecting a remedy in this rule is significantly different than is used by the Environmental Protection Agency (EPA) at superfund sites. This rule allows increased flexibility in the selection of groundwater remedies and is designed to protect and provide for uses of land and water. EPA focuses on setting the goal within the aquifer and requires the aquifer to be restored to that goal. EPA also conducts a remedial investigation and a feasibility study, selects a proposed remedy, and requests public comment on the proposed remedy. This rule has active community involvement from the beginning to the end of the process until the site is cleaned up. Finally, this rule was written to be self-implementing and encourages others to do the work and get credit toward their potential liability for the work that they have done.

R18-16-401. Definitions

Terms with specific application to the remedy selection rules are found in R18-16-401.

R18-16-402. Applicability

This Section limits the applicability of the remedy selection rules. The remedy selection rules apply only to sites which have been scored and listed on the registry or as otherwise made applicable by law. Sites on the registry are those which the Department has identified as needing additional investigation or action under the WQARF program.

The remedy selection rules address only the impacts of a release or a threatened release of a hazardous substance. WQARF will not cover remedial action costs that would have been incurred if the release had not impacted the property or well. For example, a well may have high levels of trichloroethylene, arsenic, and total dissolved solids. If only the trichloroethylene was released and the other contaminants were present before the release, the well owner cannot require WQARF to clean up the remainder of the contaminants or replace the well with a more productive well. Likewise, a property owner who owns a landfill cannot require WQARF to remove or completely clean up a landfill so the property can be used for other uses. However, in these examples, the property owner, well owner, or water provider would not be required to reimburse the WQARF fund if coincidental benefits, such as the removal of additional contaminants, occurred as a result of the remedial action.

This rule also provides a process to transition sites being cleaned up under "old WQARF" to "new WQARF." Transition sites are sites that are listed on the registry where some remedial action has occurred prior to the effective date of these rules. The requirements for transition sites depends on the level of approval received for work conducted and how far the site is towards implementing the cleanup. A person conducting work after the effective date of the rule is required to follow the rule.

This Section provides a process for a person who performed remedial work at a transition site prior to the effective date of this rule to obtain the Department's approval of the work. The person requesting the approval must describe the remedial action, demonstrate that the work is reasonable and necessary, and demonstrate that the work meets the applicable purposes of the remedy selection rules. The purpose of a remedial investigation, feasibility study, and an early response action are specifically stated in the Section dealing with that action. This allows the Department to approve remedial actions that did not follow the requirements to the letter, but achieved the goal of the rules. Any remedial work performed after the approval must comply with the requirements of this Article.

Remedial investigations and feasibility studies performed prior to the effective date of this rule present a special situation. No remedial investigation and feasibility study will be approved until information regarding current and reasonably foreseeable uses is collected, a draft RI report is prepared and distributed, and remedial objectives are selected and reported as described in R18-16-406. In addition, any alternative remedies evaluated in the feasibility study must be modified as necessary so that the remedies meet remedial objectives. Thereafter, the remedy selection rules will apply to any remedy selected.

Finally, this rule defines the application of the remedy selection rules to sites where cleanups are underway subject to approvals, agreements or court orders that predate the effective date of this rule. If, prior to the effective date of this rule, the Department approved a remedial action plan or entered into a written agreement that includes the implementation of a remedy or the substantial equivalent of a remedy, the approval or agreement apply. It does not make sense nor is it equitable to stop a remedy underway and apply a new process. In addition, this Article does not apply to work governed by the terms and conditions of a court decree or judgement entered into prior to the effective date.

R18-16-403. Scope of Work, Fact Sheet, Community Involvement Plan Outline, Notification of Availability, and Community Involvement Plan.

This Section addresses community involvement and notice requirements that take effect if the Department begins to conduct work at a site. Unless the Department determines that the necessary remedy at a site can be completed within 180 days, ADEQ prepares a scope of work for the remedial investigation and the feasibility study, a fact sheet, and an outline of the community involvement plan. These documents must be prepared before the Department conducts a remedial investigation and feasibility study.

The scope of work for a remedial investigation is meant to provide a broad overview of the extent of the investigation. The scope of work for a feasibility study generally describes the process for conducting the feasibility study and may specify additional work to be performed. The fact sheet includes general information about the site including known contamination, the site's score, potential risk of and routes of exposure to the contaminants at the site, and Department personnel who may be contacted for further information regarding the site. The outline of a community involvement plan lists the activities which will be included in the community involvement plan.

The Department provides written notice to each potentially responsible party of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan. The notice also contains a statement that any person may, by written agreement with the Department, develop and implement the remedial investigation and feasibility study work plans.

This notice is also published in a newspaper and provides an opportunity for a public meeting to discuss the documents. In addition, a written notice is provided to residents, owners or operators of facilities being investigated, commercial occupants, water providers, and owners of wells within the community involvement area. A responsiveness summary is prepared addressing any public comments received on the scope of work.

Unless the Department determines that the necessary remedy at a site can be completed within 180 days, the Department prepares and implements the community involvement plan prior to initiating a remedial investigation and feasibility study work plan. The community involvement plan includes all of the activities specified in the community involvement plan outline and specifies: 1) how the activities should be carried out; 2) who should be involved; and 3) when the activities should take place. The plan provides information regarding the establishment of a selection committee and community advisory board and provides for notices and notifications at critical junctures from the investigation of the site through the completion of the remedy. The plan also provides for the distribution of public information, such as newsletters, and identifies the locations and types of information which will be contained in a public document repository.

The community involvement plan is tailored to each site in order to provide the most effective means of providing information to and obtaining comments from the community. The Department conducts a community profile to obtain specific information, such as appropriate languages and meeting locations. The Department also solicits comments and conducts interviews with community leaders, interested groups, and others to determine community concerns and issues. In addition, the Department evaluates public health and environmental impacts. The plan is updated annually with input from the community advisory board.

R18-16-404. Community Involvement Requirements for Work Not Performed by the Department

Often parties wish to conduct work at a site or a portion of a site before the Department initiates the work. In these instances, the Department has not yet allocated resources to the site, including implementing the extensive community involvement requirements described in the previous Section. This Section describes an alternate community involvement process that allows other parties to perform work without having to wait for ADEQ to allocate resources to the site.

After the Department has provided notice under A.R.S. § 49-287.03, another party can conduct community involvement activities only by written agreement with the Department. This notice, described in the previous Section, signifies that the Department is ready to conduct work at a site. A written agreement prevents a duplication of efforts and minimizes confusion.

Parties who conduct work at a site must comply with the community involvement plan if one has prepared or adopted by the Department. If no community involvement plan has been prepared, a party may develop a plan for approval and adoption by the Department or they may conduct community involvement activities that are appropriate to the scope and schedule of the work performed.

The rule specifies minimum requirements for conducting community involvement activities without a community involvement plan. Notice must be provided to potentially impacted people when field work will cause a disruption (i.e., noise, light, odor, and dust) or when contaminants are removed. For remedial actions that will take more than 180 days, notice must be provided to persons within the community involvement area and other interested persons and a repository must be established where information about the site can be reviewed by the public. A public meeting must be convened prior to the close of the public comment period to provide information concerning a proposed remedial action plan prepared under R18-16-408. Any specific public notice and comment and consultation requirements under this Article, such as meetings to establish remedial objectives, must be met. Before implementing a work plan for a remedial investigation or feasibility study, the Department must be notified in writing with the name and address of the working party and a general description of the work to be performed. General notice and public notice requirements are also provided.

R18-16-405. Early Response Actions

Early response actions (ERA) are certain remedial actions initiated by the Department or any person prior to selection of a remedy at a site. In many instances, ERAs may involve “spending a penny today to save a dollar tomorrow”. ERAs may prevent spreading or worsening of contamination by containing or removing the source of contamination. ERAs may prevent the loss of water supply. In other instances, ERAs may address a current risk to human health, welfare and the environment that cannot or should not go unaddressed until a final remedy is developed. ERAs may be relatively inexpensive short-term actions, such as fencing or providing bottled water, or they may involve expensive large-scale groundwater treatment system.

An ERA is not intended to replace the process for selecting a remedy. Depending on when the ERA is initiated, information about the site may be relatively limited. As the remedy selection process progresses, the ERA may be modified or incorporated into the remedy. In any case, the remedy must be selected using the process established in R18-16-406 through R18-16-410.

The method or technology used to implement the early response action is selected based upon best professional judgment considering several factors using the best available information. A written rationale must be prepared describing why the ERA is necessary and how it was selected. It is not required to collect all the information necessary to select a final remedy (e.g., conducting a remedial investigation and a feasibility study) to conduct an ERA. A work plan must also be prepared containing several elements including community involvement activities.

A person conducting an ERA must notify the Department, in writing, of the action. If the Department has issued the A.R.S. § 49-287.03 notice signifying the beginning of the remedial investigation, the ERA notice must be provided to the Department 15 days before the ERA is begun. If the Department has not issued the notice, the ERA must be provided 15 days after the Department issues the notice. After notice of a proposed remedial action plan has been given, an ERA may be initiated only with Department approval.

If immediate action is necessary to address a current risk to public health or the environment, to protect a source of water, or to provide a supply of water, the work plan and written rationale may be prepared and the community involvement activities may be conducted after commencement of the early response action. In addition, the notice to the Department can be provided as soon as practicable. In these instances where time is of the essence, the preparation of the documentation and the time that it takes to conduct community involvement activities and provide notice may make the difference in taking the appropriate ERA before it is too late.

This rule also provides a process for a person to obtain an approval of an ERA or a work plan to conduct an ERA. The Department shall approve the work plan or early response action if it complies with the requirements of this Section and any other applicable requirements of this Article. Additional presumptions for considering whether an early response action is necessary to protect or provide a supply of water is also provided.

R18-16-406. Remedial Investigations

A remedial investigation (RI) is conducted to assess the conditions at a site or portion of a site and to collect enough information about uses of land and water to determine the appropriate cleanup action. The Department or any person may perform all or any portion of a remedial investigation. However, after the Department has issued the A.R.S. § 49-287.03 notice signifying the beginning of the RI, a person may perform such work only under a written agreement with the Department. A party performing all or a portion of a remedial investigation may obtain Department approval of its work.

A work plan must be developed and implemented for all or any portion of a remedial investigation for a site or a portion of the site. The work plan must demonstrate that the work performed will meet the requirements set out in the rule and will be performed in accordance with guidance documents or standards that are commonly accepted in the scientific community. Each work plan must contain several required elements and may be modified as work proceeds to address unknown or changed conditions or access problems. Field investigations can be implemented in different stages to assess several required factors in order to focus the sampling and maximize the efficiency of the investigation.

In some instances, a risk evaluation may be conducted as part of the information collection stage to determine the current risk to public health and the environment from contaminants at the site. This is a significant departure from remedial investigations conducted by the Environmental Protection Agency (EPA) at federal superfund sites. EPA conducts a baseline risk assessment to determine if further action is warranted at a site based on an evaluation of current and future risks. Under the remedy selection process described in this rulemaking, a risk assessment is only conducted to determine risks of current exposure.

Aside from determining the extent of the contamination, the most critical component of the RI and of the whole remedy selection process is the establishment of remedial objectives. The remedy selection process revolves around the remedial objectives and the selected remedy must meet the remedial objectives. The remedial objectives are based on uses of land and water and are designed to protect and provide for uses of land and water.

In order to establish remedial objectives, information is collected regarding the present and reasonably foreseeable uses of land and waters of the state that have been or are threatened to be affected by a release of a hazardous substance. Reasonably foreseeable uses are those likely to occur based on information provided by water providers, well owners, land owners, government agencies, and others.

For remedial objectives used to select a soil remedy, the land owner determines the type of land use in accordance with A.R.S. § 49-152 and Chapter 7, Article 2 of this Title (the soil remediation standards rule). The soil remediation standards rule provides for a property owner to cleanup contaminated soil to a level consistent with its use. If the property will be used for residential purposes, the property must be cleaned up to residential levels. If the property will only be used for non-residential purposes, the property owner can remediate the property to non-residential levels as long as they agree to limit the use of their property and record a restrictive use covenant on the property deed.

For landfill or other similar sites, the land owner may establish the reasonably foreseeable uses of its land. However, the remedial objectives for these types of sites are not required to address anything other than the current or potential exposure to hazardous substances at or from the site. This means that a land owner cannot require that the landfill be made suitable for other purposes under WQARF, such as stabilizing the landfill to support structures. The owner also cannot require that the remedy remove landfill or other soil material. If the land owner indicates that they would like to make the site suitable for other uses, the desired use can be incorporated into the remedy, but the land owner must incur any costs beyond addressing the current or potential exposure to hazardous substances at or from the site.

For surface water or groundwater, uses likely to occur within one hundred years will be evaluated unless site-specific information suggests a longer time period is more appropriate. Due to the importance of meeting the needs of the water users, the rule requires water affected providers to be consulted when collecting information concerning water uses and water management plans to be taken into account. These plans consider growth, water availability, and emergency supplies or drought conditions.

After the extent of contamination and the uses of land and waters are determined, a draft remedial investigation report is prepared that summarizes the data and information collected. The report is provided to the community advisory board, affected water providers, and government agencies. The report is also made available as provided under the community involvement plan. Notice is also given to the public of the opportunity to review and comment on the report.

If the remedy will only address soils or will only address other sites where waters of the state have not been impacted, a final remedial investigation report is prepared containing the results of the site characterization and a listing of remedial objectives. The report must be accompanied by responsiveness summaries from comments received on the draft remedial investigation report. If the Department approves the report, the report may be used to select a remedy in R18-16-407(C) or R18-7-407(D).

If the remedy will address waters of the state, the Department holds one or more public meetings to discuss contamination found at the site and to determine the remedial objectives. By the time the first meeting is held, numerous community involvement activities have already taken place under the community involvement plan required in R18-16-403 or the community involvement requirements in R18-16-404. Land owners, local governments, affected water providers, and the public should already be aware of the conditions at the site and many people have been contacted regarding the uses of land and water as part of the collection of information. At these meetings, the Department and interested parties discuss proposed remedial objectives for each use in terms of: 1) what it would take to protect a use; 2) what it would take to restore, replace, or provide for a use impaired or threatened to be impaired; 3) when action is needed to protect against or provide for the use; and 4) how long action is needed to protect or provide for the use. The Department also may receive and consider written information regarding proposed remedial objectives.

After the meeting the Department prepares a report of the proposed remedial objectives. The remedial objectives must be generally consistent with the water management plans of water providers and general land use plans established by local land use jurisdictions. The Department accepts and considers public comment on the proposed remedial objectives and holds additional public meetings depending upon the level of public interest.

The Department then prepares a final remedial investigation report containing the results of the site characterization and the final report of the remedial objectives. The reports are accompanied by responsiveness summaries comments, issues and concerns raised in the community involvement process. After completion of the remedial objectives report, any changes to the remedial objectives must be made according to the process described above.

This process for establishing remedial objectives for a site is quite different than the process that was previously used in the WQARF program and is still used by EPA at federal superfund sites. Previously, the remedial objectives were established by the Department and focused on setting cleanup levels within the aquifer or surface water. In addition, uses that were already damaged due to the contamination were not necessarily addressed by the cleanup and uses that were threatened by the contamination may not have been addressed in the time needed.

Remedial objectives described in this rule are based on uses determined by the community and are refined by the Department with significant community involvement. The objectives are designed to protect and provide for uses of land and water. This does not mean that the aquifer will be always be cleaned up to drinking water standards or to a level suitable for the use. Instead, the rule requires different uses to be identified and a remedy is selected which will protect and provide for the uses.

R18-16-407. Feasibility Study

Using the information collected during the remedial investigation, a feasibility study (FS) is conducted to identify proposed remedies that may be capable of achieving remedial objectives and to select a preferred remedy from among them which: 1) assures the protection of public health, welfare, and the environment; 2) to the extent practicable, provides for the control, management, or cleanup of hazardous substances so as to allow for the maximum beneficial use of waters of the state; 3) is reasonable, necessary, cost-effective, and technically feasible; and 4) addresses any well that either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system, if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end use without treatment.

The Department or any person may perform all or any portion of a feasibility study. However, after the Department has issued the notice required in A.R.S. § 49-287.03, a person may perform work only under a written agreement with the Department. The rule provides a process for a person to obtain approval of a work plan or a report for all or any portion of a feasibility study.

A work plan must be developed and implemented for all or any portion of an FS. The work plan must demonstrate that the work performed will meet all the requirements set out in the rule. The feasibility study process is subject to all appropriate community involvement requirements.

FS requirements vary depending on whether the subject of the remediation is soils, landfills that do not or will not impact groundwater, or water. Remediation of soils and landfills that do not or will not impact groundwater does not require an analysis of alternative remedies. Presumptive remedies exist for most of these types of cleanups and the range of methods and technologies is usually limited. An FS report is prepared describing how the proposed remedy meets the soil remediation standards rule (A.A.C. R18-7-201 et. seq.), or similar standards for landfills. The report describes why the proposed remedy is appropriate considering available remedial methods, technologies, and the comparison criteria of risk, cost, practicability, and benefit.

For affected or threatened waters of the state, a reference remedy and at least 2 alternative remedies, each of which is capable of achieving remedial objectives, are developed. The reference remedy and each alternative remedy consists of a package, or combination, of remedial strategies and measures. A strategy is one of 6 listed general remediation approaches employed to address contamination. Measures are specific actions taken to address land or water uses, such as replacement of a well or well-head treatment. Measures taken to address contaminated or threatened wells must be identified in consultation with water providers or well owners to ensure the action taken meets their water use needs. Because remedial measures do not address the contamination itself, financial mechanisms, such as trust funds or bonds, may be required to provide for the continued cost of implementation. The reference remedy and any alternative remedy also may include contingent strategies or measures to address reasonable uncertainties regarding the achievement of remedial objectives or uncertain time frames in which remedial objectives will be achieved.

The reference remedy is developed using best professional judgement considering available remedial methods, technologies, and the comparison criteria of practicability, cost, risk, and benefit. The alternative remedies are developed for comparison with the reference remedy. At least 1 of the alternatives must contain a remedial strategy or combination of remedial strategies that is more aggressive than the reference remedy and at least 1 must contain a remedial strategy or combination of remedial strategies that is less aggressive than the reference remedy. A more aggressive strategy may require fewer remedial measures to achieve remedial objectives, a strategy that permanently achieves remedial objectives in a shorter period of time, or a strategy that is more certain in the long-term and requires fewer contingencies.

The reference remedy and the alternative remedies are then compared to each other based on practicability, cost, risk, and benefit. Specific requirements for the evaluation of each comparison criteria is provided. Based upon this comparison, a proposed remedy is developed. The proposed remedy may be the reference remedy, any of the other alternative remedies evaluated in the feasibility study, or a different combination of remedial strategies and remedial measures that were evaluated in the FS.

The process and reasons for selecting a proposed remedy are described in an FS report. The FS report describes how the reference remedy and alternative remedies were chosen, including a demonstration that they meet remedial objectives and an evaluation of their consistency with water management plans and general land use plans. It also includes a description of the reasons for selecting the proposed remedy, including: 1) how the proposed remedy meets the remedial objectives; and 2) how the comparison criteria were considered; and 3) how the proposed remedy meets the requirements of A.R.S. § 49-282.06.

This FS process is different than the process that was previously used in WQARF program and is still used by EPA at federal superfund sites. Previously, the Department evaluated numerous alternatives from no action to the most aggressive remedy for every site, regardless of the remedial objectives for the site. In addition, due to the difference in selecting remedial objectives, the proposed remedy did not always address uses that were impaired or threatened to be impaired in the time needed. This rule minimizes the development and evaluation of remedies which will not meet the remedial objectives and the preferred remedy must meet the remedial objectives.

R18-16-408. Proposed Remedial Action Plan

The proposed remedial action plan (PRAP) informs the public and potentially responsible parties of the proposed remedy. The PRAP describes the site, the results of the remedial investigation and the feasibility study, and the proposed remedy identified in the feasibility study and its estimated costs. In addition, the plan describes how the proposed remedy will meet each of the remedial objectives identified in the remedial investigation report, how accomplishment of the remedial objectives is to be measured, and any recharge, discharge, transportation and uses of remediated water. Notice of the PRAP and of the opportunity to comment is provided by the Department as required under the community involvement plan.

If the Department intends to seek recovery of costs and conduct a cost allocation proceeding, the PRAP is provided to each potentially responsible party and additional notice is provided to them regarding allocation methods, a preliminary list of potentially responsible parties, and of the opportunity to submit information regarding other potentially responsible parties. In addition, the notice to potentially responsible parties includes a statement of costs incurred by the Department prior to the date of the notice, projected future costs, and information regarding the opportunities to submit costs, object to costs, or respond to objections to costs.

The rule also provides a process for a person to prepare a proposed remedial action plan. Notice requirements vary depending on whether the Department will be seeking cost recovery.

R18-16-409. Remedial Action Costs Credit

This Section provides a process for parties to obtain credit against their share of potential liability at a site. This means that the Department can deduct the amount spent on remedial actions by responsible parties from their allocated share of the costs of the remedy if the costs are approved by the Department. However, this rule does not create a right of reimbursement from the WQARF fund for any costs incurred or to be incurred at a site if a party spent more on remedial actions than their allocated share of cost of the remedy.

The person seeking the credit must submit an itemized statements of costs incurred or be incurred for remedial actions undertaken at the site to the Department. They must also submit documentation that the costs are consistent with A.R.S. § 49-282.06 and this Article. If the remedial actions have not previously approved by the Department, the person must also request approval of the remedial actions under R18-16-413. The statements are made available for review and an opportunity is provided for the Department or any person to object to the costs. The person submitting the costs also has an opportunity to respond to the objections.

Any person who requests approval of costs must reimburse the Department for the total reasonable cost to the Department for performance of the review unless the Department waives all or a part of the reimbursement. An agreement to reimburse the Department must be submitted with itemized statement of costs. Costs that are reimbursed to the Department constitute remedial action costs that may be recovered from other responsible parties.

The Department evaluates the costs and objections and approves those costs determined to be in substantial compliance with the requirements under A.R.S. § 49-282.06. Credit is given only for recoverable costs. Credit given by the Department as part of a settlement for work performed is considered a cost incurred by the Department and is included as an approved cost in the record of decision. The Department prepares a list of the approved costs for inclusion as part of the total estimated costs of the remedy in the record of decision.

This process is the only way for a party to obtain approval of their remedial action costs. Departmental approval of remedial actions are not considered approval of the costs of the remedial actions.

R18-16-410. Record of Decision

After receiving comments on the proposed remedial action plan and any information from potentially responsible parties, a record of decision (ROD) is prepared. The ROD documents the cleanup chosen for the site. The rule provides a process for any person to prepare the ROD. However, only the Department may issue the record of decision. This Section also contains a list of elements required to be in all RODs.

Notice of the availability of the ROD is provided to each person who commented on the proposed remedial action plan and in accordance with the community involvement plan or requirements in R18-16-404. The ROD may be amended following notification and public comment.

R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy

The design and implementation stage includes the development of the engineered design of the selected remedy and implementation of the remedy through construction. The design and implementation of the remedy must conform with the remedial action plan as adopted in the record of decision.

If the remedy or an early response action includes well replacement or a provision for an alternative water supply, the Department or any person conducting the design must consult with the affected well owner or water provider. Specific design requirements are provided for well owners and water providers to ensure that their needs and legal requirements are met without causing significant alteration of their systems.

The design of any water treatment facilities as part of the remedy or an early response action must be approved by the Department before construction. The design must be based on an evaluation of potential treatment system failure that could affect public health and must incorporate safeguards including any site-specific engineering and operation controls necessary to assure protection of public health against such failure. Minimum safeguard requirements are listed.

A period of operation and maintenance of a remedy may follow the design and construction activities. If operation and maintenance are necessary to ensure the continued achievement of the remedial objectives, an operation and maintenance plan must be prepared and implemented.

The Department's approval of an operations and maintenance plan is required for each site where the remedy or an early response action involves treatment of water to remove contaminants of concern at the site. The community advisory board, if one has been established for the site, must be provided with the opportunity to comment on the operations and maintenance plan. Notice and public involvement are conducted in accordance with R18-16-403 or R18-16-404. Requirements for the operations and maintenance plan are listed.

Any person may implement all or any portion of a remedy with the Department's approval. A process is provided to obtain the Department's approval of the design for other portions of a remedy. However, a well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment, well replacement or alternative water supply component of the remedy or early response action which is designed to address its use. Well owners and water providers may want to have control over these activities to ensure that the users needs are being met and to ensure that all applicable laws governing drinking water are met. If the well owner or water provider elects to do so, they must enter into a written agreement with the appropriate person that will govern the terms of the construction, operation or construction and operation of the water treatment, well replacement or alternative water supply component of the remedy. This election does not alter the responsibility of the Department or any person under WQARF to fund all or a portion of the remedy or early response action.

R18-16-412. Innovative Technologies

This Section deals with approvals and incentives for innovative technologies used to characterize and clean up a site. The Department may approve the use of an innovative technology for a site if the technology has been demonstrated to be reasonably likely to achieve its objectives and meets the other criteria set forth in this Article. Innovative does not mean unproven. It means one that has been used in the field, but is not yet considered routinely for use.

If an innovative technology is approved as part of a remedy, the remedial action plan shall provide for a contingency in the event that the technology fails to meet its objectives. The Department may use monies from the WQARF fund to contract for outside review of the technology.

Because innovative technologies may reduce the cost of the cleanup or accelerate the cleanup schedule, the Department may provide incentives to encourage their use. The Department may use monies from the WQARF fund to finance some or all of the use of an innovative technology. In addition, the Department may agree to forego penalties or other sanctions regarding a delay caused by the use of innovative technologies under certain defined circumstances.

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

This Section describes the process for a person who performs work at a site or a portion of a site to obtain the Department's approval of the work for purposes of cost recovery. This approval is only for the work performed or to be performed, not for the costs of conducting that work. The only process to obtain the Department's approval of costs is through the process being proposed in R18-16-409. The Department's approval under this section is not required to preserve any right to recover remedial action costs under section A.R.S. § 49-285.

The Department is proposing 2 options regarding the scope of the approvals and seeks comments on both options. Option 1 limits approvals to remedial actions at WQARF registry sites. Option 2 provides for the universe of potential A.R.S. § 49-285(B) approvals including remedial actions at WQARF registry sites, remedial actions conducted in the voluntary remediation program, and remedial actions conducted at other sites.

After the rule is proposed, the Department will consider comments received on the proposed rule to determine if: 1) the process provides an adequate basis for the Department to make its approval decision; and 2) the rule is consistent with approvals given in other Departmental programs. If Option 1 is selected as a result of comments received, the Department will develop separate rules to address approval of remedial actions under A.R.S. § 49-285(B) for participants in the voluntary remediation program as well as other sites not on the WQARF registry.

Under both options, the person who is seeking approval for the remedial action must submit a written request to the Department. The request must include: 1) general information about the person making the request and the site; 2) a description of any known contamination at the site; 3) a description of remedial actions already performed and a work plan for any remedial action yet to be performed; 4) a proposal for public notice and comment on the request including a list of names, addresses, and a summary of persons whom the person making the request believes to be responsible parties; and 5) an agreement to grant access to the Department and to reimburse the Department for the total reasonable cost of the review of the remedial action, including costs of notices.

Under Option 1, the person making the request must demonstrate how the remedial action is or will comply with the requirements of this Article. Under Option 2, the person making the request must make a demonstration based on the type of site. If the site is on the registry, the person must demonstrate how the remedial action complied or will comply with the requirements of this Article. If the site is in the Voluntary Remediation Program, the person must demonstrate how the remedial action met or will meet the requirements of that program. If the site is not on the registry and is not eligible for the Voluntary Remediation Program, they must demonstrate how the remedial action complied or will comply with: 1) the community involvement activities consistent with R18-16-404 or community involvement activities conducted under other laws that are substantially similar; 2) site characterization and other investigations that are the substantial equivalent as required by this Article; and 3) remediation requirements that are in substantial compliance with this Article or are consistent with the factors in A.R.S. § 49-282.06.

The Department may approve, deny, request additional information, request modifications, or may condition its approval of a remedial action on modifications necessary to meet the applicable requirements of this Article. Before the Department approves the request, the Department must provide notice and an opportunity to comment on the request for approval.

R18-16-414. Determination of No Further Action

This Section identifies when no further action is necessary at a site or a portion of a site and describes the process to obtain the determination from the Department. The determination can be for soils, groundwater, or both soils and groundwater.

Any person may submit a written request to the Department for a determination that the site or a portion of the site requires no further action. The request must include information sufficient for the Department to make the determination including the specific hazardous substances for which the determination is sought and a geographical description of the site or portion of the site. A request for a no further action determination may only be made once per year.

The Department may request additional information from the requesting party before acting on the request. A.R.S. § 49-287.01(F) specifies time-frames for the Department to request the information and for the requesting party to provide the information, and provides other requirements regarding the additional information. In addition, to requesting information, the Department may conduct an investigation of the site or portion of the site. The requesting party must provide access to the site. After the Department determines that it has sufficient information to act on the request, notice of the request is published and an opportunity for comments is provided.

After considering the information and any public comments, the Department must make a decision on the request within 300 days after receiving the request. A determination will be made that no further action is necessary for soils if the soil remediation standards rule (18 A.A.C. 7, Article 2) has been met, including all conditions necessary for approval such as a demonstration of leachability to groundwater. A determination will be made that no further action is necessary for groundwater if no hazardous substances at the site or a portion of the site have impacted or will impact groundwater. A determination will be made that no further action is necessary for waters of the state if: 1) the site or portion of a site has been remediated under program other than WQARF; 2) the groundwater impacted by a release from the site does not and will not exceed water quality standards or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment; or 3) there is no present or reasonably foreseeable use of water that would be impaired by the release, as determined by information collected under R18-16-406. A determination of no further action for a site or a portion of a site is published in the registry.

A determination of no further action means that the Department cannot conduct or require further remedial actions for the specific hazardous substances within the area covered by the determination. The Department may reopen an investigation and take or require additional remedial action under certain circumstances listed in A.R.S. § 49-287.01(G). If the person seeking a no further action determination wishes to have the work approved for purposes of cost recovery, the person may submit a request for approval under R18-16-413.

R18-16-415. Soil Remediation

This Section provides the requirements for soil remediations conducted prior to the selection of a remedy under R18-16-410. This Section is necessary to allow soil cleanups, which can usually be conducted in a relatively short period of time, to occur at a site without waiting for the selection of the appropriate groundwater remedy.

A person conducting a soil remediation, under this Section, must meet the Soil Remediation Standards Rule (18 A.A.C. 7, Article 2) and must conduct community involvement activities in accordance with R18-7-404. The person must also submit a Notice of Remediation as required by R18-7-209 in the Soil Remediation Standards Rule and must provide a written report providing site characterization information. If the Department has issued a notice under A.R.S. § 49-287.03, the Notice of Remediation must be submitted to the Department 15 days before conducting the remediation or, if the remediation is already underway, within 15 days after the Department provides the notice.

A person may apply to the Department for approval of soil remediation work and the Department shall approve the work if it meets the requirements of this Section. Submission of the Notice of Remediation and the written report does not constitute an approval.

The process described in this Section should not be confused with the early response actions described in R18-16-405. Early response actions are taken prior to the selection of a remedy, but are not final remedial actions. An early response action may be incorporated into a final remedy or may be modified or discontinued as a result of the remedy selection process. Soil remediations conducted under this Section may be incorporated into a final remedy, but are, themselves, final remedial actions.

R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

This Section establishes a process to obtain a determination from the Department that the work required by a settlement agreement has been completed or that the remedial objectives for the site have been satisfied and will continue to be satisfied. A party to a settlement agreement may request a determination by describing how the requirements of the settlement agreement have been satisfied.

Any person may request that the Department determine remedial objectives for the site have been satisfied and will continue to be satisfied. The request must describe how the remedial objectives have been satisfied and will continue to be satisfied, including information regarding any financial mechanisms in place to ensure the continued satisfaction of the remedial objectives. The Department may request additional information to consider the request. Notice of the request is provided by the Department with an opportunity for public comment.

A determination that remedial objectives for the site have been satisfied and will continue to be satisfied means that the Department cannot undertake or require additional remedial actions at the site or portion of a site, other than the actions that must continue to satisfy the remedial objectives. The Department may reopen an investigation and take or require additional remedial action under certain listed circumstances.

This determination is different from a determination of no further action. A determination of no further action means that no further action is needed a site or portion of a site at all.

R18-16-501. through R18-16-505. Interim Remedial Actions

Among the revisions to the WQARF statute was a new mandate that final remedies address all wells threatened or contaminated due to the release of hazardous substances at or from a site on the registry. Given limited funding and an emphasis on implementation of final remedies in order of priority, there will be WQARF sites where final remedies will not be chosen for many years. The Legislature recognized that there might on occasion be a need for earlier action to address wells and provided for interim remedial actions in A.R.S. §49-282.03 as a mechanism to do so.

While early response actions described in R18-16-405 also deal with remedial actions conducted prior to the selection of a remedy at a site, decisions to approve or perform those actions are only made once sufficient information is available to characterize the site and determine that the early response action is necessary. Interim remedial actions are primarily intended to provide rapid solutions to water supply problems resulting from WQARF contamination where there is insufficient information about the site to determine whether an early response action would be appropriate. In exchange for this very early approval, the applicant must agree to reimburse the WQARF fund if the department determines based on later information that the action was unnecessary or the applicant is later determined to be a responsible party. This proposed rule governs approvals of these actions.

R18-16-501. Definitions

Terms with specific application to the interim remedial action rules are found in this Section.

R-18-16-502. Eligibility

A well may be considered for funding or performance of interim remedial action if a remedy has not been selected and it meets 2 conditions. First, the well must currently supply water for municipal, domestic, irrigation or agricultural use or must be currently part of a public water system. Second, the water must be or will be unfit for use in the current or reasonably foreseeable future without treatment due to the release of hazardous substances from a site on the registry.

Only costs directly related to an interim remedial action approved by the Department are eligible for funding from a grant from the fund. Costs incurred by any person prior to the submittal of a request under R18-16-503 are not reimbursable by the Department. Costs incurred by any person after the submittal of a request under R18-16-503 are eligible for funding if the request contained all of the required information and the Department subsequently approves the interim remedial action.

R18-16-503. Request for Interim Remedial Action

Any person may request that the Department perform or provide a grant for an interim remedial action. The request must be in writing and include statements describing the eligibility of the well and the reasons why interim remedial action is appropriate. The request must also include additional information listed in the rule if that information is in the possession of or readily available to the person making the request. Although the rule does not require the person requesting an interim remedial action to collect additional information, the request is more to be likely approved by the Department if the person making the request can demonstrate a need for the interim remedial action. If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

R18-16-504. Review and Approval of Requests for Interim Remedial Action

This Section sets out the factors that the Department will consider in its decision to approve or deny requests for interim remedial action. The Department may gather additional information before making a decision. The Department may also decide to initiate an early response action in lieu of granting the request for interim remedial action.

An interim remedial action must be the minimum action necessary to address the loss or reduction of water available to well users during the period before selection and implementation of a final remedy at a site. This does not mean that the Department must approve the remedial action which does the least to address the loss or reduction of available water or must select a temporary solution regardless of cost. The Department may approve an interim remedial action that provides a permanent solution to the water supply problem if a temporary solution is unavailable, more expensive, or incapable of fully addressing the problem during the period before a final remedy is implemented for a site.

The Department shall condition approval of the request for interim remedial action upon execution by the requesting party of a reimbursement agreement under R18-16-505 and an agreement to provide the Department access to the property. The conditions for reimbursement are described in the next Section. The access agreement may be needed to conduct or oversee the interim remedial action or to gather information necessary to evaluate the interim remedial action.

The Department's approval or denial of any interim remedial action is completely discretionary and is not appealable. Costs of the action are either recoverable from the responsible parties, if the action was necessary and the applicant was not a responsible party, or reimbursable by the applicant, if the action was unnecessary or the applicant was a responsible party. An applicant who has reimbursed the WQARF fund as a result of a determination that they are a responsible party may submit the costs of the interim remedial action for credit against liability, under R18-16-409, or bring an action for recovery of costs, under A.R.S.§ 49-287.07.

R18-16-505. Reimbursement

The person requesting the interim remedial action must reimburse the WQARF fund for all costs incurred in taking the interim remedial action if the Department determines, based on later information in the Record of Decision, that the action was unnecessary based on the criteria in A.R.S. § 282.06 and the remedy selection rules. For example, the interim remedial action would be determined to be unnecessary if the well was never threatened or contaminated by a release at a WQARF registry site. The applicant must also agree to reimburse the WQARF fund if the applicant is later determined to be a party responsible for the release of hazardous substances that threatened or contaminated the well.

The Department must provide the person requesting the interim remedial action with a reimbursement agreement that clearly states the conditions under which the person requesting the interim remedial action must reimburse the fund. The Department may require that the person requesting the interim remedial action provide financial assurance for the obligation to reimburse the fund.

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 to 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. This rule will not diminish a previous grant of authority of a political subdivision of this state.

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

Not applicable. This rulemaking is exempt from the provisions of Title 42, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B)

10. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable

11. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department will hold oral proceedings as follows:

In Tucson on Wednesday, September 20, 2000, at 4:00 p.m. in Room 444, Arizona Department of Environmental Quality, Southern Regional Office, 400 W. Congress, Tucson, Arizona.

In Phoenix on Thursday, September 21, 2000, at 4:00 p.m. in Room 1709, Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, Arizona.

Written comments on the proposed rules will be accepted through October 23, 2000, by Don Richey, M0501, Arizona Department Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, Arizona.85012

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

None

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

The Eligibility and Evaluation Site Scoring Model as established by the Arizona Department of Environmental Quality on October 3, 1996, is incorporated by reference in R18-16-202. This incorporation by reference contains no further editions or amendments of the Model. Copies of the Model may be obtained by from the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY-WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

Sections

ARTICLE 3. PUBLIC INFORMATION

Sections

ARTICLE 4. REMEDY SELECTION

Sections

ARTICLE 5. INTERIM REMEDIAL ACTIONS

Sections

ARTICLE 6. RESERVED

ARTICLE 7. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

R-18-16-201. Preliminary Investigations

A. Based on information of a possible release or threatened release of a hazardous substance, the Department may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to public health, welfare, and the environment in order to score the site and include it on the registry.

B. Before conducting a preliminary investigation, the Department shall consider whether the possible release or threatened release of a hazardous substance:

1. Is being addressed by or should be referred to another applicable program administered by the Department or another federal, state or local governmental agency with jurisdiction over the matter; or
2. Is being adequately addressed through voluntary action.

C. At any time before or during a preliminary investigation, if the Department determines that a possible release or threatened release of a hazardous substance is being adequately addressed by another program or agency or voluntarily, the Department may suspend or terminate a preliminary investigation under this Section.

D. A preliminary investigation is a screening level investigation based primarily upon existing information. The Department may collect existing information regarding a release or threatened release of a hazardous substance from any appropriate source, including Department programs, local governments, water providers, complainants, and owners and operators of facilities where the release may have occurred. When existing information, such as soil or water sampling data, cannot be validated, or when sufficient data does not exist, additional data may be collected as necessary.

E. The Department shall terminate the preliminary investigation prior to completion if:
1. The Department determines that the release of a hazardous substance has not occurred and is not likely to occur; or
2. The Department determines:
   a. Based on valid sampling data, that soil contaminated by a release of a hazardous substance meets the remediation standards established under A.R.S. § 49-152 and Chapter 7, Article 2 of this Title; and
   b. Based on valid sampling data, that the release or a threatened release of a hazardous substance does not and will not result in an exceedance of water quality standards, or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.

F. If the Department does not terminate or suspend a preliminary investigation under subsections (C) or (E), the Department shall proceed with the preliminary investigation by collecting any additional information necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202. The Department shall notify the affected water provider and affected local governments of the initiation of the preliminary investigation. A work plan shall be developed and implemented to collect additional information and shall contain the following information:
1. The location and description of the potential site, including a map.
2. A list of hazardous substances known or suspected to have been released.
3. A proposal to search available records to determine:
   a. The historic and current uses of facilities within the potential site.
   b. The physical and environmental conditions within the potential site.
   c. Any previous environmental investigations or regulatory involvement by federal, state, or local authorities.
4. A proposal to obtain information from any affected water providers.

G. If the Department determines that additional information is necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202, the work plan shall be supplemented with the following information:
1. A conceptual site model to determine:
   a. Potential sources of contamination.
   b. Potential exposure pathways.
   c. Potential human, aquatic, and terrestrial receptors.
2. If sampling is necessary, the work plan shall contain the following information:
   a. The objectives of the sampling.
   b. A quality assurance project plan.
   c. A sampling and analysis plan to verify whether a suspected release has occurred, and if the release has occurred, to adequately characterize the release to score the site using the eligibility and evaluation site scoring model.
   d. A health and safety plan consistent with 29 CFR. 1910.120.

H. Following completion of the preliminary investigation, a report shall be prepared. The report shall contain the following information:
1. Information gathered and reviewed regarding the potential site, including a summary of the information with references to relevant reports.
2. If applicable, the conceptual site model.
3. If sampling was conducted:
   a. A description of the sampling activities.
   b. Analytical results including a summary of the results with references to relevant reports.
   c. A map of sample locations.
   d. Data quality information including a summary with references to relevant reports.

I. The Department shall approve the report prepared under subsection (H) if it contains sufficient valid information to score the site using the eligibility and evaluation site scoring model or to make a determination that no further investigation or action is needed.

J. Based on a review of the report prepared under subsection (H), the Department shall:
1. Determine that no further investigation or action is needed using the criteria in subsection (E); or
2. Prepare a draft site registry report under A.R.S. § 49-287.01(B).

K. The Department may allow any person to conduct any part of the preliminary investigation by written agreement. A person requesting to conduct all or any part of a preliminary investigation shall submit a written request to the Department that includes the following information:
1. The name and address of the person making the request and the nature of the relationship of the person to the site.
2. The portion of the preliminary investigation the person wants to conduct.
3. A work plan to conduct the preliminary investigation in accordance with subsection (F).
4. A schedule for completion of the activities specified in the work plan.
5. If requested by the Department, information regarding the financial capability of the person to conduct the work plan.

R18-16-202. Site Scoring

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996. The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference. This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809, and the Office of the Secretary of State. A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809.

ARTICLE 3. PUBLIC INFORMATION

R18-16-301. Public Notification and Opportunities for Public Comment

A. If notification by publication in a newspaper is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the frequency of the notification, the Department or person publishing notice shall publish notice, at a minimum, 1 day in a daily newspaper of general circulation in the county where the site is located or, if other than a daily newspaper, 2 days in a newspaper of general circulation in the county where the site is located.

B. If notification by direct mail is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the form of the mailing, the Department or person providing the notification shall provide the notification by bulk or first-class mailing, unless the bulk or first-class mailing would cause unreasonable delay in receiving time-sensitive materials, in which case the Department or person shall provide the notification in an manner sufficient to timely reach those who may be impacted.

C. If an opportunity for public comment is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan under § A.R.S. 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the duration during which the public may comment, the Department or person providing the opportunity for public comment shall provide at least 30 calendar days for public comment.

D. The requirements of this Section shall not prevent or delay a timely remedial action that the Director has determined is necessary to address the release or threat of release of a hazardous substance that may present an immediate danger to public health, welfare, or the environment.

R18-16-302. Location of Information Repositories

Public information repositories required or authorized under A.R.S. Title 49, Chapter 2, Article 5 shall be located in at least 1 of the following areas:

A. An office of the Department.

B. A public or semi-public facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.

C. A private facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.

ARTICLE 4. REMEDY SELECTION

R18-16-401. Definitions

The following definitions shall apply in this Article, unless the context otherwise requires:

"Alternative remedy" means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Comparison criteria" means risk, cost, benefit, and practicability, as those terms are described in R18-16-407(H)(3).

"Community involvement area" has the same meaning as defined in A.R.S. § 49-281(3).

"Contaminant of concern" means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

"Nonrecoverable costs" has the same meaning as in A.R.S. § 49-281(9).

"Proposed remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

"Reference remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Remedial measure" means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve 1 or more of the remedial objectives. For example, remedial measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

"Remedial objective" means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

Protecting against the loss or impairment of identified uses of land and waters of the state;

Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;

Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and

The projected duration of the action needed to protect or provide for the use.

"Remedial strategy" means 1 or a combination of the following 6 general approaches which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives: plume remediation, physical containment, controlled migration, source control, monitoring, or no action.

"Site-specific human health risk assessment" means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains 4 components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

"Site registry" or "registry" means the registry of scored sites maintained by the Department under A.R.S. § 49-287.01(D).

"Water provider" means the owner or operator of a public water system or an agricultural improvement district.

R18-16-402. Applicability

A. This Article applies to sites on the site registry and as otherwise made applicable by law.

B. This Article applies only to remedial actions as defined in A.R.S. § 49-281. Nothing in this Article is intended to require a remedial action, including a remedy or early response action, to provide for or cover any costs that a property owner, a well owner, or water provider would incur if the release of hazardous substances that is the subject of the remedial action had not affected the property or water supply of the property owner, well owner or water provider. A property owner, well owner or water provider shall not be required to provide reimbursement for coincidental benefits resulting from a remedial action otherwise necessary and appropriate to address a release or threatened release of a hazardous substance. Nothing in this Article shall be interpreted to require remedial action to address a land use that is impaired by properties of materials located on or under that land other than the current or potential exposure to hazardous substances contained in that material.

C. For purposes of this Section, "transition site" means a site that is on the site registry where some remedial action has occurred prior to the effective date of this Article.

D. Any person who has performed any remedial action prior to the effective date of this Article at a transition site may submit a written request for the Department's approval of the remedial action under R18-16-413 if the remedial action has not been approved by the Department prior to the effective date of this Article. The request shall include a description of the remedial action, a demonstration that the work is reasonable and necessary and meets the applicable purposes of this Article, and copies of all documentation of the remedial action for which approval is requested. The Department shall approve:

1. Remedial investigation work performed prior to the effective date of this Article if the work meets the applicable purposes stated in R18-16-406(A),
2. Feasibility study work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-407(A), and
3. Early response action work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-405(A).

E. Remedial action work approved by the Department prior to the effective date of this Article shall be deemed approved for purposes of this Article. Remedial action work conducted under a work plan approved by the Department prior to the effective date of this Article shall be evaluated for approval by the Department under the terms of the approved work plan.

F. Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are selected under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a final feasibility study report under R18-16-407(I).

G. Notwithstanding anything to the contrary in this Article, this Article shall not apply to certain remedial action plans, written agreements, and court decrees or judgements approved, made or entered prior to the effective date of this Article as follows:

1. If prior to the effective date of this Article the Department has approved a remedial action plan or entered into a written agreement for work under Title 49, Chapter 2, Article 5, Arizona Revised Statutes, that includes the implementation of a remedy or the substantial equivalent of a remedy for a site or a portion of a site, the terms and conditions of the Department's approval or agreement, and not this Article, shall govern work within the scope of the approved remedial action plan or agreement and any modification thereto.
2. The terms and conditions of any court decree or judgement entered prior to the effective date of this Article, and not this Article, shall govern the work that is within the scope of the court decree and any modification thereto. If the work required by the court decree or judgement does not include the implementation of a remedy or the substantial equivalent of a remedy at a site or a portion of a site, then the selection of a remedy for the site or portion of the site shall be under this Article, and this Article may require additional remedial actions before a remedy can be selected, but a party to the consent decree shall not be required to conduct or pay for the additional remedial actions if the liability of the party is resolved by the court decree.
3. If an approval, agreement, court decree or judgement subject to subsection (1) or (2) addresses only a portion of a site on the site registry and includes the implementation of a remedy or the substantial equivalent of a remedy for that portion of the site, then the work covered by the approval, agreement or decree shall be included as part of the remedial action plan and the record of decision selecting a remedy under this Article for the remainder of the site if agreed to by the parties to the approval, agreement, court decree or judgement.

R18-16-403. Scope of Work, Fact Sheet, Community Involvement Plan Outline, Notification of Availability, and Community Involvement Plan

A. Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare a scope of work for the remedial investigation and feasibility study, a fact sheet, and an outline of a community involvement plan for the site before the Department conducts a remedial investigation and feasibility study under A.R.S. § 49-287.03.

B. The scope of work for a remedial investigation shall generally describe the extent of the remedial investigation based upon site-specific conditions and information obtained from the preliminary investigation. The scope of work for a remedial investigation shall provide for the preparation of the following, as applicable:

1. Characterization of soil and vadose zone contamination, including identification of sources;
2. Characterization of groundwater contamination, including identification of sources;
3. Characterization of surface water contamination, including identification of sources;
4. Identification of actual and potential human and ecological receptors;
5. Identification of current and reasonably foreseeable uses of waters of the state that have been or are threatened to be impaired;
6. Identification of current and reasonably foreseeable land uses that have been or are threatened to be impaired;
7. Assessment of current risk to public health;
8. Assessment of ecological risk;

C. The scope of work for a feasibility study shall generally describe the process for conducting the feasibility study as prescribed in R18-16-407, and may specify additional work to be performed taking into account the information gathered in the remedial investigation.

D. The fact sheet shall include, at a minimum, all of the following:

1. A brief history of the site;
2. A general description of the results of the preliminary investigation, including the known extent of contamination;
3. The site's score determined under R18-16-202;
4. General information regarding the potential risk of and routes of exposure to the contaminants at the site; and
5. The Department personnel to be contacted for further information regarding the site.

E. The outline of a community involvement plan shall generally describe the activities which will be included in the community involvement plan as required by A.R.S. § 49-289.03 and subsection (I)(1).

F. The Department shall provide written notice of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan as required under A.R.S. § 49-287.03(C) to each person who, according to information available to the Department, may be liable for remedial actions. The notice shall state that any person, by written agreement with the Department may develop and implement a remedial investigation work plan or a feasibility study work plan for a site or a portion of a site under R18-16-406 or R18-16-407. The notice shall be provided in accordance with R-18-16-301.

G. The Department shall publish the newspaper notice required by A.R.S. § 49-287.03(C) and shall provide written notice by mail or other delivery to residents, owners or operators of facilities being investigated, commercial occupants, water providers and owners of known wells within the community involvement area of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan. These notices shall comply with R-18-16-301. These notices shall also provide an opportunity for a public meeting. If the remedial investigation is being performed within 1 year of the scoring of the site under A.R.S. § 49-287.01, the notices required by this may be combined with the notice required by A.R.S. § 49-289.02.

H. Before implementing a work plan for a remedial investigation or feasibility study, the Department shall prepare a responsiveness summary addressing any public comments on the scope of work as required under A.R.S. § 49-287.03(D).

I. Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare and implement the community involvement plan prior to initiating or approving a work plan under A.R.S. § 49-287.03 to implement the remedial investigation or a feasibility study. The community involvement plan shall:

1. Be updated annually and shall provide information, if applicable, regarding the establishment of a selection committee and community advisory board. The plan also shall provide for the following required activities:
   a. Notification to interested persons of the availability of the work plan developed under R18-16-406(B) to implement the remedial investigation and the solicitation of information from interested persons under R18-16-406(D) regarding the current and reasonably foreseeable uses of the land and waters of the state.
   b. Notice to the public of the opportunity to comment on the draft remedial investigation report developed under R18-16-406(F) and public meetings to establish remedial objectives under R18-16-406(I).
   c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final report prepared by the Department under R18-16-406(J).
   d. Notification to interested persons of the availability of the work plan developed under R18-16-407(B) to implement the feasibility study.
   e. Public notice and notification to interested persons of the availability of the proposed remedial action plan prepared under R18-16-408(A) and of the opportunity to comment on the proposed remedial action plan.
   f. Public notice of the availability of the record of decision and responsiveness summary prepared by the Department under R18-16-410.
   g. Public notice and notification to interested persons of availability of and opportunity to comment on the operation and maintenance plan prepared under R18-16-411(E).
   h. Public notice and notification to interested persons of a request for approval of work under R18-16-413.
   i. Newsletters to be distributed to residents and interested persons regarding the status of the remedial action and other pertinent information.
   j. Notice within the community involvement area regarding public meetings to provide and discuss information regarding sites on the registry.
   k. The location of and types of information contained in a public document repository.
   l. Public notice and notification to interested persons of a request for a waiver under A.R.S. § 49-290.
   m. Public notice for field work conducted to remove contaminants of concern or that may result in noise, light, odor, dust or other adverse impacts off of the site.
   n. Public notice of a determination under R18-16-416(B).
   o. Public notice of community advisory board meetings.
2. Describe the following procedures for conducting each of the required activities listed in subsection (I)(1)
   a. Methods of notification.
   b. Identification of a spokesperson to inform the public and act as a liaison.
   c. The means to identify interested persons to receive notices.
   d. Coordination of community involvement activities with the Department for community involvement conducted under R18-16-404(A).
3. In determining how the community involvement activities are to be implemented, the Department shall consider the following:
   a. A community profile.
   b. Assessment of community concerns and issues through community interviews, public comment, and other means.
   c. Public health and environmental impacts.

J. Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.

R18-16-404. Community Involvement Requirements for Work Not Performed by the Department.

A. A person who conducts remedial action work at a site on the registry shall conduct community involvement activity at the site in accordance with the community involvement plan prepared by the Department under R18-16-403(I) or adopted by the Department under subsection (B). If notice has been provided by the Department under A.R.S. § 49-287.03, a person may conduct community involvement activities to satisfy the requirements of the community involvement plan only by written agreement with the Department. A person who gives notice to the Department under R18-16-415(A) may conduct community involvement activities in accordance with the community involvement plan without a written agreement. If a community involvement plan has not been prepared or adopted by the Department, a person conducting remedial action work at a site shall conduct community involvement activities in accordance with subsection (C).

B. If notice has not been provided by the Department under A.R.S. § 49-287.03, a person who proposes to conduct remedial action work at a site on the registry may prepare a community involvement plan for the site in accordance with the requirements of R18-16-403(I) for submittal to the Department for approval and adoption as the community involvement plan for the site. The Department may approve and adopt a community involvement plan submitted under R18-16-413 that complies with R18-16-403(I) as the community involvement plan for the site. If a notice has been issued by the Department under to A.R.S. § 49-287.03, a person may prepare a community involvement plan for the site only by written agreement with the Department.

C. If the Department has not prepared or adopted a community involvement plan under subsection (B) or under R18-16-403(I), a person conducting a remedial action at a site on the registry shall conduct community involvement activities appropriate to the scope and schedule of the work performed including, as applicable, all of the following:

1. For field work conducted to remove contaminants of concern or that may result in noise, light, odor, dust and other adverse impacts off of the site, provide general public notice prior to conducting the work. The general public notice may be in the form of signage, direct mailing, door hangings, news articles, or any other form of notice that is distributed in an manner sufficient to reach those who may be impacted. The general public notice shall provide a general description of the field work and anticipated adverse impacts, and the name and telephone number of a person who may be contacted for information regarding the field work.
2. Prior to conducting a remedial action that will take more than 180 calendar days to complete, provide general notice regarding the nature of the action and establish a document repository accessible to the public where information regarding the site and the remedial action is available for review. The general notice may be in the form of fact sheets, newsletters, or news articles distributed by direct mailings, door hangings or any other method of distribution sufficient to reach or be accessible to local government agencies, persons within the community involvement area for the site and other persons who have requested information regarding the site. Notice to affected water providers shall be by direct mail. The general notice shall describe the nature and progress of the remedial action, the location of the repository, and provide the name and telephone number of a person who may be contacted for information regarding the remedial action. The document repository shall be accessible during normal business hours and shall contain all documents and information required to be prepared or maintained by this Article and any other documents and information deemed appropriate by the person conducting the work. An updated general notice shall be provided at least once per year while the remedial action is being conducted.
3. Before implementing a work plan prepared under R18-16-406(B) for all or a portion of a remedial investigation or performing all or any part of a feasibility study, notify the Department in writing of the name and address of the working party and a general description of the work being performed. This notice is for the Department's information only and receipt of the notice shall not constitute approval of the work plan. A person seeking approval of a work plan by the Department shall proceed under R18-16-413.
4. Comply with the process for establishing remedial objectives under R18-16-406(F) through R18-16-406(J).
5. Provide notice of the availability of the proposed remedial action plan prepared under R18-16-408 and convene a public meeting prior to the close of the public comment period to provide information concerning the proposed remedial action plan.

D. Notices provided under this Section shall be provided to the Department and shall be given by at least 1 other method, such as posting in a conspicuous location accessible to the public.

E. Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.

R18-16-405. Early Response Actions

A. The Department or any person may perform an early response action. An early response action is a remedial action initiated prior to selection of a remedy at a site under R18-16-410 where the remedial action is necessary to:

1. Address current risk to public health, welfare, and the environment;
2. Protect or provide a supply of water;

3. Address sources of contamination; or
4. Control or contain contamination where such actions are expected to reduce the scope or cost of the remedy needed at the site.

B. The method or technology used to implement the early response action shall be selected based upon best professional judgment considering the following information:
1. Information characterizing the site;
2. Best available scientific information concerning available remedial methods and technologies; and
3. Available information regarding whether the technology or method could increase the scope or costs of possible remedies for the site or result in increased risk to public health or welfare or the environment.

C. A written rationale shall be prepared for each early response action explaining how the early response action will achieve the applicable goals in subsection (A) and how the early response action is consistent with A.R.S. § 49-282.06(A). The written rationale shall identify the information used to select the early response action as provided in subsection (B), how that information was considered, and how the selected method or technology was selected. Performance of a remedial investigation or feasibility study shall not be required to select or conduct an early response action.

D. A work plan shall be prepared for each early response action. Each work plan shall contain:
1. A description of work to be done, a description of known site conditions, and a plan for conducting the work;
2. A description of community involvement activities for the early response action under R18-16-403 or R18-16-404; and
3. A schedule.

E. If immediate action is necessary to address a current risk to public health or the environment, to protect a source of water, or to provide a supply of water, the work plan and written rationale may be prepared and the community involvement activities may be conducted after commencement of the early response action.

F. Approval of an early response action under this Section does not constitute approval of the remedy for the site. The remedy for a site where an early response action is conducted shall be selected in accordance with R18-16-406 through R18-16-410. An early response action may be addressed, incorporated and modified as needed in the remedy selected under R18-16-410.

G. A person conducting an early response action at a site or portion of a site covered by a notice issued by the Department under A.R.S. § 49-287.03 shall notify the Department, in writing, of the early response action. The notice shall contain a brief description of the early response action. The notice shall be given at least 15 calendar days before the early response action is commenced, or as soon thereafter as practicable depending upon the exigencies of the circumstances. If the early response action has commenced before the Department issues notice under A.R.S. § 49-287.03, written notice of the early response action shall be given within 15 calendar days after the Department's notice is given. After notice of a proposed remedial action plan has been given under R18-16-408(C), an early response action may be initiated only after the Department has approved the early response action.

H. Any person may submit a request to the Department under R18-16-413 to approve an early response action or a work plan for an early response action. The request shall include the work plan and the written rationale for the early response action. The Department shall approve the work plan or early response action if it complies with the following:
1. The requirements of this Section;
2. Community involvement activities under R18-16-403 or R18-16-404;
3. The work plan provides for modifications to address unknown or changed conditions; and
4. Any applicable requirements of R18-16-411 and R18-16-412.

I. In considering whether an early response action is necessary to protect or provide a supply of water because a well is threatened by contamination, a well located in the area within 1/4 mile upgradient, 1/2 mile cross-gradient and 1 mile downgradient of the areal extent of contamination at the site shall be presumed to be threatened by the contamination. This presumption may be rebutted by evidence of local hydrology, geology, or geochemistry or by available information regarding the capture zone or rate of flow. In considering whether wells a greater distance from the areal extent of contamination are threatened, any evidence regarding local hydrology, geology, geochemistry, zone of capture, or rate of flow may be considered.

R18-16-406. Remedial Investigations

A. The remedial investigation for a site or portion of a site shall:
1. Establish the nature and extent of contaminated soil and waters of the state and the sources thereof,
2. Identify current and potential impacts to public health, welfare, and the environment,
3. Identify current and reasonably foreseeable uses of land and waters of the state, and
4. Obtain and evaluate any other information necessary for identification and comparison of alternative remedial actions.

B. The Department or any person may perform all or any portion of a remedial investigation, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. A work plan shall be developed and implemented for all or any portion of a remedial investigation for a site or a portion of the site. The work plan shall demonstrate that the work performed will meet the requirements of subsections (C) and (D) and that the work will be performed in accordance with guidance documents issued by the Department or standards or other guidance documents that are commonly accepted in the scientific community. Standards or guidance documents are considered to be commonly accepted in the scientific community if they are published in peer-reviewed literature such as a professional journal or publication of standards of general circulation, and if there is general consensus within the scientific community about the guidance document or standard. A work plan may be modified as work proceeds to address unknown or changed conditions or access problems. Each work plan shall contain the following elements:

1. A description of the work, including any community involvement activities undertaken to satisfy any applicable requirements of R18-16-403 or R18-16-404, a statement of justification for the work, and a plan for conducting the work;
2. A quality assurance project plan;
3. A site location map;
4. A schedule;
5. A health and safety plan consistent with 29 CFR 1910.120; and
6. A sampling and analysis plan.

C. The remedial investigation may be conducted in 1 or more phases to focus sampling efforts and increase the efficiency of the investigation. Field investigations may be conducted in one or more phases as appropriate to assess the following factors:

1. Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology;
2. The extent and general characteristics of the hazardous substances released, including physical state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility;
3. The extent to which the source of the release can be adequately identified and characterized;
4. Current and reasonably foreseeable exposure routes for the hazardous substances released, such as inhalation, ingestion and dermal;
5. Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedies; and
6. Current and reasonably foreseeable impacts to aquatic and terrestrial biota.

D. The remedial investigation shall include the collection of information regarding current and reasonably foreseeable uses of land or of waters of the state that have been or are threatened to be impacted by the release, and projected time-frames for future changes in those uses. Reasonably foreseeable uses of land are those uses of land likely to occur at the site within a reasonable time period. Reasonably foreseeable uses of water are those likely to occur within 100 years unless a longer time period is shown to be reasonable based on site-specific circumstances. Information may be solicited from any interested person including any known well owner. Information collected shall include:

1. Information regarding current and reasonably foreseeable uses of water for each aquifer that is impacted or threatened to be impacted by the release, considering any hydraulic connection between aquifers. The information shall include the locations and uses of existing wells, including all wells already impaired due to contamination, the locations and uses, if known, of any planned wells, and any written water management plans used by water providers whose water supplies may be impacted by the release. This information shall be collected in consultation with water providers.
2. Information regarding current and reasonably foreseeable uses of water for each segment of surface water impacted or threatened to be impacted by the release. This information shall be collected in consultation with water providers.
3. Information regarding current and reasonably foreseeable uses of land impacted or threatened to be impacted by the release within the community involvement area. General land use information shall include the current type of use, density, character, and governmental jurisdictions. Future land use changes shall be considered using population projections, growth, plans for future development and local land use plans. This information shall be collected in consultation with local governments with land use jurisdiction. The information collected shall also include specific land uses and property ownership for properties where the land use is impacted or threatened to be impacted by the release.

E. Using the data developed during the field investigation and information collected concerning uses of land and of waters of the state, a site-specific risk evaluation may be conducted to characterize the current risks to public health and the environment from contaminants of concern.

F. Following the collection of sufficient data to characterize the contamination and collection of sufficient information regarding uses of land and of waters of the state, a draft remedial investigation report shall be prepared and submitted to the Department. The draft remedial investigation report shall include the results of any risk evaluation conducted under subsection (E). The draft remedial investigation report may consist of a summary of the data and information collected with references to the supporting documentation and the location of the public repository where those documents may be reviewed. Copies of the draft remedial investigation report prepared by or approved for release by the Department shall be provided to the community advisory board, local government agencies, affected water providers, and the Department of Water Resources. Copies of the draft remedial investigation report also shall be made available to the community under the community involvement plan. Public notice shall be given of the opportunity to comment on the draft remedial investigation report. This notice may be combined with the notice given under subsection (I)(1).

G. For remedial objectives used to select a soil remediation remedy, the landowner has the right to identify the type of land use in accordance with A.R.S. § 49-152 and Chapter 7, Article 2 of this Title. If the remedy for the site or portion of a site will address landfill or other non-soil materials other than waters of the state, the landowner may establish the current and reasonably foreseeable uses of its land provided that the remedial objectives for the site are not required to address land uses impaired by properties of materials located on or under the land other than the current or potential exposure to the hazardous substances contained in that material.

H. If the remedy for the site or a portion of the site will not address waters of the state, a final remedial investigation report may be prepared containing the results of the site characterization and a listing of remedial objectives. The remedial objectives shall be based on the current and reasonably foreseeable uses of the property in accordance with subsection (G) and stated in accordance with subsection (I)(4). The report shall be accompanied by responsiveness summaries regarding comments, issues, and concerns regarding the draft remedial investigation report under subsection (F). The report may be submitted to the Department for review under R18-16-413. If the Department approves the report, the procedures in subsections (I) and (J) do not apply, and the approved remedial objectives report may be used to select a remedy under R18-16-407(C) or R18-16-407(D). Notice of the availability of the final remedial investigation report shall be provided with the notice under R18-16-408(C).

I. Except as provided in subsection (H), the Department shall hold 1 or more public meetings to obtain information for purposes of establishing remedial objectives for the site.

1. After the draft remedial investigation report is made available, the Department shall provide notice of a public meeting concerning remedial objectives for the site. If a community advisory board has been formed for the site, public meeting arrangements shall be coordinated with the community advisory board. The initial public meeting shall be held not less than 45 calendar days and not more than 90 calendar days after release of the draft remedial investigation report, unless the Department sets a different date for good cause.
2. At the public meeting, the Department shall solicit and consider proposed remedial objectives for the site. The Department also may receive and consider written information regarding proposed remedial objectives.
3. Remedial objectives shall be generally consistent with the water management plans of all water providers whose water supplies are or may be impaired by the contamination and with the general land use plan established by the local land use jurisdiction.
4. The Department shall prepare a report of the proposed remedial objectives for the site that shall list the current and reasonably foreseeable uses of land and the current and reasonably foreseeable beneficial uses of waters of the state. These uses shall be identified based upon information provided during the public meeting and any other information received. The report shall state the remedial objectives for each listed use in the following terms:
    a. Protecting against the loss or impairment of each listed use that is threatened to be lost or impaired as a result of a release of a hazardous substance;
    b. Restoring, replacing or otherwise providing for each listed use to the extent that it has been or will be lost or impaired as a result of a release of a hazardous substance;
    c. Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and
    d. The projected duration of the action needed to protect or provide for the use.
5. The Department shall provide notice and accept and consider public comment on the proposed remedial objectives in the remedial objectives report and may hold 1 or more additional public meetings depending upon the level of public interest. The Department shall prepare a final remedial objectives report.

J. Following the community involvement activities regarding the draft remedial investigation report and the remedial objectives report, a final remedial investigation report shall be prepared containing the results of the site characterization and the final remedial objectives report. The final remedial investigation report shall be accompanied by responsiveness summaries regarding comments, issues and concerns raised in the community involvement process. After completion of the final remedial investigation report, changes to the remedial objectives are subject to the requirements of subsection (I). The Department shall provide notice of the availability of the final remedial investigation report.

K. Any person may submit a request under R18-16-413 for the Department to approve a work plan or a report for all or any portion of a remedial investigation. The Department shall approve a work plan for a remedial investigation if the request shows that the work will comply with this Section, community involvement activities will comply with R18-16-404, and the work plan provides for modifications to address unknown or changed conditions or access problems. The Department shall approve a draft remedial investigation report if the work is in compliance with an approved work plan or, if no work plan was approved, the remedial investigation complies with this Section and the community involvement activities have been conducted under this Article.

R18-16-407. Feasibility Study

A. The feasibility study is a process to identify a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06.

B. The Department or any person may perform all or any portion of a feasibility study, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. The feasibility study process shall include community involvement procedures in compliance with R18-16-403 or R18-16-404 and may be reported concurrently with the remedial investigation. A work plan shall be developed and implemented for all or any portion of a feasibility study for a site or a portion of a site. The work plan shall demonstrate that the work performed will meet the requirements of this Section. A work plan may be modified as appropriate.

C. For remedies addressing only soils, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:

1. That the proposed remedy addresses the contaminated soil in a manner that achieves compliance with A.R.S. § 49-152 and Chapter 7, Article 2 of this Title and will achieve the remedial objectives for the use of the property.
2. That the proposed remedy was selected based upon best professional judgment considering the following information:
   a. The remedial investigation;
   b. Best available scientific information concerning available remedial methods and technologies;
   c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.

D. For remedies addressing only landfills that have not and will not impact groundwater or similar sites or portions of sites that have not and will not impact groundwater, and that contain material not subject to A.R.S. § 49-152 and Chapter 7, Article 2 of this Title, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:

1. That the proposed remedy is designed to prevent human exposure to hazardous substances through the achievement of:
   a. Soil remediation levels established under Chapter 7, Article 2 of this Title, or
   b. Site-specific remediation levels based on a site-specific human health risk assessment, meeting a cumulative excess lifetime cancer risk between 1 x 10-4 and 1 x 10-6 and a hazard index no greater than 1. The excess lifetime cancer risk shall be selected based upon site specific factors including the presence of multiple contaminants, the existence of multiple pathways of exposure, the uncertainty of exposure, and the sensitivity of the exposed population. With prior approval of the Department, a person may achieve a site specific remediation level based on the use of institutional and engineering controls. The approval shall be based in part on the demonstration that the institutional and engineering controls will be maintained.
2. That the proposed remedy was selected based upon best professional judgment considering the following information:
   a. The remedial investigation;
   b. Best available scientific information concerning available remedial methods and technologies;
   c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.
3. That the proposed remedy will achieve all of the remedial objectives.

E. For remedies other than provided in subsections (C) and (D), the feasibility study shall provide for the development of a reference remedy and at least 2 alternative remedies as follows:

1. The reference remedy and alternative remedies shall be capable of achieving all of the remedial objectives. The reference remedy and each alternative remedy shall consist of a remedial strategy under subsection (F) and all remedial measures to be employed. The combination of the remedial strategy and the remedial measures for each alternative remedy shall achieve the remedial objectives. The reference remedy and any alternative remedy also may include contingent remedial strategies or remedial measures to address reasonable uncertainties regarding the achievement of remedial objectives or uncertain time-frames in which remedial objectives will be achieved.

The reference remedy and other alternative remedies shall be developed and described in the feasibility study report in sufficient detail to allow evaluation using the comparison criteria, but plans at construction level detail are not required. The units of measure set forth in Appendix A may be used, as applicable, for comparison of the relevant factors. Where appropriate, the reference remedy and an alternative remedy may incorporate different strategies for different aquifers or portions of aquifers.

2. The reference remedy shall be developed based upon best professional judgment, considering the following:
   a. The information in the remedial investigation;
   b. The best available scientific information concerning available remedial technologies; and
   c. Preliminary analysis of the comparison criteria and the ability of the reference remedy to comply with A.R.S. § 49-282.06.
3. At a minimum, at least 2 alternative remedies must be developed for comparison with the reference remedy. At least 1 of the alternative remedies must employ a remedial strategy or combination of strategies that is more aggressive than the reference remedy, and at least 1 of the alternative remedies must employ a remedial strategy or combination of strategies that is less aggressive than the reference remedy. For the purposes of this Section, a more aggressive strategy is a strategy that requires fewer remedial measures to achieve remedial objectives, a strategy that achieves remedial objectives in a shorter period of time, or a strategy that is more certain in the long term and requires fewer contingencies. With the Department's approval, 1 of the minimum required alternative remedies may use the same strategy as the reference remedy but use different viable technologies or a more intensive use of the same technology utilized in the reference remedy.

F. The remedial strategies to be developed under subsection (E) are listed below. Source control shall be considered as an element of the reference remedy and all alternative remedies, if applicable, except for the monitoring and no action alternatives. A strategy may incorporate more than one remediation technology or methodology, such as a plume remediation strategy that consists of a combination of pumping and treating in portions of an aquifer and monitored natural attenuation for other portions of the aquifer. The remedial strategies are:

1. Plume remediation is a strategy to achieve water quality standards for contaminants of concern in waters of the state throughout the site.
2. Physical containment is a strategy to contain contaminants within definite boundaries.
3. Controlled migration is a strategy to control the direction or rate of migration but not necessarily to contain migration of contaminants.
4. Source control is a strategy to eliminate or mitigate a continuing source of contamination.
5. Monitoring is a strategy to observe and evaluate the contamination at the site through the collection of data.
6. No action is a strategy that consists of no action at a site.

G. Remedial measures necessary for each alternative remedy developed under subsection (E) to achieve remedial objectives or to satisfy the requirements of A.R.S. § 49-282.06(B)(4)(b) shall be identified in consultation with water providers or known well owners whose water supplies are affected by the release or threatened release of a hazardous substance. In identifying the remedial measures, the needs of the well owners and the water providers and their customers, including the quantity and quality of water, water rights and other legal constraints on water supplies, reliability of water supplies and any operational implications shall be considered. Such remedial measures may include, but are not limited to, well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls. Where remedial measures are relied upon to achieve remedial objectives, such remedial measures shall remain in effect as long as necessary to ensure the continued achievement of those objectives. Financial mechanisms may be necessary to provide for the cost of implementation of the remedial measures.

H. The Department or any person who conducts a feasibility study by agreement with the Department shall conduct a comparative evaluation of the reference remedy and the alternative remedies developed under subsection (E). For each alternative, the evaluation shall be reported in a feasibility study report and shall include:

1. A demonstration that the remedial alternative will achieve the remedial objectives.
2. An evaluation of consistency with the water management plans of affected water providers and the general land use plans of local governments with land use jurisdiction.
3. An evaluation of the comparison criteria, including:
   a. An evaluation of the practicability of the alternative, including its feasibility, short and long-term effectiveness, and reliability, considering site-specific conditions, characteristics of the contamination resulting from the release, performance capabilities of available technologies, and institutional considerations.
   b. An evaluation of risk, including the overall protectiveness of public health and aquatic and terrestrial biota under reasonably foreseeable land use scenarios and end uses of water. This evaluation shall address:
      i. Fate and transport of contaminants and concentrations and toxicity over the life of the remediation;
      ii. Current and future land and resource use;
      iii. Exposure pathways, duration of exposure, and changes in risk over the life of the remediation;
      iv. Protection of public health and aquatic and terrestrial biota while implementing the remedial action; and
      v. Residual risk in the aquifer at the end of remediation.

c. An evaluation of the cost of the remedial alternative, including the expenses and losses including capital, operating, maintenance, and life cycle costs. The cost analysis may include the analysis of uncertainties that may impact the cost of a remedial alternative, analysis of projected water uses and costs associated with use-based treatment, other use impairment costs of water not remediated to water quality standards, and the cost of measures such as alternative water supply or treatment. Transactional costs necessary to implement the remedial alternative, including the transactional costs of establishing long-term financial mechanisms, such as trust funds, for funding of an alternative remedy, shall be included in the cost estimate.

d. An evaluation of the benefit, or value, of the remediation. This analysis includes factors such as:

i. Lowered risk to human and aquatic and terrestrial biota;

ii. Reduced concentration and reduced volume of contaminated water;

iii. Decreased liability; acceptance by the public;

iv. Aesthetics; preservation of existing uses;

v. Enhancement of future uses; and

vi. Improvements to local economies.

e. A discussion of the comparison criteria, as evaluated in relation to each other.

I. Based upon the evaluation and comparison of the reference remedy and the other alternative remedies developed under subsection (E), a proposed remedy shall be developed and described in the feasibility study report. The proposed remedy may be the reference remedy, any of the other alternative remedies evaluated in the feasibility study, or a different combination of remedial strategies and remedial measures that were included in the alternative remedies evaluated in the feasibility study. The feasibility study report shall describe the reasons for selection of the proposed remedy, including all of the following:

1. How the proposed remedy will achieve the remedial objectives;
2. How the comparison criteria were considered; and
3. How the proposed remedy meets the requirements of A.R.S. § 49-282.06.

J. Any person, other than a person proposing to perform work under an agreement under A.R.S. §49-287.03(C), may submit a request in compliance with R18-16-413 for the Department to approve a work plan or a report for all or any portion of a feasibility study. The Department shall approve a work plan for a feasibility study if the request shows that the work will comply with this Section, community involvement activities will be performed in compliance with R18-16-404, and the work plan provides for modifications to comply with this Section. The Department shall approve a feasibility study report if the feasibility study complies with this Section and community involvement activities have been conducted under this Article.

R18-16-408. Proposed Remedial Action Plan

A. Following the completion of the feasibility study report, a proposed remedial action plan shall be prepared incorporating the proposed remedy and containing the information required in A.R.S. § 49-287.04(A). In addition, the proposed remedial action plan shall describe how the proposed remedy will achieve each of the remedial objectives identified in the final remedial investigation report under R18-16-406(J) and how accomplishment of the remedial objectives is to be measured.

B. The remedial action plan shall identify all recharge, reinjection, discharge, transportation and use of remediated water as defined in A.R.S. § 49-283.01.

C. At a site where the A.R.S. § 49-287.03 notice has been provided, notice of the proposed remedial action plan shall be provided by the Department in accordance with A.R.S. § 49-287.04(B) and the community involvement plan prepared under R18-16-403. At any other site, notice of the proposed remedial action plan shall be provided by any person as required under R18-16-404.

D. At a site where the A.R.S. § 49-287.03 notice has been provided and the Department intends to seek recovery of costs and conduct a cost allocation proceeding, notice of the proposed remedial action plan also shall include the information required by A.R.S. § 49-287.04(C). The notice shall include a statement of costs incurred by the Department prior to the date of the notice and projected future costs. The notice shall include all necessary information regarding the opportunities to submit costs, object to costs, or respond to objections to costs under R18-16-409, including a schedule for such submittal, review, objection and response to objection. The time period for submittal of costs shall not be less than 90 calendar days. If on the basis of new information or investigation notice is required to newly-identified parties, the notice sent under A.R.S. § 49-287.04 shall also include the information required by this Section.

E. A person other than the Department may prepare a proposed remedial action plan in accordance with subsection (A) of this Section and submit it to the Department under R18-16-413 with a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. § 49-287.02. If the Department determines that cost recovery by the Department is not appropriate, the Department may give the notice required by A.R.S. § 49-287.04(B) and subsection (C) of this Section or may permit the person who prepared the proposed remedial action plan to give the notice.

R18-16-409. Remedial Action Costs Credit

A. Any person seeking credit against potential liability at a site may submit to the Department, within the time period established in the notice given under R18-16-408(D), evidence of costs it has incurred or will incur for remedial actions undertaken at the site. The evidence of costs submitted shall include:

1. Two copies of an itemized statement of costs, including a certification by the person submitting the statement that the statement is true, accurate and complete;
2. Sufficient supporting documentation to establish that the costs are consistent with A.R.S. § 49-282.06 and this Article; and
3. An agreement in which the person submitting the evidence of costs agrees to reimburse the Department for the Department's costs under subsection (F).

B. Any itemized statements of costs submitted will be available for review at both the repository for the site and the Department on or after the expiration of the time period established in subsection (A).

C. Within a reasonable period of time set by the Department but not less than 30 calendar days, any person may object in writing to costs submitted by the Department or any other person under this. Written objections shall identify the specific costs to which the party objects and shall state specific reasons for the objection. Two copies of the objections shall be submitted to the Department and one copy of the objections shall be submitted to the person whose costs are the subject of objection.

D. The Department and each person who submits an itemized statement of costs shall have an opportunity to respond to any objections within the time period specified in the notice given under R18-16-408 subsection (C) or (D). Two copies of the response shall be submitted to the Department and one copy of the response shall be submitted to the person objecting to the costs.

E. The Department shall evaluate the statements of costs submitted, any objections to such statements, or other information available to the Department and shall approve those costs determined by the Department to be recoverable and in substantial compliance with A.R.S. § 49-282.06. The Department shall prepare a list of these approved costs for inclusion as part of the total estimated costs of the remedy in the record of decision under R18-16-410.

F. Any person who requests the Department's approval of costs under this Section shall reimburse the Department for the total reasonable cost to the Department for the review unless the Department waives all or a part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities. Costs that are reimbursed to the Department by a person that obtains the Department's approval of costs under this Section constitute remedial action costs that may be recovered from responsible parties.

G. The Department shall give credit up to the amount of a person's liability for the costs approved under this Section. Nothing in this Section shall create a right of reimbursement from the fund for any costs incurred or to be incurred at a site.

H. If the remedial action for which approval of costs is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) shall be accompanied by a request for approval of the remedial action under R18-16-413.

I. This Section is the exclusive process for the Department to approve the costs of a remedial action, and no other Department approval of a remedial action shall be considered as an approval of the costs of that remedial action.

R18-16-410. Record of Decision

A. After the conclusion of all required public comment periods prescribed by A.R.S. § 49-287.04, the Department shall prepare a record of decision regarding the proposed remedial action plan. However, any person may prepare a proposed record of decision for consideration by the Department by submitting copies of the final remedial investigation report, the final feasibility study report, the proposed remedial action plan, all public comments and a proposed record of decision.

B. The record of decision shall contain the following:

1. A description of the remedy, including a description of any differences from the proposed remedial action plan.
2. A comprehensive responsiveness summary regarding all comments received on the proposed remedial action plan.
3. A description of how the process for selecting the remedy complied with A.R.S. Title 49, Chapter 2, Article 5 and this Article, including all public comment and community involvement requirements.
4. A demonstration that the remedy selected will achieve the remedial objectives and will remain in place as long as necessary to ensure continued achievement of those objectives.
5. A demonstration that the remedy selected meets the requirements of A.R.S. § 49-282.06 and this Article.
6. A time for commencing implementation of the remedy and a specific time period for completing the remedy.
7. The total estimated cost of the remedy.
8. A time-frame for review of the remedy.

C. The total estimated cost of the remedy shall include:

1. Remedial action costs other than nonrecoverable costs incurred by the Department, including credit given in a settlement.
2. Remedial action costs other than nonrecoverable costs incurred by the state.

3. Remedial action costs other than nonrecoverable costs that have been approved by the Department under R18-16-409.
4. Projected future remedial action costs other than nonrecoverable costs.

D. The record of decision shall be issued only by the Department. Notice of the record of decision shall be provided under A.R.S. § 49-287.04(G) and R18-16-403.

E. A record of decision may be amended in accordance with A.R.S. § 49-289(B), (C), and (D).

R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy.

A. Any person who intends to implement all or any portion of a remedy or an early response action shall obtain the Department's approval when required in either a record of decision or under subsection (C) or (E). The design and implementation of the remedy shall conform with the remedial action plan as adopted in the record of decision.

B. If the remedy or an early response action includes well replacement or provision of an alternative water supply, the Department or any person conducting the design shall consult with the affected well owner or water provider. For a well owner, the design of that portion of the remedy or early response action shall meet the well owner's water quality and quantity needs in accordance with A.R.S. § 49-282.06(B)(4)(b) and R18-16-407(G). For a water provider, the design of that portion of the remedy or early response action shall:

1. Comply with laws and regulations governing the water provider's obligations to its customers;
2. Be implementable without significant alteration of the water provider's existing system; and
3. Meet the water provider's water quality and quantity needs in accordance with A.R.S. §49-282.06(B)(4)(b) and R18-16-407(G).

C. The Department's approval of the design of any water treatment facilities is required prior to the construction as part of the remedy or an early response action. The design shall be based on an evaluation of potential treatment system failure that could affect public health and shall incorporate safeguards including any site-specific engineering and operation controls necessary to assure protection of public health against such failure. The safeguards shall incorporate, at a minimum, if applicable to the technology:

1. Monitors and alarms on all key treatment system components, e.g. power, air flow.
2. Automatic termination of discharge from the treatment system when monitors detect abnormal operation of key treatment system components.

D. If operation and maintenance of a remedy following completion of construction are necessary to ensure the continued achievement of the remedial objectives, an operation and maintenance plan shall be prepared and implemented.

E. The Department's approval of an operation and maintenance plan shall be required for each WQARF site where the remedy or an early response action involves treatment of water to remove contaminants of concern at the site. The community advisory board, if one has been established for the site, shall be provided with the opportunity to comment on the operations and maintenance plan. Notice and community involvement shall be in accordance with sections R18-16-403 or R18-16-404. The operation and maintenance plan shall include:

1. Certification by the Department that the elements of the operations and maintenance plan adequately protect public health against treatment system failure.
2. A schedule and plan for water quality monitoring.
3. A requirement that affected water providers receive a copy of the completed application and a copy of the final permit for any National Pollutant Discharge Elimination System permit for the site.
4. A process for the treatment system operator to promptly notify potentially affected water providers of a failure of a key treatment system component that could affect the quality of a discharge of treated water.
5. For a discharge to a water of the United States, operational, maintenance and management practices to assure achievement of water quality discharge standards established in Chapter 11 of this Title prior to the point of discharge for those volatile organic compounds which are contaminants of concern at the site.

F. Any person who intends to implement any portion of a remedy may request the Department to approve the design or the operation and maintenance plan. A request for approval of a remedial design shall be submitted in accordance with R18-16-413. The Department shall approve any remedial design that is in compliance with this Section and the remedial action plan as adopted in the record of decision.

G. The well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment, well replacement or alternative water supply component of the remedy or early response action which is designed to address its use. This election shall not alter the responsibility of the Department or any person under A.R.S. Title 49, Chapter 2, Article 5 to fund all or a portion of the remedy or early response action. The well owner or water provider shall enter into a written agreement with the appropriate person that will govern the terms of the construction, operation or construction and operation of the water treatment, well replacement or alternative water supply component of the remedy.

R18-16-412. Innovative Technologies

A. The Department may approve the use of an innovative technology for a site if the Department determines that the technology has been demonstrated to be reasonably likely to achieve its objectives and meets the other criteria set forth in this Article. Such a demonstration may be made through pilot or bench testing studies, peer reviewed studies, or other appropriate means of demonstration. If an innovative technology is approved as part of a remedy, the remedial action plan shall provide for a contingency in the event that the technology fails to achieve its objectives.

B. The Department may use monies from the fund to contract for outside review of an innovative technology.

C. The Department may provide incentives for the selection of the innovative technology that may include the following:

1. The Department may agree not to assess penalties, issue a notice of violation, pursue an order, or take other enforcement action authorized by law for a delay that is caused by the use of the innovative technology provided that the party conducting the remedial action remains in compliance with the plans for implementing the innovative technology and implements a contingent remedial action in a timely manner.
2. The Department may use monies from the Water Quality Assurance Revolving Fund to finance some or all of the use of the innovative technology.

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

Option 1

A. Any person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following:

1. The name and address of the person submitting the request and the nature of the relationship of the person to the site, if any.
2. The location and boundaries of the site or portion of the site addressed by the remedial action.
3. The nature, degree, and extent of the hazardous substance contamination, if known.
4. A description of any remedial action performed before the request is submitted, a work plan for any remedial action to be performed after the request is submitted.
5. A demonstration of how the remedial action complied, or will comply, with this Article.
6. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.
7. An agreement in which the person requesting the approval agrees to:
   a. To grant access to the Department as necessary to evaluate the request for approval.
   b. To reimburse the Department for the Department's costs under subsection (G).

B. A request for approval under this Section may be combined with a no further action request under R18-16-414.

C. The Department may request additional information necessary to evaluate or to take action on the request for approval.

D. The Department shall provide notice of the request for approval and of the opportunity to comment on the request for approval.

E. The Department shall, after considering public comments, approve a remedial action under this Section if the Department determines that the remedial action is in substantial compliance with this Article. The Department's approval shall be in writing and shall state the basis for the approval.

F. The Department may deny approval of a remedial action under this Section if the remedial action does not meet the requirements of this Section, may request additional information, may request modification of the remedial action, or may condition approval of the remedial action on modifications necessary to achieve substantial compliance with this Article.

G. The person making the request for approval shall reimburse the Department for the total reasonable cost of the Department's review and action under this Section, including costs of notices, unless the Department waives all or part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities.

H. Approval of a remedial action under this Section does not constitute approval of the costs of conducting the remedial action.

I. A remedial action approved by the Department under this Section shall be deemed to be in substantial compliance with this Article. The Department's approval under this Section is not required to preserve any right to recover remedial action costs under A.R.S. § 49-285.

Option 2

A. Any person who seeks approval of a remedial action under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following:

1. The name and address of the person submitting the request and the nature of the relationship of the person to the site, if any.
2. The location and boundaries of the site or portion of the site addressed by the remedial action.
3. The nature, degree, and extent of the hazardous substance contamination, if known.

4. A description of any remedial action performed before the request is submitted, a work plan for any remedial action to be performed after the request is submitted, and a demonstration of:
   a. For a remedial action at a site or a portion of a site on the registry, how the remedial action complied, or will comply, with this Article.
   b. For a remedial action under the voluntary remediation program under A.R.S. Title 49, Chapter 1, Article 5, how the remedial action complied, or will comply, with that program.
   c. For a remedial action at a site that is not on the registry and that is not eligible for the voluntary remediation program under A.R.S. Title 49, Chapter 1, Article 5, how the remedial action complied, or will comply, with the following:
      i. Community involvement activities consistent with R18-16-404. If the remedial action is conducted or will be conducted under another law that includes public notice and comment or other community involvement activities that are substantially similar to the activities that would be required under this Article, the community involvement activities under the other program may be used to satisfy community involvement under this Article.
      ii. Site characterization and other investigations that are the substantial equivalent of the type of investigation that would be required under this Article.
      iii. For a remedial action that includes remediation, how the remedial action is in substantial compliance with this Article. If the remedial action was conducted or will be conducted under another program under A.R.S. Title 49, a person requesting the approval shall demonstrate that the remediation is consistent with the factors in A.R.S. § 49-282.06(A).
5. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.
6. An agreement in which the person requesting the approval agrees to:
   a. To grant access to the Department as necessary to evaluate the request for approval.
   b. To reimburse the Department for the Department's costs under subsection (G).

B. A request for approval under this Section may be combined with a voluntary remediation application under A.R.S. § 49-173 or a no further action request under R18-16-414.

C. The Department may request additional information necessary to evaluate or to take action on the request for approval.

D. The Department shall provide notice of the request for approval and of the opportunity to comment on the request for approval.

E. The Department shall, after considering public comments, approve a remedial action under this Section if the Department determines that the remedial action is in substantial compliance with this Article. The Department's approval shall be in writing and shall state the basis for the approval in accordance with subsection (A)(4).

F. The Department may deny approval of a remedial action under this Section if the remedial action does not meet the requirements of this Section, may request additional information, may request modification of the remedial action, or may condition approval of the remedial action on modifications necessary to achieve substantial compliance with this Article.

G. The person making the request for approval shall reimburse the Department for the total reasonable cost of the Department's review and action under this Section, including costs of notices, unless the Department waives all or part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities.

H. Approval of a remedial action under this Section does not constitute approval of the costs of conducting the remedial action.

I. A remedial action approved by the Department under this Section shall be deemed to be in substantial compliance with this Article. The Department's approval under this Section is not required to preserve any right to recover remedial action costs under A.R.S. § 49-285.

R18-16-414. Determination of No Further Action

A. The Department shall determine that no further action is necessary at a site or a portion of a site if, based upon the information submitted under A.R.S. § 49-287.01, the Department finds that the site or portion of the site does not present a significant risk to the public health, welfare, or the environment. The determination may be made by the Department based upon any of the following:
1. A finding by the Department that the remediation levels established under A.R.S. § 49-152 and Chapter 7, Article 2 of this Title have been met shall be sufficient to support a determination that no further action is necessary for soils at the site or a portion of the site.
2. A finding by the Department that no hazardous substances at the site or a portion of the site have impacted or will impact groundwater shall be sufficient to support a determination that the site or a portion of the site does not present a significant risk to groundwater.

3. The determination of no further action for waters of the state at a site or a portion of the site may be made by the Department based upon any of the following:
   a. A finding that the site or portion of a site has been remediated under a program other than A.R.S. Title 49, Chapter 2, Article 5.
   b. A finding that groundwater impacted by a release from the site does not and will not exceed water quality standards or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.
   c. A finding that there is no current or reasonably foreseeable use of water that would be impaired by the release, as determined by information collected under R18-16-406.

B. A determination of no further action for a site or a portion of a site shall be published in the registry.

C. If the remedial action for which a no further action determination is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) may be accompanied by a request for approval of the remedial action under R18-16-413.

R18-16-415. Soil Remediation

A. Soil remediation may be conducted as part of a remedy selected under R18-16-410 or may be conducted by any person at a site or portion of a site on the registry prior to the selection of a remedy if the following requirements are met:
1. The soil remediation is performed in accordance with A.R.S. § 49-152 and Chapter 7, Article 2 of this Title.
2. Community involvement activities are conducted in accordance with R18-16-404.
3. A notice of remediation under R18-7-209 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. § 49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.

B. Submission of the information required under subsection (A) to the Department shall not be considered to be an approval of the soil remediation. Approval of a work plan for soil remediation work to be performed or approval for remediation performed under this Section may be obtained by submitting a request under R18-16-413. The Department shall approve the request if the request demonstrates that the soil remediation was conducted in accordance with this Section.

C. The Department may request any additional information regarding the soil remediation in accordance with A.R.S. § 49-288.

D. The Department may include information regarding soil remediation conducted under this Section in a record of decision for a remedy for the site or portion of the site under R18-16-410.

R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

A. If the Department enters into a settlement under A.R.S. § 49-292 with a person who agrees to perform all or any portion of the remedy, the settlement agreement shall include criteria to determine when the work required by the settlement agreement is completed. A party to the settlement agreement who has performed all or a portion of a remedy may request a determination that the required work has been completed. The request shall describe how the requirements of the settlement agreement have been satisfied. The Department may require additional information to consider the request.

B. Any person may request that the Department determine that each of the remedial objectives for the site have been satisfied and will continue to be satisfied. The request shall demonstrate how the remedial objectives have been satisfied in accordance with the remedy and will continue to be satisfied, including information regarding any financial mechanisms in place to ensure the continued satisfaction of the remedial objectives. The Department may require additional information to consider the request. The Department shall issue notice of the request and provide an opportunity for public comment. Based upon the request and the public comments, the Department shall issue a written determination to approve or deny the request. If the request is approved, the written determination shall identify all actions that must continue to be taken to continue to satisfy the remedial objectives for the site.

C. Following an approval under subsection (B), the Department shall not undertake or require additional remedial action under this Article for the site or portion of the site other than the actions stated in the determination under subsection (B). However, the Department may reopen an investigation and take or require additional remedial action for any of the following reasons:
1. On discovery of new information that is material, which would result in the potential denial of a under subsection (B).
2. That information submitted to the Department under subsection (B) was inaccurate, misleading, or incomplete.
3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health, welfare, and the environment.

Appendix A. Standard Measurements for Comparison of Remedial Alternatives

	Typical Units
Plume Characterization	
Length	feet
Width	feet
Depth (thickness)	feet
Areal extent	acres
Volume	acre-feet
Plume leading edge advancement rate	feet/year
Plume volume expansion rate	acre-feet/year
Contaminant and Source Characterization	
Probable contributing sources	(number)
Number of contaminants	(number)
Maximum concentration of each contaminant	µg/I
Contaminant concentration vs. MCL	ratio
Contaminant mass in plume	pounds
Weighted average contaminant concentration in plume	µg/I
If present, estimated mass of LNAPL	pounds
If present, estimated mass of DNAPL	pounds
Sorbed contaminant mass in plume	pounds
Rate of downgradient contaminant mass transport	pounds/year
Remedial Efficiency	
Contaminant mass naturally degraded	pounds/year
Contaminant mass removed through remediation	pounds/year
Groundwater removed through remediation	acre-feet/year
Groundwater added (injected) by remediation	acre-feet/year
Net groundwater removed/added	acre-feet/year
Groundwater removed per year vs. plume volume expansion per year	percentage
Contaminant mass removed per year vs. pre-remedial contaminant mass transported downgradient per year	percentage
Time per first log cycle decline in average concentration	years per log cycle decline
Cost Efficiency	
Contaminant mass removal	$ per pound
Groundwater removal	$ per acre-foot
Cost per first cycle decline in average concentration	$ per log cycle decline

ARTICLE 5. INTERIM REMEDIAL ACTIONS

R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. § 49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

"Abandoned" means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

"Currently supplies water" means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

"Department" means the Arizona Department of Environmental Quality.

"Interim remedial action" means an action taken by the Department or by a well owner or operator under A.R.S. § 49-282.03.

"Part of a public water system" means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

"Public water system" has the same meaning as defined in 42 U.S.C. § 300(f).

"Registry sites" means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

"Remedy" has the same meaning as defined in A.R.S. § 49-281(13).

R-18-16-502. Eligibility

A. A well is eligible for consideration for funding or performance of interim remedial action if a remedy has not been selected and the well meets the following criteria:

1. The well currently supplies water for municipal, domestic, irrigation, or agricultural use or is currently part of a public water system;
2. The well produces water, or in the reasonably foreseeable future will produce water, that is not fit for its current or reasonably foreseeable end-use without treatment due to the release of hazardous substances at or from a site on the registry; and
3. The well has not been abandoned.

B. Only costs directly related to an interim remedial action approved by the Department are eligible for funding from a grant from the Water Quality Assurance Revolving Fund. Costs incurred by any person after the date of submittal of a complete request which meets the requirements of R18-16-503 are eligible for funding if the request and proposed interim remedial action are subsequently approved by the Department. Costs incurred by any person prior to the submittal of a request under R18-16-503 are not reimbursable by the Department.

R18-16-503. Request for Interim Remedial Action

A. Any person may request that the Department perform or provide a grant for an interim remedial action. The request shall be in writing and shall include a statement describing the eligibility of the well under R18-16-502 and a statement describing the reasons why interim remedial action is appropriate considering the factors in R18-16-504(A)(1) through (4). The request shall also include all of the following information that is in the possession of or is readily available to the person submitting the request:

1. A description of the well, including its location, Arizona Department of Water Resources registration number, construction details, and water production history.
2. An explanation of any water rights associated with the well and uses of the well, including any quality and quantity requirements associated with the end use of the water.
3. Any available water quality and water level data from the requesting party's wells that are the subject of the request.
4. Information that demonstrates that the well is contaminated or threatened by contamination from a release of hazardous substance from a registry site.
5. A proposal for interim remedial action, including a description of the proposed action, a schedule for implementation, and an estimate of the cost of the action.
6. A description of reasonable alternate interim remedial actions, costs associated with each alternative, and documentation supporting a finding that the proposed interim remedial action is minimum necessary to address the loss or reduction of available water until a remedy is selected.
7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. 7, Article 15, or on the ability of the water system to meet its legal obligations or its customer or user needs.
8. A description of the person's interest in the well and any limitations on the owner or operator's legal rights to use the well.

B. If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

R18-16-504. Review and Approval of Requests for Interim Remedial Action

A. The Department shall approve or deny requests for interim remedial action or request modifications to the proposal based on the following:

1. Whether immediate action may prevent contamination of the well.
2. Whether immediate action is necessary to provide for supply of water because contamination of the well is imminent.
3. Whether the well is currently contaminated, and there are water supply needs including needs related to drought or emergency supply that would be addressed by the well but for the contamination.
4. Whether the well is critical to the ability to satisfy the water supply needs of the well's users, including drought or emergency supply needs.

5. Whether the proposed action or alternative actions are the minimum necessary to address the loss or reduction of water.
6. Whether a proposed action is likely to be inconsistent with the final remedy.
7. Any information that might reasonably suggest that the party requesting the interim remedial action is responsible for the release of hazardous substances contaminating the well.
8. Funding considerations of the Department.

B. The Department may gather additional information before making a decision under subsection (A).

C. The Department shall condition approval of the request for interim remedial action upon execution by the requesting party of the following:
1. A reimbursement agreement under R18-16-505(C).
2. An agreement, as appropriate, to provide the Department access to the property at reasonable times for the purpose of conducting or overseeing the interim remedial action or to gather information necessary to evaluate the interim remedial action.

D. If any person other than the Department performs the work, the Department shall require that person to submit contracts, invoices or other evidence that the work was performed.

E. The Department may initiate an early response action in lieu of granting the request for interim remedial action if the requested remedial action meets the requirements of R18-16-405.

F. An interim remedial action shall be the minimum action necessary to address the loss or reduction of water available to well users during the period before selection and implementation of a final remedy at a site. The Department may approve an action that provides a permanent solution to the water supply problem unless a temporary solution is unavailable, more expensive, or incapable of fully addressing the problem during the period before a final remedy is implemented for the site.

R18-16-505. Reimbursement

A. If, in the record of decision, the Department determines that the interim remedial action taken was not necessary, based on criteria established in A.R.S. § 49-282.06, the Department shall require the person requesting the interim remedial action to reimburse all costs incurred in taking that action.

B. A person requesting the interim remedial action who is later determined by the Department to be a responsible party contributing to the contamination of the affected well shall reimburse the Department for all costs incurred by the Department in conducting or funding the interim remedial action.

C. The Department shall provide the person requesting the interim remedial action with a reimbursement agreement that clearly states the conditions under which the person requesting the interim remedial action must reimburse the Water Quality Assurance Revolving Fund. The person requesting the interim remedial action shall execute the reimbursement agreement as a prerequisite to approval of the interim remedial action. The Department may require that the person requesting the interim remedial action provide financial assurance for the obligation to reimburse the Water Quality Assurance Revolving Fund.